



**CHITTENDEN COUNTY RPC**  
*Communities Planning Together*

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

**Tuesday, February 18, 2020**

**8:00am to 9:30am**

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

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

### **Agenda**

**8:00 Welcome, Changes to the Agenda, Members' Items**

**8:05 Review Minutes from January 28, 2020\***

**8:10 Review Draft Comments on the Proposed Act 250 Bill**

- **Proposed CCRPC Comments\***
- **Proposed Draft Bill – 19-0040 Draft 10.4 dated 2/4/2020\***
- **Latest Bill as voted out of House Natural Resources on 2/13:**  
<https://legislature.vermont.gov/Documents/2020/WorkGroups/House%20Natural/Bills/19-0040/Drafts.%20Amendments%20and%20Summaries/W~Ellen%20Czajkowski~DR%2019-0040.%20Draft%2014.1-As%20Recommended%20by%20House%20Natural%20Resources,%202-13-2020~2-13-2020.pdf>

**9:15 Next Steps and Set Next Meeting Date (if necessary)**

**9:30 Adjourn**

\* = Attachment

**NEXT MEETING: TBD**



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

**Date:** Tuesday, January 28, 2020

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

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

**Attendees:** Tony Micklus; Jim Donovan; Justin Dextrateur (via phone); Charles Baker; Regina Mahony

- I. Meeting called to order at 9:05am. No changes to agenda or members' items.
- II. Review of Draft Comments on the Proposed Act 250 Bill:
  - a. The Committee discussed timing of the proposal and likelihood of the bill moving forward. Chris Roy indicated that he hasn't heard directly, but it is unclear if the House Natural Resources and Fish and Wildlife Committee will move forward with the VNRC/Administration bill or the bill they were working with last year. Chris Roy stated that the Enhanced Natural Resource Board part of the VNRC/Administration bill is facing more controversy than the proposed substantive changes to jurisdiction and criteria; and the latter might have a chance of being re-worked and passing if the former is removed or separated. The Committee decided to add this comment to the draft CCRPC comments.
  - b. The Committee discussed bringing these comments to the Executive Committee, Planning Advisory Committee and Board in February to provide Charlie Baker with comments that he can bring to the Legislature. Although Charlie may need to testify before a comments can be finalized.
  - c. The Committee discussed and edited the attached comment document.
- III. Next Steps: The ad hoc Committee will meet again on Tuesday, February 18<sup>th</sup> at 8am.
- IV. Adjourned at 10:25am

# CCRPC Comments on VNRC/Administration proposed Act 250 Bill

**DRAFT – 1/29/2020**

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

Here are a few broad thoughts for consideration before getting into specific provisions.

1. The substantive proposals in this draft bill have the potential of getting to a workable place much more so than the Enhanced Natural Resources Board concept and associated process. Therefore, CCRPC recommends that this Section be split from the rest of this proposal and be considered separately.
2. CCRPC believes that the state permit process should encourage development in appropriately planned places and discourage development in vulnerable and valued resource areas. Therefore, CCRPC strongly supports the concept that Act 250 should not have jurisdiction in areas planned for growth to encourage affordable housing and economic investment in our smart growth areas: walkable, transit-friendly, water and sewer-served areas. CCRPC appreciates the exemption for Designated Downtowns and Neighborhood Development Areas, but recommends further expansion of this exemption (see comment 7 below).
3. CCRPC supports the concept of relying on separate state permits to satisfy specific criteria as appropriate.
4. A general comment is to use existing definitions from other sections of statute wherever possible.

## **I. Act 250 Jurisdiction**

5. 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 expanding protection of ridgelines, however the purpose of this jurisdictional expansion should be expressly stated (i.e. scenic viewshed or wildlife habitat). Further, if the land area for a proposed development project does not functionally serve the stated purpose, there should be a process for proving so and Act 250 review and a permit should not be needed (such as wetland re-classification from Class III to Class II). Otherwise, this is a blunt tool that will result in avoidance of Act 250 review and associated unintended consequences. Lastly, it would be best to include a specific map of the area regulated (<http://anrmaps.vermont.gov/websites/ridges/index.html>) and a process for how that map will be updated.
6. 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 is supportive of the goal of preventing forest fragmentation but believes that this is too blunt of a tool. Similar to the comment above, CCRPC recommends a connection between the 2,000’ road distance and the intended purpose of this jurisdictional trigger (habitat

protection? Forest fragmentation?) and allowing an applicant to indicate if the stated purpose is being achieved with the proposed development.

7. Section C, pg. 7 to 21 – This section proposes to exclude development in designated Downtowns and Neighborhood Development Areas from Act 250 jurisdiction. **The proposal also includes underlying changes to the mixed income housing definitions.**

*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 additional Act 250 review. Further, if the conditions from previous Act 250 permits are going to be a responsibility of the municipalities, it is critically important that the municipalities have the authority to re-evaluate a previous condition already addressed by a municipal regulation and municipal standards (as stated on pg. 17 line 17 – 18). **Changes to the mixed income housing definitions including specification of unit types/bedrooms have been added which can be much more difficult to address and administer. It is unclear why these changes are being proposed.**

8. 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 and supports this adjustment.

9. 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. If this is to be put in place, the process for exemption should be one-time for the whole area. We would also suggest that interchanges in a Census-defined urbanized area (Interstate 89 Exits 12 to 16) be excluded from jurisdiction since these areas are already developed and will only be infilling over time.

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

10. 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 (with the presumption provided in IV. Act 250 Permit Conditions and Permit Process, Section C, pg. 40 of this proposed bill).

11. 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.

12. 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.
13. 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]**

14. 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 rulemaking 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). Also, CCRPC recommends that projects should be vested at time of submittal of the pre-application materials.
15. Section C, pg. 40 – This section proposes to make all ANR permits, and municipal permits, have a presumption automatically.  
*Comment:* CCRPC agrees with and appreciates this approach, especially the addition of municipal permits being considered.

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

16. 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 appreciates what this proposal is trying to do regarding consistency throughout the state. However, there are a number of challenges with this proposal, and overall CCRPC recommends that this section of the proposal be studied further and considered in a separate bill.

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

17. 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 recommendations for “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 the recommendations and report.
18. 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 or if it remains that VAPDA and VLCT be consulted in the preparation of the report.

DRAFT

**Comments on proposed Act 250 changes**  
**Offered by Charlie Baker, Executive Director**  
**Chittenden County Regional Planning Commission**

**2/14/2020**

Note: The comments herein include references to 19-0040 Draft 10.4 dated 2/4/2020. These comments are based upon discussion of CCRPC's Act 250 Committee and Planning Advisory Committee **but have not yet been reviewed and approved by the CCRPC Board**. We hope that we will have the opportunity to provide more comments as our position and the Legislature's position evolve over the coming weeks.

General comments:

1. We support updating Act 250 and applaud the Committee for taking on this important work.
2. We recognize the challenge of addressing both substantive changes to Act 250 jurisdiction and criteria and process changes to the way Act 250 is administered. If there is not agreement on the process changes, we urge the Committee to move ahead with the substantive changes this session and continue work on the process changes in the future.
3. CCRPC believes that the state permit process should encourage development in appropriately planned places and discourage development in vulnerable and valued resource areas. Therefore, CCRPC strongly supports the concept that Act 250 should not have jurisdiction in areas planned for growth to encourage affordable housing and economic investment in our smart growth areas: walkable, transit-friendly, water and sewer-serviced areas. In Chittenden County this is 15% of the land area; meanwhile this legislation only proposes jurisdictional relief for two state designations that comprise a mere 0.4% of the land area in Chittenden County (and significantly less so in other regions). It is also important to note that the rules for these state designations only allow one per municipality; this does not acknowledge historic growth patterns in many municipalities that have more than one center or location for growth. Expansion of the designation programs would be beneficial. CCRPC appreciates the exemption for Designated Downtowns and Neighborhood Development Areas, but recommends further expansion of this exemption (see comments 8 & 13 below). Further, any evolution of this bill that removes these jurisdictional exemptions, but retains resource expansions, would not be supported by CCRPC.
4. CCRPC supports the development of a Resource Map that makes clear to all parties what resource areas trigger jurisdiction (see comments 2, 4, 7, & 14 below) and to assist in evaluating compliance with relevant criteria.
5. CCRPC supports the concept of providing a presumption of compliance to satisfy specific criteria as appropriate based upon issuance of separate applicable state permits (see comment 18).

Specific Comments:

6. Page 6, lines 5-11 – 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 new jurisdiction is not necessary. If this provision is retained, we request that language be added to section (xi) to make explicit that the Regional Planning Commission determination that municipal bylaws meet the criteria for exemption provides for an exemption for that interchange area unless the RPC determines at a future date that the bylaws no longer meet the criteria. We would also suggest that interchanges in a Census-defined urbanized area (Interstate 89 Exits 12 to 16) be excluded from jurisdiction since these areas are already developed and will only be infilling over time. Also, the standards written into this section could be used for Act 250 delegation to municipalities in full, rather than just 2,000' of an interchange. CCRPC suggests this is an option for streamlining of the permitting system in municipalities that have the capacity.

7. Pages 7-8, lines 17-11 – This section proposes to include new road/driveway construction of 2,000 feet in length as development subject to Act 250.

*Comment:* CCRPC is supportive of the goal of preventing forest and habitat fragmentation, but believes that this is too blunt of a tool. CCRPC recommends a connection between the 2,000' road distance and the intended purpose of this jurisdictional trigger (habitat protection? Forest fragmentation?) and allowing an applicant to indicate if the stated purpose is being achieved with the proposed development. Alternatively, we recommend that this section be replaced with language to protect forest and habitat areas; those areas to be mapped by ANR (<http://anrmaps.vermont.gov/websites/ridges/index.html>) and adopted by reference as the area regulated; and, a process for how that map will be updated.

8. Page 9, lines 15-16 – This section exempts subdivisions inside designated downtowns and neighborhood development areas from Act 250 jurisdiction.

*Comment:* CCRPC agrees with and appreciates this approach. It is not clear if these areas are also exempt from the definition of development, and suggest that this be clarified. We suggest that development and subdivision in both Growth Centers designations, and areas planned for growth/(existing settlement areas?), should also be excluded. We suggest expanding the criteria of NDAs to include areas served by public sewer and water even it is beyond the quarter to half mile from the designated center. In Chittenden County our existing settlement area with sewer/water is XX% of our area planned for growth compared to 0.4% in NDAs.

9. Page 11, lines 5-14 - These sections define “connecting habitat” and “forest block.”

*Comment:* CCRPC recommends that these definitions be expanded to specifically reference mapping developed by ANR. Some additional guidance may be helpful to provide parameters around the minimum size of forest blocks or connecting habitat.

10. Page 14, lines 1-6 - This language shifts the responsibility for jurisdictional determinations from district coordinators to District Commissions.

*Comment:* CCRPC recommends retaining the existing role of district coordinators for ease of administration and timeliness. If there are issues regarding consistency, more training and support should be provided to the District Coordinators, and appeals of these determinations should be reviewed by the central Vermont Environmental Review Board (VERB).



11. Pages 15-19 - This language establishes the Environmental Review Board.  
*Comment:* CCRPC does not have a position on this change yet. However, we are concerned about losing the benefit of being able to combine appeals from Act 250, DEC, and municipalities at the Environmental Court. We ask that the ability to combine appeals in one body remain.
12. Page 26-27 - Capability and Development Maps.  
*Comment:* Thank you for including consultation with RPCs in the development of these maps. It might speed the process to start with a review of the maps produced by the RPCs as part of the recent enhanced regional energy planning work. Please consider making a clearer connection to the map layers that would be appropriate for determining jurisdiction in forest blocks and connecting habitat as noted in Comment #4. Also, please consider incorporating an update of the Capability and Development Plan. Rather than simply updating the maps, the Plan would provide a much more comprehensive process that incorporates balance and prioritization that can be a useful base for the state permitting system.
13. Page 34-35, lines 11-2 - This section exempts designated downtowns and neighborhood development areas from Act 250 and allows for extinguishing of Act 250 permits in designated downtowns and neighborhood development areas.  
*Comment:* CCRPC agrees with and appreciates this approach. However, permits in both Growth Centers and New Town Center designations should also be exempt and allowed to be extinguished. These are also state approved growth areas and there is no need for additional Act 250 review.
14. Pages 41-42, lines 1-5 – This section proposes a 30-day pre-application notice requirement to the public and affected agencies for larger Act 250 cases. It allows for municipal or regional planning commissions to hold hearings and provide recommendations to the applicant or District Commission.  
*Comment:* CCRPC questions the necessity of this process in Act 250. This mimics the Section 248/PUC process where most projects are exempt from local zoning. Under Act 250 a local review process is still necessary which largely serves this same role. However, if this process remains in the bill, CCRPC recommends that projects should be vested at time of submittal of the pre-application materials.
15. Page 52, line 13 – This section provides stronger language for applicants to provide bike, pedestrian and transit infrastructure.  
*Comment:* CCRPC supports this stronger language.
16. Page 53, lines 2-5 – This section adds language noting that if a municipality does not respond within 90 days to whether a development will impose an unreasonable burden on the municipality to provide educational services, it will be presumed to have no impact.  
*Comment:* CCRPC recommends that this request for a response be the responsibility of the applicable school district(s), not the municipality.
17. Page 57, lines 1-3 – This section proposes certification and inspection of energy conservation and efficiency and the stretch energy code.

*Comment:* CCRPC feels that there should be one consistent energy code applied throughout the state, not a higher standard in Act 250.

18. Pages 58-59, lines 12-2 – This section proposes that a municipal plan must be approved by the Regional Planning Commission in order for it to be used in the Act 250 review process.

*Comment:* CCRPC agrees with this approach.

19. Pages 70-71 – This section requires ANR to produce resource maps, including for forest blocks.

*Comment:* Thank you for this section. It mostly addresses concerns identified above and should be referenced more specifically with regards to forest blocks and connecting habitat. It may be useful to clarify the relationship between this resource map and the Capability and Development Maps proposed on pages 26-27 and which layers should be used for jurisdictional determinations.

20. Page 73, lines 3-9 - This section has the VERB approve regional plans and amendments if consistent with the goals of section 4302 of Title 24.

*Comment:* CCRPC supports State review of regional plans. We request consideration of adding relevant State agencies into this review process (maybe by consultation), such as ACCD, ANR, and VTrans so that all of our collective planning is as coordinated and consistent as possible. We also request additional language be added so that the review is more similar to how RPCs review municipal plans. Besides reviewing the plan for consistency with the goals we also confirm that the plan contains all the elements required by state law in 24 VSA §4382(a) and is compatible with the approved plans of adjacent municipalities (or in this case RPCs).

21. Pages 75-76 – This section provides for the appropriate municipal development review panel to review Act 250 permits and take on or remove previously required conditions under certain criteria.

*Comment:* CCRPC supports and appreciates the intent of this provision to remove unnecessary conditions from properties and level the playing field for all property owners in areas exempted from Act 250 going forward. However, it would be simpler to extinguish these permits upon adoption of this Act. If there is agreement that these locations no longer need to be subject to Act 250 today, then there is no reason to uphold old conditions. Or a more effective approach **may be for the District Commission to provide all the active permits in the affected areas to the municipality with an accompanying opinion noting that, upon application for future development, the Act 250 permit will be superseded by the local permit and any conditions outlined in the Act 250 permit may be carried forward as deemed appropriate by the municipality.**

22. Page 97, lines 3-9 – This section requires ANR to adopt rules to designate highest priority river corridors.

*Comment:* CCRPC thinks this is a step in the right direction, but would like to see explicit language added giving direction to ANR to allow for appropriate infill in our already developed downtowns and villages.

23. Presumptions for ANR permits in Act 250 Proceedings

*Comment:* We may have missed this provision. Nonetheless, CCRPC would like to see the bill

include the presumption provided in the Joint Proposal of the Administration and VNRC. (See page 40 of the “discussion draft” dated 1/14/2020.)

24. Exemption for Certain Transportation Projects

Comment: CCRPC would like to see the exemption for transportation projects that disturb less than an additional 10 acres included in the bill as proposed in Joint Proposal of the Administration and VNRC. (See page 21 of the “discussion draft” dated 1/14/2020.)

1 Introduced by

2 Referred to Committee on

3 Date:

4 Subject: Conservation and development; land use; natural resources; Act 250

5 Statement of purpose of bill as introduced: This bill proposes to make  
6 revisions to the State land use law known as Act 250, including:

- 7 • Proposing revisions to Act 250's Capability and Development Plan to  
8 address climate change and ecosystem protection.
- 9 • Amending Act 250 to include a purpose section that refers to that plan and  
10 the specific statutory goals for municipal and regional planning.
- 11 • Amending the criteria to address climate change
- 12 • Reorganizing the air and water pollution criteria.
- 13 • Amending the transportation criteria, public investment criterion, and  
14 energy conservation criterion.
- 15 • Amending the criteria to address ecosystem protection through protecting  
16 forest blocks and connecting habitat. The bill also would increase the  
17 program's ability to protect ecosystems on ridgelines by reducing the  
18 elevation threshold from 2,500 to 2,000 feet.
- 19 • Requiring that, to be used in Act 250, local and regional plans must be  
20 approved as consistent with the statutory planning goals and clarifying that

1 local and regional plan provisions apply to a project if they meet the same  
2 standard of specificity applicable to statutes.

- 3 • As part of a balancing of interests to support economic development in  
4 compact centers while promoting a rural countryside and protecting  
5 important natural resources, exempting designated downtowns and  
6 neighborhood development areas from Act 250 and increasing Act 250  
7 jurisdiction at interstate interchanges and over new roads. Because the  
8 designation under 24 V.S.A. chapter 76A would affect jurisdiction, the bill  
9 provides for appeal of designation decisions.
- 10 • Clarifying the definition of “commercial purpose” so that it is not necessary  
11 to determine whether monies received are essential to sustain a project.
- 12 • Increasing the per diem rate for District Commissioners and the Board to  
13 \$100.
- 14 • Replacing the Natural Resources Board (NRB) with a Vermont  
15 Environmental Review Board (the Board), which would hear appeals from  
16 the District Commissions and the Agency of Natural Resources in addition  
17 to the NRB’s current duties. The Environmental Division of the Superior  
18 Court would continue to hear enforcement and local zoning appeals.
- 19 • Reaffirming the supervisory authority in environmental matters of the  
20 Board and District Commissions, in accordance with the original intent of  
21 Act 250 as determined by the Vermont Supreme Court.

- 1 • Revising and clarifying the statutory authority on the use of other permits to
- 2 demonstrate compliance with the criteria, including ensuring the reliability
- 3 of those other permits.
- 4 • Maps
- 5 • Preexisting pits and quarries
- 6 • Release from jurisdiction

7 An act relating to changes to Act 250

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

9 \* \* \* Revisions to Capability and Development Plan \* \* \*

10 Sec. 1. 1973 Acts and Resolves No. 85, Sec. 7(a)(20) is added to read:

11 (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

12 Climate change poses serious risks to human health and safety, functioning  
13 ecosystems that support a diversity of species and economic growth, and  
14 Vermont's tourist, forestry, and agricultural industries. The primary driver of  
15 climate change in Vermont and elsewhere is the increase of atmospheric  
16 carbon dioxide from the burning of fossil fuels, which has a warming effect  
17 that is amplified because atmospheric water vapor, another greenhouse gas,  
18 increases as temperature rises. Vermont should minimize its emission of  
19 greenhouse gases and, because the climate is changing, ensure that the design

1 and materials used in development enable projects to withstand an increase in  
2 extreme weather events and adapt to other changes in the weather and  
3 environment.

4 Sec. 2. 1973 Acts and Resolves No. 85, Sec. 7(a)(2) is amended to read:

5 (2) ECOSYSTEM PROTECTION AND UTILIZATION OF NATURAL  
6 RESOURCES

7 (A) Healthy ecosystems clean water, purify air, maintain soil,  
8 regulate the climate, recycle nutrients, and provide food. They provide raw  
9 materials and resources for medicines and other purposes. They are at the  
10 foundation of civilization and sustain the economy. These ecosystem services  
11 are the state's natural capital.

12 (B) Biodiversity is the key indicator of an ecosystem's health. A  
13 wide variety of species copes better with threats than a limited number of  
14 species in large populations.

15 (C) Products of the land and the stone and minerals under the land, as  
16 well as the beauty of our landscape are principal natural resources of the state.

17 (D) Preservation Protection of healthy ecosystems in Vermont,  
18 preservation of the agricultural and forest productivity of the land; and the  
19 economic viability of agricultural units, conservation of the recreational  
20 opportunity afforded by the state's hills, forests, streams and lakes, wise use of  
21 the state's non-renewable earth and mineral reserves, and protection of the

1 beauty of the landscape are matters of public good. Uses which threaten or  
2 significantly inhibit ~~these~~ healthy ecosystems and the state's natural and scenic  
3 resources should be permitted only when the public interest is clearly benefited  
4 thereby.

5 \* \* \* Revisions to State Land Use Law \* \* \*

6 Sec. 3. 10 V.S.A. chapter 151 is amended to read:

7 CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS

8 Subchapter 1. General Provisions

9 § 6000. PURPOSE; CONSTRUCTION

10 The purposes of this chapter are to protect and conserve the environment of  
11 the State and to support the achievement of the goals of the Capability and  
12 Development Plan and of 24 V.S.A. § 4302(c). The chapter shall be construed  
13 broadly to effect these purposes.

14 § 6001. DEFINITIONS

15 ~~In~~ As used in this chapter:

16 (1) “Board” means the ~~Natural Resources~~ Vermont Environmental  
17 Review Board.

18 (2) “Capability and Development Plan” means the Plan prepared  
19 pursuant to section 6042 of this title and adopted pursuant to 1973 Acts and  
20 Resolves No. 85, Secs. 6 and 7, as amended by this act.

21 (3)(A) “Development” means each of the following:



\* \* \*

(vi) The construction of improvements for commercial, industrial, or residential use at or above the elevation of 2,500 2,000 feet.

\* \* \*

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

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

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

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

1                   (IV) Ensure that uses allowed in the area will not impose a  
2                   burden on the financial capacity of a town or the State.

3                   (V) Ensure that allowed uses be of a type, scale, and design that  
4                   complement rather than compete with uses that exist in designated downtowns,  
5                   village centers, growth centers, or other regional growth areas. Principle retail  
6                   should be discouraged or prohibited in highway interchange areas.

7                   (VII) Ensure that development in this area not establish or  
8                   contribute to a pattern of strip development. Where strip development already  
9                   exists, development in this area must be infill that minimizes the characteristics  
10                  of strip development.

11                  (VIII) Require site design to use space efficiently by siting  
12                  buildings close together, minimizing paved services, locating parking to the  
13                  side and rear, and minimizing the use of one-story buildings.

14                  (IX) Require the permitted uses, patterns of development, and  
15                  aesthetics of development in these areas to conform with the regional plan and  
16                  be consistent with the goals of 24 V.S.A. § 4302.

17                  (xii) The construction of a road or roads and any associated  
18                  driveways to provide access to or within a tract of land of more than one acre  
19                  owned or controlled by a person. For the purposes of determining jurisdiction  
20                  under this subdivision, any parcel of land that will be provided access by the  
21                  road and associated driveways is land involved in the construction of the road.

1 Jurisdiction under this subdivision shall not apply unless the length of road and  
2 any associated driveways, in combination, is greater than 2,000 feet. As used  
3 in this subdivision, “roads” shall include any new road or improvement to a  
4 Class IV road by a private person for the purpose of accessing a development  
5 or subdivision, including roads that will be transferred to or maintained by a  
6 municipality after their construction or improvement. For the purpose of  
7 determining the length of any road and associated driveways, the length of all  
8 other roads and driveways within the tract of land constructed within any  
9 continuous period of 10 years commencing after July 1, 2020 shall be  
10 included. This subdivision shall not apply to a State or municipal road or a  
11 road used exclusively for agricultural or forestry purposes.

12 \* \* \*

13 (D) The word “development” does not include:

14 (i) The construction of improvements for farming, logging, or  
15 forestry purposes below the elevation of 2,500 feet.

16 \* \* \*

17 (6) ~~“Floodway” means the channel of a watercourse which is expected to~~  
18 ~~flood on an average of at least once every 100 years and the adjacent land areas~~  
19 ~~which are required to carry and discharge the flood of the watercourse, as~~  
20 ~~determined by the Secretary of Natural Resources with full consideration given~~

1 ~~to upstream impoundments and flood control projects.~~ “Flood hazard area” has  
2 the same meaning as under section 752 of this title.

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

8 \* \* \*

9 (12) “Necessary wildlife habitat” means concentrated habitat ~~which that~~  
10 is identifiable and is demonstrated as being decisive to the survival of a species  
11 of wildlife at any period in its life, including breeding and migratory periods.

12 \* \* \*

13 (19)(A) “Subdivision” means each of the following:

14 (i) A tract or tracts of land, owned or controlled by a person,  
15 ~~which~~ located outside of a designated downtown or neighborhood development  
16 area, that the person has partitioned or divided for the purpose of resale into  
17 10 or more lots within a radius of five miles of any point on any lot, or within  
18 the jurisdictional area of the same District Commission, within any continuous  
19 period of five years. In determining the number of lots, a lot shall be counted  
20 if any portion is outside such an area and within five miles or within the  
21 jurisdictional area of the same District Commission.

1 (ii) A tract or tracts of land, owned or controlled by a person,  
2 ~~which~~ that the person has partitioned or divided for the purpose of resale into  
3 six or more lots, within a continuous period of five years, in a municipality  
4 ~~which~~ that does not have duly adopted permanent zoning and subdivision  
5 bylaws.

6 (iii) A tract or tracts of land, owned or controlled by a person,  
7 ~~which~~ that have been partitioned or divided for the purpose of resale into five  
8 or more separate parcels of any size within a radius of five miles of any point  
9 on any such parcel, and within any period of ten years, by public auction.

10 (I) ~~In~~ As used in this subdivision (iii), “public auction” means  
11 any auction advertised or publicized in any manner, or to which more than ten  
12 persons have been invited.

13 (II) If sales described under this subdivision (iii) are of interests  
14 that, when sold by means other than public auction, are exempt from the  
15 provisions of this chapter under the provisions of subsection 6081(b) of this  
16 title, the fact that these interests are sold by means of a public auction shall not,  
17 in itself, create a requirement for a permit under this chapter.

18 (B) The word “subdivision” shall not include each of the following:

19 (i) a lot or lots created for the purpose of conveyance to the State  
20 or to a qualified organization, as defined under section 6301a of this title, if the  
21 land to be transferred includes and will preserve a segment of the Long Trail;

1 (ii) a lot or lots created for the purpose of conveyance to the State  
2 or to a “qualified holder” of “conservation rights and interest,” as defined in  
3 section 821 of this title.

4 \* \* \*

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

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

15 (40) “Fragmentation” means the division or conversion of a forest block  
16 or connecting habitat by the separation of a parcel into two or more parcels; the  
17 construction, conversion, relocation, or enlargement of any building or other  
18 structure, or of any mining, excavation, or landfill; and any change in the use  
19 of any building or other structure, or land, or extension of use of land.  
20 However, fragmentation does not include the division or conversion of a forest  
21 block or connecting habitat by a recreational trail or by improvements

1 constructed for farming, logging, or forestry purposes below the elevation of  
2 2,500 feet.

3 (41) “Habitat” means the physical and biological environment in which  
4 a particular species of plant or wildlife lives.

5 (42) As used in subdivisions (38), (39), and (41) of this section,  
6 “recreational trail” means a corridor that is not paved and that is used for  
7 recreational purposes, including hiking, walking, bicycling, cross-country  
8 skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.

9 (43) “Air contaminant” has the same meaning as under section 552 of  
10 this title.

11 (44) “Commercial purpose” means the provision of facilities, goods, or  
12 services by a person other than for a municipal or State purpose to others in  
13 exchange for payment of a purchase price, fee, contribution, donation, or other  
14 object or service having value, regardless of whether the payment is essential  
15 to sustain the provision of the facilities, goods, or services.

16 (45) “Greenhouse gas” means carbon dioxide, methane, nitrous oxide,  
17 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other  
18 chemical or physical substance that is emitted into the air and that the  
19 Secretary of Natural Resources or District Commission reasonably anticipates  
20 to cause or contribute to climate change.

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

\* \* \*

\* \* \*



1 (c) With respect to the partition or division of land, or with respect to an  
2 activity which might or might not constitute development, any person may  
3 submit to the ~~district coordinator~~ District Commission an “Act 250 Disclosure  
4 Statement” and other information required by the rules of the Board, and may  
5 request a jurisdictional opinion from the ~~district coordinator~~ District  
6 Commission concerning the applicability of this chapter. If a requestor wishes  
7 a final determination to be rendered on the question, the district coordinator, at  
8 the expense of the requestor and in accordance with rules of the Board, shall  
9 publish notice of the issuance of the opinion in a local newspaper generally  
10 circulating in the area where the land ~~which~~ that is the subject of the opinion is  
11 located, and shall serve the opinion on all persons listed in subdivisions  
12 6085(c)(1)(A) through (D) of this title. In addition, the requestor who is  
13 seeking a final determination shall consult with the district coordinator and  
14 obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be  
15 notified by the district coordinator because they are adjoining property owners  
16 or other persons who would be likely to be able to demonstrate a particularized  
17 interest protected by this chapter that may be affected by an act or decision by  
18 a District Commission.

19 (d) [Repealed.]

## 20 Subchapter 2. Administration

### 21 § 6021. BOARD; VACANCY, REMOVAL

1       (a) ~~A Natural Resources~~ Establishment. The Vermont Environmental  
2       Review Board is created to hear appeals and adopt rules.

3           (4) The Board shall consist of five members nominated, appointed by  
4       ~~the Governor, with the advice and consent of the Senate, and confirmed in the~~  
5       manner of a Superior judge so that one appointment expires in each year. The  
6       Chair shall be a full-time position. In making these appointments, ~~the~~  
7       ~~Governor and the Senate shall give consideration to~~ candidates shall be sought  
8       who have experience, expertise, or skills relating to ~~the environment or land~~  
9       ~~use~~ environmental science, natural resources law and policy, land use planning,  
10      community development, environmental justice, or racial equity.

11           (A) ~~The Governor shall appoint a chair of the Board, a position that~~  
12      ~~shall be a full-time position~~ appointing authority shall ensure, to the extent  
13      possible, the Board membership includes the racial, ethnic, gender, and  
14      geographic diversity of the State.

15           (B) Following initial appointments, the members, ~~except for the~~  
16      ~~Chair,~~ shall be appointed for terms of four years.

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

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

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

6           ~~(b) Any vacancy occurring in the membership of the Board shall be filled~~  
7           ~~by the Governor for the unexpired portion of the term. Terms; vacancy;~~  
8           ~~succession. The term of each appointment subsequent to the initial~~  
9           ~~appointments described in subsection (a) of this section shall be four years.~~  
10          ~~Any appointment to fill a vacancy shall be for the unexpired portion of the~~  
11          ~~term vacated. A member wishing to succeed himself or herself in office may~~  
12          ~~seek reappointment under the terms of this section.~~

13          ~~(c) Removal. Notwithstanding the provisions of 3 V.S.A. § 2004, the Chair~~  
14          ~~and members shall be removable for cause only, except the Chair, who shall~~  
15          ~~serve at the pleasure of the Governor.~~

16          ~~(d) The Chair of the Board, upon request of the Chair of a District~~  
17          ~~Commission, may appoint and assign former Commission members to sit on~~  
18          ~~specific Commission cases when some or all of the regular members and~~  
19          ~~alternates of the District Commission are disqualified or otherwise unable to~~  
20          ~~serve. Use of alternates. When a member of the Board is unavailable to hear a~~  
21          ~~case, the Chair may appoint an alternate member to hear the case. Retirement~~

1 from office. When a Board member who hears all or a substantial part of a  
2 case retires from office before the case is completed, he or she shall remain a  
3 member of the Board for the purpose of concluding and deciding that case and  
4 signing the findings and judgments involved. A retiring Chair shall also  
5 remain a member for the purpose of certifying questions of law if a party  
6 appeals to the Supreme Court.

7 (e) Completion of case. A case shall be deemed completed when the Board  
8 enters a final decision even though that decision is appealed to the Supreme  
9 Court and remanded by that Court.

10 (f) Court of record; jurisdiction. The Board shall have the powers of a  
11 court of record in the determination and adjudication of all matters within its  
12 jurisdiction. It may initiate proceedings on any matter within its jurisdiction.  
13 It may render judgments and enforce the same by any suitable process issuable  
14 by courts in this State. An order issued by the Board on any matter within its  
15 jurisdiction shall have the effect of a judicial order. The Board's jurisdiction  
16 shall include:

17 (1) the issuance of declaratory rulings on the applicability of this chapter  
18 and rules or orders issued under this chapter, pursuant to 3 V.S.A. § 808; and

19 (2) the issuance of decisions on appeals pursuant to section 6089 and  
20 chapter 219 of this title.

1        (g) Hearing officers. One Board member or any officer or employee of the  
2        Board duly appointed by the Chair of the Board may inquire into and examine  
3        any matter within the jurisdiction of the Board.

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

6                (2) Hearings conducted by a hearing officer shall be in accordance with  
7        3 V.S.A. §§ 809–814. A hearing officer may administer oaths and exercise the  
8        powers of the Board necessary to hear and determine a matter for which the  
9        officer was appointed. A hearing officer shall report his or her findings of fact  
10       in writing to the Board in the form of a proposal for decision. A copy shall be  
11       served upon the parties pursuant to 3 V.S.A. § 811. However, judgment on  
12       those findings shall be rendered only by a majority of the Board.

13       § 6022. PERSONNEL

14       (a) Regular personnel. The Board may ~~appoint~~ retain legal counsel,  
15       scientists, engineers, experts, investigators, temporary employees, and  
16       administrative personnel, as it finds necessary in carrying out its duties, ~~unless~~  
17       ~~the Governor shall otherwise provide~~ and may authorize the District  
18       Commissions to use funds to retain personnel to assist on matters within its  
19       jurisdiction, including oversight and monitoring of permit compliance.  
20       Personnel employed by the District Commissions **pursuant to this subsection,**  
21       shall not report to the Board.

1        (b) Personnel for particular proceedings.

2            (1) Retention.

3            (A) The Board may authorize or retain legal counsel, official  
4        stenographers, expert witnesses, advisors, temporary employees, and other  
5        research services:

6            (i) to assist the Board in any proceeding before it under this  
7        chapter or chapter 219 of this title; and

8            (ii) to monitor compliance with any formal opinion of the Board  
9        or a District Commission.

10          (B) The personnel authorized by this section shall be in addition to  
11        the regular personnel of the Board. The Board shall fix the amount of  
12        compensation and expenses to be paid to such additional personnel.

13          (2) Assessment of costs.

14          (A) The Board may allocate to an applicant the portion of its  
15        expenses incurred by retaining additional personnel for a proceeding. On  
16        petition of an applicant to which costs are proposed to be allocated, the Board  
17        shall review and determine, after opportunity for hearing, the necessity and  
18        reasonableness of those costs, having due regard for the size and complexity of  
19        the project, and may amend or revise an allocation.

20          (B) Prior to allocating costs, the Board shall make a determination of  
21        the purpose and use of the funds to be raised under this section, identify the

1 recipient of the funds, provide for allocation of costs among applicants to be  
2 assessed, indicate an estimated duration of the proceedings, and estimate the  
3 total costs to be imposed. With the approval of the Board, estimates may be  
4 revised as necessary. From time to time during the progress of the work, the  
5 Board shall render to the applicant detailed statements showing the amount of  
6 money expended or contracted for in the work of additional personnel, which  
7 statements shall be paid into the State Treasury at the time and in the manner  
8 as the Board may reasonably direct.

9 (C) All payments for costs allocated pursuant to this section shall be  
10 deposited into the fund created under section 6029 of this title.

11 (c) The District Commissions may retain legal counsel, scientists,  
12 engineers, experts, investigators, temporary employees, and administrative  
13 personnel to assist in its recorded hearings. The District Commissions may use  
14 funds collected under section 6083a of this title for this purpose.

15 \* \* \*

16 § 6025. RULES

17 (a) The Board may adopt rules of procedure for itself and the District  
18 Commissions. The Board shall adopt rules of procedure that govern appeals  
19 and other contested cases before it and are consistent with this chapter and  
20 chapter 219 of this title.

1 (b) The Board may adopt substantive rules, in accordance with the  
2 provisions of 3 V.S.A. chapter 25, that interpret and carry out the provisions of  
3 this chapter. These rules shall include provisions that establish criteria under  
4 which applications for permits under this chapter may be classified in terms of  
5 complexity and significance of impact under the standards of subsection  
6 6086(a) of this chapter. In accordance with that classification, the rules may:

7 (1) provide for simplified or less stringent procedures than are otherwise  
8 required under sections 6083, 6084, and 6085 of this chapter;

9 (2) provide for the filing of notices instead of applications for the  
10 permits that would otherwise be required under section 6081 of this chapter;  
11 and

12 (3) provide a procedure by which a District Commission may authorize  
13 a district coordinator to issue a permit that the District Commission has  
14 determined under ~~Natural Resources~~ Board rules is a minor application with no  
15 undue adverse impact.

16 \* \* \*

17 § 6026. DISTRICT COMMISSIONERS

18 (a) For the purposes of the administration of this chapter, the State is  
19 divided into nine districts.

20 \* \* \*



1 (b) A District Environmental Commission is created for each district. Each  
2 District Commission shall consist of three members from that district  
3 appointed in the month of February by the Governor so that two appointments  
4 expire in each odd-numbered year. Two of the members shall be appointed for  
5 a term of four years, and the Chair (third member) of each District shall be  
6 appointed for a two-year term. In any district, the Governor may appoint not  
7 more than four alternate members from that district whose terms shall not  
8 exceed two years, who may hear any case when a regular member is  
9 disqualified or otherwise unable to serve. The Governor shall ensure, to the  
10 extent possible, each District Commission includes the racial, ethnic, gender,  
11 and geographic diversity of the State.

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

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

16 (e) The Chair of the Board, upon request of the Chair of a District  
17 Commission, may appoint and assign former Commission members to sit on  
18 specific Commission cases when some or all of the regular members and  
19 alternates of the District Commission are disqualified or otherwise unable to  
20 serve.

1 § 6027. POWERS

2 (a) The Board and District Commissions shall have supervisory authority in  
3 environmental matters respecting projects within their jurisdiction and shall  
4 apply their independent judgment in determining facts and interpreting law.

5 They each shall have the power, with respect to any matter within its  
6 jurisdiction, to:

7 (1) administer oaths, take depositions, subpoena and compel the  
8 attendance of witnesses, and require the production of evidence;

9 (2) allow parties to enter upon lands of other parties for the purposes of  
10 inspecting and investigating conditions related to the matter before the Board  
11 or Commission;

12 (3) enter upon lands for the purpose of conducting inspections,  
13 investigations, examinations, tests, and site evaluations as it deems necessary  
14 to verify information presented in any matter within its jurisdiction; and

15 (4) apply for and receive grants from the federal government and from  
16 other sources.

17 (b) The powers granted under this chapter are additional to any other  
18 powers ~~which~~ that may be granted by other legislation.

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

1 require a regional planning commission to receive applications, provide  
2 administrative assistance, perform investigations, and make recommendations.

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

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

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

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

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

(2) noncompliance with any permit or permit condition;

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

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

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

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

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

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

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

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Members of the Board and District Commissions shall receive per diem pay of \$100.00 and all necessary and actual expenses in accordance with 32 V.S.A. § 1010.

~~§ 6030. MAP OF WIRELESS TELECOMMUNICATIONS FACILITIES~~

CAPABILITY AND DEVELOPMENT MAPS

(a) Updates. On or before January 1, 2022, the Board and the Secretaries of Commerce and Community Development, of Digital Services, of Agriculture, Food and Markets, and of Natural Resources shall complete an update to the capability and development maps created under this chapter in 1971 for use in issuing permits under this chapter. Maps updated pursuant to this section shall be consistent with the Capability and Development Plan and shall include and identify environmental constraints, existing settlements, rural and working lands areas, critical resource areas, facilities and infrastructure, and areas targeted for conservation, public investment, and development. The Board and these Secretaries shall complete further updates to these maps not less frequently than every eight years. The Board shall lead and coordinate the completion of updates pursuant to this section.

1        (b) Process. When updating maps pursuant to this section, the Board and  
2        Secretaries shall, prior to completing the update:

- 3                (1) consult with the regional planning commissions; and  
4                (2) issue a draft update, provide public notice of the draft update, and  
5        offer an opportunity for written public comment and conduct one or more  
6        public meetings to receive oral comment on the draft update.

7        (c) Availability. The updated maps shall be maintained as a layer in the  
8        Agency of Natural Resources' Natural Resources Atlas and shall be available  
9        to the public.

10       § 6031. ETHICAL STANDARDS

11       (a) The Chair and members of the Board and the Chair and the regular and  
12       alternate members of each District Commission shall comply with the  
13       following ethical standards:

- 14                (1) The provisions of 12 V.S.A. § 61 (disqualification for interest).  
15                (2) The Chair and each member shall conduct the affairs of his or her  
16       office in such a manner as to instill public trust and confidence and shall take  
17       all reasonable steps to avoid any action or circumstance that might result in any  
18       one of the following:

- 19                (A) undermining his or her independence or impartiality of action;  
20                (B) taking official action on the basis of unfair considerations;

1 (C) giving preferential treatment to any private interest on the basis  
2 of unfair considerations;

3 (D) giving preferential treatment to any family member or member of  
4 his or her household;

5 (E) using his or her office for the advancement of personal interest or  
6 to secure special privileges or exemptions; or

7 (F) adversely affecting the confidence of the public in the integrity of  
8 the Board or District Commission.

9 (3) In the case of the Board, no person who receives or has received  
10 during the previous two years a significant portion of his or her income directly  
11 or indirectly from permit holders or applicants for a permit under chapter 47 of  
12 this title may hear appeals from acts or decisions of the Secretary relating to  
13 permits issued under chapter 47.

14 (4) The District Commission shall not initiate, permit, or consider ex  
15 parte communications, or consider other communications made to the District  
16 Commission outside the presence of the parties concerning a pending or  
17 impending proceeding except that:

18 (A) Where circumstances require, ex parte communications for  
19 scheduling, administrative purposes or emergencies that do not deal with  
20 substantive matters or issues on the merits are authorized; provided:

1                   (i) the District Commission reasonably believes that no party will  
2                   gain a procedural or tactical advantage as a result of the ex parte  
3                   communication, and

4                   (ii) the District Commission makes provision promptly to notify  
5                   all other parties of the substance of the ex parte communication and allows an  
6                   opportunity to respond.

7                   (B) The District Commission may obtain the advice of a disinterested  
8                   expert on the law applicable to a proceeding if the District Commission gives  
9                   notice to the parties of the person consulted and the substance of the advice,  
10                  and affords the parties reasonable opportunity to respond.

11                  (C) The District Commission may consult with personnel whose  
12                  function is to aid the District Commission in carrying out its adjudicative  
13                  responsibilities.

14                  (D) The District Commission may, with the consent of the parties,  
15                  confer separately with the parties and their lawyers in an effort to mediate or  
16                  settle matters pending before the District Commission.

17                  (E) The District Commission may initiate or consider any ex parte  
18                  communications when expressly authorized by law to do so.

19                  (b) As soon as practicable after grounds become known, a party may move  
20                  to disqualify a ~~Board member or~~ District Commissioner from a particular  
21                  matter before the ~~Board or~~ District Commission.



1           (1) The motion shall contain a clear statement of the specific grounds  
2           for disqualification and when such grounds were first known.

3           (2) On receipt of the motion, a District Commissioner who is the subject  
4           of the motion shall ~~disqualify himself or herself or shall refer the motion to the~~  
5           ~~Chair of the Board~~ issue a decision after consultation with the Commission's  
6           counsel.

7           ~~(A) The Chair of the Board may disqualify the District Commissioner~~  
8           ~~from the matter before the District Commission if, on review of the motion, the~~  
9           ~~Chair determines that such disqualification is necessary to ensure compliance~~  
10          ~~with subsection (a)(ethical standards) of this section.~~

11          ~~(B)~~ On disqualification of a District Commissioner under this  
12          subsection, the Chair of the ~~Board~~ District Commission shall assign another  
13          District Commissioner to take the place of the disqualified Commissioner. The  
14          Chair shall consider making such an assignment from among the members of  
15          the same District Commission before assigning a member of another District  
16          Commission.

17          ~~(3) On receipt of the motion, a Board member who is the subject of the~~  
18          ~~motion shall disqualify himself or herself or shall refer the motion to the full~~  
19          ~~Board. The Board may disqualify a member from the matter before the Board~~  
20          ~~if, on review of the motion, the Board determines that such disqualification is~~  
21          ~~necessary to ensure compliance with subsection (a) (ethical standards) of this~~

1 ~~section. The Board member who is the subject of the motion shall not be~~  
2 ~~eligible to vote on the motion.~~

3 (c) For one year after leaving office, a former appointee to ~~the Board or a~~  
4 District Commission shall not, for pecuniary gain:

5 (1) be an advocate on any matter before ~~the Board or the District~~  
6 Commission to which he or she was appointed; or

7 (2) be an advocate before any other public body or the General  
8 Assembly or its committees regarding any matter in which, while an appointee,  
9 he or she exercised any official responsibility or participated personally and  
10 substantively.

11 \* \* \*

12 Subchapter 4. Permits

13 \* \* \*

14 § 6081. PERMITS REQUIRED; EXEMPTIONS

15 \* \* \*

16 (b) Subsection (a) of this section shall not apply to a subdivision exempt  
17 under the regulations of the Department of Health in effect on January 21,  
18 1970 or any subdivision ~~which~~ that has a permit issued prior to June 1, 1970  
19 under the Board of Health regulations, or has pending a bona fide application  
20 for a permit under the regulations of the Board of Health on June 1, 1970, with  
21 respect to plats on file as of June 1, 1970 provided such permit is granted prior

1 to August 1, 1970. Subsection (a) of this section shall not apply to  
2 development ~~which~~ that is not also a subdivision, which has been commenced  
3 prior to June 1, 1970, if the construction will be completed by March 1, 1971.

4 Subsection (a) of this section shall not apply to a State highway on which a  
5 hearing pursuant to 19 V.S.A. § 222 has been held prior to June 1, 1970.

6 Subsection (a) of this section shall not apply to any telecommunications  
7 facility in existence prior to July 1, 1997, unless that facility is a  
8 “development” as defined in subdivision 6001(3) of this title. Subsection (a)  
9 of this section shall apply to any substantial change in such excepted  
10 subdivision or development. On or before July 1, 2020, owners of preexisting  
11 pits and quarries shall submit extraction data to the Board in order to establish  
12 a baseline against which substantial changes may be determined.

13 \* \* \*

14 (l)(1) By no later than January 1, 1997, any owner of land or mineral rights  
15 or any owner of slate quarry leasehold rights on a parcel of land on which a  
16 slate quarry was located as of June 1, 1970, may register the existence of the  
17 slate quarry with the District Commission and with the clerk of the  
18 municipality in which the slate quarry is located, while also providing each  
19 with a map which indicates the boundaries of the parcel which contains the  
20 slate quarry.

1           (2) Slate quarry registration shall state the name and address of the  
2 owner of the land, mineral rights, or leasehold rights; whether that person  
3 holds mineral rights, or leasehold rights or is the owner in fee simple; the  
4 physical location of the same; the physical location and size of ancillary  
5 buildings; and the book and page of the recorded deed or other instrument by  
6 which the owner holds title to the land or rights.

7           (3) Slate quarry registration documents shall be submitted to the District  
8 Commission together with a request, under the provisions of subsection  
9 6007(c) of this title, for a final determination regarding the applicability of this  
10 chapter.

11           (4) The final determination regarding a slate quarry registration under  
12 subsection 6007(c) of this title shall be recorded in the municipal land records  
13 at the expense of the registrant along with an accurate site plan of the parcel  
14 depicting the site specific information contained in the registration documents.

15           The registrant must provide notice of the slate quarry's registration to the  
16           adjacent landowners.

17           (5) With respect to a slate quarry located on a particular registered  
18 parcel of land, ancillary activities on the parcel related to the extraction and  
19 processing of slate into products that are primarily other than crushed stone  
20 products shall not be deemed to be substantial changes, ~~as long as~~ provided the

activities do not involve the creation of one or more new slate quarry holes that are not related to an existing slate quarry hole.

(6) Registered slate quarries shall be added to the Agency of Natural Resources Natural Resource Atlas.

\* \* \*

(o) If a designation pursuant to 24 V.S.A. chapter 76A is removed, subsection (a) of this section shall apply to any subsequent substantial change to a ~~priority housing project~~ development or subdivision that was originally exempt pursuant to subdivision 6001(3)(A)(iv)(I) of this title or subsection (p) of this section on the basis of that designation.

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

1 downtown development area or a new neighborhood area shall be  
2 extinguished.

3 \* \* \*

4 (v) ~~A permit or permit amendment shall not be required for a development~~  
5 ~~or subdivision in a designated downtown development district for which the~~  
6 ~~District Commission has issued positive findings and conclusions under~~  
7 ~~section 6086b of this title on all the criteria listed in that section. A person shall~~  
8 ~~obtain new or amended findings and conclusions from the District Commission~~  
9 ~~under section 6086b of this title prior to commencement of a material change,~~  
10 ~~as defined in the rules of the Board, to a development or subdivision for which~~  
11 ~~the District Commission has issued such findings and conclusions. A person~~  
12 ~~may seek a jurisdictional opinion under section 6007 of this title concerning~~  
13 ~~whether such a change is a material change. [Repealed.]~~

14 \* \* \*

15 § 6083a. ACT 250 FEES

16 (a) All applicants for a land use permit under section 6086 of this title shall  
17 be directly responsible for the costs involved in the publication of notice in a  
18 newspaper of general circulation in the area of the proposed development or  
19 subdivision and the costs incurred in recording any permit or permit  
20 amendment in the land records. In addition, applicants shall be subject to the  
21 following fees for the purpose of compensating the State of Vermont for the

1 direct and indirect costs incurred with respect to the administration of the  
2 Act 250 program:

3 (1) For projects involving construction, \$6.65 for each \$1,000.00 of the  
4 first \$15,000,000.00 of construction costs, and \$3.12 for each \$1,000.00 of  
5 construction costs above \$15,000,000.00. An additional \$0.75 for each  
6 \$1,000.00 of the first \$15,000,000.00 of construction costs shall be paid to the  
7 Agency of National Resources to account for the Agency of Natural  
8 Resources' review of Act 250 applications. An additional \$3.00 for every  
9 \$1,000.00 of construction costs shall be deposited in the Fund created under  
10 section 6029 of this title for reimbursement of the District Commission's costs  
11 incurred in retaining its own expert witnesses in that matter. Any unused fee  
12 shall be returned to the applicant at the conclusion of the matter.

13 (2) For projects involving the creation of lots, \$125.00 for each lot.

14 (3) For projects involving exploration for or removal of oil, gas, and  
15 fissionable source materials, a fee as determined under subdivision (1) of this  
16 subsection or \$1,000.00 for each day of Commission hearings required for  
17 such projects, whichever is greater.

18 (4) For projects involving the extraction of earth resources, including  
19 sand, gravel, peat, topsoil, crushed stone, or quarried material, the greater of:  
20 a fee as determined under subdivision (1) of this subsection; or a fee equivalent  
21 to the rate of \$0.02 per cubic yard of the first million cubic yards of the total

1 volume of earth resources to be extracted over the life of the permit, and  
2 \$.01 per cubic yard of any such earth resource extraction above one million  
3 cubic yards. An additional \$.02 per cubic yard of the first million cubic yards,  
4 and \$.01 per cubic yard of any such earth resource extraction above one  
5 million cubic yards shall be deposited in the Fund created under section 6029  
6 of this title for reimbursement of the District Commission's costs incurred in  
7 retaining its own expert witnesses in that matter. Any unused fee shall be  
8 returned to the applicant at the conclusion of the matter. Extracted material  
9 that is not sold or does not otherwise enter the commercial marketplace shall  
10 not be subject to the fee. The fee assessed under this subdivision for an  
11 amendment to a permit shall be based solely upon any additional volume of  
12 earth resources to be extracted under the amendment.

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



1 this subsection shall be due, except to the extent that it is waived pursuant to  
2 subsection (f) of this section.

3 (6) In no event shall a permit application fee exceed \$165,000.00.

4 (b) Notwithstanding the provisions of subsection (a) of this section, there  
5 shall be a minimum fee of \$187.50 for original applications and \$62.50 for  
6 amendment applications, in addition to publication and recording costs. These  
7 costs shall be in addition to any other fee established by statute, unless  
8 otherwise expressly stated.

9 (c) Fees, other than fees paid to reimburse the Commission for  
10 expenditures on expert witnesses, shall not be required for projects undertaken  
11 by municipal agencies or by State governmental agencies, except for  
12 publication and recording costs.

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

18 (e) A written request for an application fee refund shall be submitted to the  
19 District Commission to which the fee was paid within 90 days of the  
20 withdrawal of the application.

21 \* \* \*

1 (4) District Commission decisions regarding application fee refunds  
2 may be appealed to the ~~Natural Resources~~ Board in accordance with Board  
3 rules.

4 \* \* \*

5 \* \* \*

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

16 (1) In reviewing this petition, the District Commission shall consider the  
17 following:

18 (A) Whether a portion of the project's impacts have been reviewed  
19 by the District Commission in a previous permit;

20 (B) Whether the project is being reviewed as a major application,  
21 minor application, or administrative amendment;

1           (C) Whether the applicant relies on any presumptions permitted  
2           under subsection 6086(d) of this title and has, at the time of the permit  
3           application, already obtained the permits necessary to trigger such  
4           presumptions. If a presumption is rebutted, the District Commission may  
5           require the applicant to pay the previously waived fee.

6           (D) Whether the applicant has engaged in any preapplication  
7           planning with the district coordinator that will result in a decrease in the  
8           amount of time the District Commission will have to consider the application.

9           (2) The District Commission shall issue a written decision in response to  
10          any application for a fee waiver. The written decision shall address each of the  
11          factors in subdivision (1) of this subsection.

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

15          (g) A Commission or the ~~Natural Resources~~ Board may require any  
16          permittee to file a certification of actual construction costs and may direct the  
17          payment of a supplemental fee in the event that an application understated a  
18          project's construction costs. Failure to file a certification or to pay a  
19          supplemental fee shall be grounds for permit revocation.

20                                   \* \* \*

1       § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF  
2               REVIEW

3           (a) The plans for the construction of any development or subdivision  
4 subject to the permitting requirements of this chapter must be submitted by the  
5 applicant to the District Commission, municipal and regional planning  
6 commissions, affected State agencies, and adjoining landowners no less than  
7 30 days prior to filing an application under this chapter, unless the municipal  
8 and regional planning commissions and affected state agencies waive such  
9 requirement.

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

12               (A) Hold a public hearing on the proposed plans. The planning  
13 commission may require that the applicant attend the hearing.

14               (B) Make recommendations to the applicant within 30 days.

15               (C) Once the application is filed with the District Commission, make  
16 recommendations to the District Commission by the deadline established in the  
17 applicable provision of this section, Board rule, or scheduling order issued by  
18 the District Commission.

19           (2) The application shall address the substantive written comments and  
20 recommendations made by the planning commissions related to the criteria of  
21 subsection 6086(a) of this title received by the applicant and the substantive

1 oral comments related to those criteria made at a public hearing under  
2 subdivision (1) of this subsection.

3 (3) This subsection shall not apply to a project that have been designated  
4 as using simplified procedures pursuant to 6025(b)(1) or an administrative  
5 amendment.

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

\* \* \*

(d)(e) Any hearing or prehearing conference for a major application shall be held within 40 days of receipt of a complete application; or within 20 days of the end of the public comment period specified in the notice of minor application review if the District Commission determines that it is appropriate to hold a hearing for a minor application treat the application as a major application. Any hearing required shall be held in the municipality where the project is located unless the parties agree to an alternate location. When conducting hearings and prehearing conferences, the District Commission shall

1 exercise reasonable flexibility with its rules of procedure and of evidence to  
2 maximize pro se participation while ensuring the fairness of the proceeding.

3 ~~(e)~~(f) Any notice ~~for a major or minor application~~, as required by this  
4 section, shall also be published by the District Commission in a local  
5 newspaper generally circulating in the area where the development or  
6 subdivision is located not more than ten days after receipt of a complete  
7 application.

8 \* \* \*

9 ~~(f)~~(g) This subsection concerns an application for a new permit amendment  
10 to change the conditions of an existing permit or existing permit amendment in  
11 order to authorize the construction of a priority housing project described in  
12 subdivision 6081(p)(2) of this title.

13 \* \* \*

14 ~~(g)~~(h) When an application concerns the construction of improvements for  
15 one of the following, the application shall be processed as a minor application  
16 in accordance with subsections ~~(b)~~(c) through ~~(e)~~(f) of this section:

17 \* \* \*

18 (i) Hearings on major applications shall be governed by the Vermont  
19 Administrative Procedure Act. Each District Commission shall be assisted by  
20 counsel, shall have the authority to retain expert witnesses, and, together with

1 their counsel, shall comply with the ethical standards established in section  
2 6031 of this title.

3 § 6085. HEARINGS; PARTY STATUS

4 \* \* \*

5 (e) ~~The Natural Resources Board and any~~ District Commission, acting  
6 through one or more duly authorized representatives at any prehearing  
7 conference or at any other times deemed appropriate by the ~~Natural Resources~~  
8 ~~Board or by the~~ District Commission, shall promote expeditious, informal, and  
9 nonadversarial resolution of issues, require the timely exchange of information  
10 concerning the application, and encourage participants to settle differences.

11 No District Commissioner who is participating as a ~~decisionmaker~~ decision  
12 maker in a particular case may act as a duly authorized representative for the  
13 purposes of this subsection. These efforts at dispute resolution shall not affect  
14 the burden of proof on issues before a Commission or the ~~Environmental~~  
15 ~~Division Board~~, nor shall they affect the requirement that a permit may be  
16 issued only after the issuance of affirmative findings under the criteria  
17 established in section 6086 of this title.

18 (f) At the prehearing conference or a subsequent scheduling hearing or  
19 hearings, the District Commission shall establish a schedule for pretrial  
20 discovery pursuant to the Vermont Rules of Civil Procedure and for disclosure  
21 of and discovery with regard to any expert testimony by experts retained by the



1 District Commission. The Commission shall have the same authority to  
2 supervise or limit pretrial discovery as a Superior Court Judge under the  
3 Vermont Rules of Civil Procedure.

4 (g) A hearing shall not be closed until a Commission provides an  
5 opportunity to all parties to respond to the last permit or evidence submitted.  
6 Once a hearing has been closed, a Commission shall conclude deliberations as  
7 soon as is reasonably practicable. A decision of a Commission shall be issued  
8 within 20 days of the completion of deliberations.

9 § 6085a. RECORDED HEARINGS

10 (a) Any appeal under section 6089 of this title shall be a review of the  
11 record of the proceeding before the District Commission in accordance with  
12 subdivision 8504(h)(3) of this title.

13 (b) Within 10 calendar days of receipt of a complete application under  
14 section 6084 of this title, the District Commission shall provide notice of the  
15 recorded hearings in accordance with the procedures of subdivision 6084(b)(1)  
16 of this title.

17 (c) Each of the following shall apply to the review of an application under  
18 this section:

19 (1) The District Commission shall extend the hearing schedule or take  
20 other appropriate action as necessary to provide a fair and reasonable

1 opportunity for parties to prepare, present, and respond to evidence without  
2 creating undue delay in the review of the application.

3 (2) The District Commission may require parties to submit prefiled  
4 testimony and exhibits. If the District Commission requires submission of  
5 prefiled evidence, the applicant and any parties supporting the application shall  
6 submit their prefiled direct evidence first, and then other parties shall be given  
7 a reasonable opportunity to submit their prefiled direct evidence. The District  
8 Commission may then allow the submission or presentation of rebuttal  
9 testimony and exhibits in the sequence and form that it determines to be  
10 appropriate.

11 (3) Unless the parties agree otherwise, the District Commission in a  
12 prehearing order shall establish the type, sequence, and amount of discovery  
13 available under Rules 26–37 of the Vermont Rules of Civil Procedure, limiting  
14 the discovery permitted to that necessary for a full and fair determination of the  
15 proceeding.

16 (d) On receipt of a request from the District Commission for assistance  
17 with regard to an application heard under this section, the Board shall provide  
18 assistance to the District Commission as necessary, or the District Commission  
19 may hire personnel pursuant to section 6022 of this title.

20 (e) At the expense of the applicant, the District Commission shall record by  
21 video any hearing on an application. In the event that appeal is taken from a

1 District Commission act or decision on such an application, the District  
2 Commission shall provide the Environmental Division with the original  
3 recording of the hearing and a copy of the complete written record and shall  
4 make and preserve a copy of the original recording for its own records.

5 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

6 (a) Criteria. Before granting a permit, the District Commission shall find  
7 that the subdivision or development:

8 (1) Air pollution. Will not result in undue ~~water or~~ air pollution. In  
9 making this determination, the District Commission shall at least consider: the  
10 air contaminants, greenhouse gas emissions, and noise to be emitted by the  
11 development or subdivision, if any; the proximity of the emission source to  
12 residences, population centers, and other sensitive receptors; and emission  
13 dispersion characteristics at or near the source.

14 (A) Air contaminants. A permit will be granted whenever it is  
15 demonstrated by the applicant that, in addition to all other applicable criteria,  
16 the emission, if any, of air contaminants by the development or subdivision  
17 will meet any applicable requirement under the Clean Air Act, 42 U.S.C.  
18 chapter 85, and the air pollution control regulations of the Department of  
19 Environmental Conservation.

20 (2) Water pollution. Will not result in undue water pollution. In making  
21 this determination ~~it~~, the District Commission shall at least consider: the

1 elevation of land above sea level; and in relation to the flood plains, the nature  
2 of soils and subsoils and their ability to adequately support waste disposal; the  
3 slope of the land and its effect on effluents; the availability of streams for  
4 disposal of effluents; and the applicable Health and Environmental  
5 Conservation Department regulations.

6 (A) Headwaters. A permit will be granted whenever it is  
7 demonstrated by the applicant that, in addition to all other applicable criteria,  
8 the development or subdivision will meet any applicable Health and  
9 Environmental Conservation Department regulation regarding reduction of the  
10 quality of the ground or surface waters flowing through or upon lands ~~which~~  
11 that are not devoted to intensive development, and which lands are:

12 (i) headwaters of watersheds characterized by steep slopes and  
13 shallow soils; or

14 (ii) drainage areas of 20 square miles or less; or

15 (iii) above 1,500 feet elevation; or

16 (iv) watersheds of public water supplies designated by the Agency  
17 of Natural Resources; or

18 (v) areas supplying significant amounts of recharge waters to  
19 aquifers.

20 (B) Waste disposal. A permit will be granted whenever it is  
21 demonstrated by the applicant that, in addition to all other applicable criteria,

1 the development or subdivision will meet any applicable Health and  
2 Environmental Conservation Department regulations regarding the disposal of  
3 wastes, and will not involve the injection of waste materials or any harmful or  
4 toxic substances into ground water or wells.

5 (C) Water conservation. A permit will be granted whenever it is  
6 demonstrated by the applicant that, in addition to all other applicable criteria,  
7 the design has considered water conservation, incorporates multiple use or  
8 recycling where technically and economically practical, utilizes the best  
9 available technology for such applications, and provides for continued efficient  
10 operation of these systems.

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

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

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

1 (E) Streams. A permit will be granted whenever it is demonstrated  
2 by the applicant that, in addition to all other applicable criteria, the  
3 development or subdivision of lands on or adjacent to the banks of a stream  
4 will, whenever feasible, maintain the natural condition of the stream, and will  
5 not endanger the health, safety, or welfare of the public or of adjoining  
6 landowners.

7 (F) Shorelines. A permit will be granted whenever it is demonstrated  
8 by the applicant that, in addition to all other criteria, the development or  
9 subdivision of shorelines must of necessity be located on a shoreline in order to  
10 fulfill the purpose of the development or subdivision, and the development or  
11 subdivision will, insofar as possible and reasonable in light of its purpose:

12 (i) retain the shoreline and the waters in their natural condition;

13 (ii) allow continued access to the waters and the recreational  
14 opportunities provided by the waters;

15 (iii) retain or provide vegetation ~~which~~ that screen the  
16 development or subdivision from the waters; and

17 (iv) stabilize the bank from erosion, as necessary, with vegetation  
18 cover.

19 (G) Wetlands. A permit will be granted whenever it is demonstrated  
20 by the applicant, in addition to other criteria, that the development or

1 subdivision will not violate the rules of the Secretary of Natural Resources, as  
2 adopted under chapter 37 of this title, relating to significant wetlands.

3 ~~(2)~~(3) Water supply.

4 (A) Does have sufficient water available for the reasonably  
5 foreseeable needs of the subdivision or development.

6 ~~(3)~~(B) Will not cause an unreasonable burden on an existing water  
7 supply, if one is to be utilized.

8 \* \* \*

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

13 (B) ~~As appropriate, will~~ Will incorporate transportation demand  
14 management strategies and provide safe use, access, and connections to  
15 adjacent lands and facilities and to existing and planned pedestrian, bicycle,  
16 and transit networks and services. ~~In determining appropriateness under this~~  
17 ~~subdivision (B)~~ However, the District Commission ~~shall consider whether may~~  
18 decline to require such a strategy, access, or connection ~~constitutes a measure~~  
19 if it finds that a reasonable person would ~~take~~ not undertake the measure given  
20 the type, scale, and transportation impacts of the proposed development or  
21 subdivision.

1 (6) Will not cause an unreasonable burden on the ability of a  
2 municipality to provide educational services. If a municipality fails to respond  
3 to a request by the District Commission within 90 days as to the impacts, the  
4 application will be presumed not to have an unreasonable burden on  
5 educational services.

6 (7) Will not place an unreasonable burden on the ability of the local  
7 governments to provide municipal or governmental services. If a municipality  
8 fails to respond to a request by the District Commission within 90 days as to  
9 the impacts, the application will be presumed not to have an unreasonable  
10 burden on municipal or governmental services.

11 (8) Ecosystem protection; scenic beauty; historic sites. Will not have an  
12 undue adverse effect on the scenic or natural beauty of the area, aesthetics,  
13 historic sites, or rare and irreplaceable natural areas.

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

19 (i) the economic, social, cultural, recreational, or other benefit to  
20 the public from the development or subdivision will ~~not~~ outweigh the



1 economic, environmental, or recreational loss to the public from the  
2 destruction or imperilment of the habitat or species; ~~or~~

3 (ii) all feasible and reasonable means of preventing or lessening  
4 the destruction, diminution, or imperilment of the habitat or species have ~~not~~  
5 been or will ~~not~~ continue to be applied; or

6 (iii) a reasonably acceptable alternative site is not owned or  
7 controlled by the applicant ~~which~~ that would allow the development or  
8 subdivision to fulfill its intended purpose.

9 (B) Forest blocks.

10 (i) A permit will not be granted for a development or subdivision  
11 within or partially within a forest block unless the applicant demonstrates that:

12 (I) the development or subdivision will avoid fragmentation of  
13 the forest block through the design of the project or the location of project  
14 improvements, or both; or

15 (II) it is not feasible to avoid fragmentation of the forest block  
16 and the design of the development or subdivision minimizes fragmentation of  
17 the forest block.

18 (ii) Methods for avoiding or minimizing the fragmentation of a  
19 forest block include:

20 (I) Locating buildings and other improvements and operating  
21 the project in a manner that avoids or minimizes incursion into and disturbance

1 of the forest block, including clustering of buildings and associated  
2 improvements.

3 (II) Designing roads, driveways, and utilities that serve the  
4 development or subdivision to avoid or minimize fragmentation of the forest  
5 block. Such design may be accomplished by following or sharing existing  
6 features on the land such as roads, tree lines, stone walls, and fence lines.

7 (C) Connecting habitat.

8 (i) A permit will not be granted for a development or subdivision  
9 unless the applicant demonstrates that:

10 (I) the development or subdivision will avoid fragmentation of  
11 a connecting habitat through the design of the project or the location of project  
12 improvements, or both; or

13 (II) it is not feasible to avoid fragmentation of the connecting  
14 habitat and the design of the development or subdivision minimizes  
15 fragmentation of the connector.

16 (ii) Methods for avoiding or minimizing the fragmentation of a  
17 connecting habitat include:

18 (I) locating buildings and other improvements at the farthest  
19 feasible location from the center of the connector;

1                    (II) designing the location of buildings and other improvements  
2                    to leave the greatest contiguous portion of the area undisturbed in order to  
3                    facilitate wildlife travel through the connector; or

4                    (III) when there is no feasible site for construction of buildings  
5                    and other improvements outside the connector, designing the buildings and  
6                    improvements to facilitate the continued viability of the connector for use by  
7                    wildlife.

8                    \* \* \*

9                    (9) Capability and development plan. Is in conformance with a duly  
10                  adopted capability and development plan, and land use plan when adopted.  
11                  ~~However, the legislative findings of subdivisions 7(a)(1) through (19) of Act~~  
12                  ~~85 of 1973 shall not be used as criteria in the consideration of applications by a~~  
13                  ~~District Commission.~~

14                  \* \* \*

15                  (F) Energy conservation and efficiency. A permit will be granted  
16                  when it has been demonstrated by the applicant that, in addition to all other  
17                  applicable criteria, the planning and design of the subdivision or development  
18                  reflect the principles of energy conservation and energy efficiency, including  
19                  reduction of greenhouse gas emissions from the use of energy, and incorporate  
20                  the best available technology for efficient use or recovery of energy. An  
21                  applicant seeking an affirmative finding under this criterion shall provide

1 evidence, by certification and established through inspection, that the  
2 subdivision or development complies with the applicable building energy  
3 standards and stretch codes under 30 V.S.A. § 51 or 53.

4 \* \* \*

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

19 \* \* \*

20 (M) Climate adaptation. A permit will be granted for the  
21 development or subdivision when it has been demonstrated that, in addition to

1 all other applicable criteria, the development or subdivision will employ  
2 building orientation, site and landscape design, and building design that are  
3 sufficient to enable the improvements to be sited and constructed, including  
4 buildings, roads, and other infrastructure, to withstand and adapt to the effects  
5 of climate change, including extreme temperature events, wind, and  
6 precipitation reasonably projected at the time of application.

7 (N) Environmental justice. A permit will be granted for the  
8 development or subdivision when it has been demonstrated by the applicant  
9 that, in addition to all other applicable criteria, no group of people will bear a  
10 disproportionate share of the negative environmental consequences of the  
11 development or subdivision.

12 (10) Local and regional plans. Is in conformance with any duly adopted  
13 local or plan that has been approved under 24 V.S.A. § 4350, regional plan that  
14 has been approved by the Board under 24 V.S.A. § 4348, or capital program  
15 under 24 V.S.A. chapter 117 § 4430. In making this finding, if:

16 (A) A District Commission shall require conformance with the future  
17 land use maps contained in the local and regional plans and with the written  
18 provisions of those plans.

19 (B) A District Commission shall decline to apply a provision of a  
20 local or regional plan only if the Commission is persuaded that the provision

1 does not afford a person of ordinary intelligence with a reasonable opportunity  
2 to understand what the provision directs, requires, or proscribes.

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

7 \* \* \*

8 (c) Conditions.

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

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

19 (A) A permit condition restricting a forest-based enterprise's hours of  
20 operation shall only be imposed when the absence the condition would result

1 in an impact under the criteria pursuant to subdivision (a)(1), (5), or (8) of this  
2 section.

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

9 (C) In making a determination under this subdivision (2) as to  
10 whether an impact exists, the District Commission shall consider the benefits  
11 to forests, the forest resources resulting from the forest-based enterprise, and  
12 the impact on the forest-based enterprise that would result from a condition.  
13 Conditions shall impose the minimum restriction necessary to address the  
14 undue adverse impact.

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

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

6           (d) Other permits and approvals; presumptions. The Natural Resources  
7           Board may by rule allow the acceptance of a permit or permits or approval of  
8           any State agency with respect to subdivisions (a)(1) through (5) of this section  
9           or a permit or permits of a specified municipal government with respect to  
10          subdivisions (a)(1) through (7) and (9) and (10) of this section, or a  
11          combination of such permits or approvals, in lieu of evidence by the applicant.  
12          ~~A District Commission, in accordance with rules adopted by the Board, shall~~  
13          ~~accept determinations issued by a development review board under the~~  
14          ~~provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of~~  
15          ~~municipal impacts. The acceptance of such approval, positive determinations,~~  
16          permit, or permits shall create a presumption that the application is not  
17          detrimental to the public health and welfare with respect to the specific  
18          requirement for which it is accepted. ~~In the case of approvals and permits~~  
19          ~~issued by the Agency of Natural Resources, technical determinations of the~~  
20          ~~Agency shall be accorded substantial deference by the Commissions. The~~  
21          ~~acceptance of negative determinations issued by a development review board~~



1 ~~under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review~~  
2 ~~of municipal impacts shall create a presumption that the application is~~  
3 ~~detrimental to the public health and welfare with respect to the specific~~  
4 ~~requirement for which it is accepted. Any determinations, positive or negative,~~  
5 ~~under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the~~  
6 ~~extent that the impacts under the criteria are limited to the municipality issuing~~  
7 ~~the decision.~~ Such a rule may be revoked or amended pursuant to the  
8 procedures set forth in 3 V.S.A., chapter 25, the Vermont Administrative  
9 Procedure Act.

10 (1) The rules adopted by the Board shall not approve the acceptance of a  
11 permit or approval of such an agency or a permit of a municipal government  
12 unless it each of the following applies:

13 (A) The permit or approval satisfies the appropriate requirements of  
14 subsection (a) of this section.

15 (B) The Board finds that the permit or approval is part of a program  
16 that reliably meets its goals, such as achieving water quality standards.

17 (2) A presumption created under this subsection may be rebutted by the  
18 introduction of evidence contrary to the presumed fact.

19 (3) In the case of approvals and permits issued by the Agency of Natural  
20 Resources:

(A) There shall be no presumption for a permit or approval authorizing the discharge of a pollutant into a water if uses of that water are already impaired by the pollutant.

(B) Admissible evidence of the technical determinations of the Agency shall be accorded substantial deference by the District Commissions.

(4) A District Commission, in accordance with rules adopted by the Board, shall accept determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local review of municipal impacts under criteria of this section. The acceptance of such a determination, if positive, shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted and, if negative, shall create a presumption that the application is so detrimental. Any determinations, positive or negative, under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the extent that the impacts under the criteria are limited to the municipality issuing the decision.

\* \* \*

## § 6087. DENIAL OF APPLICATION

\* \* \*

(b) A permit may not be denied solely for the reasons set forth in subdivisions 6086(a)(5), (6), and (7) of this title. ~~However, reasonable~~

1 Reasonable conditions and requirements allowable in subsection 6086(c) of  
2 this title may be attached to alleviate the burdens created. However, a permit  
3 may be denied under subdivision 6086(a)(5) of this title if the permit is for  
4 development in an interchange area that is not within an existing settlement.

5 \* \* \*

6 § 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

7 (a) The initial burden of production, to produce sufficient evidence for a  
8 District Commission to make a factual determination, shall be on the applicant  
9 with respect to subdivisions 6086(a)(1) through (10) of this title.

10 (b) The burden of persuasion, to show that the application meets the  
11 relevant standard, shall be on the applicant with respect to subdivisions  
12 6086(a)(1), (2), (3), (4), (8)(A) through (C), (9), and (10) of this title.

13 ~~(b)(c)~~ (c) The burden shall be on any party opposing the applicant application  
14 with respect to subdivisions 6086(a)(5) through (8), (6), (7), and (8), not  
15 including (8)(A) through (8)(C), of this title to show an unreasonable or  
16 adverse effect that the application does not meet the relevant standard.

17 (d) With respect to permit conditions to mitigate impacts under  
18 subdivisions 6086(a)(5) through (8) of this title, the burden shall be on the  
19 applicant to demonstrate that is not feasible to avoid the impact.

20 § 6089. APPEALS

1        (a) Appeals of any act or decision of a District Commission under this  
2        chapter or a district coordinator under subsection 6007(c) of this title shall be  
3        made to the ~~Environmental Division~~ Board in accordance with chapter 220 of  
4        this title. For the purpose of this section, a decision of the Chair of a District  
5        Commission under section 6001e of this title on whether action has been taken  
6        to circumvent the requirements of this chapter shall be considered an act or  
7        decision of the District Commission.

8        (b) In an appeal of an act or decision described in subsection (a) of this  
9        section, an appellant shall have the burden of proof on the issues raised in his  
10       or her appeal. The applicant, whether or not an appellant, shall have a burden  
11       to produce evidence sufficient to inform the Division of the nature, elements,  
12       context, and impacts of the project to which the appeal relates.

13       § 6090. ~~RECORDING; DURATION AND REVOCATION OF PERMITS~~

14       (a) Recording. In order to afford adequate notice of the terms and  
15       conditions of land use permits, permit amendments, and revocations of  
16       permits, they shall be recorded in local land records. Recordings under this  
17       chapter shall be indexed as though the permittee were the grantor of a deed.

18       (b) Permits for specified period.

19       (1) Any permit granted under this chapter for extraction of mineral  
20       resources, operation of solid waste disposal facilities, or logging above 2,500  
21       feet, shall be for a specified period determined by the Board in accordance

1 with the rules adopted under this chapter as a reasonable projection of the time  
2 during which the land will remain suitable for use if developed or subdivided  
3 as contemplated in the application, and with due regard for the economic  
4 considerations attending the proposed development or subdivision. Other  
5 permits issued under this chapter shall be for an indefinite term, as long as  
6 there is compliance with the conditions of the permit.

7 (2) Expiration dates contained in permits issued before July 1, 1994  
8 (involving developments that are not for extraction of mineral resources,  
9 operation of solid waste disposal facilities, or logging above ~~2,500~~ 2,000 feet)  
10 are extended for an indefinite term, ~~as long as~~ provided there is compliance  
11 with the conditions of the permits.

12 (c) Change to nonjurisdictional use; release from permit.

13 (1) On an application signed by each permittee, the District Commission  
14 may release land subject to a permit under this chapter from the obligations of  
15 that permit and the obligation to obtain amendments to the permit, on finding  
16 each of the following:

17 (A) The use of the land as of the date of the application is not the  
18 same as the use of the land that caused the obligation to obtain a permit under  
19 this chapter.

20 (B) The use of the land as of the date of the application does not  
21 constitute development or subdivision as defined in section 6001 of this title

1 and would not require a permit or permit amendment but for the fact that the  
2 land is already subject to a permit under this chapter.

3 (C) The permittee or permittees are in compliance with the permit  
4 and their obligations under this chapter.

5 (2) It shall be a condition of each affirmative decision under this  
6 subsection that a subsequent proposal of a development or subdivision on the  
7 land to which the decision applies shall be subject to this chapter as if the land  
8 had never previously received a permit under the chapter.

9 (3) An application for a decision under this subsection shall be made on  
10 a form prescribed by the Board. The form shall require evidence  
11 demonstrating that the application complies with subdivisions (1)(A) through  
12 (C) of this subsection. The application shall be processed in the manner  
13 described in section 6084 of this title and may be treated as a minor application  
14 under that section. In determining whether to treat as minor an application  
15 under this subsection, the District Commission shall apply the criteria of this  
16 subsection and not of subsection 6086(a) of this title.

17 \* \* \*

18 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

19 \* \* \*

20 (c) Mitigation and offsets for forest-based enterprises. Notwithstanding  
21 any provision of this chapter to the contrary, a conversion of primary

1 agricultural soils by a forest-based enterprise permitted under this chapter shall  
2 be entitled to a ratio of 1:1 protected acres to acres of affected primary  
3 agricultural soil.

4 \* \* \*

5 ~~§ 6094. MITIGATION OF FOREST BLOCKS AND HABITAT~~

6 ~~CONNECTORS~~

7 ~~(a) A District Commission may consider a proposal to mitigate, through~~  
8 ~~compensation, the fragmentation of a forest block or habitat connector if the~~  
9 ~~applicant demonstrates that it is not feasible to avoid or minimize~~  
10 ~~fragmentation of the block or connector in accordance with the respective~~  
11 ~~requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District~~  
12 ~~Commission may approve the proposal only if it finds that the proposal will~~  
13 ~~meet the requirements of the rules adopted under this section and will preserve~~  
14 ~~a forest block or habitat connector of similar quality and character to the block~~  
15 ~~or connector affected by the development or subdivision.~~

16 ~~(b) The Natural Resources Board, in consultation with the Secretary of~~  
17 ~~Natural Resources, shall adopt rules governing mitigation under this section.~~

18 ~~(1) The rules shall state the acreage ratio of forest block or habitat~~  
19 ~~connector to be preserved in relation to the block or connector affected by the~~  
20 ~~development or subdivision.~~

1           ~~(2) Compensation measures to be allowed under the rules shall be based~~  
2           ~~on the ratio of land developed pursuant to subdivision (1) of this subsection~~  
3           ~~and shall include:~~

4           ~~(A) Preservation of a forest block or habitat connector of similar~~  
5           ~~quality and character to the block or connector that the development or~~  
6           ~~subdivision will affect.~~

7           ~~(B) Deposit of an offsite mitigation fee into the Vermont Housing~~  
8           ~~and Conservation Trust Fund under section 312 of this title.~~

9           ~~(i) This mitigation fee shall be derived as follows:~~

10           ~~(I) Determine the number of acres of forest block or habitat~~  
11           ~~connector, or both, affected by the proposed development or subdivision.~~

12           ~~(II) Multiply this number of affected acres by the ratio set forth~~  
13           ~~in the rules.~~

14           ~~(III) Multiply the resulting product by a “price per acre” value,~~  
15           ~~which shall be based on the amount that Commissioner of Forests, Parks and~~  
16           ~~Recreation to be the recent, per acre cost to acquire conservation easements for~~  
17           ~~forest blocks and habitat connectors of similar quality and character in the~~  
18           ~~same geographic region as the proposed development or subdivision.~~

19           ~~(ii) The Vermont Housing Conservation Board shall use such a fee~~  
20           ~~to preserve a forest block or habitat connector of similar quality and character~~  
21           ~~to the block or connector affected by the development or subdivision.~~



1 ~~(C) Such other compensation measures as the rules may authorize.~~

2 ~~(e) The mitigation of impact on a forest block or a habitat connector, or~~

3 ~~both, shall be structured also to mitigate the impacts, under the criteria of~~

4 ~~subsection 6086(a) of this title other than subdivisions (8)(B) and (C), to land~~

5 ~~or resources within the block or connector.~~

6 ~~(d) All forest blocks and habitat connectors preserved pursuant to this~~

7 ~~section shall be protected by permanent conservation easements that grant~~

8 ~~development rights and include conservation restrictions and are conveyed to a~~

9 ~~qualified holder, as defined in section 821 of this title, with the ability to~~

10 ~~monitor and enforce easements in perpetuity.~~

11 \* \* \*

12 \* \* \* Resource Mapping; Forest Blocks \* \* \*

13 Sec. 4. 10 V.S.A. § 127 is amended to read:

14 § 127. RESOURCE MAPPING

15 (a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources

16 ~~(the Secretary)~~ shall complete and maintain resource mapping based on the

17 Geographic Information System (GIS) or other technology. The mapping shall

18 identify natural resources throughout the State, including forest blocks, that

19 may be relevant to the consideration of energy projects and projects subject to

20 chapter 151 of this title. The Center for Geographic Information shall be

1 available to provide assistance to the Secretary in carrying out the ~~GIS-based~~  
2 resource mapping.

3 (b) The Secretary of ~~Natural Resources~~ shall consider the ~~GIS-based~~  
4 resource maps developed under subsection (a) of this section when providing  
5 evidence and recommendations to the Public Utility Commission under  
6 30 V.S.A. § 248(b)(5) and when commenting on or providing  
7 recommendations under chapter 151 of this title to District Commissions on  
8 other projects.

9 (c) The Secretary shall establish and maintain written procedures that  
10 include a process and science-based criteria for updating resource maps  
11 developed under subsection (a) of this section. Before establishing or revising  
12 these procedures, the Secretary shall provide opportunities for affected parties  
13 and the public to submit relevant information and recommendations.

14 \* \* \* Enhanced Designation; Appeal \* \* \*

15 Sec. 5. 24 V.S.A. § 2798 is amended to read:

16 § 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

17 (a) The A person aggrieved by a designation decisions decision of the State  
18 Board under this chapter are not subject to appeal one or more of sections 2793  
19 through 2793f of this title may appeal to the Vermont Environmental Review  
20 Board established under 10 V.S.A. chapter 151 within 30 days of the decision.  
21 If the decision pertains to designation of a growth center under section 2793c

1 of this title, the period for filing an appeal shall be tolled by the filing of a  
2 request for reconsideration under that section and shall commence to run in full  
3 on the State Board's issuance of a decision on that request.

4 (b) The Vermont Environmental Review Board shall conduct a de novo  
5 hearing on the decision under appeal and shall proceed in accordance with the  
6 contested case requirements of the Vermont Administrative Procedure Act.  
7 The Vermont Environmental Review Board shall issue a final decision within  
8 90 days of the filing of the appeal. The provisions of 10 V.S.A. § 6024  
9 regarding assistance to the Vermont Environmental Review Board from other  
10 departments and agencies of the State shall apply to appeals under this section.

11 \* \* \* Regional and Municipal Planning \* \* \*

12 Sec. 6. 24 V.S.A. § 4348(f) is amended to read:

13 (f) A regional plan or amendment shall be adopted by not less than a  
14 60 percent vote of the commissioners representing municipalities, in  
15 accordance with the bylaws of the regional planning commission, and  
16 immediately submitted to the legislative bodies of the municipalities that  
17 comprise the region.

18 (1) The plan or amendment shall be considered duly adopted and shall  
19 take effect 35 days after the date of adoption, unless, within 35 days of the date  
20 of adoption, the regional planning commission receives certification from the  
21 legislative bodies of a majority of the municipalities in the region vetoing the

1 proposed plan or amendment. In case of such a veto, the plan or amendment  
2 shall be deemed rejected.

3 (2) Upon adoption, the regional planning commission shall submit the  
4 plan or amendment to the Vermont Environmental Review Board established  
5 under 10 V.S.A. chapter 151, which shall approve the plan or amendment if it  
6 determines that the plan or amendment is consistent with the goals of section  
7 4302 of this title. The plan or amendment shall take effect on the issuance of  
8 such approval. The Board shall issue its decision within 30 days after  
9 receiving the plan or amendment.

10 Sec. 7. 24 V.S.A. § 4348a is amended to read:

11 § 4348a. ELEMENTS OF A REGIONAL PLAN

12 (a) A regional plan shall be consistent with the goals established in section  
13 4302 of this title and shall include the following:

14 \* \* \*

15 (2) A land use element, which shall consist of a map and statement of  
16 present and prospective land uses, that:

17 (A) Indicates those areas proposed for forests, recreation, agriculture  
18 (using the agricultural lands identification process established in 6 V.S.A. § 8),  
19 residence, commerce, industry, public, and semi-public uses, open spaces,  
20 areas reserved for flood plain, and areas identified by the State, regional  
21 planning commissions, or municipalities that require special consideration for

1 aquifer protection; for wetland protection; for the maintenance of forest blocks,  
2 wildlife habitat, and habitat connectors; or for other conservation purposes.

3 (B) Indicates those areas within the region that are likely candidates  
4 for designation under sections 2793 (downtown development districts), 2793a  
5 (village centers), 2793b (new town centers), and 2793c (growth centers) of this  
6 title.

7 \* \* \*

8 (F) Indicates those areas that are important as forest blocks and  
9 habitat connectors and plans for land development in those areas to minimize  
10 forest fragmentation and promote the health, viability, and ecological function  
11 of forests. A plan may include specific policies to encourage the active  
12 management of those areas for wildlife habitat, water quality, timber  
13 production, recreation, or other values or functions identified by the regional  
14 planning commission.

15 (G) Indicates those areas that constitute critical resource areas as  
16 defined in 10 V.S.A. § 6001.

17 \* \* \*

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

19 § 4382. THE PLAN FOR A MUNICIPALITY

20 (a) A plan for a municipality ~~may~~ shall be consistent with the goals  
21 established in section 4302 of this title and compatible with approved plans of

1 other municipalities in the region and with the regional plan and shall include  
2 the following:

3 \* \* \*

4 Sec. 9. 24 V.S.A. § 4460 is amended to read:

5 § 4460. APPROPRIATE MUNICIPAL PANELS

6 \* \* \*

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

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

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

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

13 (2) The appropriate municipal panel reviewing an application for a  
14 municipal permit or permit amendment pursuant to this subsection shall  
15 include conditions contained within a permit previously issued pursuant to 10  
16 V.S.A. chapter 151 unless the panel determines that the permit condition  
17 pertains to any of the following:

18 (A) the construction phase of the project that has already been  
19 completed;

20 (B) compliance with another State permit that has independent  
21 jurisdiction that addresses the condition in the previously issued permit;

1           (C) federal or State law that is no longer in effect or applicable;

2           (D) an issue that is addressed by municipal regulation, and the project  
3           will meet the municipal standards; and

4           (E) a physical or use condition that is no longer in effect or  
5           applicable, or that will no longer be in effect or applicable once the new project  
6           is approved.

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

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

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

17          (6) Any final action by the appropriate municipal panel affecting a  
18          condition of a permit previously issued pursuant to 10 V.S.A. chapter 151 shall  
19          be recorded in the municipal land records.

\* \* \* Appeals \* \* \*

Sec. 10. REPEAL

10 V.S.A. chapter 220 (consolidated environmental appeals) is repealed.

Sec. 11. 10 V.S.A. chapter 219 is added to read:

CHAPTER 219. STATE ENVIRONMENTAL PERMIT APPEALS

§ 8401. PURPOSE

It is the purpose of this chapter to:

(1) create an administrative board to hear and decide appeals under this chapter with respect to State environmental permits;

(2) consolidate appeal routes for acts or decisions of the District

Commissions and the Secretary;

(3) standardize the appeal periods, the parties who may appeal these acts or decisions, and the ability to stay any act or decision upon appeal, taking into account the nature of the different programs affected;

(4) encourage people to get involved in the permitting process at the initial stages of review by requiring participation as a prerequisite for an appeal of a decision to the Vermont Environmental Review Board; and

(5) provide clear appeal routes for acts and decisions of the Secretary.

§ 8402. DEFINITIONS

As used in this chapter:



1           (1) “Board” means the Vermont Environmental Review Board  
2           established under chapter 151 of this title.

3           (2) “District Commission” means a district commission established  
4           under chapter 151 of this title.

5           (3) “Person” means any individual, partnership, company, corporation,  
6           association, unincorporated association, joint venture, trust, municipality, the  
7           State of Vermont or any agency, department, or subdivision of the State, any  
8           federal agency, or any other legal or commercial entity.

9           (4) “Person aggrieved” means a person who alleges an injury to a  
10          particularized interest protected by the provisions of law listed in section 8410  
11          of this title, attributable to an act or decision by a district coordinator, District  
12          Commission, the Secretary, regional planning commission, or the Board that  
13          can be redressed by the Board or the Supreme Court.

14          (5) “Secretary” means the Secretary of Natural Resources or the  
15          Secretary’s duly authorized representative. For the purposes of this chapter,  
16          “Secretary” also means the Commissioner of Environmental Conservation, the  
17          Commissioner of Forests, Parks and Recreation, and the Commissioner of Fish  
18          and Wildlife, with respect to those statutes that refer to the authority of that  
19          commissioner or the department overseen by that commissioner.

1     § 8403. APPLICABILITY

2           (a) This chapter shall govern all appeals of an act or decision of the  
3     Secretary, excluding appeals of enforcement actions under chapters 201 and  
4     211 of this title and rulemaking, under:

5           (1) the following provisions of this title:

6           (A) chapter 23 (air pollution control);

7           (B) chapter 50 (aquatic nuisance control);

8           (C) chapter 41 (regulation of stream flow);

9           (D) chapter 43 (dams);

10          (E) chapter 47 (water pollution control);

11          (F) chapter 48 (groundwater protection);

12          (G) chapter 53 (beverage containers; deposit-redemption system);

13          (H) chapter 55 (aid to municipalities for water supply and water  
14     pollution abatement and control);

15          (I) chapter 56 (public water supply);

16          (J) chapter 59 (underground and aboveground liquid storage tanks);

17          (K) chapter 64 (potable water supply and wastewater system permit);

18          (L) section 2625 (regulation of heavy cutting);

19          (M) chapter 123 (protection of endangered species);

20          (N) chapter 159 (waste management);

1           (O) chapter 37 (wetlands protection and water resources  
2           management);

3           (P) chapter 166 (collection and recycling of electronic devices);

4           (Q) chapter 164A (collection and disposal of mercury-containing  
5           lamps);

6           (R) chapter 32 (flood hazard areas);

7           (S) chapter 49A (lake shoreland protection standards);

8           (T) chapter 83, subchapter 8 (importation of firewood); and

9           (U) chapter 168 (product stewardship for primary batteries and  
10          rechargeable batteries);

11          (2) 29 V.S.A. chapter 11 (management of lakes and ponds); and

12          (3) 24 V.S.A. chapter 61, subchapter 10 (salvage yards).

13          (b) This chapter shall govern all appeals from an act or decision of a  
14          District Commission under chapter 151 of this title.

15          (c) This chapter shall govern all appeals from a district coordinator  
16          jurisdictional opinion under chapter 151 of this title.

17          (d) This chapter shall govern all appeals from an act or decision of the  
18          Board under this chapter.

19          (e) This chapter shall not govern appeals from enforcement actions under  
20          chapters 201 and 211 of this title or from rulemaking decisions by the Board or  
21          the Secretary.

1        (f) An appeal of an act or decision of an appropriate municipal panel under  
2        24 V.S.A. chapter 117 may be to the Board if the act or decision pertains to  
3        land development, as defined in 24 V.S.A. § 4303(10), that requires a permit,  
4        certificate, or other approval from the Agency of Natural Resources or a  
5        District Commission under a statute listed in subsections (a) or (b) of this  
6        section. The provisions of 24 V.S.A. §§ 4471 (appeals to environmental  
7        division) and 4471a(b) through (g) (environmental division) shall apply to such  
8        an appeal, except that the appeal shall be before the Board and may be  
9        consolidated with other appeals before the Board pursuant to subsection  
10       8411(f) of this title. If an appeal is filed with the Board, any party may move  
11       to consolidate appeals or move to have the appeal of an act or decision of an  
12       appropriate municipal panel heard individually by the Environmental Division  
13       of the Superior Court.

14       (g) This chapter shall govern all appeals from an act or decision of a  
15       regional planning commission made pursuant to section 6001 (3)(A)(xi) of this  
16       title.

17       § 8404. APPEALS

18       (a) Person aggrieved; time period. Any person aggrieved by an act or  
19       decision of the Secretary, a District Commission, or a district coordinator  
20       under the provisions of law listed in section 8403 of this title may appeal to the  
21       Board within 30 days following the date of the act or decision.

1        (b) Notice of the filing of an appeal.

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

9            (2) On the filing of an appeal from the act or decision of the Secretary  
10       under the provisions of law listed in section 8403 of this title, the appellant  
11       shall provide notice of the filing of an appeal to the following persons: the  
12       applicant before the Agency of Natural Resources if other than the appellant;  
13       the owner of the land where the project is located if the applicant is not the  
14       owner; the municipality in which the project is located; the municipal and  
15       regional planning commissions for the municipality in which the project is  
16       located; if the project site is located on a boundary, any adjacent Vermont  
17       municipality and the municipal and regional planning commissions for that  
18       municipality; any State agency affected; the solid waste management district in  
19       which the project is located if the project constitutes a facility pursuant to  
20       subdivision 6602(10) of this title; all persons required to receive notice of  
21       receipt of an application or notice of the issuance of a draft permit; and all

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

5 (c) Requirement to participate before the District Commission or the  
6 Secretary.

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

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

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

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

1           (2) Participation before the Secretary.

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

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

10          (ii) The appellant shall identify each comment that the appellant  
11          submitted to the Secretary that identifies or relates to an issue raised in his or  
12          her appeal.

13          (iii) A person moving to dismiss an appeal or an issue raised by an  
14          appeal pursuant to this subdivision (A) shall have the burden to prove that the  
15          requirements of this subdivision (A) are not satisfied.

16          (B) Notwithstanding the limitations of subdivision (2)(A) of this  
17          subsection (c), an aggrieved person may appeal an act or decision of the  
18          Secretary if the Board determines that:

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

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

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

6                   (iv) some other condition exists that would result in manifest  
7 injustice if the person's right to appeal was disallowed.

8           (d) District Commission jurisdictional opinions.

9                   (1) The appellant shall provide notice of the filing of an appeal to each  
10 person entitled to notice under subdivisions 6085(c)(1)(A)–(D) of this title and  
11 to each person on a list pursuant to subdivision 6085(c)(1)(E) of this title that  
12 is approved under subsection 6007(c) of this title.

13                   (2) Failure to appeal within the time required under subsection (a) of  
14 this section shall render the jurisdictional opinion the final determination  
15 regarding jurisdiction under chapter 151 of this title unless the opinion was not  
16 properly served on persons listed in subdivisions 6085(c)(1)(A)–(D) of this  
17 title and each person on a list pursuant to subdivision 6085(c)(1)(E) of this title  
18 that is approved under subsection 6007(c) of this title.

19           (e) Stays.

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



1           (A) acts or decisions involving stream alteration permits or shoreline  
2           encroachment permits issued by the Secretary; and

3           (B) the denial of party status by a District Commission.

4           (2) On petition by a party or upon its own motion for a stay of an act or  
5           decision, the Board shall perform the initial review of the request and may  
6           grant a stay. Any decision under this subsection to issue a stay shall be subject  
7           to appeal to the Supreme Court according to the Rules of Appellate Procedure.

8           (f) Consolidated appeals. The Board may consolidate or coordinate  
9           different appeals where those appeals all relate to the same project.

10          (g) De novo. The Board, applying the substantive standards that were  
11          applicable to the District Commission, district coordinator, or Secretary, shall  
12          hear and review de novo those issues that have been appealed. The Board shall  
13          apply its independent judgement in finding facts and interpreting law.  
14          However, a permit decision from a District Commission under chapter 151  
15          shall be on the record.

16          (h) Appeals of authorizations or coverage under a general permit. Any  
17          appeal of an authorization or coverage under the terms of a general permit shall  
18          be limited in scope to whether the permitted activity complies with the terms  
19          and conditions of the general permit.

20          (i) Limitations on appeals. Notwithstanding any other provision of this  
21          section:

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

5           (2) if a District Commission issues a partial decision under subsection  
6           6086(b) of this title, any appeal of that decision must be taken within 30 days  
7           following the date of that decision.

8           (j) Representation. The Secretary may represent the Agency in all appeals  
9           under this section. If more than one State agency either appeals or seeks to  
10           intervene in an appeal under this section, only the Attorney General may  
11           represent the interests of the State in the appeal.

12           (k) Prior decisions. Prior decisions of the Water Resources Board, the  
13           Environmental Board, the Waste Facilities Panel, and the Environmental  
14           Division on matters arising under the chapters listed in section 8403 of this title  
15           shall be given the same weight and consideration as prior decisions of the  
16           Board.

17           (l) Intervention. Any person may intervene in a pending appeal if that  
18           person:

19           (1) appeared as a party in the action appealed from and retained party  
20           status;

21           (2) is a party by right;

1           (3) is a person aggrieved, as defined in this chapter; or

2           (4) meets the standard for intervention established in the Vermont Rules  
3           of Civil Procedure.

4           (m) With respect to review of an act or decision of the Secretary pursuant  
5           to 3 V.S.A. § 2809, the Board may reverse the act or decision or amend an  
6           allocation of costs to an applicant only if the Board determines that the act,  
7           decision, or allocation was arbitrary, capricious, or an abuse of discretion. In  
8           the absence of such a determination, the Board shall require the applicant to  
9           pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

10          (n) Administrative record. The Secretary shall certify the administrative  
11          record as defined in chapter 170 of this title and shall transfer a certified copy  
12          of that record to the Board when:

13               (1) there is an appeal of an act or decision of the Secretary that is based  
14               on that record; or

15               (2) there is an appeal of a decision of a District Commission and a  
16               decision of the Secretary is relevant under a criterion of subsection 6086(a) of  
17               this title that is at issue in the appeal.

18          § 8405. FEES

19               (a) All persons filing an appeal shall pay a fee of \$250.00, plus any  
20               associated publication costs. The Board may waive the fee or publication costs  
21               if the Board finds that the appellant or initiating party is unable to pay the fee

1 or publication costs. The fee of \$250.00 shall not apply to appeals or other  
2 matters brought before the Board under this chapter in the name of the State by  
3 public officials authorized to do so.

4 (b) All funds collected pursuant to this section shall be deposited into the  
5 fund created in section 6029 of this title.

6 § 8406. APPEALS TO THE SUPREME COURT

7 (a) Any person aggrieved by an act or decision of the Board pursuant to  
8 this chapter may appeal to the Supreme Court within 30 days after the date of  
9 the entry of the judgment or order appealed from, provided that the person was  
10 a party to the proceeding before the Board.

11 (b) Notwithstanding subsection (a) of this section, an aggrieved person may  
12 appeal a decision of the Board if the Supreme Court determines that:

13 (1) there was a procedural defect that prevented the person from  
14 participating in the proceeding; or

15 (2) some other condition exists that would result in manifest injustice if  
16 the person's right to appeal was disallowed.

17 (c) An objection that has not been raised before the Board may not be  
18 considered by the Supreme Court, unless the failure or neglect to raise that  
19 objection is excused by the Supreme Court because of extraordinary  
20 circumstances. The findings of the Board with respect to questions of fact, if

1 supported by substantial evidence on the record as a whole, shall be  
2 conclusive.

3 (d) Only the Attorney General may represent the State in all appeals under  
4 this section.

5 \* \* \* Environmental Division \* \* \*

6 Sec. 12. 4 V.S.A. § 34 is amended to read:

7 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

8 The Environmental Division shall have:

9 (1) jurisdiction of matters arising under 10 V.S.A. ~~chapters~~ chapter 201  
10 ~~and 220;~~

11 (2) jurisdiction of matters arising under 24 V.S.A. chapter 61,  
12 subchapter 12 and 24 V.S.A. chapter 117; and

13 (3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.

14 Sec. 13. 24 V.S.A. § 2283 is amended to read:

15 § 2283. APPEALS

16 After exhausting the right of administrative appeal to the Board under  
17 19 V.S.A. § 5(d)(5), a person aggrieved by any order, act, or decision of the  
18 Agency of Transportation may appeal to the Superior Court, and all  
19 proceedings shall be de novo. Any person, including the Agency of  
20 Transportation, may appeal to the Supreme Court from a judgment or ruling of  
21 the Superior Court. Appeals of acts or decisions of the Secretary of Natural

1 Resources ~~or~~ under this subchapter shall be appealed to the Vermont  
2 Environmental Review Board under 10 V.S.A. § 8403. Acts or decisions of a  
3 legislative body of a municipality under this subchapter shall be appealed to  
4 the Environmental Division under ~~10 V.S.A. § 8503~~ section 4471a of this title.

5 Sec. 14. 24 V.S.A. § 4449(a)(3) is amended to read:

6 (3) No permit issued pursuant to this section shall take effect until the  
7 time for appeal in section 4465 of this title has passed, or in the event that a  
8 notice of appeal is properly filed, no such permit shall take effect until  
9 adjudication of that appeal by the appropriate municipal panel is complete and  
10 the time for taking an appeal to the Environmental Division has passed without  
11 an appeal being taken. If an appeal is taken to the Environmental Division, the  
12 permit shall not take effect until the Environmental Division rules in  
13 accordance with ~~10 V.S.A. § 8504~~ section 4471a of this title on whether to  
14 issue a stay, or until the expiration of 15 days, whichever comes first.

15 Sec. 15. 24 V.S.A. § 4471 is amended to read:

16 § 4471. APPEAL TO ENVIRONMENTAL DIVISION

17 (a) Participation required. An interested person who has participated in a  
18 municipal regulatory proceeding authorized under this title may appeal a  
19 decision rendered in that proceeding by an appropriate municipal panel to the  
20 Environmental Division as provided by section 4471a of this title.

21 Participation in a local regulatory proceeding shall consist of offering, through

1 oral or written testimony, evidence or a statement of concern related to the  
2 subject of the proceeding. An appeal from a decision of the appropriate  
3 municipal panel, or from a decision of the municipal legislative body under  
4 subsection 4415(d) of this title, shall be taken in such manner as the Supreme  
5 Court may by rule provide for appeals from State agencies governed by  
6 3 V.S.A. §§ 801–816, unless the decision is an appropriate municipal panel  
7 decision ~~which~~ that the municipality has elected to be subject to review on the  
8 record.

9 \* \* \*

10 Sec. 16. 24 V.S.A. § 4471a is added to read:

11 § 4471a. ENVIRONMENTAL DIVISION

12 (a) Applicability.

13 (1) This section and section 4471 of this title shall govern all appeals  
14 arising under this chapter, except for appeals under section 4352 of this title.

15 (2) This section shall govern all appeals of acts or decisions of the  
16 legislative body of a municipality arising under chapter 61, subchapter 10 of  
17 this title relating to the municipal certificate of approved location for salvage  
18 yards.

19 (3) This section shall govern all appeals from an act or decision of the  
20 Environmental Division under this chapter.

21 (b) Appeals; exceptions.

1           (1) Within 30 days following the date of the act or decision, an  
2           interested person, as defined in section 4465 of this title, who has participated,  
3           as defined in section 4471 of this title, in the municipal regulatory proceeding  
4           under this chapter may appeal to the Environmental Division an act or decision  
5           made under the chapter by an appropriate municipal panel; provided, however,  
6           that:

7                   (A) decisions of a development review board under section 4420 of  
8                   this title with respect to local Act 250 review of municipal impacts are not  
9                   subject to appeal but shall serve as presumptions under 10 V.S.A.  
10                  chapter 151; and

11                   (B) an appeal of an act or decision of an appropriate municipal panel  
12                   may be to the Vermont Environmental Review Board established under  
13                   10 V.S.A. chapter 219 if the act or decision pertains to land development that  
14                   requires a permit, certificate, or other approval from the Agency of Natural  
15                   Resources or a District Commission under a statute listed in 10 V.S.A.  
16                   § 8403(a) or (b) (applicability).

17           (2) Notwithstanding subdivision (1) of this subsection, an interested  
18           person may appeal an act or decision under this chapter if the Environmental  
19           judge determines that:

20                   (A) there was a procedural defect that prevented the person from  
21                   obtaining interested person status or participating in the proceeding;



1           (B) the decision being appealed is the grant or denial of interested  
2           person status; or

3           (C) some other condition exists that would result in manifest injustice  
4           if the person's right to appeal was disallowed.

5           (c) Notice. On filing of an appeal under this chapter, the appellant shall  
6           give notice as required under section 4471 of this title.

7           (d) Stays.

8           (1) The filing of an appeal shall automatically stay the act or decision in  
9           the following situations if it pertains to the denial of interested person status by  
10          a board of adjustment, planning commission, or development review board.

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

16          (e) De novo hearing. The Environmental Division, applying the  
17          substantive standards that were applicable before the tribunal appealed from,  
18          shall hold a de novo hearing on those issues that have been appealed, except in  
19          the case of a decision being appealed on the record pursuant to subsection  
20          4471(b) of this title.

1        (f) Limitation on appeals. Notwithstanding any other provision of this  
2        section, a municipal decision regarding whether a particular application  
3        qualifies for a recorded hearing under subsection 4471(b) of this title shall not  
4        be subject to appeal.

5        (g) Intervention. Any person may intervene in a pending appeal before the  
6        Environmental Division if that person:

7            (1) appeared as a party in the action appealed from and retained party  
8            status;

9            (2) is a party by right;

10          (3) qualifies as an “interested person” as established in section 4465 of  
11          this title; or

12          (4) meets the standard for intervention established in the Vermont Rules  
13          of Civil Procedure.

14        (h) Appeals to Supreme Court.

15            (1) Any person aggrieved by a decision of the Environmental Division  
16            pursuant to this section or any party by right may appeal to the Supreme Court  
17            within 30 days following the date of the entry of the order or judgment  
18            appealed from, provided that:

19            (A) the person was a party to the proceeding before the  
20            Environmental Division;

21            (B) the decision being appealed is the denial of party status; or

(i) there was a procedural defect that prevented the person from

(ii) some other condition exists that would result in manifest

(2) An objection that has not been raised before the Environmental

neglect to raise that objection is excused by the Supreme Court because of

\* \* \* River Permits \* \* \*

## § 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM

(a) Rulemaking authority.

pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuance

(i)(A) uses exempt from municipal regulation that are located

flood hazard bylaw or ordinance under 24 V.S.A. chapter 117; and

\* \* \*

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

7 \* \* \*

8 (f)(1) Permit requirement.

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

19 (B) Beginning on November 1, 2021, a person shall not commence  
20 construction of a development or subdivision that is subject to a permit under  
21 chapter 151 of this title without a permit issued pursuant under the rules

1 required under subsection (a) of this section by the Secretary or by a State  
2 agency delegated permitting authority under subsection (g) of this section.

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

8 \* \* \* Racial Equity Review \* \* \*

9 Sec. 18. IMPACTS ON RACIAL EQUITY AND DIVERSITY; REVIEW

10 (a) Pursuant to the duties and powers established under 3 V.S.A. chapter  
11 68, the Executive Director of Racial Equity, in cooperation with the Racial  
12 Equity Advisory Panel and the Human Rights Commission, shall conduct a  
13 comprehensive review of the processes, procedures, and language of 10 V.S.A.  
14 chapter 151 (Act 250) to assess the extent to which Act 250 has contributed to  
15 adverse impacts on racial equity and diversity within the State. The review  
16 shall:

17 (1) identify the impacts of acts or decisions made pursuant to Act 250 on  
18 inequities in land ownership and land distribution within the State;

19 (2) measure the extent to which minority populations in the State have  
20 incurred disproportional environmental impacts due to acts or decisions of the  
21 State pursuant to Act 250;

1           (3) assess the capability of the current public participation processes,  
2           notice requirements, and appointment processes under Act 250 to fairly  
3           represent the interests of minority populations within the State; and

4           (4) recommend legislative changes to Act 250 necessary to achieve the  
5           goals of racial equity and diversity representation for minority population.

6           (b) On or before October 15, 2020, the Executive Director of Racial Equity  
7           shall report to the General Assembly with its findings and any  
8           recommendations for legislative action.

9                   \* \* \* Revision Authority; Transition; Effective Dates \* \* \*

10           Sec. 19. REFERENCES; REVISION AUTHORITY

11           (a) In the Vermont Statutes Annotated, all references to the Natural  
12           Resources Board are deemed to be references to the Vermont Environmental  
13           Review Board.

14           (b) In 10 V.S.A. § 6001 as amended by Sec. 3 of this act, the Office of  
15           Legislative Council shall:

16           (1) in subdivision (2), replace the reference to “this act” with the  
17           specific citation to this act as enacted; and

18           (2) reorganize and renumber the definitions so that they are in  
19           alphabetical order and, in the Vermont Statutes Annotated, shall revise all  
20           cross-references to those definitions accordingly.

1        (c) In the Vermont Statutes Annotated, the Office of Legislative Council  
2        shall:

3                (1) replace “Natural Resources Board” with “Vermont Environmental  
4        Review Board”;

5                (2) replace “10 V.S.A. chapter 220” and “chapter 220 of Title 10” with  
6        “10 V.S.A. chapter 219”;

7                (3) in Title 10, replace “chapter 220 of this title” with “chapter 219 of  
8        this title”; and

9                (4) when a statute concerns an appeal governed by Sec. 11 of this act,  
10        10 V.S.A. chapter 219, replace the reference, if any, to the Environmental  
11        Division of the Superior Court with a reference to the Vermont Environmental  
12        Review Board.

13        (d) In 10 V.S.A. § 6086, the Office of Legislative Council shall insert the  
14        following subsection and subdivision headings:

15                (1) in subdivision (a)(4): Soil erosion; capacity of land to hold water.

16                (2) in subdivision (a)(6): Educational services.

17                (3) in subdivision (a)(7): Local governmental services.

18                (4) in subsection (b): Partial findings.

19                (5) in subsection (e): Temporary improvements; film or TV.

20                (6) in subsection (f): Stay of construction.



1       Sec. 20. RULES

2           (a) Act 250 rules adopted pursuant to 10 V.S.A. § 6025, as that statute and  
3       those rules existed immediately prior to the effective date of this act, shall be  
4       deemed rules of the Vermont Environmental Review Board under Sec. 3 of  
5       this act, 10 V.S.A. § 6025, and the Vermont Environmental Review Board may  
6       amend those rules in accordance with 3 V.S.A. chapter 25.

7           (b) The provisions of this act shall supersede any provisions to the contrary  
8       contained in the Act 250 rules as they existed immediately prior to the  
9       effective date of this act.

10       Sec. 21. ENVIRONMENTAL REVIEW BOARD; BUDGET;

11               POSITIONS

12           As of February 1, 2020, all appropriations and employee positions of the  
13       Natural Resources Board are transferred to the Vermont Environmental  
14       Review Board.

15       Sec. 22. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

16           Notwithstanding the repeal of its jurisdictional authority to hear appeals  
17       relative to State environmental permits under Sec. 10 of this act, the  
18       Environmental Division shall continue to have jurisdiction to complete its  
19       consideration of any such appeal that is pending before it as of February 1,  
20       2020 if, with respect to such act or appeal, mediation or discovery has  
21       commenced, a dispositive motion has been filed, or a trial has begun.

1      Sec. 23. EFFECTIVE DATES

2            (a) This section and Sec. 18 shall take effect on passage.

3            (b) The remainder of this act shall take effect on February 1, 2020, except  
4            that the authority to make appointments to the Vermont Environmental Review  
5            Board shall take effect on passage and each such appointment shall be made on  
6            or before December 15, 2019.

DRAFT