

H.663

Introduced by Representatives Dickinson of St. Albans Town, Baser of  
Bristol, Condon of Colchester, Lewis of Berlin, Parent of  
St. Albans Town, Savage of Swanton, and Van Wyck of  
Ferrisburgh

Referred to Committee on

Date:

Subject: Land use; natural resources; local bylaws; Act 250; Environmental  
Division; permit process; appeals

Statement of purpose of bill as introduced: This bill proposes to reform  
various land use and environmental permit processes.

An act relating to land use and environmental permit processing

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

\* \* \* Municipal Planning and Zoning Provisions \* \* \*

Sec. 1. 24 V.S.A. § 4420 is amended to read:

§ 4420. LOCAL ACT 250 REVIEW OF MUNICIPAL IMPACTS

\* \* \*

(c) In proceedings under this section, the applicant shall demonstrate that  
the proposed development or subdivision:

(4) will not have an undue adverse effect on the scenic or natural beauty  
or aesthetics of the municipality.

\* \* \*

Sec. 2. 24 V.S.A. § 4463a is added to read:

## § 4463a. COMPLETENESS OF APPLICATIONS

This section applies to all development review applications before an appropriate municipal panel under this chapter. Within 45 days of referral or appeal of an application from the administrative officer, or of direct submission of an application by the applicant to an appropriate municipal panel if such is otherwise authorized, the appropriate municipal panel shall issue a determination of whether the application is complete, and failure of the panel to issue such a determination within this period shall be deemed approval and effective on the 46th day. The hearing and notice requirements of subsections 4464(a) and (b) of this title shall not apply to the panel's determination and decision on whether an application is complete. If the panel determines that an

1 application is incomplete, it shall list each specific item that is missing and  
2 provide the applicant reasonable time to amend its application. A decision  
3 under this section on whether an application is complete shall be in writing and  
4 shall be sent to the applicant by certified mail.

5 Sec. 3. 24 V.S.A. § 4464 is amended to read:

6 § 4464. HEARING AND NOTICE REQUIREMENTS; DECISIONS AND  
7 CONDITIONS; REQUESTS FOR FORMAL REVIEW;  
8 ADMINISTRATIVE REVIEW; ROLE OF ADVISORY  
9 COMMISSIONS IN DEVELOPMENT REVIEW; CONCLUSIVE  
10 WETLANDS PRESUMPTION

11 (a) Notice procedures. All development review applications before an  
12 appropriate municipal the panel under procedures set forth in this chapter shall  
13 require notice as follows.

14 (1) A warned public hearing shall be required for conditional use  
15 review, variances, administrative officer appeals, and final plat review for  
16 subdivisions. Any public notice for a warned public hearing shall be given not  
17 less than ~~15~~ 10 days prior to the date of the public hearing by all the following:

18 \* \* \*

19 (b) Decisions.

20 (1) The appropriate municipal panel may recess the proceedings on any  
21 application pending submission of additional information. The panel ~~should~~

1 shall close the evidence promptly after all parties have submitted the requested  
2 information. ~~The~~ Notwithstanding any such recess or pending information  
3 request, the panel shall adjourn the hearing and issue a decision within 45 days  
4 after ~~the adjournment of the hearing~~ a determination that the application is  
5 complete under section 4463a of this title, and failure of the panel to issue a  
6 decision within this period shall be deemed approval and shall be effective on  
7 the 46th day. However, with respect to an application that is subject to the  
8 formal review procedure of subsection (e) of this section or is otherwise  
9 conducted on the record under this chapter, the panel shall issue a decision  
10 within 180 days of a determination that the application is complete under  
11 section 4463a of this title, and failure of the panel to issue a decision within  
12 this period shall be deemed approval and effective on the 181st day. Decisions  
13 shall be issued in writing and shall include a statement of the factual bases on  
14 which the appropriate municipal panel has made its conclusions and a  
15 statement of the conclusions. The minutes of the meeting may suffice,  
16 provided the factual bases and conclusions relating to the review standards are  
17 provided in conformance with this subsection.

18 \* \* \*

19 (e) Formal review. An appropriate municipal panel shall conduct a  
20 proceeding on a development review application pursuant to chapter 36 of this  
21 title if the application is complete and the applicant or an interested person

1 presents to the panel, during or before the first public hearing on the  
2 application, a written request for formal review and recorded hearings. If the  
3 request is made by an interested person, the request shall include a  
4 demonstration that the person meets the definition of interested person set out  
5 in subsection 4465(b) of this title. An appropriate municipal panel may reject  
6 such a request only if the application is substantially incomplete or if the  
7 requestor is not the applicant and the panel determines that the requestor does  
8 not qualify as an interested person. Each of the following shall apply to the  
9 review of an application for which a request under this subsection has been  
10 made:

11 (1) If the request is made prior to the first public hearing on the  
12 application, the appropriate municipal panel shall provide notice of the request  
13 prior to that public hearing in accordance with the same notice procedures that  
14 apply to the application under subsection (a) of this section except that, if the  
15 request is received within 12 days prior to the hearing or prehearing  
16 conference, the panel shall provide the maximum practicable days' notice of  
17 the request.

18 (2) Provided that any extension complies with the provisions of  
19 subdivision (b)(1) of this section, the panel shall extend the hearing schedule or  
20 take 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 (3) The panel may require parties to submit prefiled testimony and  
4 exhibits. If the panel requires submission of prefiled evidence, the applicant  
5 and any interested persons supporting the application shall submit their  
6 prefiled direct evidence first, and then other interested persons shall be given a  
7 reasonable opportunity to submit their prefiled direct evidence. The panel may  
8 then allow the submission or presentation of rebuttal testimony and exhibits in  
9 the sequence and form that it reasonably determines to be appropriate.

10 (4) The panel shall record by video any hearing on the application that  
11 follows the request. In the event that appeal is taken from the panel's act or  
12 decision on such an application, the panel shall provide the Environmental  
13 Division with the original recording of the hearing and a copy of the complete  
14 written record and shall make and preserve a copy of the original recording for  
15 the purpose of keeping a record.

16 (5) All incremental costs incurred by an appropriate municipal panel  
17 with respect to a request under this subsection, including the cost of video  
18 recording, shall be borne by the party that requested formal review and  
19 recorded hearings. Such a panel may require such a requestor to post a bond,  
20 payable to the applicable municipality, in the estimated amount of those costs.  
21 As used in this section, the term "incremental costs" means those costs

1 incurred by a panel beyond the costs it would incur if the application were  
2 reviewed in the manner otherwise provided by this chapter.

3 (f) Conclusive wetlands presumption. With respect to a wetland that is  
4 subject to the rules of the Secretary of Natural Resources pursuant to  
5 10 V.S.A. § 913(a), the issuance of a final decision on an application for a  
6 permit, a conditional use determination, or other approval under those rules  
7 shall create a conclusive presumption concerning the wetland in any  
8 proceeding before an appropriate municipal panel. If the final decision on the  
9 application under those rules is affirmative, this presumption shall be that the  
10 activity in the wetland or its buffer zone authorized in the permit, conditional  
11 use determination, or other approval complies with any provisions related to  
12 wetlands contained in the applicable bylaw, provided that all conditions of the  
13 permit, conditional use determination, or other approval are met. If the final  
14 decision on the application under those rules is negative, this presumption shall  
15 be that the proposed activity in the wetland or its buffer zone does not comply  
16 with any provisions related to wetlands contained in the applicable bylaw. As  
17 used in this subsection, “final decision” means a decision for which the appeals  
18 period has passed and no appeal was taken or on which appeal was taken and  
19 the appeal or appeals have been conclusively determined.

1 Sec. 4. 24 V.S.A. § 4471 is amended to read:

2 § 4471. APPEAL TO ENVIRONMENTAL DIVISION

3 \* \* \*

4 (b) Appeal on the record.

5 (1) If the municipal legislative body has determined (or been instructed  
6 by the voters) to provide that appeals of certain appropriate municipal panel  
7 determinations shall be on the record, has defined what magnitude or nature of  
8 development proposal shall be subject to the production of an adequate record  
9 by the panel, and has provided that the municipal administrative procedure act  
10 shall apply in these instances, then an appeal from such a decision of an  
11 appropriate municipal panel shall be taken on the record in accordance with the  
12 Vermont Rules of Civil Procedure.

13 (2) Notwithstanding subdivision (1) of this subsection, an appeal from a  
14 decision of an appropriate municipal panel shall be taken on the record in  
15 accordance with the Vermont Rules of Civil Procedure when the decision  
16 results from a formal review under subsection 4464(e) of this title.

17 \* \* \*

18 \* \* \* Act 250 Provisions \* \* \*

19 Sec. 5. 10 V.S.A. § 6001 is amended to read:

20 § 6001. DEFINITIONS

21 In this chapter:



\* \* \*

(11) "Lot" means any undivided interest in land, whether freehold or leasehold, including interests created by trusts, partnerships, corporations, cotenancies, and contracts. For the purpose of determining whether a person has partitioned or divided land into the number of lots necessary to create a subdivision under this chapter, "lot" shall not include an undivided interest in land that consists solely of a road to serve one or more lots or that is to be held in common for the benefit of multiple adjacent lots through deed or other enforceable legal restriction.

\* \* \*

~~(16)(A) "Existing settlement" means an area that constitutes one of the following:~~

~~(i) a designated center; or~~

~~(ii) an existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.~~

~~(B) Strip development outside an area described in subdivision (A)(i) or (ii) of this subdivision (16) shall not constitute an existing settlement.~~

1 “Rural growth areas” means lands that are not natural resources referred to in  
2 subdivisions 6086(a)(1)(A) through (F), subdivision 6086(a)(8)(A), and  
3 subdivisions 6086(a)(9)(B), (C), (D), (E), and (K) of this title.

4 \* \* \*

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

6 (i) A tract or tracts of land, owned or controlled by a person,  
7 which the person has partitioned or divided for the purpose of resale into 10 or  
8 more lots ~~within a radius of five miles of any point on any lot, or within the~~  
9 ~~jurisdictional area of the same District Commission,~~ within any continuous  
10 period of five years. In determining the number of lots, a lot shall be counted  
11 if any portion is within five miles or within the jurisdictional area of the same  
12 District Commission, unless the lot is within a district, center, or area  
13 designated under 24 V.S.A. chapter 76A, in which case the lot shall only be  
14 counted in relation to other lots partitioned or divided by the person within the  
15 same district, center, or neighborhood.

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

20 (iii) A tract or tracts of land, owned or controlled by a person,  
21 which have been partitioned or divided for the purpose of resale into five or

1 more separate parcels of any size within a radius of five miles of any point on  
2 any such parcel, and within any period of ten years, by public auction.

3 (I) In this subdivision (iii), “public auction” means any auction  
4 advertised or publicized in any manner, or to which more than ten persons  
5 have been invited.

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

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

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

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

18 (iii) a lot or lots created for the purpose of conveyance to a person  
19 for whom a nonprofit organization will construct or rehabilitate residential  
20 housing on the lot, if all of the following apply:

(III) The organization will provide the person with a no-interest, no-profit loan for the housing to be constructed or rehabilitated on the lot and will use the mortgage payments on the loan to build or rehabilitate additional housing for persons selected on the basis of need.

\* \* \*

(36) ~~“Strip development” means linear commercial development along a public highway that includes three or more of the following characteristics: broad road frontage, predominance of single-story buildings, limited reliance on shared highway access, lack of connection to any existing settlement except by highway, lack of connection to surrounding land uses except by highway, lack of coordination with surrounding land uses, and limited accessibility for pedestrians. In determining whether a proposed development or subdivision constitutes strip development, the District Commission shall consider the topographic constraints in the area in which the development or subdivision is to be located.~~ [Repealed.]

\* \* \*

Sec. 6. 10 V.S.A. § 6083 is amended to read:

§ 6083. APPLICATIONS

\* \* \*

(d) The Board and Commissions shall make all practical efforts to process matters before the Board and permits in a prompt manner. ~~The Board shall establish time limits for the processing of land use permits issued under section 6086 of this title as well as procedures and time periods within which to notify applicants whether an application is complete.~~ The Board shall report annually by February 15 to the General Assembly by electronic submission. The annual report shall assess the performance of the Board and Commissions in meeting ~~the~~ statutory time limits; identify areas ~~which~~ that hinder effective performance; list fees collected for each permit; summarize changes made to improve performance; and describe staffing needs for the coming year. The annual report shall list the number of enforcement actions taken by the Board, the disposition of such cases, and the amount of penalties collected. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

\* \* \*

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

2 § 6084. NOTICE OF APPLICATION; HEARINGS, COMMENCEMENT OF  
3 REVIEW

4 \* \* \*

5 (b) A determination on whether the application is complete shall be made  
6 within 45 days of receipt. Such a determination shall be issued in writing in  
7 accordance with the rules of the Board. If the determination is that an  
8 application is not complete, the determination shall list each specific item that  
9 is missing and provide the applicant a reasonable period of time to amend the  
10 application. Upon an application being ruled complete, the ~~district~~  
11 ~~commission~~ District Commission shall determine whether to process the  
12 application as a major application with a required public hearing or process the  
13 application as a minor application with the potential for a public hearing in  
14 accordance with ~~board~~ Board rules.

15 \* \* \*

16 (d) ~~Any hearing or prehearing conference for a major application shall be~~  
17 ~~held within 40 days of receipt of a complete application; or within 20 days of~~  
18 ~~the end of the public comment period specified in the notice of minor~~  
19 ~~application review if the District Commission determines that it is appropriate~~  
20 ~~to hold a hearing for a minor application~~ A decision on any application under  
21 this chapter shall be rendered within 45 days of a determination that the

1 application is complete, and failure of the District Commission to issue a  
2 decision within this period shall be deemed approval and shall be effective on  
3 the 46th day. However, with respect to an application that is subject to the  
4 formal review procedure of section 6085a of this title, the District Commission  
5 shall issue a decision within 180 days of a determination that the application is  
6 complete, and failure of the District Commission to issue a decision within this  
7 period shall be deemed approval and shall be effective on the 181st day.

8 \* \* \*

9 Sec. 8. 10 V.S.A. § 6085a is added to read:

10 § 6085a. FORMAL REVIEW AND RECORDED HEARINGS

11 (a) A District Commission shall conduct a proceeding on an application for  
12 development or subdivision in accordance with this section if the application is  
13 complete and has been determined to be a major application under section  
14 6084 of this title, and the applicant or a person qualifying for party status  
15 presents to the District Commission, during or before the initial hearing or  
16 prehearing conference on the application, a written request for formal review  
17 and recorded hearings. If the request is made by a person other than the  
18 applicant, the request shall include a demonstration that the person qualifies for  
19 party status under section 6085 of this title and the rules of the Board. A  
20 District Commission may reject such a request only if the application is

1 substantially incomplete or if the requestor is not the applicant and the District  
2 Commission determines that the requestor does not qualify for party status.

3 (b) Each of the following shall apply to the review of an application for  
4 which a request under this subsection has been made:

5 (1) If the request is made prior to the initial hearing or prehearing  
6 conference on the application, the District Commission shall provide notice of  
7 the request prior to such hearing or conference in accordance with the same  
8 notice procedures that apply to the application under section 6084 of this title,  
9 except that, if the request is received within 12 days prior to the hearing or  
10 prehearing conference, the District Commission shall provide the maximum  
11 practicable days' notice of the request.

12 (2) Provided that any extension complies with the provisions of  
13 subsection 6084(d) of this title, the District Commission shall extend the  
14 hearing schedule or take other appropriate action as necessary to provide a fair  
15 and reasonable opportunity for parties to prepare, present, and respond to  
16 evidence without creating undue delay in the review of the application.

17 (3) The District Commission may require parties to submit prefiled  
18 testimony and exhibits. If the District Commission requires submission of  
19 prefiled evidence, the applicant and any parties supporting the application shall  
20 submit their prefiled direct evidence first, and then other parties shall be given  
21 a reasonable opportunity to submit their prefiled direct evidence. The District



1 Commission may then allow the submission or presentation of rebuttal  
2 testimony and exhibits in the sequence and form that it reasonably determines  
3 to be appropriate.

4 (4) Unless the parties agree otherwise, the District Commission in a  
5 prehearing order shall establish the type, sequence, and amount of discovery  
6 available under Rules 26–37 of the Vermont Rules of Civil Procedure, limiting  
7 the discovery permitted to that necessary for a full and fair determination of the  
8 proceeding.

9 (c) During proceedings on an application under this section, the District  
10 Commission shall maintain the flexibility regarding the introduction of  
11 evidence provided by 3 V.S.A. § 810 and the procedural flexibility and  
12 informality that has been characteristic of District Commission proceedings.

13 (d) On receipt of a request from the District Commission for assistance  
14 with regard to an application under this section, the Board shall provide  
15 assistance to the District Commission as necessary.

16 (e) The District Commission shall record by video any hearing on an  
17 application that is heard under this section. In the event that appeal is taken  
18 from a District Commission act or decision on such an application, the District  
19 Commission shall provide the Environmental Division with the original  
20 recording of the hearing and a copy of the complete written record and shall

1 make and preserve a copy of the original recording for the purpose of keeping  
2 a record.

3 (f) All incremental costs incurred by a District Commission with respect to  
4 a request under this section, including the cost of video recording, shall be  
5 borne by the party that requested formal review and recorded hearings. A  
6 District Commission may require such a requestor to post a bond, payable to  
7 the applicable municipality, in the estimated amount of those costs. As used in  
8 this section, the term “incremental costs” means those costs incurred by a  
9 District Commission beyond the costs it would incur if the application were  
10 reviewed in the manner otherwise provided by this chapter.

11 Sec. 9. 10 V.S.A. § 6086 is amended to read:

12 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

13 (a) Before granting a permit, the District Commission shall find that the  
14 subdivision or development:

15 \* \* \*

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

20 \* \* \*

1           (L) ~~Settlement patterns. To promote Vermont's historic settlement~~  
2 ~~pattern of compact village and urban centers separated by rural countryside, a~~  
3 ~~permit will be granted for a development or subdivision outside an existing~~  
4 ~~settlement when it is demonstrated by the applicant that, in addition to all other~~  
5 ~~applicable criteria, the development or subdivision:~~

6                     (i) ~~will make efficient use of land, energy, roads, utilities, and~~  
7 ~~other supporting infrastructure; and~~

8                     (ii)(I) ~~will not contribute to a pattern of strip development along~~  
9 ~~public highways; or~~

10                    (H) ~~if the development or subdivision will be confined to an~~  
11 ~~area that already constitutes strip development, will incorporate infill as~~  
12 ~~defined in 24 V.S.A. § 2791 and is designed to reasonably minimize the~~  
13 ~~characteristics listed in the definition of strip development under subdivision~~  
14 ~~6001(36) of this title. Rural growth areas. A permit will be granted for the~~  
15 ~~development or subdivision of rural growth areas when it is demonstrated by~~  
16 ~~the applicant that in addition to all other applicable criteria, provision will be~~  
17 ~~made in accordance with subdivisions (A) "impact of growth," (G) "private~~  
18 ~~utility service," (H) "costs of scattered development," and (J) "public utility~~  
19 ~~services" of this subdivision (9) for reasonable population densities, reasonable~~  
20 ~~rates of growth, and the use of cluster planning and new community planning~~  
21 ~~designed to economize on the cost of roads, utilities, and land usage.~~

\* \* \*

(d)(1) The Natural Resources Board may by rule allow the acceptance of a permit or permits or approval of any federal or State Agency ~~Agency~~ agency with respect to subdivisions (a)(1) through (5) of this section or a permit or permits of a specified municipal government with respect to subdivisions (a)(1) through (7), (8) as to scenic or natural beauty or aesthetics, (9), and (10) of this section, or a combination of such permits or approvals, in lieu of evidence by the applicant. 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 Act 250 review of municipal impacts. The acceptance of such approval, positive determinations, permit, or permits 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. In the case of a permit or approval issued by a federal agency, or a permit or approval issued by a State agency that is subject to appeal under chapter 220 of this title, this presumption may be rebutted only by a clear and convincing showing that the agency's issuance of the permit or other approval was arbitrary or capricious. In the case of approvals and permits issued by the Agency of Natural Resources, technical determinations of the Agency shall be accorded substantial deference by the Commissions. The acceptance of negative determinations issued by a

1 Development Review Board under the provisions of 24 V.S.A. § 4420, with  
2 respect to local Act 250 review of municipal impacts shall create a  
3 presumption that the application is detrimental to the public health and welfare  
4 with respect to the specific requirement for which it is accepted. Any  
5 determinations, positive or negative, under the provisions of 24 V.S.A. § 4420  
6 shall create presumptions only to the extent that the impacts under the criteria  
7 are limited to the municipality issuing the decision. Such a rule may be  
8 revoked or amended pursuant to the procedures set forth in 3 V.S.A.  
9 chapter 25, the Vermont Administrative Procedure Act. The rules adopted by  
10 the Board shall not approve the acceptance of a permit or approval of such an  
11 ~~Agency~~ agency or of a permit of a municipal government unless it satisfies the  
12 appropriate requirements of subsection (a) of this section.

13 (2) The rules adopted by the Board under subdivision (1) of this  
14 subsection shall provide that a certification by a qualified professional engineer  
15 or architect, or other qualified professional, may be submitted by the applicant  
16 in lieu of evidence under specified subdivisions of subsection (a) of this  
17 section. Each of the following shall apply to such certifications:

18 (A) The rules shall identify each subdivision of subsection (a) of this  
19 section for which a certification may be provided. At a minimum, the rules  
20 shall provide for such certifications with respect to subdivisions (a)(1) through  
21 (5) and (8) (as to scenic or natural beauty or aesthetics) of this section.

(C) A person making a certification under this subdivision (d)(2) may be held liable for violation of this chapter if he or she makes an erroneous certification that is offered in a proceeding under this chapter, and he or she made the erroneous certification willfully or recklessly or did not follow the standard of care normally exercised by a member of the same profession in similar circumstances. In a proceeding under this chapter, a determination that a certification is rebutted shall not be sufficient to demonstrate a violation under this subdivision (2).

\* \* \* Appeal and Environmental Division Provisions \* \* \*

§ 1001. ENVIRONMENTAL DIVISION

(f) The Environmental Division shall be provided with a dedicated minimum of one court manager, two hearing officers appointed for a term of six years by the Administrative judge from among the attorneys admitted to

1 practice in Vermont, two law clerks, and two docket clerk-courtroom  
2 operators. These positions shall not be subject to any rotation with other  
3 courts. The Environmental Division shall receive the same funding and  
4 provisions for security as provided to county courthouses.

5 \* \* \*

6 Sec. 11. 4 V.S.A. § 1005 is added to read:

7 § 1005. REFERRAL TO HEARING OFFICER

8 An Environmental judge may refer a matter before the Environmental  
9 Division to an Environmental Division hearing officer if such referral is likely  
10 to expedite the matter, and the matter is not likely to result in a decision of  
11 significant precedential importance. With respect to a matter so referred, the  
12 hearing officer shall be the presiding officer and shall have the same powers in  
13 presiding over the matter as would an Environmental judge, including  
14 scheduling, conducting trials and hearings, and the issuance of subpoenas, of  
15 procedural orders, and of decisions on discovery disputes. Any decision by the  
16 hearing officer that is dispositive of the matter and adverse to one or more  
17 parties to the proceeding shall be issued as a proposal for decision that is  
18 served upon the parties, and an opportunity shall be afforded to each party to  
19 file exceptions and present briefs and oral argument to an Environmental  
20 judge. A decision by the hearing officer that is dispositive of the matter and is  
21 not adverse to one or more parties to the proceeding also shall be issued as a

1 proposal for decision, but an opportunity for parties to file exceptions and  
2 briefs and present oral argument shall not be required. A proposal for decision  
3 under this section shall contain a statement of the reasons for and of each issue  
4 of fact or law necessary to the proposed decision. Upon issuance by a hearing  
5 officer of a proposal for decision, the matter promptly shall be returned to an  
6 Environmental judge for final decision.

7 Sec. 12. POSITION TRANSFERS

8 Effective July 1, 2017, one associate general counsel position at the Natural  
9 Resources Board is transferred to the Environmental Division to be an  
10 Environmental Division hearing officer. The position of case manager to the  
11 Environmental Division shall be used for the other position of Environmental  
12 Division hearing officer. The Administrative judge may commence  
13 recruitment for these positions prior to July 1, 2017 and shall appoint the  
14 hearing officers as soon as possible on or after that date. Such hearing officers  
15 shall be exempt from the classified service, with a salary to be the same as that  
16 of a Judicial Bureau hearing officer under 32 V.S.A. § 1003.

17 Sec. 13. 10 V.S.A. § 8504 is amended to read:

18 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

19 \* \* \*



1 (d) Requirement that persons aggrieved ~~Act 250 parties~~ by decisions of the  
2 Secretary or District Commission participate before the Secretary or District  
3 Commission.

4 (1) No aggrieved person may appeal an act or decision that was made by  
5 the Secretary or a District Commission unless, in the case of an appeal from  
6 the Secretary, the person participated in the proceedings before the Secretary  
7 or, in the case of an appeal from a District Commission, the person was  
8 granted party status by the District Commission pursuant to subdivision  
9 6085(c)(1)(E) of this title, participated in the proceedings before the District  
10 Commission, and retained party status at the end of the District Commission  
11 proceedings. In addition, the person may only appeal those issues under the  
12 criteria with respect to which the person was granted party status.

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

16 (A) there was a procedural defect which prevented the person from  
17 ~~obtaining party status or~~ participating in the proceeding or, in the case of an  
18 appeal from a District Commission, obtaining party status;

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

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

3 \* \* \*

4 (h) ~~De novo~~ Burden of proof; de novo hearing; record review. In any  
5 appeal before the Environmental Division, the burden of proof shall be on the  
6 appellant. An appellant that is not the applicant may meet this burden initially  
7 through evidence or argument concerning the project as described in the  
8 decision being appealed or as described by the applicant in the proceeding  
9 from which the appeal is taken. The Environmental Division, applying the  
10 substantive standards that were applicable before the tribunal appealed from,  
11 shall hold a de novo hearing on those issues which have been appealed, except  
12 in the case of:

13 (1) ~~a~~ A decision being appealed on the record pursuant to 24 V.S.A.  
14 chapter 117;

15 (2) ~~a~~ A decision of the Commissioner of Forests, Parks and Recreation  
16 under section 2625 of this title being appealed on the record, in which case the  
17 Environmental Division shall affirm the decision, unless it finds that the  
18 Commissioner did not have reasonable grounds on which to base the decision.

19 (3) A decision of a District Commission on an application that is subject  
20 to formal review under section 6085a of this title, in which case the appeal  
21 shall be on the record. The Environmental Division shall remand to the

1 District Commission if the District Commission improperly excluded  
2 evidence, did not provide adequate notice or opportunity to be heard, or  
3 otherwise failed to comply with the requirements of 3 V.S.A. chapter 25 with  
4 respect to contested cases. The Environmental Division need not remand for  
5 harmless error. The Environmental Division shall not set aside any findings of  
6 fact by the District Commission unless clearly erroneous.

7 \* \* \*

8 (n) Intervention. Any person may intervene in a pending appeal if that  
9 person:

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

12 (2) is a party by right;

13 (3) is the Natural Resources Board;

14 (4) is a person aggrieved, as defined in this chapter;

15 (5) qualifies as an “interested person,” as established in 24 V.S.A.

16 § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

17 (6) meets the standard for intervention established in the Vermont Rules  
18 of Civil Procedure.

19 (o) Natural Resources Board. To be a party to an appeal from a District  
20 Commission or district coordinator, the Natural Resources Board need not  
21 have participated before the Commission or coordinator.

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

8                               \* \* \* Other Provisions \* \* \*

9       Sec. 14. 3 V.S.A. § 2822 is amended to read:

10      § 2822. BUDGET AND REPORT; POWERS

11                               \* \* \*

12      ~~(f)(1)~~ Simplified applications and minor projects. For any Agency  
13      program, the Secretary may provide for simplified application forms and  
14      procedures for minor projects.

15      (2) Consolidated applications and decisions. For projects requiring  
16      multiple permits or other approvals from the Agency, the Secretary may create  
17      a consolidated application form that allows an applicant to elect to apply in one  
18      application for multiple Agency permits and approvals. For any such  
19      application, the Agency may consolidate notice and procedure by using the  
20      most stringent notice and procedural requirements pertinent to the applicable

1 Agency permits and approvals and may issue a consolidated decision with  
2 respect to applicable Agency permits and approvals.

3 (g) The Secretary shall make all practical efforts to process permits in a  
4 prompt manner. ~~The Secretary shall establish time limits for the processing of~~  
5 ~~each permit as well as procedures and time periods within which to notify~~  
6 ~~applicants whether an application is complete.~~ A determination on whether an  
7 application or amended application to the Agency for a permit, certificate, or  
8 other similar approval is complete shall be made within 45 days of receipt. If  
9 the Agency determines that an application is not complete, it shall list each  
10 specific item that is missing and provide the applicant a reasonable period of  
11 time to amend its application. A decision on any application to the Agency for  
12 a permit, certificate, or other similar approval shall be rendered within 45 days  
13 of a determination that the application is complete, and failure of the Agency  
14 to issue a decision within this period shall be deemed approval and shall be  
15 effective on the 46th day unless such deemed approval would conflict with the  
16 requirements of a delegated federal program. The Secretary shall report no  
17 later than the third Tuesday of each annual legislative session to the General  
18 Assembly by electronic submission. The annual report shall assess the  
19 Agency's performance in meeting the limits; identify areas which hinder  
20 effective Agency performance; list fees collected for each permit; summarize  
21 changes made by the Agency to improve performance; describe staffing needs

1 for the coming year; certify that the revenue from the fees collected is at least  
2 equal to the costs associated with those positions; and discuss the operation of  
3 the Agency during the preceding fiscal year and the future goals and objectives  
4 of the Agency. The provisions of 2 V.S.A. § 20(d) (expiration of required  
5 reports) shall not apply to the report to be made under this subsection. This  
6 report is in addition to the fee report and request required by 32 V.S.A.  
7 chapter 7, subchapter 6.

8 \* \* \*

9 \* \* \* Effective Dates \* \* \*

10 Sec. 15. EFFECTIVE DATES

11 This act shall take effect on July 1, 2016, except that this section and  
12 Sec. 12 shall take effect on passage.