

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources and Energy to which was referred
3 House Bill No. 823 entitled “An act relating to encouraging growth in
4 designated centers and protecting natural resources” respectfully reports that it
5 has considered the same and recommends that the bill be amended by striking
6 out all after the enacting clause and inserting in lieu thereof the following:

7 * * * Amendments to 10 V.S.A. chapter 151 (Act 250) * * *

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

9 § 6001. DEFINITIONS

10 In this chapter:

11 * * *

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

13 * * *

14 (iv) The construction of housing projects such as cooperatives,
15 condominiums, or dwellings, or construction or maintenance of mobile homes
16 or ~~trailer~~ mobile home parks, with 10 or more units, constructed or maintained
17 on a tract or tracts of land, owned or controlled by a person, within a radius of
18 five miles of any point on any involved land, and within any continuous period
19 of five years. However:

20 (I) A priority housing project shall constitute a development
21 under this subdivision (iv) only if the number of housing units in the project is:

- 1 (aa) 275 or more, in a municipality with a population of
2 15,000 or more;
- 3 (bb) 150 or more, in a municipality with a population of
4 10,000 or more but less than 15,000;
- 5 (cc) 75 or more, in a municipality with a population of 6,000
6 or more but less than 10,000.
- 7 (dd) 50 or more, in a municipality with a population of
8 3,000 or more but less than 6,000;
- 9 (ee) 25 or more, in a municipality with a population of less
10 than 3,000; and
- 11 (ff) notwithstanding subdivisions (aa) through (ee) of this
12 subdivision (iv)(I), 10 or more if the construction involves the demolition of
13 one or more buildings that are listed on or eligible to be listed on the State or
14 National Register of Historic Places. However, demolition shall not be
15 considered to create jurisdiction under this subdivision if the Division for
16 Historic Preservation has determined that the proposed demolition will have no
17 adverse effect, will have no adverse effect if specified conditions are met, or
18 will have an adverse effect that will be adequately mitigated. Any imposed
19 conditions shall be enforceable through a grant condition, deed covenant, or
20 other legally binding document.

1 (II) The determination of jurisdiction over a priority housing
2 project shall count only the housing units included in that discrete project.

3 (III) Housing units in a priority housing project shall not count
4 toward determining jurisdiction over any other project.

5 * * *

6 ~~(B)(i) Smart Growth Jurisdictional Thresholds. Notwithstanding the~~
7 ~~provisions of subdivision (3)(A) of this section, if a project consists~~
8 ~~exclusively of mixed income housing or mixed use, or any combination~~
9 ~~thereof, and is located entirely within a growth center designated pursuant to~~
10 ~~24 V.S.A. 2793e or, entirely within a downtown development district~~
11 ~~designated pursuant to 24 V.S.A. § 2793, “development” means:~~

12 ~~(I) Construction of mixed income housing with 200 or more~~
13 ~~housing units or a mixed use project with 200 or more housing units, in a~~
14 ~~municipality with a population of 15,000 or more.~~

15 ~~(II) Construction of mixed income housing with 100 or more~~
16 ~~housing units or a mixed use project with 100 or more housing units, in a~~
17 ~~municipality with a population of 10,000 or more but less than 15,000.~~

18 ~~(III) Construction of mixed income housing with 50 or more~~
19 ~~housing units or a mixed use project with 50 or more housing units, in a~~
20 ~~municipality with a population of 6,000 or more and less than 10,000.~~

1 ~~(IV) Construction of mixed income housing with 30 or more~~
2 ~~housing units or a mixed use project with 30 or more housing units, in a~~
3 ~~municipality with a population of 3,000 or more but less than 6,000.~~

4 ~~(V) Construction of mixed income housing with 25 or more~~
5 ~~housing units or a mixed use project with 25 or more housing units, in a~~
6 ~~municipality with a population of less than 3,000.~~

7 ~~(VI) Historic Buildings. Construction of 10 or more units of~~
8 ~~mixed income housing or a mixed use project with 10 or more housing units~~
9 ~~where if the construction involves the demolition of one or more buildings that~~
10 ~~are listed on or eligible to be listed on the State or National Register of Historic~~
11 ~~Places. However, demolition shall not be considered to create jurisdiction~~
12 ~~under this subdivision if the Division for Historic Preservation has determined~~
13 ~~the proposed demolition will have: no adverse effect; no adverse effect~~
14 ~~provided that specified conditions are met; or, will have an adverse effect, but~~
15 ~~that adverse effect will be adequately mitigated. Any imposed conditions shall~~
16 ~~be enforceable through a grant condition, deed covenant, or other legally~~
17 ~~binding document.~~

18 ~~(ii) Mixed Income Housing Jurisdictional Thresholds.~~
19 ~~Notwithstanding the provisions of subdivision (3)(A) of this section, if a~~
20 ~~project consists exclusively of mixed income housing and is located entirely~~
21 ~~within a Vermont neighborhood designated pursuant to 24 V.S.A. § 2793d or a~~

1 ~~neighborhood development area as defined in 24 V.S.A. § 2791(16),~~

2 ~~“development” means:~~

3 ~~(I) Construction of mixed income housing with 200 or more~~
4 ~~housing units, in a municipality with a population of 15,000 or more.~~

5 ~~(II) Construction of mixed income housing with 100 or more~~
6 ~~housing units, in a municipality with a population of 10,000 or more but less~~
7 ~~than 15,000.~~

8 ~~(III) Construction of mixed income housing with 50 or more~~
9 ~~housing units, in a municipality with a population of 6,000 or more and less~~
10 ~~than 10,000.~~

11 ~~(IV) Construction of mixed income housing with 30 or more~~
12 ~~housing units, in a municipality with a population of 3,000 or more but less~~
13 ~~than 6,000.~~

14 ~~(V) Construction of mixed income housing with 25 or more~~
15 ~~housing units, in a municipality with a population of less than 3,000.~~

16 ~~(VI) Historic Buildings. Construction of 10 or more units of~~
17 ~~mixed income housing where the construction involves the demolition of one~~
18 ~~or more buildings that are listed on or eligible to be listed on the State or~~
19 ~~National Register of Historic Places. However, demolition shall not be~~
20 ~~considered to create jurisdiction under this subdivision if the Division for~~
21 ~~Historic Preservation has determined the proposed demolition will have: no~~

1 ~~adverse effect; no adverse effect provided that specified conditions are met; or~~
2 ~~will have an adverse effect, but that adverse effect will be adequately~~
3 ~~mitigated. Any imposed conditions shall be enforceable through a grant~~
4 ~~condition, deed covenant, or other legally binding document. [Repealed.]~~

5 (C) For the purposes of determining jurisdiction under subdivisions
6 subdivision (3)(A) and (3)(B) of this section, the following shall apply:

7 (i) ~~Incentive for Growth Inside Designated Areas.~~

8 ~~Notwithstanding subdivision (3)(A)(iv) of this section, housing units~~
9 ~~constructed by a person partially or completely outside a designated downtown~~
10 ~~development district, designated growth center, designated Vermont~~
11 ~~neighborhood, or designated neighborhood development area shall not be~~
12 ~~counted to determine jurisdiction over housing units constructed by that person~~
13 ~~entirely within a designated downtown development district, designated~~
14 ~~growth center, designated Vermont neighborhood, or designated neighborhood~~
15 ~~development area. [Repealed.]~~

16 (ii) ~~Five Year, Five Mile Radius Jurisdiction Analysis. Within~~

17 ~~any continuous period of five years, housing units constructed by a person~~
18 ~~entirely within a designated downtown district, designated growth center,~~
19 ~~designated Vermont neighborhood, or designated neighborhood development~~
20 ~~area shall be counted together with housing units constructed by that person~~
21 ~~partially or completely outside a designated downtown development district,~~

1 ~~designated growth center, designated Vermont neighborhood, or designated~~
2 ~~neighborhood development area to determine jurisdiction over the housing~~
3 ~~units constructed by a person partially or completely outside the designated~~
4 ~~downtown development district, designated growth center, designated Vermont~~
5 ~~neighborhood, or designated neighborhood development area and within a~~
6 ~~five mile radius in accordance with subdivision (3)(A)(iv) of this section.~~

7 [Repealed.]

8 (iii) ~~Discrete Housing Projects in Designated Areas and Exclusive~~
9 ~~Counting for Housing Units. Notwithstanding subdivisions (3)(A)(iv) and (19)~~
10 ~~of this section, jurisdiction shall be determined exclusively by counting~~
11 ~~housing units constructed by a person within a designated downtown~~
12 ~~development district, designated growth center, designated Vermont~~
13 ~~neighborhood, or designated neighborhood development area, provided that~~
14 ~~the housing units are part of a discrete project located on a single tract or~~
15 ~~multiple contiguous tracts of land. [Repealed.]~~

16 * * *

17 (16) ~~“Rural growth areas” means lands which are not natural~~
18 ~~resources referred to in subdivisions 6086(a)(1)(A) through (F), subdivision~~
19 ~~6086(a)(8)(A) and subdivisions 6086(a)(9)(B), (C), (D), (E) and (K) of this~~
20 ~~title.~~

1 (A) “Existing settlement” means an area that constitutes one of the
2 following:

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

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

12 * * *

13 (27) “Mixed income housing” means a housing project in which the
14 following apply:

15 (A) Owner-occupied housing. At the option of the applicant,
16 owner-occupied housing may be characterized by either of the following:

- 17 (i) at least 15 percent of the housing units have a purchase price
18 which at the time of first sale does not exceed 85 percent of the new
19 construction, targeted area purchase price limits established and published
20 annually by the Vermont Housing Finance Agency; or

1 (ii) at least 20 percent of the housing units have a purchase price
2 which at the time of first sale does not exceed 90 percent of the new
3 construction, targeted area purchase price limits established and published
4 annually by the Vermont Housing Finance Agency;

5 (B) Affordable Rental Housing. At least 20 percent of the housing
6 units that is are rented by the occupants whose gross annual household income
7 ~~does not exceed 60 percent of the county median income, or 60 percent of the~~
8 ~~standard metropolitan statistical area income if the municipality is located in~~
9 ~~such an area, as defined by the United States Department of Housing and~~
10 ~~Urban Development for use with the Housing Credit Program under Section~~
11 ~~42(g) of the Internal Revenue Code, and the total annual cost of the housing, as~~
12 ~~defined at Section 42(g)(2)(B), is not more than 30 percent of the gross annual~~
13 ~~household income as defined at Section 42(g)(2)(C), and with~~ constitute
14 affordable housing and have a duration of affordability of no less than ~~30~~ 20
15 years.

16 (28) “Mixed use” means construction of both mixed income housing
17 and construction of space for any combination of retail, office, services,
18 artisan, and recreational and community facilities, provided at least 40 percent
19 of the gross floor area of the buildings involved is mixed income housing.

20 “Mixed use” does not include industrial use.

21 (29) “Affordable housing” means either of the following:

1 (A) Housing that is owned by its occupants whose gross annual
2 household income does not exceed 80 percent of the county median income, or
3 80 percent of the standard metropolitan statistical area income if the
4 municipality is located in such an area, as defined by the United States
5 Department of Housing and Urban Development, and the total annual cost of
6 the housing, including principal, interest, taxes, insurance, and condominium
7 association fees, is not more than 30 percent of the gross annual household
8 income.

9 (B) Housing that is rented by the occupants whose gross annual
10 household income does not exceed 80 percent of the county median income, or
11 80 percent of the standard metropolitan statistical area income if the
12 municipality is located in such an area, as defined by the United States
13 Department of Housing and Urban Development, and the total annual cost of
14 the housing, including rent, utilities, and condominium association fees, is not
15 more than 30 percent of the gross annual household income.

16 (30) “Designated ~~growth center~~” means a ~~growth center designated by~~
17 ~~the Vermont Downtown Development Board under the provisions of~~
18 24 V.S.A. chapter 76A downtown development district, village center, new
19 town center, growth center, Vermont neighborhood, or neighborhood
20 development area designated under 24 V.S.A. chapter 76A.

21 * * *

1 (35) “Priority housing project” means a discrete project located on a
2 single tract or multiple contiguous tracts of land that consists exclusively of:

3 (A) mixed income housing or mixed use, or any combination thereof,
4 and is located entirely within a designated downtown development district,
5 designated new town center; designated growth center, or designated village
6 center that is also a designated neighborhood development area under
7 24 V.S.A. chapter 76A; or

8 (B) mixed income housing and is located entirely within a designated
9 Vermont neighborhood or designated neighborhood development area under
10 24 V.S.A. chapter 76A.

11 (36) “Strip development” means linear commercial development along a
12 public highway that includes three or more of the following characteristics:
13 broad road frontage, predominance of single-story buildings, limited reliance
14 on shared highway access, lack of connection to any existing settlement except
15 by highway, limited accessibility for pedestrians, and lack of coordination with
16 surrounding land uses in terms of design, signs, lighting, and parking. In
17 determining whether a proposed development or subdivision constitutes strip
18 development, the District Commission shall consider the topographic
19 constraints in the area in which the development or subdivision is to be
20 located.

21 * * *

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

2 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

3 (a) Before granting a permit, the ~~district commission~~ District Commission
4 shall find that the subdivision or development:

5 * * *

6 (5)(A) Will not cause unreasonable congestion or unsafe conditions with
7 respect to use of the highways, waterways, railways, airports and airways, and
8 other means of transportation existing or proposed.

9 (B) As appropriate, will incorporate transportation demand
10 management strategies and provide safe access and connections to adjacent
11 lands and facilities and to existing and planned pedestrian, bicycle, and transit
12 networks and services. This subdivision (B) shall not require an applicant to
13 construct an improvement on a tract that the applicant does not own or control.
14 However, the District Commission may require an applicant to contribute to
15 the cost of constructing such an improvement.

16 * * *

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

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* * *

~~(L) Rural growth areas. A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) “impact of growth,” (G) “private utility service,” (H) “costs of scattered development” and (J) “public utility services” of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.~~

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

- (i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure;
- (ii) is designed in a manner consistent with the planning goals set forth in 24 V.S.A. § 4302(c)(1);
- (iii) will conform to the land use element, map, and resource protection policies included in the municipal and regional plans applicable to the proposed location of the development or subdivision;

1 (iv) will not establish, extend, or contribute to a pattern of strip
2 development along public highways;

3 (v) if the development or subdivision will be located in an area
4 that already constitutes strip development, incorporates infill as defined in 24
5 V.S.A. § 2791 and is designed to avoid or minimize the characteristics listed in
6 the definition of strip development under subdivision 6001(36) of this title; and

7 (vi) if the development or subdivision will be adjacent to an area
8 that already constitutes strip development, is designed to avoid or minimize the
9 characteristics listed in the definition of strip development under subdivision
10 6001(36) of this title.

11 * * *

12 Sec. 3. 10 V.S.A. § 6086b is added to read:

13 § 6086b. DOWNTOWN DEVELOPMENT; FINDINGS

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

19 (1) In lieu of obtaining a permit or permit amendment, a person may
20 request findings and conclusions from the Board, which shall approve the
21 request if it finds that the development or subdivision will meet subdivisions

1 6086 (a)(1) (air and water pollution), (2) (sufficient water available), (3)
2 (burden on existing water supply), (4) (soil erosion), (5) (traffic), (8) (historic
3 sites and rare and irreplaceable natural areas only) (8)(A) (endangered species;
4 necessary wildlife habitat), (9)(B) (primary agricultural soils), (9)(C)
5 (productive forest soils), (9)(F) (energy conservation), and (9)(K) (public
6 facilities, services, and lands) of this title.

7 (2) The request shall be complete as to the criteria listed in subdivision
8 (1) of this subsection and need not address other criteria of subsection (a) of
9 this section.

10 (A) The requestor shall file the request in accordance with the
11 requirements of subsection 6084(a) of this title, except that the filing shall be
12 with the Board, and the requestor shall provide a copy of the request to each
13 agency and department listed in subdivision (3) of this section.

14 (B) Within five days of the request's filing, the Chair of the Board
15 shall determine whether the request is complete. Within five days of the date
16 the Chair determines the request to be complete, the Board shall provide notice
17 of the complete request to each person required to receive a copy of the filing
18 under subdivision (2)(A) of this section and to each adjoining property owner
19 and shall post the notice and a copy of the request on its web page. The
20 computation of time under this subdivision (2)(B) shall exclude Saturdays,
21 Sundays, and State legal holidays.

1 (3) Within 30 days of receiving notice of a complete request:

2 (A) The State Historic Preservation Officer or designee shall submit a
3 written determination on whether the improvements will have an undue
4 adverse effect on any historic site.

5 (B) The Commissioner of Public Service or designee shall submit a
6 written determination on whether the improvements will meet or exceed the
7 applicable energy conservation and building energy standards under
8 subdivision 6086(a)(9)(F) of this title.

9 (C) The Secretary of Transportation or designee shall submit a
10 written determination on whether the improvements will have a significant
11 impact on any highway, transportation facility, or other land or structure under
12 the Secretary's jurisdiction.

13 (D) The Commissioner of Buildings and General Services or
14 designee shall submit a written determination on whether the improvements
15 will have a significant impact on any adjacent land or facilities under the
16 Commissioner's jurisdiction.

17 (E) The Secretary of Natural Resources or designee shall submit a
18 written determination on whether the improvements will have a significant
19 impact on any land or facilities under its jurisdiction or on any important
20 natural resources, other than primary agricultural soils. In this subdivision (E),

1 “important natural resources” shall have the same meaning as under 24 V.S.A.
2 § 2791.

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

7 (4) Any person may submit written comments or ask for a hearing
8 within 30 days of the date on which the Board issues notice of a complete
9 request. If the person asks for a hearing, the person shall include a petition for
10 party status in the submission. The petition for party status shall meet the
11 requirements of subdivision 6085(c)(2) of this title, except that it shall be filed
12 with the Board.

13 (5) The Board shall not hold a hearing on the request unless it
14 determines that there is a substantial issue under one or more applicable
15 criteria that requires a hearing. The Board shall hold any hearing within 20
16 days of the end of the comment period specified in subdivisions (3) and (4) of
17 this section.

18 (A) The Board shall conduct the hearing as a contested case under the
19 Vermont Administrative Procedure Act.

20 (B) Subdivisions 6085(c)(1)–(5) of this title shall govern
21 participation in a hearing under this section.

1 (6) The Board shall issue a decision within 60 days of issuing notice of a
2 complete request under this section or, if it holds a hearing, within 15 days of
3 adjourning the hearing. The Board shall send a copy of the decision to the
4 District Commission in whose district the development or subdivision is
5 located, to each State agency listed in subdivision (3) of this section, to the
6 municipality, to the municipal and regional planning commissions for the
7 municipality, and to each person that submitted a comment, requested a
8 hearing, or participated in the hearing, if any. The decision may include
9 conditions that meet the standards of subsection 6086(c) of this title.

10 (7) The requestor may waive the time periods required under
11 subdivisions (3), (4), and (6) of this section as to one or more agencies,
12 departments, the Board, or other persons. Such a waiver shall extend the
13 applicable and subsequent time periods by the amount of time waived.

14 (8) The record of a proceeding under this section shall consist of the
15 request, each written determination issued under subdivision (3) of this section,
16 each comment and request for hearing submitted under subdivision (4) of this
17 section, each document submitted for introduction into evidence at the hearing,
18 an audio or audiovisual recording of the hearing, and the decision of the Board.

19 Sec. 4. 10 V.S.A. § 6081(v) is added to read:

20 (v) A permit or permit amendment shall not be required for a development
21 or subdivision in a designated downtown development district for which the

1 Board has issued positive findings and conclusions under section 6086b of this
2 title on all the criteria listed in that section. A person shall obtain new or
3 amended findings and conclusions from the Board under section 6086b of this
4 title prior to commencement of a material change, as defined in the rules of the
5 Board, to a development or subdivision for which the Board has issued such
6 findings and conclusions. A person may seek a jurisdictional opinion under
7 section 6007 of this title concerning whether such a change is a material
8 change.

9 Sec. 5. 10 V.S.A. § 6089 is amended to read:

10 § 6089. APPEALS

11 Appeals of any act or decision of a ~~district commission~~ District Commission
12 under this chapter or the Natural Resources Board under ~~section~~ subsection
13 6007(d) of this title or under section 6086b of this title shall be made to the
14 Environmental Division in accordance with chapter 220 of this title. For the
15 purpose of this section, a decision of the chair of a ~~district commission~~ District
16 Commission under section 6001e of this title on whether action has been taken
17 to circumvent the requirements of this chapter shall be considered an act or
18 decision of the ~~district commission~~ District Commission.

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

20 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

1 (a) Mitigation for loss of primary agricultural soils. Suitable mitigation for
2 the conversion of primary agricultural soils necessary to satisfy subdivision
3 6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located.

4 (1) Project located in ~~growth center~~ certain designated areas. This
5 subdivision (1) applies to projects located in the following areas designated
6 under 24 V.S.A. chapter 76A: a downtown development district, a growth
7 center, a new town center designated on or before January 1, 2014, and a
8 neighborhood development area associated with a designated downtown
9 development district. If the project tract is located in a ~~designated growth~~
10 ~~center~~ one of these designated areas, an applicant who complies with
11 subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee
12 into the Vermont ~~housing and conservation trust fund~~ Housing and
13 Conservation Trust Fund established under section 312 of this title for the
14 purpose of preserving primary agricultural soils of equal or greater value with
15 the highest priority given to preserving prime agricultural soils as defined by
16 the U.S. Department of Agriculture. Any required offsite mitigation fee shall
17 be derived by:

18 (A) ~~determining~~ Determining the number of acres of primary
19 agricultural soils affected by the proposed development or subdivision;

20 (B) ~~multiplying~~ Multiplying the number of affected acres of primary
21 agricultural soils by a factor resulting in a ratio established as follows:

1 (i) ~~for~~ For development or subdivision within a designated ~~growth~~
2 ~~center~~ area described in this subdivision (a)(1), the ratio shall be 1:1 $\frac{1}{2}$.

3 (ii) ~~for~~ For residential construction that has a density of at least
4 eight units of housing per acre, of which at least eight units per acre or at least
5 40 percent of the units, on average, in the entire development or subdivision,
6 whichever is greater, meets the definition of affordable housing established in
7 this chapter, no mitigation shall be required, regardless of location in or outside
8 a designated area described in this subdivision (a)(1). However, all affordable
9 housing units shall be subject to housing subsidy covenants, as defined in 27
10 V.S.A. § 610, that preserve their affordability for a period of 99 years or
11 longer. ~~For purposes of~~ As used in this section, housing that is rented shall be
12 considered affordable housing when its inhabitants have a gross annual
13 household income that does not exceed 60 percent of the county median
14 income or 60 percent of the standard metropolitan statistical area income if the
15 municipality is located in such an area.

16 (C) ~~multiplying~~ Multiplying the resulting product by a
17 “price-per-acre” value, which shall be based on the amount that the ~~secretary~~
18 ~~of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets
19 has determined to be the recent, per-acre cost to acquire conservation
20 easements for primary agricultural soils in the same geographic region as the
21 proposed development or subdivision.

1 (2) Project located outside certain designated ~~growth-center~~ areas. If the
2 project tract is not located in a designated ~~growth-center~~ area described in
3 subdivision (a)(1) of this section, mitigation shall be provided on site in order
4 to preserve primary agricultural soils for present and future agricultural use,
5 with special emphasis on preserving prime agricultural soils. Preservation of
6 primary agricultural soils shall be accomplished through innovative land use
7 design resulting in compact development patterns which will maintain a
8 sufficient acreage of primary agricultural soils on the project tract capable of
9 supporting or contributing to an economic or commercial agricultural operation
10 and shall be enforceable by permit conditions issued by the ~~district commission~~
11 District Commission. The number of acres of primary agricultural soils to be
12 preserved shall be derived by:

13 (A) ~~determining~~ Determining the number of acres of primary
14 agricultural soils affected by the proposed development or subdivision; ~~and,~~
15 (B) ~~multiplying~~ Multiplying the number of affected acres of primary
16 agricultural soils by a factor based on the quality of those primary agricultural
17 soils, and other factors as the ~~secretary of agriculture, food and markets~~
18 Secretary of Agriculture, Food and Markets may deem relevant, including the
19 soil's location; accessibility; tract size; existing agricultural operations; water
20 sources; drainage; slope; the presence of ledge or protected wetlands; the
21 infrastructure of the existing farm or municipality in which the soils are

1 located; and the N.R.C.S. rating system for Vermont soils. This factor shall
2 result in a ratio of no less than 2:1, but no more than 3:1, protected acres to
3 acres of impacted primary agricultural soils.

4 (3) Mitigation flexibility.

5 (A) Notwithstanding the provisions of subdivision (a)(1) of this
6 ~~subsection~~ section pertaining to a development or subdivision on primary
7 agricultural soils within a certain designated ~~growth-center~~ areas, the ~~district~~
8 ~~commission~~ District Commission may, in appropriate circumstances, require
9 onsite mitigation with special emphasis on preserving prime agricultural soils
10 if that action is deemed consistent with the agricultural elements of local and
11 regional plans and the goals of 24 V.S.A. § 4302. In this situation, the
12 approved plans must designate specific soils that shall be preserved inside
13 ~~growth-centers~~ a designated area described in subdivision (a)(1) of this section.

14 For projects located within such a designated ~~growth-center~~ area, all factors
15 used to calculate suitable mitigation acreage or fees, or some combination of
16 these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

17 (B) Notwithstanding the provisions of subdivision (a)(2) of this
18 ~~subsection~~ section pertaining to a development or subdivision on primary
19 agricultural soils outside a designated ~~growth-center~~ area described in
20 subdivision (a)(1) of this section, the ~~district commission~~ District Commission
21 may, in appropriate circumstances, approve off-site mitigation or some

1 combination of onsite and off-site mitigation if that action is deemed consistent
2 with the agricultural elements of local and regional plans and the goals of
3 24 V.S.A. § 4302. For projects located outside such a designated ~~growth~~
4 ~~center~~ area, all factors used to calculate suitable mitigation acreage or fees, or
5 some combination of these measures, shall be as specified in this
6 subsection (a), subject to a ratio of no less than 2:1, but no more than 3:1.

7 * * *

8 Sec. 7. 10 V.S.A. § 8003 is amended to read:

9 § 8003. APPLICABILITY

10 (a) The Secretary may take action under this chapter to enforce the
11 following statutes and rules, permits, assurances, or orders implementing the
12 following statutes, and the Board may take such action with respect to
13 subdivision (10) of this subsection:

14 * * *

15 (10) 10 V.S.A. chapter 151, relating to land use, and including findings
16 and conclusions issued by the Board under section 6086b of this title;

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* * * Appeal of Downtown Development Findings * * *

Sec. 8. 10 V.S.A. § 8504 is amended to read:

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

(a) Act 250 and agency appeals. Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the Secretary, the Natural Resources Board, or a district commission under the provisions of law listed in section 8503 of this title, or any party by right, may appeal to the Environmental Division, except for an act or decision of the Secretary under subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

* * *

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

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

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

1 (3) An act or decision of the Natural Resources Board under
 2 section 6086b of this title (downtown development; findings), which shall be
 3 reviewed on the record created by the Board. The Environmental Division
 4 shall uphold the Board unless the Division determines that the Board abused its
 5 discretion or made factual determinations not supported by substantial
 6 evidence when the record is viewed as a whole. The Division shall not
 7 consider an appellant’s objection that was not urged before the Board, unless
 8 the failure or neglect to urge the objection is excused by extraordinary
 9 circumstances.

* * *

* * * Agency of Natural Resource Rule Revisions * * *

Sec. 9. MUNICIPAL POLLUTION CONTROL PRIORITY SYSTEM

13 (a) In the Environmental Protection Rules of the Agency of Natural
 14 Resources, chapter 2 (municipal pollution control priority system), subchapter
 15 500 (definitions), the definition of “designated growth center” is struck and a
 16 new definition of “designated center” is inserted in lieu thereof to read:

17 “Designated center” shall mean a downtown development district,
 18 village center, new town center, growth center, Vermont neighborhood, or
 19 neighborhood development area designated under 24 V.S.A. chapter 76A.

20 (b) On or before August 1, 2014, the Secretary of Natural Resources shall
 21 conform the published version of the rules described in this section to the

1 requirements of subsection (a) of this section. Provided that the only revision
2 to those rules is the change required by subsection (a) of this section, the
3 rulemaking procedures of the Vermont Administrative Procedure Act shall not
4 apply to the publication of this conformed version of the rules. However, on
5 publication, the Secretary shall send a copy of the conformed version of the
6 rules to the Office of the Secretary of State and the Legislative Committee on
7 Administrative Rules.

8 Sec. 10. 10 V.S.A. § 1571 is amended to read:

9 § 1571. DEFINITIONS

10 As used in this chapter:

11 * * *

12 (10) “Designated center” means a downtown development district,
13 village center, new town center, growth center, Vermont neighborhood, or
14 neighborhood development area designated under 24 V.S.A. chapter 76A.

15 Sec. 11. 10 V.S.A. § 1628 is amended to read:

16 § 1628. PRIORITIES

17 The ~~department~~ Department shall make awards under this chapter to
18 eligible municipal projects on the basis of urgency of need as determined
19 according to a system of priorities adopted by the ~~department~~ Department and
20 to the extent appropriate funds are available. The system of priorities shall
21 include increased priority to eligible municipal projects in designated centers.

1 The ~~department~~ Department shall assure that projects sponsored by a town
2 school district, or incorporated school district shall be given increased priority
3 for purposes of the receipt of engineering planning advances awarded under
4 section 1593 of this chapter. The total amount of the engineering planning
5 advances made and still outstanding during a period for this purpose shall not
6 exceed 30 percent of the bond issue or appropriation voted for construction
7 grant funds by the ~~general assembly~~ General Assembly for the period in which
8 the award is made.

9 Sec. 12. 10 V.S.A. § 1973 is amended to read:

10 § 1973. PERMITS

11 (a) Except as provided in this section and sections 1974 and 1978 of this
12 title, a person shall obtain a permit from the Secretary before:

13 (1) subdividing land;

14 (2) creating or modifying a campground in a manner that affects a
15 potable water supply or wastewater system or the requirements for providing
16 potable water and wastewater disposal;

17 (3) constructing, replacing, or modifying a potable water supply or
18 wastewater system;

19 (4) using or operating a failed supply or failed system;

20 (5) constructing a new building or structure;

1 (6) modifying an existing building or structure in a manner that
2 increases the design flow or modifies other operational requirements of a
3 potable water supply or wastewater system;

4 (7) making a new or modified connection to a new or existing potable
5 water supply or wastewater system; or

6 (8) changing the use of a building or structure in a manner that increases
7 the design flows or modifies other operational requirements of a potable water
8 supply or wastewater system.

9 * * *

10 (f)(1) The Secretary shall give deference to a certification by a licensed
11 designer with respect to the engineering design or judgment exercised by the
12 designer in order to minimize agency review of certified designs. Nothing in
13 this section shall limit the responsibility of the licensed designer to comply
14 with all standards and rules, or the authority of the Secretary to review and
15 comment on design aspects of an application or to enforce agency rules with
16 respect to the design or the design certification.

17 (2) The Secretary shall issue a permit for a new or modified connection
18 to a water main and a sewer main or indirect discharge system from a building
19 or structure in a designated downtown development district upon submission
20 of an application under subsection (b) of this section that consists solely of the
21 certification of a licensed designer, in accordance with subsection (d) of this

1 section, and a letter from the owner of the water main and sewer main or
2 indirect discharge system allocating the capacity needed to accommodate the
3 new or modified connection. However, this subdivision (2) shall not apply if
4 the Secretary finds one of the following:

5 (A) The Secretary has prohibited the system that submitted the
6 allocation letter from issuing new allocation letters due to a lack of capacity.

7 (B) As a result of an audit of the application performed on a random
8 basis or in response to a complaint, the system is not designed in accordance
9 with the rules adopted under this chapter.

10 * * *

11 Sec. 13. WASTEWATER RULES; AMENDMENT

12 On or before December 1, 2014, the Agency of Natural Resources shall
13 amend its form under 10 V.S.A. § 1973 and its rules under 10 V.S.A. § 1978 to
14 conform to the provisions of Sec. 12 of this act.

15 * * * Inclusionary Zoning * * *

16 Sec. 14. 24 V.S.A. § 4414(7) is amended to read:

17 (7) Inclusionary zoning. In order to provide for affordable housing,
18 bylaws may require that a certain percentage of housing units in a proposed
19 subdivision ~~or~~, planned unit development, or multi-unit development meets
20 defined affordability standards, which may include lower income limits than
21 contained in the definition of “affordable housing” in subdivision 4303(1) of

1 this title and may contain different affordability percentages than contained in
2 the definition of “affordable housing development” in subdivision 4303(2) of
3 this title. These provisions, at a minimum, shall comply with all the following:

4 * * *

5 * * * Effective Dates * * *

6 Sec. 15. EFFECTIVE DATES

7 (a) This section and Sec. 9 (municipal pollution control priority system)
8 shall take effect on passage.

9 (b) The remainder of this act shall take effect on June 1, 2014.

10

11 (Committee vote: _____)

12

13

Representative

14

FOR THE COMMITTEE