

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
17 maintained on a tract or tracts of land, owned or controlled by a person, within
18 a radius of five miles of any point on any involved land, and within any
19 continuous period of five years. **However:**

1 **(I) A priority housing project shall constitute a**
2 **development under this subdivision (iv) only if the number of housing**
3 **units in the project is:**
4 **(aa) 275 or more, in a municipality with a population of**
5 **15,000 or more;**
6 **(bb) 150 or more, in a municipality with a population of**
7 **10,000 or more but less than 15,000;**
8 **(cc) 75 or more, in a municipality with a population of**
9 **6,000 or more but less than 10,000.**
10 **(dd) 50 or more, in a municipality with a population of**
11 **3,000 or more but less than 6,000;**
12 **(ee) 25 or more, in a municipality with a population of**
13 **less than 3,000; and**
14 **(ff) notwithstanding subdivisions (aa) through (ee) of this**
15 **subdivision (iv)(I), 10 or more if the construction involves the demolition**
16 **of one or more buildings that are listed on or eligible to be listed on the**
17 **State or National Register of Historic Places. However, demolition shall**
18 **not be considered to create jurisdiction under this subdivision if the**
19 **Division for Historic Preservation has determined the proposed**
20 **demolition will have no adverse effect; no adverse effect provided that**
21 **specified conditions are met; or will have an adverse effect but that**

1 adverse effect will be adequately mitigated. Any imposed conditions shall
2 be enforceable through a grant condition, deed covenant, or other legally
3 binding document.

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

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

9 * * *

10 *[Note: formerly proposed amendments to subdivisions (3)(B) and (C), below,*
11 *are deleted; substance moved to subdivision (3)(A)(iv), above]*

12 ~~(B)(i) Smart Growth Jurisdictional Thresholds. Notwithstanding~~
13 ~~the provisions of subdivision (3)(A) of this section, if a project consists~~
14 ~~exclusively of mixed income housing or mixed use, or any combination~~
15 ~~thereof, and is located entirely within a growth center designated~~
16 ~~pursuant to 24 V.S.A. 2793c or, entirely within a downtown development~~
17 ~~district designated pursuant to 24 V.S.A. § 2793, “development” means:~~

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

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

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

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

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

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

1 ~~met; or, will have an adverse effect, but that adverse effect will be~~
2 ~~adequately mitigated. Any imposed conditions shall be enforceable~~
3 ~~through a grant condition, deed covenant, or other legally binding~~
4 ~~document.~~

5 ~~(ii) Mixed Income Housing Jurisdictional Thresholds.~~

6 ~~Notwithstanding the provisions of subdivision (3)(A) of this section, if a~~
7 ~~project consists exclusively of mixed income housing and is located~~
8 ~~entirely within a Vermont neighborhood designated pursuant to 24 V.S.A.~~
9 ~~§ 2793d or a neighborhood development area as defined in 24 V.S.A. §~~
10 ~~2791(16), “development” means:~~

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

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

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

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

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

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

14 (C) For the purposes of determining jurisdiction under
15 subdivisions subdivision (3)(A) and ~~(3)(B)~~ of this section, the following
16 shall apply:

17 (i) ~~Incentive for Growth Inside Designated Areas.~~
18 ~~Notwithstanding subdivision (3)(A)(iv) of this section, housing units~~
19 ~~constructed by a person partially or completely outside a designated~~
20 ~~downtown development district, designated growth center, designated~~
21 ~~Vermont neighborhood, or designated neighborhood development area~~

1 ~~shall not be counted to determine jurisdiction over housing units~~
2 ~~constructed by that person entirely within a designated downtown~~
3 ~~development district, designated growth center, designated Vermont~~
4 ~~neighborhood, or designated neighborhood development area.~~

5 [Repealed.]

6 (ii) ~~Five-Year, Five-Mile Radius Jurisdiction Analysis. Within~~
7 ~~any continuous period of five years, housing units constructed by a person~~
8 ~~entirely within a designated downtown district, designated growth center,~~
9 ~~designated Vermont neighborhood, or designated neighborhood~~
10 ~~development area shall be counted together with housing units~~
11 ~~constructed by that person partially or completely outside a designated~~
12 ~~downtown development district, designated growth center, designated~~
13 ~~Vermont neighborhood, or designated neighborhood development area to~~
14 ~~determine jurisdiction over the housing units constructed by a person~~
15 ~~partially or completely outside the designated downtown development~~
16 ~~district, designated growth center, designated Vermont neighborhood, or~~
17 ~~designated neighborhood development area and within a five-mile radius~~
18 ~~in accordance with subdivision (3)(A)(iv) of this section. [Repealed.]~~

19 (iii) ~~Discrete Housing Projects in Designated Areas and Exclusive~~
20 ~~Counting for Housing Units. Notwithstanding subdivisions (3)(A)(iv) and (19)~~
21 ~~of this section, jurisdiction shall be determined exclusively by counting~~

1 ~~housing units constructed by a person within a designated downtown~~
2 ~~development district, designated growth center, designated Vermont~~
3 ~~neighborhood, or designated neighborhood development area, provided that~~
4 ~~the housing units are part of a discrete project located on a single tract or~~
5 ~~multiple contiguous tracts of land. [Repealed.]~~

6 * * *

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

11 (A) “Existing settlement” ~~excludes strip development~~ means an area
12 that constitutes one of the following:

13 (i) a designated center; or

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

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

4 * * *

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

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

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

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

17 (B) ~~Affordable~~ Rental Housing. At least 20 percent of the housing
18 units that ~~is~~ are rented ~~by the occupants whose gross annual household~~
19 ~~income does not exceed 60 percent of the county median income, or 60~~
20 ~~percent of the standard metropolitan statistical area income if the~~
21 ~~municipality is located in such an area, as defined by the United States~~

1 ~~Department of Housing and Urban Development for use with the Housing~~
2 ~~Credit Program under Section 42(g) of the Internal Revenue Code, and~~
3 ~~the total annual cost of the housing, as defined at Section 42(g)(2)(B), is~~
4 ~~not more than 30 percent of the gross annual household income as defined~~
5 ~~at Section 42(g)(2)(C), and with constitute affordable housing and have a~~
6 duration of affordability of no less than ~~30~~ 20 years.

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

11 “Mixed use” does not include industrial use.

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

13 (A) Housing that is owned by its occupants whose gross annual
14 household income does not exceed 80 percent of the county median income, or
15 80 percent of the standard metropolitan statistical area income if the
16 municipality is located in such an area, as defined by the United States
17 Department of Housing and Urban Development, and the total annual cost of
18 the housing, including principal, interest, taxes, insurance, and condominium
19 association fees, is not more than 30 percent of the gross annual household
20 income.

1 ~~required outside a designated center, unless this lower level of service will~~
2 ~~cause or exacerbate unsafe conditions.~~

3 ~~(B) Will provide transportation access and mobility for all users~~
4 ~~of the development or subdivision and reduce dependence on single~~
5 ~~occupancy vehicles by incorporating, as~~ As appropriate, will incorporate
6 transportation demand management strategies and provide safe access and
7 connections to ~~nearby adjacent~~ lands and facilities, ~~including; and to~~
8 ~~existing and planned~~ pedestrian, bicycle, and transit networks and services.

9 ~~This subdivision (B) shall not require an applicant to construct an~~
10 ~~improvement on a tract which the applicant does not own or control.~~

11 ~~However, the District Commission may require an applicant to contribute~~
12 ~~to the cost of constructing such an improvement.~~

13 * * *

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

19 * * *

20 (L) ~~Rural growth areas. A permit will be granted for the~~
21 ~~development or subdivision of rural growth areas when it is demonstrated by~~

1 the applicant that in addition to all other applicable criteria provision will be
2 made in accordance with subdivisions (9)(A) “impact of growth,” (G) “private
3 utility service,” (H) “costs of scattered development” and (J) “public utility
4 services” of subsection (a) of this section for reasonable population densities,
5 reasonable rates of growth, and the use of cluster planning and new community
6 planning designed to economize on the cost of roads, utilities and land usage.
7 Settlement patterns. To promote Vermont’s historic settlement pattern of
8 compact village and urban centers separated by rural countryside, a permit
9 will be granted for a development or subdivision outside an existing
10 settlement when it is demonstrated by the applicant that in addition to all
11 other applicable criteria, the development or subdivision shall promote an
12 will make efficient use of land, energy, roads, utilities, and other supporting
13 infrastructure; shall be is designed in a manner consistent with the planning
14 goals set forth in 24 V.S.A. § 4302(c)(1); and shall will not establish, extend,
15 or contribute to a pattern of strip development along public highways; and, if
16 the development or subdivision is to be located in an area that already
17 constitutes strip development, incorporates compact site design and infill
18 as defined in 24 V.S.A. § 2791. A development or subdivision proposed
19 for an area in which a pattern of strip development has already been
20 established shall incorporate compact site design; shall create or
21 contribute to mixed uses in the adjacent area; and shall provide

1 ~~appropriate connections to existing and planned transit, bicycle, and~~
2 ~~pedestrian networks.~~

3 * * *

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

5 **§ 6086b. DOWNTOWN DEVELOPMENT; FINDINGS**

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

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

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

1 subsection (a) of this section. Notice of the request shall comply with the
2 requirements of subsection 6084(a) of this title applicable to minor
3 applications and a copy of the request shall be provided to each agency
4 and department listed in subdivision (3) of this section.

5 (3) Within 30 days of receiving a complete application:

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

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

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

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

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

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

11 **(4) A party shall submit any written comments or request for**
12 **hearing within 30 days of receiving a complete application.**

13 **(5) The Board shall not hold a hearing on the application 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**
16 **15 days of the end of the comment period specified in subdivision (4) of**
17 **this section.**

18 **(A) The Board shall conduct the hearing as a contested case**
19 **under the 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 receiving a**
2 **complete request under this section and shall send a copy of the decision**
3 **to the District Commission in whose district the development or**
4 **subdivision is located, to each State agency listed in subdivision (3) of this**
5 **section, and to each party that submitted a comment, requested a hearing,**
6 **or participated in the hearing, if any. The decision may include conditions**
7 **that meet the standards of subsection 6086(c) of this title.**

8 **(7) The requestor may waive the 30-day period required under**
9 **subdivisions (3) and (5) of this section as to one or more agencies,**
10 **departments, or other parties, and may waive the 60-day period required**
11 **under subdivision (6) of this subsection.**

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

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

2 **(v) A permit or permit amendment shall not be required for a**
3 **development or subdivision in a designated downtown development**
4 **district for which the Board has issued positive findings and conclusions**
5 **under section 6086b of this title on all the criteria listed in that section.**

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

7 **§ 6089. APPEALS**

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

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

18 **§ 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS**

19 **(a) Mitigation for loss of primary agricultural soils. Suitable mitigation for**
20 **the conversion of primary agricultural soils necessary to satisfy subdivision**
21 **6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located.**

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

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

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

16 (i) ~~for~~ For development or subdivision within a designated
17 downtown development district, growth center, or neighborhood development
18 area associated with a downtown development district, the ratio shall
19 be 1:1½;

20 (ii) ~~for~~ For residential construction that has a density of at least
21 eight units of housing per acre, of which at least eight units per acre or at least

1 40 percent of the units, on average, in the entire development or subdivision,
2 whichever is greater, meets the definition of affordable housing established in
3 this chapter, no mitigation shall be required. However, all affordable housing
4 units shall be subject to housing subsidy covenants, as defined in 27 V.S.A.
5 § 610, that preserve their affordability for a period of 99 years or longer. For
6 purposes of this section, housing that is rented shall be considered affordable
7 housing when its inhabitants have a gross annual household income that does
8 not exceed 60 percent of the county median income or 60 percent of the
9 standard metropolitan statistical area income if the municipality is located in
10 such an area.

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

17 (2) Project located outside designated downtown, growth center, or
18 neighborhood development area. If the project tract is not located in a
19 designated downtown, growth center, or neighborhood development area
20 **associated with a downtown development district**, mitigation shall be
21 provided on site in order to preserve primary agricultural soils for present and

1 future agricultural use, with special emphasis on preserving prime agricultural
2 soils. Preservation of primary agricultural soils shall be accomplished through
3 innovative land use design resulting in compact development patterns which
4 will maintain a sufficient acreage of primary agricultural soils on the project
5 tract capable of supporting or contributing to an economic or commercial
6 agricultural operation and shall be enforceable by permit conditions issued by
7 the ~~district commission~~ District Commission. The number of acres of primary
8 agricultural soils to be preserved shall be derived by:

9 (A) ~~determining~~ Determining the number of acres of primary
10 agricultural soils affected by the proposed development or subdivision; ~~and~~.

11 (B) ~~multiplying~~ Multiplying the number of affected acres of primary
12 agricultural soils by a factor based on the quality of those primary agricultural
13 soils, and other factors as the ~~secretary of agriculture, food and markets~~
14 Secretary of Agriculture, Food and Markets may deem relevant, including the
15 soil's location; accessibility; tract size; existing agricultural operations; water
16 sources; drainage; slope; the presence of ledge or protected wetlands; the
17 infrastructure of the existing farm or municipality in which the soils are
18 located; and the N.R.C.S. rating system for Vermont soils. This factor shall
19 result in a ratio of no less than 2:1, but no more than 3:1, protected acres to
20 acres of impacted primary agricultural soils.

21 (3) Mitigation flexibility.

1 (A) Notwithstanding the provisions of subdivision (1) of this
2 subsection pertaining to a development or subdivision on primary agricultural
3 soils within a designated downtown, growth center, or neighborhood
4 development area, the ~~district commission~~ District Commission may, in
5 appropriate circumstances, require onsite mitigation with special emphasis on
6 preserving prime agricultural soils if that action is deemed consistent with the
7 agricultural elements of local and regional plans and the goals of 24 V.S.A.
8 § 4302. In this situation, the approved plans must designate specific soils that
9 shall be preserved inside designated downtowns, growth centers, and
10 neighborhood development areas. For projects located within a these
11 designated ~~growth center~~ areas, all factors used to calculate suitable mitigation
12 acreage or fees, or some combination of these measures, shall be as specified
13 in this subsection, subject to a ratio of 1:1.

14 (B) Notwithstanding the provisions of subdivision (2) of this
15 subsection pertaining to a development or subdivision on primary agricultural
16 soils outside a designated downtown, growth center, or neighborhood
17 development area, the ~~district commission~~ District Commission may, in
18 appropriate circumstances, approve off-site mitigation or some combination of
19 onsite and off-site mitigation if that action is deemed consistent with the
20 agricultural elements of local and regional plans and the goals of 24 V.S.A.
21 § 4302. For projects located outside a these designated ~~growth center~~ areas, all

1 factors used to calculate suitable mitigation acreage or fees, or some
2 combination of these measures, shall be as specified in this subsection, subject
3 to a ratio of no less than 2:1, but no more than 3:1.

4 * * *

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

6 **§ 8003. APPLICABILITY**

7 (a) **The Secretary may take action under this chapter to enforce the**
8 **following statutes and rules, permits, assurances, or orders implementing**
9 **the following statutes:**

10 * * *

11 (10) **10 V.S.A. chapter 151, relating to land use, and including**
12 **findings and conclusions issued by the Board under section 6086b of this**
13 **title;**

14 * * *

15 * * * Appeal of Downtown Development Findings * * *

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

17 **§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION**

18 (a) **Act 250 and agency appeals. Within 30 days of the date of the act or**
19 **decision, any person aggrieved by an act or decision of the Secretary, the**
20 **Natural Resources Board, or a district commission under the provisions of**
21 **law listed in section 8503 of this title, or any party by right, may appeal to**

1 **the Environmental Division, except for an act or decision of the Secretary**
2 **under subsection 6086(g) of this title or governed by section 8506 of this**
3 **title.**

4 * * *

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

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

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

15 **(3) An act or decision of the Natural Resources Board under**
16 **section 6086b of this title (downtown development; findings), which shall**
17 **be reviewed on the record created by the Board. The Environmental**
18 **Division shall uphold the Board unless the Division determines that the**
19 **Board abused its discretion or made factual determinations not supported**
20 **by substantial evidence when the record is viewed as a whole. The**
21 **Division shall not consider an appellant's objection that was not urged**

1 **before the Board, unless the failure or neglect to urge the objection is**
2 **excused by extraordinary circumstances.**

3 * * *

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

5 Sec. 9. MUNICIPAL POLLUTION CONTROL PRIORITY SYSTEM

6 (a) In the Environmental Protection Rules of the Agency of Natural
7 Resources, chapter 2 (municipal pollution control priority system), subchapter
8 500 (definitions), the definition of “designated growth center” is struck and a
9 new definition of “designated ~~growth~~ center” is inserted in lieu thereof to read:

10 **“Designated growth center” shall mean a growth center as defined**
11 **under 24 V.S.A. § 2791 that is designated under 24 V.S.A. § 2793c.**

12 **“Designated center” shall mean 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 (b) On or before August 1, 2014, the Secretary of Natural Resources shall
16 conform the published version of the rules described in this section to the
17 requirements of subsection (a) of this section. Provided that the only revision
18 to those rules is the change required by subsection (a) of this section, the
19 rulemaking procedures of the Vermont Administrative Procedure Act shall not
20 apply to the publication of this conformed version of the rules. However, on
21 publication, the Secretary shall send a copy of the conformed version of the

1 rules to the Office of the Secretary of State and the Legislative Committee on
2 Administrative Rules.

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

4 § 1571. DEFINITIONS

5 As used in this chapter:

6 * * *

7 (10) “Designated growth center” means a growth center as defined
8 under 24 V.S.A. § 2791 that is designated under 24 V.S.A. § 2793c.
9 “Designated center” means a downtown development district, village
10 center, new town center, growth center, Vermont neighborhood, or
11 neighborhood development area designated under 24 V.S.A. chapter 76A.

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

13 § 1628. PRIORITIES

14 The ~~department~~ Department shall make awards under this chapter to
15 eligible municipal projects on the basis of urgency of need as determined
16 according to a system of priorities adopted by the ~~department~~ Department and
17 to the extent appropriate funds are available. The system of priorities shall
18 include increased priority to eligible municipal projects in designated **growth**
19 centers. The ~~department~~ Department shall assure that projects sponsored by a
20 town school district, or incorporated school district shall be given increased
21 priority for purposes of the receipt of engineering planning advances awarded

1 under section 1593 of this chapter. The total amount of the engineering
2 planning advances made and still outstanding during a period for this purpose
3 shall not exceed 30 percent of the bond issue or appropriation voted for
4 construction grant funds by the ~~general assembly~~ General Assembly for the
5 period in which the award is made.

6 *[Note: formerly proposed Sec. 8, defining “designated center” for wastewater*
7 *and water supply chapter, removed because term no longer proposed to be*
8 *used]*

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 district based on submission of an application under subsection (b) of this
2 section that consists solely of the certification of a licensed designer, in
3 accordance with subsection (d) of this section, and a letter from the owner
4 of the water main and sewer main or indirect discharge system allocating
5 the capacity needed to accommodate the new or modified connection.

6 However, this subdivision (2) shall not apply if the Secretary finds one of
7 the following:

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

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

14 Sec. 13. WASTEWATER RULES; AMENDMENT

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

18 * * * Inclusionary Zoning * * *

19 Sec. 14. 24 V.S.A. § 4303(34) is added to read:

20 (34) “Multi-unit development” means a structure or set of
21 structures that contains more than one housing unit. In this subdivision

1 **(34), “housing unit” means that part of a structure comprising an**
2 **independent, self-contained space that is designed primarily to provide**
3 **principal dwelling accommodations for persons or families and is fitted**
4 **with a private bath, kitchen, and living facilities.**

5 **Sec. 15. 24 V.S.A. § 4414(7) is amended to read:**

6 **(7) Inclusionary zoning. In order to provide for affordable housing,**
7 **bylaws may require that a certain percentage of housing units in a**
8 **proposed subdivision ~~or~~, planned unit development, or multi-unit**
9 **development meets defined affordability standards, which may include**
10 **lower income limits than contained in the definition of “affordable**
11 **housing” in subdivision 4303(1) of this title and may contain different**
12 **affordability percentages than contained in the definition of “affordable**
13 **housing development” in subdivision 4303(2) of this title. These**
14 **provisions, at a minimum, shall comply with all the following:**

15 * * *

16 * * * Effective Dates * * *

17 **Sec. 16. EFFECTIVE DATES**

18 **(a) This section and Sec. 9 (municipal pollution control priority system)**
19 **shall take effect on passage.**

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

21

1 (Committee vote: _____)

2

3

Representative [surname]

4

FOR THE COMMITTEE