

1 TO THE HONORABLE SENATE:

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 Senate propose to the House  
6 to amend the bill as follows:

7 First: In Sec. 1, 10 V.S.A. § 6001 (definitions), by striking out subdivision  
8 (36) in its entirety and inserting in lieu thereof a new subdivision (36) to read:

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

1           Second: By striking out Sec. 2 in its entirety and inserting in lieu thereof a  
2           new Sec. 2 to read:

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

4           § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

7   \* \* \*

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

11           ~~(B) As appropriate, will~~ Will incorporate transportation demand  
12           management strategies and provide safe access and connections to adjacent  
13           lands and facilities and to existing and planned pedestrian, bicycle, and transit  
14           networks and services, unless the District Commission affirmatively finds  
15           that such a strategy, access, or connection does not constitute a measure  
16           that a reasonable person would take given the type, scale, and  
17           transportation impacts of the proposed development or subdivision. This  
18           subdivision (B) shall not require an applicant to construct an  
19           improvement on a tract that the applicant does not own or control.  
20           However, the District Commission may require an applicant to contribute  
21           to the cost of constructing such an improvement.

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

\* \* \*

~~(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:

1                    (i) will make efficient use of land, energy, roads, utilities, and  
2                    other supporting infrastructure;

3                    (ii) is designed in a manner consistent with the planning goals set  
4                    forth in 24 V.S.A. § 4302(c)(1); and

5                    (iii) will conform to the land use element, map, and resource  
6                    protection policies included in the municipal and regional plans applicable  
7                    to the proposed location of the development or subdivision;

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

10                    (v)(II) if the development or subdivision will be located in an area  
11                    that already constitutes strip development, will incorporate infill as defined in  
12                    24 V.S.A. § 2791 and is designed to avoid or reasonably minimize the  
13                    characteristics listed in the definition of strip development under  
14                    6001(36) of this title; and

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

19                    \* \* \*

1        Third: By striking out Secs. 3, 4, and 5 in their entirety and inserting in lieu  
2 thereof new Secs. 3, 4, and 5 to read:

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

4        § 6086b. DOWNTOWN DEVELOPMENT; FINDINGS

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

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

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

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

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

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

18           (A) The State Historic Preservation Officer or designee shall submit a  
19           written ~~determination~~ **recommendation** on whether the improvements will  
20           have an undue adverse effect on any historic site.

1           (B) The Commissioner of Public Service or designee shall submit a  
2           written **determination recommendation** on whether the improvements will  
3           meet or exceed the applicable energy conservation and building energy  
4           standards under subdivision 6086(a)(9)(F) of this title.

5           (C) The Secretary of Transportation or designee shall submit a  
6           written **determination recommendation** on whether the improvements will  
7           have a significant impact on any highway, transportation facility, or other land  
8           or structure under the Secretary’s jurisdiction.

9           (D) The Commissioner of Buildings and General Services or  
10           designee shall submit a written **determination recommendation** on whether  
11           the improvements will have a significant impact on any adjacent land or  
12           facilities under the Commissioner’s jurisdiction.

13           (E) The Secretary of Natural Resources or designee shall submit a  
14           written **determination recommendation** on whether the improvements will  
15           have a significant impact on any land or facilities under its jurisdiction or on  
16           any important natural resources, other than primary agricultural soils. In this  
17           subdivision (E), “important natural resources” shall have the same meaning as  
18           under 24 V.S.A. § 2791.

19           (F) The Secretary of Agriculture, Food and Markets or designee shall  
20           submit a written **determination recommendation** on whether the  
21           improvements will reduce or convert primary agricultural soils and on whether

1 there will be appropriate mitigation for any reduction in or conversion of those  
2 soils.

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

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

14 ~~(A) The Board shall conduct the hearing as a contested case~~  
15 ~~under the Vermont Administrative Procedure Act.~~

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

18 (6) The **Board District Commission** shall issue a decision within 60  
19 days of issuing notice of a complete request under this section or, if it holds a  
20 hearing, within 15 days of adjourning the hearing. The **Board District**  
21 **Commission** shall send a copy of the decision to ~~the District Commission in~~



1 ~~whose district the development or subdivision is located~~, each State agency  
2 listed in subdivision (3) of this section, to the municipality, to the municipal  
3 and regional planning commissions for the municipality, and to each person  
4 that submitted a comment, requested a hearing, or participated in the hearing, if  
5 any. The decision may include conditions that meet the standards of  
6 subsection 6086(c) of this title.

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

16 ~~(8) The record of a proceeding under this section shall consist of the~~  
17 ~~request, each written determination issued under subdivision (3) of this~~  
18 ~~section, each comment and request for hearing submitted under~~  
19 ~~subdivision (4) of this section, each document submitted for introduction~~  
20 ~~into evidence at the hearing, an audio or audiovisual recording of the~~  
21 ~~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 development  
3 or subdivision in a designated downtown development district for which the  
4 **Board District Commission** has issued positive findings and conclusions  
5 under section 6086b of this title on all the criteria listed in that section. A  
6 person shall obtain new or amended findings and conclusions from the **Board**  
7 **District Commission** under section 6086b of this title prior to commencement  
8 of a material change, as defined in the rules of the Board, to a development or  
9 subdivision for which the **Board District Commission** has issued such  
10 findings and conclusions. A person may seek a jurisdictional opinion under  
11 section 6007 of this title concerning whether such a change is a material  
12 change.

13 Sec. 5. [Deleted.]

14 Fourth: **PLACEHOLDER FOR RECONCILING SEC. 6, RE PRIMARY**  
15 **AGRICULTURAL SOILS MITIGATION, WITH H.448 AMENDMENTS**  
16 **ON SAME STATUTE (10 V.S.A. § 6093)**

17 Fifth: By striking out Secs. 7 and 8 in their entirety and inserting in lieu  
18 thereof new Secs. 7 and 8 to read:

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

2 § 8003. APPLICABILITY

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

7 \* \* \*

8 (10) 10 V.S.A. chapter 151, relating to land use, and including findings  
9 and conclusions issued ~~by the Board~~ under section 6086b of this title;

10 \* \* \*

11 \* \* \* Nonappeal, Recommendation to District Commission \* \* \*

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

13 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

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

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(Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

FOR THE COMMITTEE