

1                   **BOLD LANGUAGE = CHANGE FROM DRAFT 2.1**

2           Introduced by

3           Referred to Committee on

4           Date:

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

6           Statement of purpose of bill as introduced: This bill proposes to make

7           revisions to the State land use law known as Act 250, including:

- 8           • Naming it the Vermont Act on Land Use and the Environment (VALUE).
- 9           • Proposing revisions to Act 250’s Capability and Development Plan to  
10           address climate change and ecosystem protection.
- 11          • Amending Act 250 to include a purpose section that refers to that plan and  
12           the specific statutory goals for municipal and regional planning.
- 13          • Amending the criteria to address climate change, including requiring  
14           projects to ~~net-zero~~ **avoid, minimize, or mitigate** greenhouse gas  
15           emissions and to be designed to withstand and adapt to climate change.
- 16          • Amending the criteria to address ecosystem protection through protecting  
17           forest blocks and connecting habitat. The bill also would increase the  
18           program’s ability to protect ecosystems on ridgelines by reducing the  
19           elevation threshold from 2,500 to 2,000 feet.
- 20          • Requiring that, to be used in Act 250, local and regional plans must be  
21           approved as consistent with the statutory planning goals and clarifying that

- 1 local and regional plan provisions apply to a project if they meet the same  
2 standard of specificity applicable to statutes.
- 3 • As part of a balancing of interests to support economic development in  
4 compact centers while promoting a rural countryside and protecting  
5 important natural resources, amending Act 250 jurisdiction to allow  
6 municipalities to ensure compliance with the Act 250 criteria in centers  
7 receiving an enhanced designation under 24 V.S.A. chapter 76A and  
8 increasing Act 250 jurisdiction in critical resource areas and at interstate  
9 interchanges. Because the designation under 24 V.S.A. chapter 76A would  
10 affect jurisdiction, the bill provides for appeal of designation decisions.
  - 11 • Clarifying the definition of “commercial purpose” so that it is not necessary  
12 to determine whether monies received are essential to sustain a project.
  - 13 • **Replacing the Natural Resources Board (NRB) with a Vermont**  
14 **Environmental Review Board (the Board), which would hear appeals**  
15 **from the District Commissions and the Agency of Natural Resources in**  
16 **addition to the NRB’s current duties. The Environmental Division of**  
17 **the Superior Court would continue to hear enforcement and local**  
18 **zoning appeals.**
  - 19 • **Reaffirming the supervisory authority in environmental matters of the**  
20 **Board and District Commissions, in accordance with the original intent**  
21 **of Act 250 as determined by the Vermont Supreme Court.**

- 1 • **Revising and clarifying the statutory authority on the use of other**  
2 **permits to demonstrate compliance with the criteria, including**  
3 **ensuring the reliability of those other permits.**

4 An act relating to the Vermont Act on Land Use and the Environment

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

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

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

8 (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

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

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

1           (2) ECOSYSTEM PROTECTION AND UTILIZATION OF  
2           NATURAL RESOURCES

3                   (A) Healthy ecosystems clean water, purify air, maintain soil,  
4                   regulate the climate, recycle nutrients, and provide food. They provide raw  
5                   materials and resources for medicines and other purposes. They are at the  
6                   foundation of civilization and sustain the economy. These ecosystem services  
7                   are the State’s natural capital.

8                   (B) Biodiversity is the key indicator of an ecosystem’s health. A  
9                   wide variety of species copes better with threats than a limited number of  
10                  species in large populations.

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

13                  (D) ~~Preservation~~ Protection of healthy ecosystems in Vermont,  
14                  preservation of the agricultural and forest productivity of the land; and the  
15                  economic viability of agricultural units, conservation of the recreational  
16                  opportunity afforded by the state’s hills, forests, streams and lakes, wise use of  
17                  the state’s non-renewable earth and mineral reserves, and protection of the  
18                  beauty of the landscape are matters of public good. Uses which threaten or  
19                  significantly inhibit ~~these~~ healthy ecosystems and the state’s natural and scenic  
20                  resources should be permitted only when the public interest is clearly benefited  
21                  thereby.

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

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

3                                 Subchapter 1. General Provisions

4       § 6001. SHORT TITLE; PURPOSE; CONSTRUCTION

5             (a) This chapter may be cited as the Vermont Act on Land Use and the  
6       Environment (VALUE).

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

11       § 6002. DEFINITIONS

12             In this chapter:

13             (1) “Board” means the ~~Natural Resources~~ **Vermont Environmental**  
14       Review Board.

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

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

19                         (i) The construction of improvements on a tract or tracts of land,  
20       owned or controlled by a person, involving more than 10 acres of land within a

1 radius of five miles of any point on any involved land, for commercial or  
2 industrial purposes.

3 (ii) The construction of improvements for commercial or  
4 industrial purposes on more than one acre of land within a municipality that:

5 (I) has not adopted permanent zoning and subdivision bylaws;  
6 or

7 (II) has adopted permanent zoning and subdivision bylaws, if  
8 the municipality in which the proposed project is located has elected by  
9 ordinance, adopted under 24 V.S.A. chapter 59, to have this jurisdiction apply.

10 (iii) The construction of improvements for commercial or  
11 industrial purposes on a tract or tracts of land, owned or controlled by a person,  
12 involving more than ~~one acre~~ [amount to be determined] of land within a  
13 ~~municipality that has adopted permanent zoning and subdivision bylaws, if the~~  
14 ~~municipality in which the proposed project is located has elected by ordinance,~~  
15 ~~adopted under 24 V.S.A. chapter 59, to have this jurisdiction apply~~ rural and  
16 working lands area. [Note: this is a placeholder for the jurisdictional tier re  
17 rural and working lands.]

18 \* \* \*

19 (vi) The construction of improvements for commercial, industrial,  
20 or residential use at or above the elevation of 2,500 2,000 feet or in a critical

1 resource area below that elevation. **[Note: the reference to critical resource**  
2 **area is a placeholder for the jurisdictional tier re critical resource areas.]**

3 \* \* \*

4 (xi) The construction of improvements for commercial or  
5 industrial purposes in an interchange area, unless it is within an existing  
6 settlement.

7 \* \* \*

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

9 (i) The construction of improvements for farming, logging, or  
10 forestry purposes below the elevation of ~~2,500~~ 2,000 feet.

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11  
12 **OPTION 1 FOR ENERGY FACILITIES:**

13 (ii) The construction of improvements for an electric generation  
14 facility below the elevation of ~~2,500~~ 2,000 feet or transmission facility that  
15 requires a certificate of public good under 30 V.S.A. § 248, a natural gas  
16 facility as defined in 30 V.S.A. § 248(a)(3), or a telecommunications facility  
17 issued a certificate of public good under 30 V.S.A. § 248a.

18 **OPTION 2 FOR ENERGY FACILITIES:**

19 (ii) The construction of improvements for an electric generation  
20 facility, other than a merchant generation facility, or transmission facility that  
21 requires a certificate of public good under 30 V.S.A. § 248, a natural gas

1 facility as defined in 30 V.S.A. § 248(a)(3), or a telecommunications facility  
2 issued a certificate of public good under 30 V.S.A. § 248a. As used in this  
3 subdivision (ii), “merchant generation” means an electric generation facility in  
4 which a Vermont electric utility subject to the jurisdiction of the Public Utility  
5 Commission under 30 V.S.A. § 203, or group of such utilities, does not have  
6 majority ownership or control.

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7  
8 (iii) The construction of improvements for commercial or  
9 industrial purposes within an area that has obtained an enhanced designation  
10 pursuant to 24 V.S.A. chapter 76A.

11 \* \* \*

12 (vii) The construction of improvements below the elevation of  
13 ~~2,500~~ 2,000 feet for the onsite storage, preparation, and sale of compost,  
14 provided that one of the following applies:

15 \* \* \*

16 (6) ~~“Floodway” means the channel of a watercourse which is expected to~~  
17 ~~flood on an average of at least once every 100 years and the adjacent land areas~~  
18 ~~which are required to carry and discharge the flood of the watercourse, as~~  
19 ~~determined by the Secretary of Natural Resources with full consideration given~~  
20 ~~to upstream impoundments and flood control projects. “Flood hazard area”~~  
21 shall have the same meaning as under section 752 of this title.



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

6 \* \* \*

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

10 \* \* \*

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

12 (i) A tract or tracts of land, owned or controlled by a person,  
13 located outside an area that has received an enhanced designation under 24  
14 V.S.A. chapter 76A, which that the person has partitioned or divided for the  
15 purpose of resale into 10 or more lots within a radius of five miles of any point  
16 on any lot, or within the jurisdictional area of the same District Commission,  
17 within any continuous period of five years. In determining the number of lots,  
18 a lot shall be counted if any portion is outside such an area and within five  
19 miles or within the jurisdictional area of the same District Commission. **[Note:**  
20 ***these changes are placeholders for the jurisdictional sub-tier re enhanced***  
21 ***designation.***]

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

6 (iii) A tract or tracts of land, owned or controlled by a person, that  
7 the person has partitioned or divided for the purpose of resale into *[number of*  
8 *lots to be determined]* or more lots, within a continuous period of five years, in  
9 a rural and working lands area. *[Note: this is a placeholder for the*  
10 *jurisdictional tier re rural and working lands.]*

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

15 (I) In this subdivision ~~(iii)~~ (iv), “public auction” means any  
16 auction advertised or publicized in any manner, or to which more than ten  
17 persons have been invited.

18 (II) If sales described under this subdivision (iii) are of interests  
19 that, when sold by means other than public auction, are exempt from the  
20 provisions of this chapter under the provisions of subsection 6081(b) of this

1 title, the fact that these interests are sold by means of a public auction shall not,  
2 in itself, create a requirement for a permit under this chapter.

3 (v) A tract or tracts of land, owned or controlled by a person,  
4 located in a critical resource area, that have been partitioned or divided for the  
5 purpose of resale. [Note: this is a placeholder for the jurisdictional tier re  
6 critical resource areas.]

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

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

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

14 \* \* \*

15 (38) “Connecting habitat” refers to land or water, or both, that links  
16 patches of habitat within a landscape, allowing the movement, migration, and  
17 dispersal of animals and plants and the functioning of ecological processes. A  
18 connecting habitat may include recreational trails and improvements  
19 constructed for farming, logging, or forestry purposes.

20

1           **OPTION 1 FOR FOREST BLOCK**

2           (39) “Forest block” means a contiguous area of forest in any stage of  
3           succession and not currently developed for nonforest use that is mapped as an  
4           interior forest block within the 2016 interior forest block dataset created as part  
5           of resource mapping under section 127 of this title, as that dataset may be  
6           updated pursuant to procedures developed in accordance with that section. A  
7           forest block may include recreational trails, wetlands, or other natural features  
8           that do not themselves possess tree cover and improvements constructed for  
9           farming, logging, or forestry purposes.

10           **OPTION 2 FOR FOREST BLOCK**

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

16           

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17           (40) “Fragmentation” means the division or conversion of a forest block  
18           or connecting habitat by the separation of a parcel into two or more parcels; the  
19           construction, conversion, relocation, or enlargement of any building or other  
20           structure, or of any mining, excavation, or landfill; and any change in the use  
21           of any building or other structure, or land, or extension of use of land.

1 However, fragmentation does not include the division or conversion of a forest  
2 block or connecting habitat by a recreational trail or by improvements  
3 constructed for farming, logging, or forestry purposes below the elevation of  
4 ~~2,500~~ 2,000 feet.

5 (41) “Habitat” means the physical and biological environment in which  
6 a particular species of plant or animal lives.

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

11 (43) “Air contaminant” shall have the same meaning as under section  
12 552 of this title.

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

18 (45) “Critical resource area” means a river corridor, a significant  
19 wetland as defined under section 902 of this title, land at or above 2,000 feet,  
20 and land characterized by slopes greater than 15 percent and shallow depth to  
21 bedrock.

1           (46) “Greenhouse gas” means carbon dioxide, methane, nitrous oxide,  
2           hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other  
3           chemical or physical substance that is emitted into the air and that the  
4           Secretary of Natural Resources or District Commission reasonably anticipates  
5           to cause or contribute to climate change.

6           (47) “Interchange area” means the land within a 3,000-foot radius of an  
7           interstate interchange, except for land within an existing settlement. The  
8           radius shall be measured from the midpoint of the interconnecting roadways  
9           within the interchange.

10           (48) “Rural and working lands area” means an area that is not an  
11           existing settlement or a critical resource area. [Note: this is a placeholder  
12           definition for the jurisdictional tier re rural and working lands.]

13           (49) “Technical determination” means a decision that results from the  
14           application of scientific, engineering, or other similar expertise to the facts to  
15           determine whether activity for which a permit is requested meets the standards  
16           for issuing the permit under statute and rule. The term does not include an  
17           interpretation of a statute or rule.

18           § ~~6001e~~ 6003. COMMERCIAL COMPOSTING FACILITY;

19                               CIRCUMVENTION

20           Notwithstanding subdivisions ~~6001(3)(D)(vii)(I)-(VI)~~  
21           6002(3)(D)(vii)(I)-(VI) of this title, a permit under this chapter may be

1 required for the construction of improvements below the elevation of ~~2,500~~  
2 2,000 feet for the onsite storage, preparation, and sale of compost if the Chair  
3 of the District Commission, based on the information available to the Chair,  
4 determines that action has been taken to circumvent the requirements of this  
5 chapter.

6 § ~~6002~~ 6004. PROCEDURES

7 The provisions of 3 V.S.A. chapter 25 shall apply unless otherwise  
8 specifically stated.

9 § ~~6003~~ 6005. PENALTIES

10 A violation of any provision of this chapter or the rules adopted under  
11 this chapter is punishable by a fine of not more than \$500.00 for each day of  
12 the violation or imprisonment for not more than two years, or both. A person  
13 who completely transfers ownership and control of property that is the subject  
14 of a permit under this chapter shall not be liable for later violations of that  
15 permit by another person.

16 \* \* \*

17 Subchapter 2. Administration

18 § **6021. BOARD; VACANCY, REMOVAL**

19 (a) ~~A Natural Resources Establishment. The Vermont Environmental~~  
20 Review Board is created. The Board shall consist of a chair and /structure

1 and membership, including whether to be professional or semiprofessional,  
2 and whether to have alternate members, to be determined].

3 (1) ~~The Board shall consist of five members appointed by the~~  
4 ~~Governor, with the advice and consent of the Senate, so that one~~  
5 ~~appointment expires in each year. In The Chair, members, and alternate~~  
6 ~~members shall be nominated, appointed, and confirmed as follows:~~

7 [appointment process to be determined; options included Gov. with advice  
8 and consent of Senate or same process as judges]. In making these

9 ~~appointments, the Governor and the Senate shall give consideration to~~

10 ~~candidates shall be sought who have experience, expertise, or skills~~

11 ~~relating to the environment or land use. [Note: this is current law.~~

12 ~~Commission may want to alter qualifications in some manner, depending on~~  
13 ~~choice Board structure, e.g., professional, semiprofessional]~~

14 (A) ~~The Governor shall appoint a chair of the Board, a position~~  
15 ~~that shall be a full-time position.~~

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

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



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

3           ~~(B) The Chair of the Board may assign alternates to sit on specific~~  
4           ~~matters before the Board, in situations where fewer than five members are~~  
5           ~~available to serve. Initial appointments to the Board shall be made so that~~  
6           ~~the terms of the Chair and the members expire in a staggered manner.~~

7           ~~[Length of initial terms to be determined.]~~

8           ~~(b) Any vacancy occurring in the membership of the Board shall be~~  
9           ~~filled by the Governor for the unexpired portion of the term. Terms;~~  
10           ~~vacancy; succession. The term of each appointment subsequent to the~~  
11           ~~initial appointments described in subdivision (a)(2) of this section shall be~~  
12           ~~[length of terms to be determined] years. Any appointment to fill a vacancy~~  
13           ~~shall be for the unexpired portion of the term vacated. A member wishing~~  
14           ~~to succeed himself or herself in office may seek reappointment under the~~  
15           ~~terms of this section.~~

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

19           ~~(d) The Chair of the Board, upon request of the Chair of a District~~  
20           ~~Commission, may appoint and assign former Commission members to sit~~  
21           ~~on specific Commission cases when some or all of the regular members~~

1 ~~and alternates of the District Commission are disqualified or otherwise~~  
2 ~~unable to serve.~~ Use of alternates. When a member of the Board is  
3 unavailable to hear a case, the Chair may appoint an alternate member to  
4 hear the case.

5 (e) Retirement from office. When a Board member or alternate who  
6 hears all or a substantial part of a case retires from office before the case  
7 is completed, he or she shall remain a member of the Board for the  
8 purpose of concluding and deciding that case and signing the findings and  
9 judgments involved. A retiring Chair shall also remain a member for the  
10 purpose of certifying questions of law if a party appeals to the Supreme  
11 Court.

12 (f) Completion of case. A case shall be deemed completed when the  
13 Board enters a final decision even though that decision is appealed to the  
14 Supreme Court and remanded by that Court.

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

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

4           **(2) the issuance of decisions on appeals pursuant to section 6089 and**  
5           **chapter 219 of this title.**

6           **(h) Hearing officers. One Board member or any officer or employee of**  
7           **the Board duly appointed by the Chair of the Board may inquire into and**  
8           **examine any matter within the jurisdiction of the Board.**

9           **(1) A hearing officer may hold any hearing on any matter within the**  
10           **jurisdiction of the Board.**

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

19           **§ 6022. PERSONNEL**

20           **(a) Regular personnel.** The Board may appoint legal counsel,  
21           **scientists, engineers, experts, investigators, temporary employees, and**

1 administrative personnel; as it finds necessary in carrying out its duties;  
2 ~~unless the Governor shall otherwise provide~~ in providing personnel to  
3 assist the District Commissions and in investigating matters within its  
4 jurisdiction.

5 (b) Personnel for particular proceedings.

6 (1) Retention.

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

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

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

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

17 (2) Assessment of costs.

18 (A) The Board may allocate to an applicant the portion of its  
19 expenses incurred by retaining additional personnel for a proceeding. On  
20 petition of an applicant to which costs are proposed to be allocated, the  
21 Board shall review and determine, after opportunity for hearing, the

1 necessity and reasonableness of those costs, having due regard for the size  
2 and complexity of the project, and may amend or revise an allocation.

3 (B) Prior to allocating costs, the Board shall make a  
4 determination of the purpose and use of the funds to be raised under this  
5 section, identify the recipient of the funds, provide for allocation of costs  
6 among applicants to be assessed, indicate an estimated duration of the  
7 proceedings, and estimate the total costs to be imposed. With the  
8 approval of the Board, estimates may be revised as necessary. From time  
9 to time during the progress of the work, the Board shall render to the  
10 applicant detailed statements showing the amount of money expended or  
11 contracted for in the work of additional personnel, which statements shall  
12 be paid into the State Treasury at the time and in the manner as the  
13 Board may reasonably direct.

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

16 \* \* \*

17 § 6025. RULES

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

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

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

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

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

17                                   \* \* \*

18           **§ 6026. DISTRICT COMMISSIONERS**

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

21                                   \* \* \*

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

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

12           **(d) Any vacancy shall be filled by the Governor for the unexpired**  
13           **period of the term.**

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

19           § 6027. POWERS

20           **(a) The Board and District Commissions shall have supervisory authority in**  
21           **environmental matters respecting projects within their jurisdiction and shall**

1 apply their independent judgment in determining facts and interpreting law.

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

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

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

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

12 (4) apply for and receive grants from the federal government and from  
13 other sources.

14 **(b) The powers granted under this chapter are additional to any other**  
15 **powers which that may be granted by other legislation.**

16 **(c) The ~~Natural Resources~~ Board may designate or establish such**  
17 **regional offices as it deems necessary to implement the provisions of this**  
18 **chapter and the rules adopted hereunder. The ~~Natural Resources~~ Board**  
19 **may designate or require a regional planning commission to receive**  
20 **applications, provide administrative assistance, perform investigations,**  
21 **and make recommendations.**



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

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

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

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

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



1                    CAPABILITY AND DEVELOPMENT MAPS

2                    ~~The Board shall maintain a map that shows the location of all wireless~~  
3 ~~telecommunications facilities in the State.~~

4                    (a) Updates. On or before January 1, 2021, the Board and the Secretaries  
5 of Commerce and Community Development, of Digital Services, and of  
6 Natural Resources shall complete an update to the capability and development  
7 maps created under this chapter in 1971 for reference in applying this chapter.  
8 Maps updated pursuant to this section shall be consistent with the Capability  
9 and Development Plan and shall include and identify environmental  
10 constraints, existing settlements, rural and working lands areas, critical  
11 resource areas, facilities and infrastructure, and areas targeted for conservation,  
12 public investment, and development. The Board and these Secretaries shall  
13 complete further updates to these maps no less frequently than every eight  
14 years. The Board shall lead and coordinate the completion of updates pursuant  
15 to this section.

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

18                    (1) consult with the regional planning commissions; and

19                    (2) issue a draft update, provide public notice of the draft update, and  
20 offer an opportunity for written public comment and conduct one or more  
21 public meetings to receive oral comment on the draft update.

1        (c) Availability. The updated maps shall be maintained as a layer in the  
2        Vermont Geographic Information System and shall be available to the public.

3        **§ 6031. ETHICAL STANDARDS**

4        **(a) The Chair and the regular and alternate members of the Board and**  
5        **the Chair and the regular and alternate members of each District**  
6        **Commission shall comply with the following ethical standards:**

7                **(1) The provisions of 12 V.S.A. § 61 (disqualification for interest).**

8                **(2) The Chair and each member shall conduct the affairs of his or**  
9        **her office in such a manner as to instill public trust and confidence and**  
10        **shall take all reasonable steps to avoid any action or circumstance that**  
11        **might result in any one of the following:**

12                **(A) undermining his or her independence or impartiality of**  
13        **action;**

14                **(B) taking official action on the basis of unfair considerations;**

15                **(C) giving preferential treatment to any private interest on the**  
16        **basis of unfair considerations;**

17                **(D) giving preferential treatment to any family member or**  
18        **member of his or her household;**

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





1 **of affirmative findings under the criteria established in section 6086 of this**  
2 **title.**

3 \* \* \*

4 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

19 (B) Greenhouse gas emissions; climate change. A permit will be  
20 granted whenever it is demonstrated by the applicant that, in addition to all  
21 other applicable criteria:

1                    (i) ~~There will be net-zero greenhouse gas emissions from the~~

2                    The construction, use, operation, and maintenance of the development or  
3                    subdivision ~~and the vehicular traffic that it generates will:~~

4                    (I) avoid the emission of greenhouse gases, including  
5                    greenhouse gases from the vehicular traffic to be generated by the  
6                    development or subdivision;

7                    (II) if it is not feasible to avoid such emissions, will  
8                    minimize them; or

9                    (III) if it is not feasible to avoid or minimize such emissions,  
10                   will mitigate them in accordance with rules adopted by the Board. Any  
11                   offsets used shall be third-party verified and enforceable by the applicant  
12                   and its successors and assigns and by the State of Vermont.

13                   (ii) The development or subdivision will employ design and  
14                   materials that are sufficient to enable the improvements to be constructed,  
15                   including buildings, roads, and other infrastructure, to withstand and adapt to  
16                   the effects of climate change reasonably projected at the time of application.

17                   (2) Water pollution. Will not result in undue water pollution. In making  
18                   this determination ~~the~~ District Commission shall at least consider: the  
19                   elevation of land above sea level; and in relation to the flood plains, the nature  
20                   of soils and subsoils and their ability to adequately support waste disposal; the  
21                   slope of the land and its effect on effluents; the availability of streams for



1 disposal of effluents; and the applicable Health and Environmental  
2 Conservation Department regulations.

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

9 (i) headwaters of watersheds characterized by steep slopes and  
10 shallow soils; or

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

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

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

15 (v) areas supplying significant amounts of recharge waters to  
16 aquifers.

17 (B) Waste disposal. A permit will be granted whenever it is  
18 demonstrated by the applicant that, in addition to all other applicable criteria,  
19 the development or subdivision will meet any applicable Health and  
20 Environmental Conservation Department regulations regarding the disposal of

1 wastes, and will not involve the injection of waste materials or any harmful or  
2 toxic substances into ground water or wells.

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

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

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

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

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

1 development or subdivision of lands on or adjacent to the banks of a stream  
2 will, whenever feasible, maintain the natural condition of the stream, and will  
3 not endanger the health, safety, or welfare of the public or of adjoining  
4 landowners.

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

- 10 (i) retain the shoreline and the waters in their natural condition;  
11 (ii) allow continued access to the waters and the recreational  
12 opportunities provided by the waters;  
13 (iii) retain or provide vegetation ~~which~~ that screen the  
14 development or subdivision from the waters; and  
15 (iv) stabilize the bank from erosion, as necessary, with vegetation  
16 cover.

17 (G) Wetlands. A permit will be granted whenever it is demonstrated  
18 by the applicant, in addition to other criteria, that the development or  
19 subdivision will not violate the rules of the Secretary of Natural Resources, as  
20 adopted under chapter 37 of this title, relating to significant wetlands.

21 ~~(2)~~(3) Water supply.



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

6           (i) the economic, social, cultural, recreational, or other benefit to  
7 the public from the development or subdivision will ~~not~~ outweigh the  
8 economic, environmental, or recreational loss to the public from the  
9 destruction or imperilment of the habitat or species; ~~or~~

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

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

16           (B) Forest blocks.

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

19           (I) the development or subdivision will avoid fragmentation of  
20 the forest block through the design of the project or the location of project  
21 improvements, or both;

1                   (II) it is not feasible to avoid fragmentation of the forest block  
2                   and the design of the development or subdivision minimizes fragmentation of  
3                   the forest block; or

4                   (III) it is not feasible to avoid or minimize fragmentation of the  
5                   forest block and the applicant will mitigate the fragmentation in accordance  
6                   with section 6094 of this title.

7                   (ii) Methods for avoiding or minimizing the fragmentation of a  
8                   forest block may include:

9                   (I) Locating buildings and other improvements and operating  
10                  the project in a manner that avoids or minimizes incursion into and disturbance  
11                  of the forest block, including clustering of buildings and associated  
12                  improvements.

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

17                  (C) Connecting habitat.

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







1 used in this subdivision (I), “Vermont Interstate Interchange Planning and  
2 Design Guidelines” refers to the guidelines by that name published by the  
3 Agency of Commerce and Community in 2004 or such update to those  
4 guidelines as the Commissioner of Housing and Community Development  
5 may subsequently publish, provided that the update is at least as protective of  
6 existing settlements, scenic beauty and aesthetics, farmland, and natural  
7 resources as the 2004 guidelines.

8 \* \* \*

9 (K) Development affecting public investments. A permit will be  
10 granted for the development or subdivision of lands adjacent to governmental  
11 and public utility facilities, services, and lands, including highways, airports,  
12 waste disposal facilities, office and maintenance buildings, fire and police  
13 stations, universities, schools, hospitals, prisons, jails, electric generating and  
14 transmission facilities, oil and gas pipe lines, parks, hiking trails ~~and~~ forest and  
15 game lands, lands conserved under chapter 155 of this title, and facilities or  
16 lands receiving benefits through the Vermont Housing and Conservation Board  
17 under chapter 15 of this title, the State Designation Program under 24 V.S.A.  
18 chapter 76A, or the Vermont Downtown and Village Center Tax Credit  
19 Program under 32 V.S.A. chapter 151, subchapter J, when it is demonstrated  
20 that, in addition to all other applicable criteria, the development or subdivision  
21 will not unnecessarily or unreasonably endanger the public or quasi-public

1 investment in the facility, service, or lands, or materially jeopardize or interfere  
2 with the function, efficiency, or safety of, or the public's use or enjoyment of  
3 or access to the facility, service, or lands.

4 \* \* \*

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

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

12 (B) A District Commission shall decline to apply a provision of a  
13 local or regional plan only if the Commission is persuaded that the provision  
14 does not afford a person of ordinary intelligence with a reasonable opportunity  
15 to understand what the provision directs, requires, or proscribes.

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

20 \* \* \*

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

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

1 requirement for which it is accepted. ~~In the case of approvals and permits~~  
2 ~~issued by the Agency of Natural Resources, technical determinations of the~~  
3 ~~Agency shall be accorded substantial deference by the Commissions. The~~  
4 ~~acceptance of negative determinations issued by a development review board~~  
5 ~~under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review~~  
6 ~~of municipal impacts shall create a presumption that the application is~~  
7 ~~detrimental to the public health and welfare with respect to the specific~~  
8 ~~requirement for which it is accepted. Any determinations, positive or negative,~~  
9 ~~under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the~~  
10 ~~extent that the impacts under the criteria are limited to the municipality issuing~~  
11 ~~the decision.~~ Such a rule may be revoked or amended pursuant to the  
12 procedures set forth in ~~3 V.S.A., chapter 25,~~ the Vermont Administrative  
13 Procedure Act.

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

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

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

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

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

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

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

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

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\* \* \*

§ 6087. DENIAL OF APPLICATION

\* \* \*

(b) A permit may not be denied solely for the reasons set forth in subdivisions 6086(a)(5), (6), and (7) of this title. ~~However, reasonable~~ Reasonable conditions and requirements allowable in subsection 6086(c) of this title may be attached to alleviate the burdens created. ~~However, a permit may be denied under subdivision 6086(a)(5) of this title if the permit is for development in an interchange area that is not within an existing settlement.~~

\* \* \*

§ 6088. BURDEN OF PROOF

(a) The burden shall be on the applicant with respect to subdivisions 6086(a)(1), (2), (3), (4), (8)(A) through (C), (9), and (10) of this title.

(b) ~~The~~ Except for subdivisions 6086(a)(8)(A) through (C) of this title, the burden shall be on any party opposing the applicant with respect to subdivisions 6086(a)(5) through (8) of this title to show an unreasonable or adverse effect.

§ 6089. APPEALS

(a) Appeals of any act or decision of a District Commission under this chapter or a district coordinator under subsection 6007(c) of this title shall be made to the Environmental Division in accordance with chapter 220 of this

1 title. For the purpose of this section, a decision of the Chair of a District  
2 Commission under section ~~6001e~~ 6003 of this title on whether action has been  
3 taken to circumvent the requirements of this chapter shall be considered an act  
4 or decision of the District Commission.

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

10 § 6090. RECORDING; DURATION AND REVOCATION OF PERMITS

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

15 (b) Permits for specified period.

16 (1) Any permit granted under this chapter for extraction of mineral  
17 resources, operation of solid waste disposal facilities, or logging above 2,500  
18 feet, shall be for a specified period determined by the Board in accordance  
19 with the rules adopted under this chapter as a reasonable projection of the time  
20 during which the land will remain suitable for use if developed or subdivided  
21 as contemplated in the application, and with due regard for the economic

1 considerations attending the proposed development or subdivision. Other  
2 permits issued under this chapter shall be for an indefinite term, as long as  
3 there is compliance with the conditions of the permit.

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

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

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

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

17 (B) The use of the land as of the date of the application does not  
18 constitute development or subdivision as defined in section 6002 of this title  
19 and would not require a permit or permit amendment but for the fact that the  
20 land is already subject to a permit under this chapter.





1 applicant demonstrates that it is not feasible to avoid or minimize  
2 fragmentation of the block or connector in accordance with the respective  
3 requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District  
4 Commission may approve the proposal only if it finds that the proposal will  
5 meet the requirements of the rules adopted under this section and will preserve  
6 a forest block or connecting habitat of similar quality and character to the  
7 block or connector affected by the development or subdivision.

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

10 (1) The rules shall state the acreage ratio of forest block or connecting  
11 habitat to be preserved in relation to the block or connector affected by the  
12 development or subdivision.

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

16 (A) Preservation of a forest block or connecting habitat of similar  
17 quality and character to the block or connector that the development or  
18 subdivision will affect.

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

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

1                   (I) Determine the number of acres of forest block or connecting  
2                   habitat, or both, affected by the proposed development or subdivision.

3                   (II) Multiply this number of affected acres by the ratio set forth  
4                   in the rules.

5                   (III) Multiply the resulting product by a “price-per-acre” value,  
6                   which shall be based on the amount that the Commissioner of Forests, Parks  
7                   and Recreation determines to be the recent, per-acre cost to acquire  
8                   conservation easements for forest blocks and connecting habitats of similar  
9                   quality and character in the same geographic region as the proposed  
10                   development or subdivision.

11                   (ii) The Vermont Housing and Conservation Board shall use such  
12                   a fee to preserve a forest block or connecting habitat of similar quality and  
13                   character to the block or connector affected by the development or subdivision.

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

15                   (c) The mitigation of impact on a forest block or a connecting habitat, or  
16                   both, shall be structured also to mitigate the impacts, under the criteria of  
17                   subsection 6086(a) of this title other than subdivisions (8)(B) and (C), to land  
18                   or resources within the block or connector.

19                   (d) All forest blocks and connecting habitats preserved pursuant to this  
20                   section shall be protected by permanent conservation easements that grant  
21                   development rights and include conservation restrictions and are conveyed to a

1 qualified holder, as defined in section 821 of this title, with the ability to  
2 monitor and enforce easements in perpetuity.

3 \* \* \*

4 \* \* \* Resource Mapping; Forest Blocks \* \* \*

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

6 § 127. RESOURCE MAPPING

7 (a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources  
8 (the Secretary) shall complete and maintain resource mapping based on the  
9 Geographic Information System (GIS) or other technology. The mapping shall  
10 identify natural resources throughout the State, including forest blocks, that  
11 may be relevant to the consideration of energy projects and projects subject to  
12 chapter 151 of this title. The Center for Geographic Information shall be  
13 available to provide assistance to the Secretary in carrying out the ~~GIS-based~~  
14 resource mapping.

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

20 (c) The Secretary shall establish and maintain written procedures that  
21 include a process and science-based criteria for updating resource maps

1 developed under subsection (a) of this section. Before establishing or revising  
2 these procedures, the Secretary shall provide an opportunity for affected parties  
3 and the public to submit relevant information and recommendations.

4 \* \* \* Enhanced Designation; Appeal \* \* \*

5 Sec. 5. 24 V.S.A. § 2793f is added to read:

6 § 2793f. ENHANCED DESIGNATION

7 (a) A municipality that has received or applies for designation of a  
8 downtown development district, village center, new town center, or growth  
9 center under this chapter may also apply for an enhanced designation pursuant  
10 to this section in order to allow the municipality, in lieu of the District  
11 Commissions under 10 V.S.A. chapter 151, to ensure that land development  
12 within the designated area complies with the criteria set forth in 10 V.S.A. §  
13 6086(a). As used in this section, “land development” has the same meaning as  
14 in section 4303 of this title.

15 (b) A municipality seeking an enhanced designation shall:

16 (1) demonstrate that its bylaws ensure that land development in the  
17 designated area complies with the criteria set forth in 10 V.S.A. § 6086(a);

18 (2) demonstrate that it has the capability to review land development for  
19 compliance with those criteria and to enforce its decisions;

20 (3) identify those areas within the municipality that constitute critical  
21 resource areas within the meaning of 10 V.S.A. § 6002; and

1           (4) satisfy such other requirements as the State Board shall adopt by  
2 rule.

3           (c) The State Board shall adopt rules to implement this section and may  
4 grant or conditionally grant an application for enhanced designation if it meets  
5 the requirements of this section and the adopted rules.

6           Sec. 6. 24 V.S.A. § 2798 is amended to read:

7           § 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

8           (a) The A person aggrieved by a designation ~~decisions~~ decision of the State  
9 Board under this chapter are not subject to appeal one or more of sections 2793  
10 through 2793f of this title may appeal to the ~~Natural Resources Vermont~~  
11 **Environmental Review** Board established under 10 V.S.A. chapter 151 within  
12 30 days of the decision. If the decision pertains to designation of a growth  
13 center under section 2793c of this title, the period for filing an appeal shall be  
14 tolled by the filing of a request for reconsideration under that section and shall  
15 commence to run in full on the State Board's issuance of a decision on that  
16 request.

17           (b) The ~~Natural Resources Vermont Environmental Review~~ Board shall  
18 conduct a de novo hearing on the decision under appeal and shall proceed in  
19 accordance with the contested case requirements of the Vermont  
20 Administrative Procedure Act. The ~~Natural Resources Vermont~~  
21 **Environmental Review** Board shall issue a final decision within 90 days of

1 the filing of the appeal. The provisions of 10 V.S.A. § 6024 regarding  
2 assistance to the ~~Natural Resources~~ Vermont Environmental Review Board  
3 from other departments and agencies of the State shall apply to appeals under  
4 this section.

5 \* \* \* Regional and Municipal Planning \* \* \*

6 Sec. 7. 24 V.S.A. § 4348(f) is amended to read:

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

12 (1) The plan or amendment shall be considered duly adopted ~~and shall~~  
13 ~~take effect~~ 35 days after the date of adoption, unless, within 35 days of the date  
14 of adoption, the regional planning commission receives certification from the  
15 legislative bodies of a majority of the municipalities in the region vetoing the  
16 proposed plan or amendment. In case of such a veto, the plan or amendment  
17 shall be deemed rejected.

18 (2) Upon adoption, the regional planning commission shall submit the  
19 plan or amendment to the Natural Resources Board established under 10  
20 V.S.A. chapter 151, which shall approve the plan or amendment if it  
21 determines that the plan or amendment is consistent with the goals of section

1 4302 of this title. The plan or amendment shall take effect on the issuance of  
2 such approval. The Natural Resources Board shall issue its decision within 30  
3 days after receiving the plan or amendment.

4 Sec. 8. 24 V.S.A. § 4348a is amended to read:

5 § 4348a. ELEMENTS OF A REGIONAL PLAN

6 (a) A regional plan shall be consistent with the goals established in section  
7 4302 of this title and shall include the following:

8 \* \* \*

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

11 (A) Indicates those areas proposed for forests, recreation, agriculture  
12 (using the agricultural lands identification process established in 6 V.S.A. § 8),  
13 residence, commerce, industry, public, and semi-public uses, open spaces,  
14 areas reserved for flood plain, and areas identified by the State, regional  
15 planning commissions, or municipalities that require special consideration for  
16 aquifer protection; for wetland protection; for the maintenance of forest blocks,  
17 wildlife habitat, and habitat connectors; or for other conservation purposes.

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



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

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

\* \* \*

Sec. 9. 24 V.S.A. § 4382 is amended to read:

§ 4382. THE PLAN FOR A MUNICIPALITY

(a) A plan for a municipality ~~may~~ shall be consistent with the goals established in section 4302 of this title and compatible with approved plans of other municipalities in the region and with the regional plan and shall include the following:

\* \* \*

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

**Sec. 10. REPEAL**

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

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

2               **CHAPTER 219. STATE ENVIRONMENTAL PERMIT APPEALS**

3               **§ 8401. PURPOSE**

4               **It is the purpose of this chapter to:**

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

7                       **(2) consolidate appeal routes for acts or decisions of the District**  
8               **Commissions and the Secretary;**

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

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

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

17               **§ 8402. DEFINITIONS**

18               **As used in this chapter:**

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

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

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

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

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

1        **§ 8403. APPLICABILITY**

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

5            **(1) The following provisions of this title:**

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

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

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

9            **(D) chapter 43 (dams);**

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

11          **(F) chapter 48 (groundwater protection);**

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

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

16          **(I) chapter 56 (public water supply);**

17          **(J) chapter 59 (underground and aboveground liquid storage**  
18        **tanks);**

19          **(K) chapter 64 (potable water supply and wastewater system**  
20        **permit);**

21          **(L) section 2625 (regulation of heavy cutting);**

- 1           **(M) chapter 123 (protection of endangered species);**
- 2           **(N) chapter 159 (waste management);**
- 3           **(O) chapter 37 (wetlands protection and water resources**
- 4 **management);**
- 5           **(P) chapter 166 (collection and recycling of electronic devices);**
- 6           **(Q) chapter 164A (collection and disposal of mercury-containing**
- 7 **lamps);**
- 8           **(R) chapter 32 (flood hazard areas);**
- 9           **(S) chapter 49A (lake shoreland protection standards);**
- 10          **(T) chapter 83, subchapter 8 (importation of firewood); and**
- 11          **(U) chapter 168 (product stewardship for primary batteries and**
- 12 **rechargeable batteries);**
- 13           **(2) 29 V.S.A. chapter 11 (management of lakes and ponds); and**
- 14           **(3) 24 V.S.A. chapter 61, subchapter 10 (salvage yards).**
- 15          **(b) This chapter shall govern all appeals from an act or decision of a**
- 16 **District Commission under chapter 151 of this title.**
- 17          **(c) This chapter shall govern all appeals from a district coordinator**
- 18 **jurisdictional opinion under chapter 151 of this title.**
- 19          **(d) This chapter shall govern all appeals from an act or decision of the**
- 20 **Board under this chapter.**

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

4        **§ 8404. APPEALS**

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

9        **(b) Notice of the filing of an appeal.**

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

18        **(2) On the filing of an appeal from the act or decision of the**  
19        **Secretary under the provisions of law listed in section 8403 of this title, the**  
20        **appellant shall provide notice of the filing of an appeal to the following**  
21        **persons: the applicant before the Agency of Natural Resources, if other**

1 **than the appellant; the owner of the land where the project is located if**  
2 **the applicant is not the owner; the municipality in which the project is**  
3 **located; the municipal and regional planning commissions for the**  
4 **municipality in which the project is located; if the project site is located on**  
5 **a boundary, any adjacent Vermont municipality and the municipal and**  
6 **regional planning commissions for that municipality; any State agency**  
7 **affected; the solid waste management district in which the project is**  
8 **located, if the project constitutes a facility pursuant to subdivision**  
9 **6602(10) of this title; all persons required to receive notice of receipt of an**  
10 **application or notice of the issuance of a draft permit; and all persons on**  
11 **any mailing list for the decision involved. In addition, the appellant shall**  
12 **publish notice not more than 10 days after providing notice as required**  
13 **under this subsection, at the appellant's expense, in a newspaper of**  
14 **general circulation in the area of the project that is the subject of the**  
15 **decision.**

16 **(c) Requirement to participate before the District Commission or the**  
17 **Secretary.**

18 **(1) Participation before District Commission. An aggrieved person**  
19 **shall not appeal an act or decision that was made by a District**  
20 **Commission unless the person was granted party status by the District**  
21 **Commission pursuant to subdivision 6085(c)(1)(E) of this title,**

1 participated in the proceedings before the District Commission, and  
2 retained party status at the end of the District Commission proceedings.

3 In addition, the person may only appeal those issues under the criteria  
4 with respect to which the person was granted party status. However,  
5 notwithstanding these limitations, an aggrieved person may appeal an act  
6 or decision of the District Commission if the Board determines that:

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

9 (B) the decision being appealed is the grant or denial of party  
10 status; or

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

13 (2) Participation before the Secretary.

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

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



1                    **(ii) The appellant shall identify each comment that the**  
2                    **appellant submitted to the Secretary that identifies or relates to an issue**  
3                    **raised in his or her appeal.**

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

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

10                   **(i) there was a procedural defect that prevented the person**  
11                   **from commenting during the comment period or at the public meeting or**  
12                   **otherwise participating in the proceeding;**

13                   **(ii) the Secretary did not conduct a comment period and did**  
14                   **not hold a public meeting;**

15                   **(iii) the person demonstrates that an issue was not reasonably**  
16                   **ascertainable during the review of an application or other request that led**  
17                   **to the Secretary’s act or decision; or**

18                   **(iv) some other condition exists that would result in manifest**  
19                   **injustice if the person’s right to appeal was disallowed.**

20                   **(d) District coordinator jurisdictional opinions.**

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

5           **(2) Failure to appeal within the time required under subsection (a)**  
6           **of this section shall render the jurisdictional opinion the final**  
7           **determination regarding jurisdiction under chapter 151 of this title unless**  
8           **the opinion was not properly served on persons listed in subdivisions**  
9           **6085(c)(1)(A)–(D) of this title and each person on a list pursuant to**  
10           **subdivision 6085(c)(1)(E) of this title that is approved under**  
11           **subsection 6007(c) of this title.**

12           **(e) Stays.**

13           **(1) The filing of an appeal shall automatically stay the act or**  
14           **decision in the following situations:**

15           **(A) acts or decisions involving stream alteration permits or**  
16           **shoreline encroachment permits issued by the Secretary; and**

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

18           **(2) On petition by a party or upon its own motion for a stay of an**  
19           **act or decision, the Board shall perform the initial review of the request**  
20           **and may grant a stay. Any decision under this subsection to issue a stay**

1 shall be subject to appeal to the Supreme Court according to the Rules of  
2 Appellate Procedure.

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

5 (g) De novo. The Board, applying the substantive standards that were  
6 applicable to the District Commission, district coordinator, or Secretary,  
7 shall hear and review de novo those issues that have been appealed. The  
8 Board shall apply its independent judgement in finding facts and  
9 interpreting law.

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

14 (i) Limitations on appeals. Notwithstanding any other provision of this  
15 section:

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

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

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

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

13           **(l) Intervention. Any person may intervene in a pending appeal if that**  
14           **person:**

15           **(1) appeared as a party in the action appealed from and retained**  
16           **party status;**

17           **(2) is a party by right;**

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

19           **(4) meets the standard for intervention established in the Vermont**  
20           **Rules of Civil Procedure.**

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

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

11       **(1) there is an appeal of an act or decision of the Secretary that is**  
12       **based on that record; or**

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

16       **§ 8405. FEES**

17       **(a) All persons filing an appeal shall pay a fee of \$250.00, plus any**  
18       **associated publication costs. The Board may waive the fee or publication**  
19       **costs if the Board finds that the appellant or initiating party is unable to**  
20       **pay the fee or publication costs. The fee of \$250.00 shall not apply to**

1 appeals or other matters brought before the Board under this chapter in  
2 the name of the State by public officials authorized to do so.

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

5 § 8406. APPEALS TO THE SUPREME COURT

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

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

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

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

16 (c) An objection that has not been raised before the Board may not be  
17 considered by the Supreme Court, unless the failure or neglect to raise  
18 that objection is excused by the Supreme Court because of extraordinary  
19 circumstances. The findings of the Board with respect to questions of fact,  
20 if supported by substantial evidence on the record as a whole, shall be  
21 conclusive.

1           **(d) Only the Attorney General may represent the State in all appeals**  
2           **under this section.**

3                           **\* \* \* Environmental Division \* \* \***

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

5           **§ 34. JURISDICTION; ENVIRONMENTAL DIVISION**

6           **The Environmental Division shall have:**

7                   **(1) jurisdiction of matters arising under 10 V.S.A. ~~chapters~~ chapter**  
8           **201 and 220;**

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

11                   **(3) original jurisdiction to revoke permits under 10 V.S.A. chapter**  
12           **151.**

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

14           **§ 2283. APPEALS**

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

1 **Vermont Environmental Review Board under 10 V.S.A. § 8403. Acts or**  
2 **decisions of a legislative body of a municipality under this subchapter**  
3 **shall be appealed to the Environmental Division ~~under 10 V.S.A. § 8503~~**  
4 **under 24 V.S.A. § 4471a.**

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

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

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

17 **§ 4471. APPEAL TO ENVIRONMENTAL DIVISION**

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



1 **4471a of this title.** Participation in a local regulatory proceeding shall  
2 consist of offering, through oral or written testimony, evidence or a  
3 statement of concern related to the subject of the proceeding. An appeal  
4 from a decision of the appropriate municipal panel, or from a decision of  
5 the municipal legislative body under subsection 4415(d) of this title, shall  
6 be taken in such manner as the Supreme Court may by rule provide for  
7 appeals from State agencies governed by 3 V.S.A. §§ 801–816, unless the  
8 decision is an appropriate municipal panel decision ~~which~~ that the  
9 municipality has elected to be subject to review on the record.

10 \* \* \*

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

12 **§ 4471a. ENVIRONMENTAL DIVISION**

13 **(a) Applicability.**

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

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

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

3           **(b) Appeals; exceptions.**

4           **(1) Within 30 days after the date of the act or decision, an interested**  
5           **person as defined in section 4465 of this title who has participated as**  
6           **defined in section 4471 of this title in the municipal regulatory proceeding**  
7           **under this chapter may appeal to the Environmental Division an act or**  
8           **decision made under this chapter by an appropriate municipal panel;**  
9           **provided, however, that decisions of a development review board under**  
10           **section 4420 of this title with respect to review of municipal impacts under**  
11           **10 V.S.A. chapter 151 are not subject to appeal but shall serve as**  
12           **presumptions in accordance with that chapter.**

13           **(2) Notwithstanding subdivision (1) of this subsection, an interested**  
14           **person may appeal an act or decision under this chapter if the**  
15           **Environmental judge determines that:**

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

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

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

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

3        **(d) Stays.**

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

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

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

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

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

3                **(1) appeared as a party in the action appealed from and retained**  
4        **party status;**

5                **(2) is a party by right;**

6                **(3) qualifies as an “interested person” as established in section 4465**  
7        **of this title; or**

8                **(4) meets the standard for intervention established in the Vermont**  
9        **Rules of Civil Procedure.**

10        **(h) Appeals to Supreme Court.**

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

15                **(A) the person was a party to the proceeding before the**  
16        **Environmental Division;**

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

18                **(C) the Supreme Court determines that:**

19                **(i) there was a procedural defect that prevented the person**  
20        **from participating in the proceeding; or**

1                    **(ii) some other condition exists that would result in manifest**  
2                    **injustice if the person’s right to appeal were disallowed.**

3                    **(2) An objection that has not been raised before the Environmental**  
4                    **Division may not be considered by the Supreme Court, unless the failure**  
5                    **or neglect to raise that objection is excused by the Supreme Court because**  
6                    **of extraordinary circumstances.**

7                    \* \* \* Revision Authority; **Transition**; Effective Date \* \* \*

8                    Sec. 17. **REFERENCES; REVISION AUTHORITY**

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

12                    **(b) In 10 V.S.A. § 6002 as amended by Sec. 3 of this act, the Office of**  
13                    **Legislative Council shall:**

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

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

19                    **(c) In the Vermont Statutes Annotated, the Office of Legislative Council**  
20                    **shall replace references to “Act 250” with “the Vermont Act on Land Use and**  
21                    **the Environment” or “VALUE”, as appropriate;**

1 **(d) In the Vermont Statutes Annotated, the Office of Legislative**

2 **Council shall:**

3 **(1) replace “Natural Resources Board” with “Vermont**

4 **Environmental Review Board”;**

5 **(2) replace “10 V.S.A. chapter 220” and “chapter 220 of Title 10”**

6 **with “10 V.S.A. chapter 219”;**

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

8 **of this title”; and**

9 **(4) when a statute concerns an appeal governed by Sec. 11 of this**

10 **act, 10 V.S.A. chapter 219, replace the reference, if any, to the**

11 **Environmental Division of the Superior Court with a reference to the**

12 **Vermont Environmental Review Board.**

13 **(e) In 10 V.S.A. § 6086, the Office of Legislative Council shall insert the**

14 **following subsection and subdivision headings:**

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

16 **(2) In subdivision (a)(6): Educational services.**

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

18 **(4) In subsection (b): Partial findings.**

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

20 **(6) In subsection (f): Stay of construction.**

1       **Sec. 18. RULES**

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

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

11       **Sec. 19. ENVIRONMENTAL REVIEW BOARD; BUDGET;**  
12               **POSITIONS**

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

16       **Sec. 20. ENVIRONMENTAL DIVISION; CONTINUED**  
17               **JURISDICTION**

18           Notwithstanding the repeal of its jurisdictional authority to hear  
19           appeals relative to State environmental permits under Sec. 10 of this act,  
20           the Environmental Division shall continue to have jurisdiction to complete  
21           its consideration of any such appeal that is pending before it as of

1 **January 1, 2020 if, with respect to such act or appeal, mediation or**  
2 **discovery has commenced, a dispositive motion has been filed, or a trial**  
3 **has begun.**

4 Sec. 21. EFFECTIVE DATES

5 **~~This act shall take effect on July 1, 2019. On or before September 1,~~**  
6 **2019,**

7 **(a) This section shall take effect on passage.**

8 **(b) The remainder of this act shall take effect on February 1, 2020,**  
9 **except that:**

10 **(1) The authority to make appointments to the Vermont**  
11 **Environmental Review Board shall take effect on passage and each such**  
12 **appointment shall be made on or before December 15, 2019.**

13

14 **(2) On or before April 1, 2020, the ~~Natural Resources~~ Vermont**  
15 **Environmental Review Board shall file with the Secretary of State proposed**  
16 **rules to implement Sec. 3, 10 V.S.A. §§ 6086(a)(1)(B) (mitigation of**  
17 **greenhouse gas emissions) and 6094 (mitigation of forest blocks and**  
18 **connecting habitat).**