

1 Introduced by

2 Referred to Committee on

3 Date:

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

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

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

- 7 • Naming it the Vermont Act on Land Use and the Environment (VALUE).
- 8 • Proposing revisions to Act 250's Capability and Development Plan to
9 address climate change.
- 10 • Amending Act 250 to include a purpose section that refers to that plan and
11 the specific statutory goals for municipal and regional planning.
- 12 • Amending the criteria to address climate change, including requiring
13 projects to have net zero greenhouse gas emissions and to be designed to
14 withstand and adapt to climate change.
- 15 • Amending the criteria to address ecosystem protection through protecting
16 forest blocks and connecting habitat.
- 17 • As part of a balancing of interests to support economic development in
18 compact centers while promoting a rural countryside and protecting
19 important natural resources, amending Act 250 jurisdiction to allow
20 municipalities to ensure compliance with the Act 250 criteria in centers
21 receiving an enhanced designation under 24 V.S.A. chapter 76A and

- 1 increasing Act 250 jurisdiction in critical resource areas and at interstate
2 interchanges. Because the designation under 24 V.S.A. chapter 76A would
3 affect jurisdiction, the bill provides for appeal of designation decisions.
- 4 • Clarifying the definition of “commercial purpose” so that it is not necessary
5 to determine whether monies received are essential to sustain a project.
 - 6 • Requiring that, to be used in Act 250, local and regional plans must be
7 approved as consistent with the statutory planning goals and clarifying that
8 local and regional plan provisions apply to a project if they meet the same
9 standard of specificity applicable to statutes.

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

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

12 * * * Revisions to Capability and Development Plan * * *

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

14 (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

15 Climate change poses serious risks to human health, functioning ecosystems

16 that support a diversity of species and economic growth, and Vermont’s

17 tourist, forestry, and agricultural industries. The primary driver of climate

18 change in Vermont and elsewhere is the increase of atmospheric carbon

19 dioxide from the burning of fossil fuels, which has a warming effect that is

20 amplified because atmospheric water vapor, another greenhouse gas, increases

1 as temperature rises. Vermont should minimize its emission of greenhouse
2 gases and, because the climate is changing, ensure that the design and
3 materials used in development enable projects to withstand an increase in
4 extreme weather events and adapt to other changes in the weather and
5 environment.

6 * * * Revisions to State Land Use Law * * *

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

8 Subchapter 1. General Provisions

9 § 6001. SHORT TITLE; PURPOSE; CONSTRUCTION

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

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

16 § 6002. DEFINITIONS

17 In this chapter:

18 (1) “Board” means the Natural Resources Board.

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

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

2 (i) The construction of improvements on a tract or tracts of land,
3 owned or controlled by a person, involving more than 10 acres of land within a
4 radius of five miles of any point on any involved land, for commercial or
5 industrial purposes.

6 (ii) The construction of improvements for commercial or
7 industrial purposes on more than one acre of land within a municipality that
8 has not adopted permanent zoning and subdivision bylaws.

9 (iii) The construction of improvements for commercial or
10 industrial purposes on a tract or tracts of land, owned or controlled by a person,
11 involving more than one acre of land within a municipality that has adopted
12 permanent zoning and subdivision bylaws, if the municipality in which the
13 proposed project is located has elected by ordinance, adopted under 24 V.S.A.
14 chapter 59, to have this jurisdiction apply.

15 * * *

16 (vi) The construction of improvements for commercial, industrial,
17 or residential use at or above the elevation of 2,500 feet or in a critical resource
18 area.

19 * * *

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

4 * * *

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

6 (i) The construction of improvements for farming, logging, or
7 forestry purposes below the elevation of 2,500 feet.

8 **OPTION 1 FOR ENERGY FACILITIES:**

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

14 **OPTION 2 FOR ENERGY FACILITIES:**

15 (ii) The construction of improvements for an electric generation
16 facility, other than a merchant generation facility, or transmission facility that
17 requires a certificate of public good under 30 V.S.A. § 248, a natural gas
18 facility as defined in 30 V.S.A. § 248(a)(3), or a telecommunications facility
19 issued a certificate of public good under 30 V.S.A. § 248a. As used in this
20 subdivision (ii), “merchant generation” means an electric generation facility in
21

1 which a Vermont electric utility subject to the jurisdiction of the Public Utility
2 Commission under 30 V.S.A. § 203, or group of such utilities, does not have
3 majority ownership or control.

4
5 (iii) The construction of improvements for commercial or
6 industrial purposes within an area that has obtained an enhanced designation
7 pursuant to 24 V.S.A. chapter 76A.

8 * * *

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

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

20 * * *

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

4 * * *

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

6 (i) A tract or tracts of land, owned or controlled by a person,
7 located outside an area that has received an enhanced designation under 24
8 V.S.A. chapter 76A, which the person has partitioned or divided for the
9 purpose of resale into 10 or more lots within a radius of five miles of any point
10 on any lot, or within the jurisdictional area of the same District Commission,
11 within any continuous period of five years. In determining the number of lots,
12 a lot shall be counted if any portion is outside such an area and within five
13 miles or within the jurisdictional area of the same District Commission.

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

18 (iii) A tract or tracts of land, owned or controlled by a person,
19 which have been partitioned or divided for the purpose of resale into five or
20 more separate parcels of any size within a radius of five miles of any point on
21 any such parcel, and within any period of ten years, by public auction.

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

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

9 (iv) A tract or tracts of land, owned or controlled by a person,
10 located in a critical resource area, that have been partitioned or divided for the
11 purpose of resale.

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

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

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

19 * * *

20 (38) “Connecting habitat” refers to land or water, or both, that links
21 patches of habitat within a landscape, allowing the movement, migration, and

1 dispersal of animals and plants and the functioning of ecological processes. A
2 connecting habitat may include recreational trails and improvements
3 constructed for farming, logging, or forestry purposes.

4
5 **OPTION 1 FOR FOREST BLOCK**

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

14 **OPTION 2 FOR FOREST BLOCK**

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

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

6 However, fragmentation does not include the division or conversion of a forest
7 block or connecting habitat by a recreational trail or by improvements
8 constructed for farming, logging, or forestry purposes below the elevation of
9 2,500 feet.

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

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

16 (43) “Air contaminant” shall have the same meaning as under section
17 552 of this title.

18 (44) “Commercial purpose” means the provision of facilities, goods, or
19 services by a person other than for a municipal or State purpose to others in
20 exchange for payment of a purchase price, fee, contribution, donation, or other

1 object or service having value, regardless of whether the payment is essential
2 to sustain the provision of the facilities, goods, or services.

3 **(45) “Critical resource area” means [TO BE COMPLETED].**

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

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

13 * * *

14 Subchapter 2. Administration

15 * * *

16 § 6030. ~~MAP OF WIRELESS TELECOMMUNICATIONS FACILITIES~~
17 CAPABILITY AND DEVELOPMENT MAPS

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

20 (a) Updates. On or before January 1, 2021, the Board and the Secretaries
21 of Commerce and Community Development, Digital Services, and Natural

1 Resources shall complete an update to the capability and development maps
2 created under this chapter in 1971 for reference in applying subdivision
3 6086(a)(9) of this title. Maps updated pursuant to this section shall be
4 consistent with the Capability and Development Plan and shall include
5 environmental constraints, existing settlements, critical resource areas,
6 facilities and infrastructure, and areas targeted for conservation, public
7 investment, and development. The Board and these Secretaries shall complete
8 further updates to these maps no less frequently than every eight years. The
9 Board shall lead and coordinate the completion of updates pursuant to this
10 section.

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

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

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

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

19 * * *

20 Subchapter 4. Permits

21 * * *

1 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

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

19 (i) There will be net zero greenhouse gas emissions from the
20 construction, operation, and maintenance of the development or subdivision
21 and the vehicular traffic that it generates. Any offsets used shall be third-party

1 verified and enforceable by the applicant and its successors and assigns and by
2 the State of Vermont.

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

7 (2) Water pollution. Will not result in undue water pollution. In making
8 this determination ~~the~~ District Commission shall at least consider: the
9 elevation of land above sea level; and in relation to the flood plains, the nature
10 of soils and subsoils and their ability to adequately support waste disposal; the
11 slope of the land and its effect on effluents; the availability of streams for
12 disposal of effluents; and the applicable Health and Environmental
13 Conservation Department regulations.

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

20 (i) headwaters of watersheds characterized by steep slopes and
21 shallow soils; or

- 1 (ii) drainage areas of 20 square miles or less; or
2 (iii) above 1,500 feet elevation; or
3 (iv) watersheds of public water supplies designated by the Agency
4 of Natural Resources; or
5 (v) areas supplying significant amounts of recharge waters to
6 aquifers.

7 (B) Waste disposal. A permit will be granted whenever it is
8 demonstrated by the applicant that, in addition to all other applicable criteria,
9 the development or subdivision will meet any applicable Health and
10 Environmental Conservation Department regulations regarding the disposal of
11 wastes, and will not involve the injection of waste materials or any harmful or
12 toxic substances into ground water or wells.

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

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

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

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

9 (E) Streams. A permit will be granted whenever it is demonstrated
10 by the applicant that, in addition to all other applicable criteria, the
11 development or subdivision of lands on or adjacent to the banks of a stream
12 will, whenever feasible, maintain the natural condition of the stream, and will
13 not endanger the health, safety, or welfare of the public or of adjoining
14 landowners.

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

20 (i) retain the shoreline and the waters in their natural condition;

1 (ii) allow continued access to the waters and the recreational
2 opportunities provided by the waters;

3 (iii) retain or provide vegetation which will screen the
4 development or subdivision from the waters; and

5 (iv) stabilize the bank from erosion, as necessary, with vegetation
6 cover.

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

11 ~~(2)~~(3) Water supply.

12 (A) Does have sufficient water available for the reasonably
13 foreseeable needs of the subdivision or development.

14 ~~(3)~~(B) Will not cause an unreasonable burden on an existing water
15 supply, if one is to be utilized.

16 * * *

17 (5)(A) Transportation. Will not cause unreasonable congestion or unsafe
18 conditions with respect to use of the highways; waterways; railways; airports
19 and airways; bicycle, pedestrian, and other transit infrastructure; and other
20 means of transportation existing or proposed.

1 (B) ~~As appropriate, will~~ Will incorporate transportation demand
2 management strategies and provide safe access and connections to adjacent
3 lands and facilities and to existing and planned pedestrian, bicycle, and transit
4 networks and services. ~~In determining appropriateness under this subdivision~~
5 ~~(B) However,~~ the District Commission ~~shall consider whether~~ may decline to
6 require such a strategy, access, or connection ~~constitutes a measure~~ if it finds
7 that a reasonable person would ~~take~~ not undertake the measure given the type,
8 scale, and transportation impacts of the proposed development or subdivision.

9
10 * * *

11 (8) Ecosystem protection; scenic beauty; historic sites. Will not have an
12 undue adverse effect on the scenic or natural beauty of the area, aesthetics,
13 historic sites, or rare and irreplaceable natural areas.

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

19 (i) the economic, social, cultural, recreational, or other benefit to
20 the public from the development or subdivision will ~~not~~ outweigh the

1 economic, environmental, or recreational loss to the public from the
2 destruction or imperilment of the habitat or species; ~~or~~

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

6 (iii) a reasonably acceptable alternative site is not owned or
7 controlled by the applicant which would allow the development or subdivision
8 to fulfill its intended purpose.

9 (B) Forest blocks.

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

12 (I) the development or subdivision will avoid fragmentation of
13 the forest block through the design of the project or the location of project
14 improvements, or both;

15 (II) it is not feasible to avoid fragmentation of the forest block
16 and the design of the development or subdivision minimizes fragmentation of
17 the forest block; or

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

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

3 (I) Locating buildings and other improvements and operating
4 the project in a manner that avoids or minimizes incursion into and disturbance
5 of the forest block, including clustering of buildings and associated
6 improvements.

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

11 (C) Connecting habitat.

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

14 (I) the development or subdivision will avoid fragmentation of
15 a connecting habitat through the design of the project or the location of project
16 improvements, or both;

17 (II) it is not feasible to avoid fragmentation of the connecting
18 habitat and the design of the development or subdivision minimizes
19 fragmentation of the connector; or

1 (III) it is not feasible to avoid or minimize fragmentation of the
2 connecting habitat and the applicant will mitigate the fragmentation in
3 accordance with section 6094 of this title.

4 (ii) Methods for avoiding or minimizing the fragmentation of a
5 connecting habitat may include:

6 (I) locating buildings and other improvements at the farthest
7 feasible location from the center of the connector;

8 (II) designing the location of buildings and other improvements
9 to leave the greatest contiguous portion of the area undisturbed in order to
10 facilitate wildlife travel through the connector; or

11 (III) when there is no feasible site for construction of buildings
12 and other improvements outside the connector, designing the buildings and
13 improvements to facilitate the continued viability of the connector for use by
14 wildlife.

15 * * *

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

21 * * *

1 (F) Energy conservation and efficiency. A permit will be granted
2 when it has been demonstrated by the applicant that, in addition to all other
3 applicable criteria, the planning and design of the subdivision or development
4 reflect the principles of energy conservation and energy efficiency, including
5 reduction of greenhouse gas emissions from the use of energy, and incorporate
6 the best available technology for efficient use or recovery of energy. An
7 applicant seeking an affirmative finding under this criterion shall provide
8 evidence that the subdivision or development complies with the applicable
9 building energy standards and stretch codes under 30 V.S.A. § 51 or 53.

10 * * *

11 (I) Interchange areas. A permit will be granted for a development or
12 subdivision within an interchange area when it is demonstrated that, in addition
13 to all other applicable criteria, the development or subdivision complies with
14 the Vermont Interstate Interchange Planning and Design Guidelines applicable
15 to the category of land use as identified for that area in the regional plan. As
16 used in this subdivision, “Vermont Interstate Interchange Planning and Design
17 Guidelines” refers to the guidelines by that name published by the Agency of
18 Commerce and Community in 2004 or such update to those guidelines as the
19 Commissioner of Housing and Community Development may subsequently
20 publish, provided that the update is at least as protective of existing

1 settlements, scenic beauty and aesthetics, farmland, and natural resources as
2 the 2004 guidelines.

3 * * *

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

20 * * *

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

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

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

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

16 * * *

17 (c) Conditions. A permit may contain such requirements and conditions as
18 are allowable proper exercise of the police power and which are appropriate
19 within the respect to subdivisions (a)(1) through (10) of this section, including
20 those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b),
21 and 4464, the dedication of lands for public use, and the filing of bonds to

1 ~~insure~~ ensure compliance. The requirements and conditions incorporated from
2 Title 24 may be applied whether or not a local plan has been adopted. General
3 requirements and conditions may be established by rule of the Natural
4 Resources Board.

5 * * *

6 § 6087. DENIAL OF APPLICATION

7 * * *

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

14 * * *

15 § 6088. BURDEN OF PROOF

16 (a) The burden shall be on the applicant with respect to subdivisions
17 6086(a)(1), (2), (3), (4), (8)(A) through (C), (9), and (10) of this title.

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

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* * *

§ 6094. MITIGATION OF FOREST BLOCKS AND HABITAT

CONNECTORS

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (d) All forest blocks and connecting habitats preserved pursuant to this
6 section shall be protected by permanent conservation easements that grant
7 development rights and include conservation restrictions and are conveyed to a
8 qualified holder, as defined in section 821 of this title, with the ability to
9 monitor and enforce easements in perpetuity.

10 * * *

11 * * * Resource Mapping; Forest Blocks * * *

12 Sec. 3. 10 V.S.A. § 127 is amended to read:

13 § 127. RESOURCE MAPPING

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

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

6 (c) The Secretary shall establish and maintain written procedures that
7 include a process and science-based criteria for updating resource maps
8 developed under subsection (a) of this section. Before establishing or revising
9 these procedures, the Secretary shall provide an opportunity for affected parties
10 and the public to submit relevant information and recommendations.

11 * * * Enhanced Designation; Appeal * * *

12 Sec. 4. 24 V.S.A. § 2793f is added to read:

13 § 2793f. ENHANCED DESIGNATION

14 (a) A municipality that has received or applies for designation of a
15 downtown development district, village center, new town center, or growth
16 center under this chapter may also apply for an enhanced designation pursuant
17 to this section in order to allow the municipality, in lieu of the District
18 Commissions under 10 V.S.A. chapter 151, to ensure that land development
19 within the designated area complies with the criteria set forth in 10 V.S.A. §
20 6086(a). As used in this section, “land development” has the same meaning as
21 in 24 V.S.A. § 4303.

- 1 (b) A municipality seeking an enhanced designation shall:
- 2 (1) demonstrate that its bylaws ensure that land development in the
- 3 designated area complies with the criteria set forth in 10 V.S.A. § 6086(a);
- 4 (2) demonstrate that it has the capability to review land development for
- 5 compliance with those criteria and to enforce its decisions;
- 6 (3) identify those areas within the municipality that constitute critical
- 7 resource areas within the meaning of 10 V.S.A. § 6001; and
- 8 (4) satisfy such other requirements as the State Board shall adopt by rule.

9 (c) The State Board shall adopt rules to implement this section and may

10 grant or conditionally grant an application for enhanced designation if it meets

11 the requirements of this section and the adopted rules.

12 Sec. 5. 24 V.S.A. § 2798 is amended to read:

13 § 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

14 ~~The~~ (a) A person aggrieved by a designation ~~decisions~~ decision of the State

15 Board under this chapter are not subject to appeal one or more of sections 2793

16 through 2793f of this title may appeal to the Natural Resources Board

17 established under 10 V.S.A. chapter 151 within 30 days of the decision. If the

18 decision pertains to designation of a growth center under section 2793c of this

19 title, the period for filing an appeal shall be tolled by the filing of a request for

20 reconsideration under that section and shall commence to run in full on the

21 State Board’s issuance of a decision on that request.

1 (b) The Natural Resources Board shall conduct a de novo hearing on the
2 decision under appeal and shall proceed in accordance with the contested case
3 requirements of the Vermont Administrative Procedure Act. The Natural
4 Resources Board shall issue a final decision within 90 days of the filing of the
5 appeal. The provisions of 10 V.S.A. § 6024 regarding assistance to the Natural
6 Resources Board from other departments and agencies of the State shall apply
7 to appeals under this section.

8 * * * Regional and Municipal Planning * * *

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

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

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

1 (2) Upon adoption, the regional planning commission shall submit the
2 plan or amendment to the Natural Resources Board established under 10
3 V.S.A. chapter 151, which shall approve the plan or amendment if it
4 determines that the plan or amendment is consistent with the goals of section
5 4302 of this title. The plan or amendment shall take effect the issuance of such
6 approval. The Natural Resources Board shall issue its decision within 30 days
7 of receiving the plan or amendment.

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

9 § 4348a. ELEMENTS OF A REGIONAL PLAN

10 (a) A regional plan shall be consistent with the goals established in section
11 4302 of this title and shall include the following:

12 * * *

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

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

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

5 * * *

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

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

15 * * *

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

17 § 4382. THE PLAN FOR A MUNICIPALITY

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

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* * * Revision Authority; Effective Date * * *

Sec. 10. REVISION AUTHORITY

(a) In 10 V.S.A. § 6002 as amended by Sec. 2 of this act, the Office of Legislative Council shall:

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

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

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

(c) In 10 V.S.A. § 6086, the Office of Legislative Council shall insert the following subsection and subdivision headings:

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

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

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

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

(5) In subsection (d): Other permits and approvals; presumptions.

1 (6) In subsection (e): Temporary improvements; film or TV.

2 (7) In subsection (f): Stay of construction.

3 Sec. 11. EFFECTIVE DATE

4 This act shall take effect on July 1, 2019. On or before September 1, 2019,

5 the Natural Resources Board shall file with the Secretary of State proposed

6 rules to implement Sec. 2, 10 V.S.A. § 6094.

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