

1 H.197

2 Introduced by Representatives Kimbell of Woodstock, Bock of Chester,  
3 Dickinson of St. Albans Town, Fagan of Rutland City, Harrison  
4 of Chittenden, Jickling of Randolph, Pajala of Londonderry,  
5 and Sibia of Dover

6 Referred to Committee on

7 Date:

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

9 Statement of purpose of bill as introduced: This bill proposes to promote the  
10 goals in the State's Capability and Development Plan while reducing the  
11 amount of time and money spent obtaining Act 250 and other State permits by:

- 12 • Creating an enhanced designation that would remove Act 250 jurisdiction  
13 within designated centers.
- 14 • Creating a process to subject unique resource areas to Act 250 jurisdiction  
15 regardless of whether a project in such area would trigger jurisdiction  
16 under existing thresholds.
- 17 • Including impacts on forest blocks and connecting habitat in the review  
18 process under Act 250 Criterion 8.
- 19 • Updating Act 250 Criterion 1(D) so that it is consistent with the  
20 terminology used in the State's other permitting programs.
- 21 • Defining what kind of evidence is sufficient to rebut permits that create  
22 presumptions in Act 250.

- 1       • Clarifying when an Act 250 permit application fee waiver and partial refund  
2           may be warranted.
- 3       • Allowing forest-based enterprises flexibility in their hours of operation
- 4       • Clarifying the circumstances in which a recreational trail must receive an  
5           Act 250 permit.
- 6       • Exempting transportation projects that are supported, in whole or in part, by  
7           federal aid from Act 250 review.
- 8       • Updating the definition of development to address accessory on-farm  
9           businesses.

10           An act relating to various amendments to Act 250

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

12       Sec. 1. FINDINGS

13           The General Assembly finds that:

14           It is the policy of the State to promote the sustainable and economic  
15           management of its forests and woodlands to protect long-term forest health,  
16           integrity, and productivity and to maintain and conserve forest soil resources,  
17           protect water quality, and mitigate the effects of climate change. The  
18           protection and conservation of forest resources is achieved in large part  
19           through the promotion and protection of sustainable forest management and  
20           the forest products economy, which in turn results in environmental and

1 economic benefits to the State. Therefore, it is in the public interest to promote  
2 and protect the sustainable management of the State's forests and forest  
3 products industry and economy by recognizing unique operational constraints  
4 associated with forest-based enterprises and the effect of conserving forest  
5 resources attributable to the forest products industry. State regulation of such  
6 enterprises shall reflect a proper balance between economic development of  
7 forest-based enterprises and responsible land use practices.

8 Sec. 2. 10 V.S.A. § 6001 is amended to read:

9 § 6001. DEFINITIONS

10 ~~It~~ As used in this chapter:

11 \* \* \*

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

13 \* \* \*

14 (v) The construction of improvements on a tract of land involving  
15 more than 10 acres that is to be used for municipal, county, or State purposes,  
16 including Vermont Trails System trails. In computing the amount of land  
17 involved, land shall be included that is incident to the use such as lawns,  
18 parking areas, roadways, leaching fields and accessory buildings.

19 \* \* \*

20 (xi) The construction of improvements for commercial, industrial  
21 or residential use in a Unique Resource Value Area, as designated by the  
22 Secretary of Natural Resources under 3 V.S.A. § 2825(f).

1 \* \* \*

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

3 \* \* \*

4 (ix) The construction of improvements for transportation projects  
5 that are supported, in whole or in part, by federal aid for municipal, county, or  
6 State purposes.

7 (x) The construction of improvements or land uses on a tract of  
8 land primarily devoted to farming, as defined in subdivisions (22)(A)–(E) and  
9 (H) of this section, and that is subject to the State’s Required Agricultural  
10 Practices, provided that:

11 (I) the improvements or land uses will support an activity that  
12 meets the definition of “accessory on-farm business” in 24 V.S.A. § 4412; and

13 (II) the total area of improvements associated with the  
14 accessory on-farm businesses does not exceed three-quarters of an acre.

15 \* \* \*

16 (6) ~~“Floodway” means the channel of a watercourse which is expected~~  
17 ~~to flood on an average of at least once every 100 years and the adjacent land~~  
18 ~~areas 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 has the same meaning as in section 752 of this title.







1           (A) Whether a portion of the project's impacts have been reviewed  
2 by it, the Natural Resources Board, or the District Coordinator in a previous  
3 permit.

4           (B) Whether the project is being reviewed as a major application,  
5 minor application, or administrative amendment.

6           (C) Whether the applicant relies on any presumptions permitted  
7 under subsection 6086(d) of this title and has, at the time of the permit  
8 application, already obtained the permits necessary to trigger such  
9 presumptions. If a presumption is rebutted, the Commission may require the  
10 applicant to pay the previously waived fee.

11           (D) Whether the applicant has engaged in any preapplication  
12 planning with the district coordinator that will result in a decrease in the  
13 amount of time the District Commission will have to consider the application.

14           (2) The District Commission shall issue a written decision in response to  
15 any application for a fee waiver. The written decision shall address each of the  
16 factors in subdivision (1) of this subsection.

17           (3) District Commission decisions regarding application fee waivers  
18 may be appealed to the Natural Resources Board in accordance with Board  
19 rules.

20           (4) If the classification of an application is changed from an  
21 administrative amendment or minor application to a major application, the  
22 Commission may require the applicant to pay the previously waived fee.

1 (g) A Commission or the Natural Resources Board may require any  
2 permittee to file a certification of actual construction costs and may direct the  
3 payment of a supplemental fee in the event that an application understated a  
4 project's construction costs. Failure to file a certification or to pay a  
5 supplemental fee shall be grounds for permit revocation. If the actual  
6 construction costs are less than the estimated construction costs upon which the  
7 original permit fee was calculated, a written request for a refund of the  
8 difference may be submitted to the District Commission within 90 days after  
9 the date an applicant files a certification.

10 \* \* \*

11 Sec. 5. 10 V.S.A. § 6086 is amended to read:

12 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

15 \* \* \*

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

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



1 (a)(1), (5), or (8) of this section. In making a determination of whether an  
2 undue adverse impact exists, the District Commission shall consider the  
3 benefits to forests and forest resources resulting from the forest-based  
4 enterprise and the impact to the operation of the forest-based enterprise that  
5 would result from a restriction on hours of operation and shall impose only the  
6 minimum restriction necessary to address the undue adverse impact.

7 (3) Permits issued for a forest-based enterprise shall allow the enterprise  
8 to ship and receive delivery of forest products when ground and road  
9 conditions are appropriate for the harvesting operations that supply such  
10 products, including delivery from the harvesting site to the enterprise during  
11 hours outside normal business hours, including nights, weekends, and holidays  
12 for a minimum of 60 days per year.

13 (4) Permits issued for a forest-based enterprise that produces wood  
14 chips, pellets, cord wood, and other fuel wood shall authorize the delivery from  
15 the enterprise of such products to the end user during hours outside normal  
16 business hours, including nights, weekends, and holidays from October 1  
17 through April 30 of each year.

18 (5) Forest-based enterprises holding a permit may request the District  
19 Commission amend existing permit conditions related to hours of operation  
20 and seasonal restrictions under this subsection. Requests for condition  
21 amendments under this subsection shall not be subject to Act 250 Rule 34E.

22 (d) State and local permits; presumptions.

1           (1) State permits.

2           (A) The Natural Resources Board may by rule A District  
3           Commission shall allow the acceptance of a permit or permits or approval of  
4           any State agency with respect to subdivisions (a)(1) through (5) of this section  
5           or in lieu of evidence by the applicant. The presumption established by this  
6           subdivision (1) shall only apply to the issues addressed as a part of the terms of  
7           the permit.

8           (B) In the case of permits issued by the Agency of Natural  
9           Resources, technical determinations of the Agency shall be accorded  
10          substantial deference by the District Commissions.

11          (C) The acceptance of such permit or permits shall create a  
12          presumption that the application is not detrimental to the public health and  
13          welfare with respect to the specific requirement for which it is accepted.

14          (2) Municipal permits.

15          (A) The Natural Resources Board may by rule allow a permit or  
16          permits of a specified municipal government with respect to subdivisions  
17          (a)(1) through (7) and (9) and (10) of this section, or a combination of such  
18          permits or approvals, in lieu of evidence by the applicant. The presumption  
19          established by this subdivision shall only apply to the issues addressed as a  
20          part of the terms of the permit.

21          (B) A District Commission, in accordance with rules adopted by the  
22          Board, shall accept determinations issued by a development review board

1 under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review  
2 of municipal impacts.

3 (C) The acceptance of such approval, positive determinations, permit,  
4 or permits shall create a presumption that the application is not detrimental to  
5 the public health and welfare with respect to the specific requirement for which  
6 it is accepted. ~~In the case of approvals and permits issued by the Agency of~~  
7 ~~Natural Resources, technical determinations of the Agency shall be accorded~~  
8 ~~substantial deference by the Commissions.~~ The acceptance of negative  
9 determinations issued by a development review board under the provisions of  
10 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts  
11 shall create a presumption that the application is detrimental to the public  
12 health and welfare with respect to the specific requirement for which it is  
13 accepted. Any determinations, positive or negative, under the provisions of 24  
14 V.S.A. § 4420 shall create presumptions only to the extent that the impacts  
15 under the criteria are limited to the municipality issuing the decision. ~~Such a~~  
16 ~~rule may be revoked or amended pursuant to the procedures set forth in 3~~  
17 ~~V.S.A., chapter 25, the Vermont Administrative Procedure Act.~~

18 (3) Rebutting Presumptions.

19 (A) Except as provided in subdivision (B) of this subdivision (3),  
20 permits may be rebutted by evidence that is relevant and admissible.





1           (1) encourage a municipality to plan and regulate for compact patterns  
2           of development; and

3           (2) encourage development that is consistent with Vermont's land use  
4           goals and smart growth principles by removing Act 250 jurisdiction from  
5           enhanced designated downtowns, new town centers, growth centers,  
6           neighborhood development areas, and village centers.

7           (b) Application and approval. A municipality, by resolution of its  
8           legislative body, may apply to the State Board for enhanced designation for  
9           any designated downtown development district, designated new town center,  
10          designated growth center, designated neighborhood development area, or  
11          designated village center. The State Board shall issue an affirmative  
12          determination on finding that the municipality meets the requirements of  
13          subsection (c) of this section.

14          (c) Enhanced designation requirements.

15           (1) To obtain an enhanced designation under this section, a municipality  
16          must demonstrate that it has each of the following:

17                   (A) an approved designated downtown development district,  
18                   designated new town center, designated growth center, designated  
19                   neighborhood development area, or designated village center;

20                   (B) a municipal plan that is approved in accordance with section  
21          4350 of this title;

1           (C) municipal flood hazard planning, applicable to the entire  
2           municipality, in accordance with section 4382(12) of this title and the  
3           guidelines issued by the Department pursuant to section 2792(d) of this title;

4           (D) flood hazard and river corridor bylaws, applicable to the entire  
5           municipality, that are consistent with the standards established pursuant to 10  
6           V.S.A § 755(b) (flood hazard) and §1428(b) (river corridor);

7           (E) a capital budget and program pursuant to section 4430 of this title  
8           that make substantial investments in the ongoing development of the  
9           designated area, are consistent with the plan's implementation program, and  
10          are consistent with the smart growth principles defined in section 2791(13) of  
11          this title;

12          (F) municipal bylaws that do not include broad exemptions excluding  
13          significant private or public land development from requiring a municipal land  
14          use permit;

15          (2) Designated downtown development districts seeking enhanced  
16          designation shall, in addition to the requirements of subsections (c)(1) through  
17          (6) of this section, also have:

18                (A) urban form bylaws for the enhanced designated center that  
19                further the smart growth principles of this chapter and adequately regulate the  
20                physical form and scale of development and conform to the guidelines  
21                established by the Department; and

1           (B) historic preservation bylaws for established design review  
2           districts, historic districts, or historic landmarks pursuant to 24 V.S.A.  
3           § 4414(1)(E) and (F) for the enhanced designated center that meet State  
4           historic preservation guidelines issued by the Department pursuant to section  
5           2792(d) of this title.

6           (3) Designated new town centers, growth centers, or neighborhood  
7           development areas seeking enhanced designation shall have, in addition to the  
8           requirements of subdivisions (c)(1) through (6) of this section, wildlife habitat  
9           planning bylaws for the enhanced designated center that comply with standards  
10          established by the Department of Fish and Wildlife.

11          (4) Designated village centers seeking enhanced designation shall have,  
12          in addition to the requirements of subsections (c)(1) through (6) of this section:

13               (A) Urban form bylaws for the enhanced designated center that  
14               further the smart growth principles of this chapter and regulate the physical  
15               form and scale of development and conform to the guidelines established by  
16               the Department.

17               (B) Historic preservation bylaws for established design review  
18               districts, historic districts, or historic landmarks pursuant to subdivisions  
19               4414(1)(E) and (F) of this title for the enhanced designated center that meet  
20               State historic preservation guidelines issued by the Department pursuant to  
21               subsection 2792(d) of this title.

1           (C) Permitted water and wastewater systems with the capacity to  
2           support additional development within the enhanced designated center. The  
3           municipality shall have adopted consistent policies, by municipal plan and  
4           ordinance, on the allocation, connection, and extension of water and  
5           wastewater lines that include a defined service area to support the enhanced  
6           designated center.

7           (D) Adequate municipal staff to support coordinated comprehensive  
8           and capital planning, development review, and zoning administration.

9           (5) If any party entitled to notice under subdivision (d)(4)(A) of this  
10          section or any resident of the municipality raises concerns about the  
11          municipality's compliance with the requirements for the underlying  
12          designation, those concerns must be addressed as part of the municipality's  
13          application.

14          (d) Process for issuing determinations of enhanced designation.

15           (1) A preapplication meeting shall be held with Department staff to  
16           review the program requirements. The meeting shall be held in the  
17           municipality unless another location is agreed to by the municipality.

18           (2) An application by the municipality must include the information and  
19           analysis required by the Department's guidelines established pursuant to  
20           section 2792 of this title on how to meet the requirements of subsection (c) of  
21           this section.

1           (3) The Department shall establish a procedure for submission of a draft  
2           application that involves review and comment by all the parties to be noticed in  
3           subdivision (4)(A) of this subsection and shall issue a preapplication memo  
4           incorporating the comments to the applicant after receipt of a draft preliminary  
5           application.

6           (4) After receipt of a complete final application, the State Board shall  
7           convene a public hearing in the municipality to consider whether to issue a  
8           determination of enhanced designation under this section.

9           (A) Notice.

10           (i) At least 35 days in advance of the Board's meeting, the  
11           Department shall provide notice to the municipality and post it on the  
12           Agency's website.

13           (ii) The municipality shall publish notice of the meeting at least 30  
14           days in advance of the Board's meeting in a newspaper of general circulation  
15           in the municipality, and deliver physically or electronically, with proof of  
16           receipt or by certified mail, return receipt requested to the Agency of Natural  
17           Resources, the Natural Resources Board, the Division for Historic  
18           Preservation, the Agency of Agriculture, Food and Markets, the Agency of  
19           Transportation, the regional planning commission, the regional development  
20           corporations, and the entities providing educational, police, and fire services to  
21           the municipality.

1           (iii) The notice shall also be posted by the municipality in or near  
2           the municipal clerk's office and in at least two other designated public places  
3           in the municipality, and on the websites of the municipality and the Agency of  
4           Commerce and Community Development.

5           (iv) The municipality shall also certify in writing that the notice  
6           required by this subsection (d) has been published, delivered, and posted  
7           within the specified time.

8           (B) No defect in the form or substance of any requirements of this  
9           subsection (d) shall invalidate the action of the State Board where reasonable  
10          efforts are made to provide adequate posting and notice. However, the action  
11          shall be invalid when the defective posting or notice was materially misleading  
12          in content. If an action is ruled to be invalid by the Superior Court or by the  
13          State Board itself, the Department shall provide and the municipality shall  
14          issue new posting and notice, and the State Board shall hold a new hearing and  
15          take a new action.

16          (5) The State Board may recess the proceedings on any application  
17          pending submission of additional information. The State Board shall close the  
18          proceedings promptly after all parties have submitted the requested  
19          information.

20          (6) The State Board shall issue its determination in writing. The  
21          determination shall include explicit findings on each of the requirements in  
22          subsection (c) of this section.

1       (e) Review of enhanced designation status.

2           (1) Length of designation. Initial determination of enhanced status may  
3 be made at any time. Thereafter, review of an enhanced designation shall be  
4 concurrent with the next periodic review of the underlying designated  
5 downtown, village center, new town center, growth center, or neighborhood  
6 development area.

7           (2) The State Board, on its motion, may review compliance with the  
8 enhanced designation requirements at more frequent intervals.

9           (3) If at any time the State Board determines that the enhanced  
10 designated area no longer meets the standards for an enhanced designation, it  
11 shall take one of the following actions:

12                   (A) require corrective action within a reasonable time frame; or

13                   (B) terminate the enhanced designation.

14           (4) If the underlying designation is terminated, the enhanced designation  
15 also shall terminate.

16       (f) Appeal.

17           (1) An interested person may appeal any act or decision of the State  
18 Board under this section to the Natural Resources Board within 30 days  
19 following the act or decision.

20           (2) As used in this section, an “interested person” means any one of the  
21 following:



1 3 V.S.A. § 806. When designating an area as an UVRA, the Secretary shall  
2 evaluate the ecological significance of the area, the importance of the area for  
3 habitat connectivity, the importance of the area for high-value forest blocks,  
4 the importance of these areas for contiguous blocks of primary agricultural  
5 soils, the importance and impacts of the designation on Vermont's farm and  
6 forest products economy, and the scenic values associated with these areas.  
7 The Secretary may adopt rules to provide additional guidance to how a  
8 designation is evaluated and the additional resource values to be protected by  
9 the designation. The Secretary shall hold a public hearing convenient to the  
10 geographic area subject to the rulemaking.

11 (2) Prior to filing a proposed rule with the Secretary of State, the  
12 Secretary shall conduct a pre-rulemaking stakeholder process involving, at a  
13 minimum, the owner of record of any land on which a URVA is proposed for  
14 designation. As a part of this process, the Secretary shall notify stakeholders  
15 of the basis of the rulemaking and the effect of the rulemaking on future  
16 development in that area.

17 (3) The Secretary shall not designate a URVA in a designated  
18 downtown, village center, neighborhood development area, growth center, or  
19 new town center designated under 24 V.S.A. chapter 76A.

20 (4) Designation as a URVA shall not affect the terms of any permit  
21 issued prior to the designation of the area as a URVA.

1       Sec. 10. RECREATIONAL TRAILS

2           (a) Findings. The General Assembly finds that it is the policy of the State  
3       to promote the sustainable development of recreational trails that are consistent  
4       with Vermont’s land use goals. Therefore, it is in the public interest to define  
5       “recreational trail” and the requisite jurisdictional triggers for both  
6       “recreational trails” and “Vermont Trail System trails.”

7           (b) Jurisdiction. Jurisdiction over Vermont Trails System trails shall be  
8       established by the rules of the Natural Resources Board. Until those rules are  
9       adopted, jurisdiction over Vermont Trails System trails shall be established  
10       pursuant to 10 V.S.A. § 6001(3)(A)(v). The rules adopted shall also include a  
11       procedure to release jurisdiction over recreational trails and Vermont Trails  
12       System trails, provided, at a minimum:

13           (1) the permittee is in compliance with the permit;

14           (2) the trail corridor has been reclaimed;

15           (3) there is no lasting impact or infrastructure within the trail corridor;

16       and

17           (4) the release of jurisdiction over recreational trails and Vermont Trails

18       System trails shall have no effect on any other State or federal permit,

19       including permits issued pursuant to this chapter, that may regulate the land, or

20       a portion of the land, being released from jurisdiction.

21       Sec. 11. EFFECTIVE DATE

22           This act shall take effect on passage.