

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Appropriations to which was referred House Bill No.
3 926 entitled “An act relating to changes to Act 250” respectfully reports that it
4 has considered the same and recommends that the bill be amended by striking
5 out all after the enacting clause and inserting in lieu thereof the following:

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

7 Sec. 1. 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 and safety, functioning
10 ecosystems that support a diversity of species and economic growth, and
11 Vermont’s tourist, forestry, and agricultural industries. The primary driver of
12 climate change in Vermont and elsewhere is the increase of atmospheric
13 carbon dioxide from the burning of fossil fuels, which has a warming effect
14 that is amplified because atmospheric water vapor, another greenhouse gas,
15 increases as temperature rises. Vermont should minimize its emission of
16 greenhouse gases and, because the climate is changing, ensure that the design
17 and 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:

21 (2) ECOSYSTEM PROTECTION AND UTILIZATION OF NATURAL

1 RESOURCES

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

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

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

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

21 * * * Revisions to State Land Use Law * * *

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

2 CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS

3 Subchapter 1. General Provisions

4 § 6000. PURPOSE; CONSTRUCTION

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

9 § 6001. DEFINITIONS

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

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

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

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

16 * * *

17 (vi) The construction of improvements for commercial, industrial,
18 or residential use at or above the elevation of ~~2,500~~ 2,000 feet.

19 * * *

20 (xi) The construction of improvements for commercial or
21 industrial use within 2,000 feet of a point of access to or exit from the

1 interstate highway system as measured from the midpoint of the
2 interconnecting roadways, unless a regional planning commission has
3 determined, at the request of the municipality where the interchange is located
4 or any municipality with land in the 2,000-foot radius, that municipal
5 ordinances or bylaws applicable to properties around the interchange:

6 (I) Ensure that planned development patterns will maintain the
7 safety and function of the interchange area for all road users, including
8 nonmotorized, for example, by limiting curb cuts, and by sharing parking and
9 access points and parcels will be interconnected to adjoining parcels wherever
10 physically possible.

11 (II) Ensure that development will be undertaken in a way that
12 preserves scenic characteristics both at and beyond the project site. This shall
13 include a determination that site and building design fit the context of the area.

14 (III) Ensure that development does not destroy or compromise
15 necessary wildlife habitat or endangered species.

16 (IV) Ensure that uses allowed in the area will not impose a
17 burden on the financial capacity of a town or the State.

18 (V) Ensure that allowed uses be of a type, scale, and design that
19 complement rather than compete with uses that exist in designated downtowns,
20 village centers, growth centers, or other regional growth areas. Principle retail
21 should be discouraged or prohibited in highway interchange areas.

1 (VI) Ensure that development in this area not establish or
2 contribute to a pattern of strip development. Where strip development already
3 exists, development in this area must be infill that minimizes the characteristics
4 of strip development.

5 (VII) Require site design to use space efficiently by siting
6 buildings close together; minimizing paved surfaces; locating parking to
7 consider aesthetics, neighborhoods, and view sheds; and minimizing the use of
8 one-story buildings.

9 (VIII) Require the permitted uses, patterns of development, and
10 aesthetics of development in these areas to conform with the regional plan and
11 be consistent with the goals of 24 V.S.A. § 4302.

12 (xii) The construction of a road or roads and any associated
13 driveways to provide access to or within a tract of land of more than one acre
14 owned or controlled by a person. For the purposes of determining jurisdiction
15 under this subdivision, any new development or subdivision on a parcel of land
16 that will be provided access by the road and associated driveways is land
17 involved in the construction of the road. Jurisdiction under this subdivision
18 shall not apply unless the length of the road and any associated driveways in
19 combination is greater than 2,000 feet. As used in this subdivision, “roads”
20 shall include any new road or improvement to a Class IV road by a private
21 person, including roads that will be transferred to or maintained by a

1 municipality after their construction or improvement. For the purpose of
2 determining the length of any road and associated driveways, the length of all
3 other roads and driveways within the tract of land constructed within any
4 continuous period of 10 years commencing after July 1, 2020 shall be
5 included. This subdivision shall not apply to a State or municipal road, a
6 utility corridor of an electric transmission or distribution company, or a road
7 used primarily for farming or forestry purposes. The conversion of a road used
8 for farming or forestry purposes that also meets the requirements of this
9 subdivision shall constitute development.

10 * * *

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

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

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

* * *

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

(i) A tract or tracts of land, owned or controlled by a person, ~~which~~ located outside of a designated downtown or neighborhood development area, that the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same District Commission, within any continuous period of five years. In determining the number of lots, a lot shall be counted if any portion is outside such an area and within five miles or within the jurisdictional area of the same District Commission.

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

(iii) A tract or tracts of land, owned or controlled by a person, ~~which~~ that have been partitioned or divided for the purpose of resale into five

1 or more separate parcels of any size within a radius of five miles of any point
2 on any such parcel, and within any period of ten years, by public auction.

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

6 * * *

7 (38) “Connecting habitat” refers to land or water, or both, that links
8 patches of habitat within a landscape, allowing the movement, migration, and
9 dispersal of wildlife and plants and the functioning of ecological processes. A
10 connecting habitat may include recreational trails and improvements
11 constructed for farming, logging, or forestry purposes.

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

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 feet.

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

7 (42) As used in subdivisions (38), (39), and (40) 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” has the same meaning as under section 552 of
12 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) “Greenhouse gas” means carbon dioxide, methane, nitrous oxide,
19 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other
20 chemical or physical substance that is emitted into the air and that the

1 Secretary of Natural Resources or District Commission reasonably anticipates
2 to cause or contribute to climate change.

3 (46) “Technical determination” means a decision that results from the
4 application of scientific, engineering, or other similar expertise to the facts to
5 determine whether activity for which a permit is requested meets the standards
6 for issuing the permit under statute and rule. The term does not include an
7 interpretation of a statute or rule.

8 (47) “Forest-based enterprise” means an enterprise that aggregates forest
9 products from forestry operations and adds value through processing or
10 marketing in the forest products supply chain or directly to consumers through
11 retail sales. “Forest-based enterprise” includes sawmills; veneer mills; pulp
12 mills; pellet mills; producers of firewood, woodchips, mulch and fuel wood;
13 and log and pulp concentration yards. “Forest-based enterprise” does not
14 include facilities that purchase, market, and resell finished goods, such as
15 wood furniture, wood pellets, and milled lumber, without first receiving forest
16 products from forestry operations.

17 (48) “Forest product” means logs, pulpwood, veneer wood, bolt wood,
18 wood chips, stud wood, poles, pilings, biomass, fuel wood, maple sap, and
19 bark.

20 (49) “Environmental justice” means that all people and communities
21 have the right to equal environmental protection under the law and the right to

1 live, work, and play in communities that are safe, healthy, and free of life-
2 threatening conditions.

3 * * *

4 Subchapter 2. Administration

5 * * *

6 § 6022. PERSONNEL

7 (a) Regular personnel. The Board may ~~appoint~~ retain legal counsel,
8 scientists, engineers, experts, investigators, temporary employees, and
9 administrative personnel, as it finds necessary in carrying out its duties, unless
10 the Governor shall otherwise provide and may authorize the District
11 Commissions to retain personnel to assist on matters within its jurisdiction,
12 including oversight and monitoring of permit compliance. The Board shall
13 ensure that District Commissions and district coordinators have the resources
14 necessary to perform their duties, including access to legal resources and
15 training.

16 (b) Personnel for particular proceedings.

17 (1) The Board may authorize or retain legal counsel, official
18 stenographers, expert witnesses, advisors, temporary employees, and other
19 research services:

20 (A) to assist the Board in any proceeding before it under this
21 chapter; and

1 (B) to monitor compliance with any formal opinion of the Board
2 or a District Commission.

3 (2) The personnel authorized by this section shall be in addition to the
4 regular personnel of the Board. The Board shall fix the amount of
5 compensation and expenses to be paid to such additional personnel.

6 * * *

7 § 6031. ETHICAL STANDARDS

8 (a) The Chair and members of the Board and the Chair and members of
9 each District Commission shall comply with the following ethical standards:

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

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

15 (A) undermining his or her independence or impartiality of action;

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

17 (C) giving preferential treatment to any private interest on the basis
18 of unfair considerations;

19 (D) giving preferential treatment to any family member or member of
20 his or her household;

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

3 (F) adversely affecting the confidence of the public in the integrity of
4 the District Commission.

5 (4) The District Commission shall not initiate, permit, or consider ex
6 parte communications or consider other communications made to the District
7 Commission outside the presence of the parties concerning a pending or
8 impending proceeding, except that:

9 (A) Where circumstances require, ex parte communications for
10 scheduling, administrative purposes or emergencies that do not deal with
11 substantive matters or issues on the merits are authorized, provided:

12 (i) the District Commission reasonably believes that no party will
13 gain a procedural or tactical advantage as a result of the ex parte
14 communication, and

15 (ii) the District Commission makes provision promptly to notify
16 all other parties of the substance of the ex parte communication and allows an
17 opportunity to respond.

18 (B) The District Commission may obtain the advice of a disinterested
19 expert on the law applicable to a proceeding if the District Commission gives
20 notice to the parties of the person consulted and the substance of the advice
21 and affords the parties reasonable opportunity to respond.

1 (C) The District Commission may consult with personnel whose
2 function is to aid the District Commission in carrying out its adjudicative
3 responsibilities.

4 (D) The District Commission may, with the consent of the parties,
5 confer separately with the parties and their lawyers in an effort to mediate or
6 settle matters pending before the District Commission.

7 (E) The District Commission may initiate or consider any ex parte
8 communications when expressly authorized by law to do so.

9 * * *

10 Subchapter 4. Permits

11 § 6081. PERMITS REQUIRED; EXEMPTIONS

12 * * *

13 (1)(1) By no later than January 1, 1997, any owner of land or mineral rights
14 or any owner of slate quarry leasehold rights on a parcel of land on which a
15 slate quarry was located as of June 1, 1970, may register the existence of the
16 slate quarry with the District Commission and with the clerk of the
17 municipality in which the slate quarry is located, while also providing each
18 with a map which indicates the boundaries of the parcel which contains the
19 slate quarry.

20 * * *

1 (6) Registered slate quarries shall be added to the Agency of Natural
2 Resources Natural Resource Atlas.

3 * * *

4 (o) If a designation pursuant to 24 V.S.A. chapter 76A is removed,
5 subsection (a) of this section shall apply to any subsequent substantial change
6 to a ~~priority housing project~~ development or subdivision that was originally
7 exempt pursuant to subdivision 6001(3)(A)(iv)(I) of this title or subsection (p)
8 of this section on the basis of that designation.

9 (p)(1) No permit or permit amendment is required for any subdivision,
10 development, or change to a project that is located entirely within a downtown
11 development district designated pursuant to 24 V.S.A. § 2793 ~~if the change~~
12 ~~consists exclusively of any combination of mixed use and mixed income~~
13 ~~housing, and the cumulative changes within any continuous period of five~~
14 ~~years, commencing on or after the effective date of this subsection, remain~~
15 ~~below any applicable jurisdictional threshold specified in subdivision~~
16 ~~6001(3)(A)(iv)(I) of this title~~ or a neighborhood development area designated
17 pursuant to 24 V.S.A. § 2793e. Upon receiving notice and a copy of the permit
18 issued by the appropriate municipal panel pursuant to 24 V.S.A. § 4460(f) a
19 previously issued permit for a development or subdivision located in a
20 downtown development area or a new neighborhood area shall be
21 extinguished.

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~~(v) A permit or permit amendment shall not be required for a development or subdivision in a designated downtown development district for which the District Commission has issued positive findings and conclusions under section 6086b of this title on all the criteria listed in that section. A person shall obtain new or amended findings and conclusions from the District Commission under section 6086b of this title prior to commencement of a material change, as defined in the rules of the Board, to a development or subdivision for which the District Commission has issued such findings and conclusions. A person may seek a jurisdictional opinion under section 6007 of this title concerning whether such a change is a material change. [Repealed.]~~

* * *

§ 6083a. ACT 250 FEES

* * *

(5) For projects involving the review of a master plan, the fee established in subdivision (1) of this section shall be due for any portion of the proposed project for which construction approval is sought and a fee equivalent to \$0.10 per \$1,000.00 of total estimated construction costs in current dollars in addition to the fee established in subdivision (1) of this subsection for any portion of the project seeking construction approval shall be due for all other portions of the proposed project. If construction approval is

1 sought in future permit applications, the fee established in subdivision (1) of
2 this subsection shall be due, except to the extent that it is waived pursuant to
3 subsection (f) of this section.

4 (6) In no event shall a permit application fee exceed \$165,000.00.

5 (b) Notwithstanding the provisions of subsection (a) of this section, there
6 shall be a minimum fee of \$187.50 for original applications and \$62.50 for
7 amendment applications, in addition to publication and recording costs. These
8 costs shall be in addition to any other fee established by statute, unless
9 otherwise expressly stated.

10 (c) Fees shall not be required for projects undertaken by municipal
11 agencies or by State governmental agencies, except for publication and
12 recording costs.

13 ~~(d) Neighborhood development area fees. Fees for residential development~~
14 ~~in a Vermont neighborhood or neighborhood development area designated~~
15 ~~according to 24 V.S.A. § 2793e shall be no more than 50 percent of the fee~~
16 ~~otherwise charged under this section. The fee shall be paid within 30 days after~~
17 ~~the permit is issued or denied. [Repealed.]~~

18 (e) A written request for an application fee refund shall be submitted to the
19 District Commission to which the fee was paid within 90 days of the
20 withdrawal of the application.

21 * * *

1 (4) District Commission decisions regarding application fee refunds
2 may be appealed to the Natural Resources Board in accordance with Board
3 rules.

4 * * *

5 (f) ~~In the event that an application involves a project or project impacts that~~
6 ~~previously have been reviewed, the~~ An applicant may petition the ~~Chair of the~~
7 District Commission to waive all or part of the application fee. ~~If an~~
8 ~~application fee was paid previously in accordance with subdivisions (a)(1)~~
9 ~~through (4) of this section, the Chair may waive all or part of the fee for a new~~
10 ~~or revised project if the Chair finds that the impacts of the project have been~~
11 ~~reviewed in an applicable master permit application, or that the project is not~~
12 ~~significantly altered from a project previously reviewed, or that there will be~~
13 ~~substantial savings in the review process due to the scope of review of the~~
14 ~~previous applications.~~

15 (1) In reviewing this petition, the District Commission shall consider the
16 following:

17 (A) Whether a portion of the project's impacts have been reviewed in
18 a previous permit.

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

1 (C) Whether the applicant relies on any presumptions permitted
2 under subsection 6086(d) of this title and has, at the time of the permit
3 application, already obtained the permits necessary to trigger the presumptions.
4 If a presumption is rebutted, the District Commission may require the applicant
5 to pay the previously waived fee.

6 (D) Whether the applicant has engaged in any preapplication
7 planning that will result in a decrease in the amount of time the District
8 Commission will have to consider the application.

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

12 (3) If the classification of an application is changed from an
13 administrative amendment or minor application to a major application, the
14 Board may require the applicant to pay the previously waived fee.

15 (g) A Commission or the Natural Resources Board may require any
16 permittee to file a certification of actual construction costs and may direct the
17 payment of a supplemental fee in the event that an application understated a
18 project's construction costs. Failure to file a certification or to pay a
19 supplemental fee shall be grounds for permit revocation.

20 * * *

1 § 6084. NOTICE OF APPLICATION; PREAPPLICATION PROCESS;

2 HEARINGS; COMMENCEMENT OF REVIEW

3 (a) The plans for the construction of any development or subdivision
4 subject to the permitting requirements of this chapter must be submitted by the
5 applicant to the District Commission, municipal and regional planning
6 commissions, affected State agencies, and adjoining landowners not less than
7 30 days prior to filing an application under this chapter, unless the municipal
8 and regional planning commissions and affected State agencies waive this
9 requirement.

10 (1) The District Commission may hold a meeting on the proposed plans
11 and the municipal or regional planning commission may take one or more of
12 the following actions:

13 (A) make recommendations to the applicant within 30 days;

14 (B) once the application is filed with the District Commission, make
15 recommendations to the District Commission by the deadline established in the
16 applicable provision of this section, Board rule, or scheduling order issued by
17 the District Commission.

18 (2) The application shall address the substantive written comments and
19 recommendations made by the planning commissions related to the criteria of
20 subsection 6086(a) of this title received by the applicant and the substantive

1 oral comments related to those criteria made at a public hearing under
2 subdivision (1) of this subsection.

3 (3) This subsection shall not apply to a project that has been designated
4 as using simplified procedures pursuant to subdivision 6025(b)(1) of this title
5 or an administrative amendment.

6 (b) ~~On or before the date of~~ Upon the filing of an application with the
7 District Commission, the ~~applicant~~ District Commission shall send, by
8 electronic means, notice ~~and a copy~~ of the ~~initial~~ application to the owner of
9 the land if the applicant is not the owner; the municipality in which the land is
10 located; the municipal and regional planning commissions for the municipality
11 in which the land is located; the Vermont Agency of Natural Resources; and
12 any adjacent Vermont municipality and municipal and regional planning
13 commission if the land is located on a municipal or regional boundary. The
14 applicant shall furnish to the District Commission ~~the names of those furnished~~
15 notice by affidavit, and shall ~~post,~~ send by electronic means a copy of the
16 notice ~~in~~ to the town clerk's office of the town or towns in which the project
17 lies. The town clerk shall post the notice in the town office. The applicant
18 shall also provide a list of adjoining landowners to the District Commission.
19 Upon request and for good cause, the District Commission may authorize the
20 applicant to provide a partial list of adjoining landowners in accordance with
21 Board rules.

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~~(f)~~(g) This subsection concerns an application for a new permit amendment to change the conditions of an existing permit or existing permit amendment in order to authorize the construction of a priority housing project described in subdivision 6081(p)(2) of this title.

* * *

~~(g)~~(h) When an application concerns the construction of improvements for one of the following, the application shall be processed as a minor application in accordance with subsections ~~(b)~~(c) through ~~(e)~~(f) of this section:

* * *

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

1 the emission, if any, of air contaminants by the development or subdivision
2 will meet any applicable requirement under the Clean Air Act, 42 U.S.C.
3 chapter 85, and the air pollution control regulations of the Department of
4 Environmental Conservation.

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

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

18 (i) headwaters of watersheds characterized by steep slopes and
19 shallow soils; or

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

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

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

3 (v) areas supplying significant amounts of recharge waters to
4 aquifers.

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

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

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

20 (i) the development or subdivision of lands within a ~~floodway~~
21 flood hazard area or river corridor will not restrict or divert the flow of flood

1 waters, cause or contribute to fluvial erosion, and endanger the health, safety,
2 and welfare of the public or of riparian owners during flooding; ~~and~~

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

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

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

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

19 (ii) allow continued access to the waters and the recreational
20 opportunities provided by the waters;

1 (iii) retain or provide vegetation ~~which~~ that screen the
2 development or subdivision from the waters; and

3 (iv) stabilize the bank from erosion, as necessary, with vegetation
4 cover.

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

9 ~~(2)~~(3) Water supply.

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

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

14 * * *

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

19 (B) ~~As appropriate, will~~ Will incorporate transportation demand
20 management strategies and provide safe use, access, and connections to
21 adjacent lands and facilities and to existing and planned pedestrian, bicycle,

1 and transit networks and services. ~~In determining appropriateness under this~~
2 ~~subdivision (B)~~ However, the District Commission ~~shall consider whether may~~
3 decline to require such a strategy, access, or connection ~~constitutes a measure~~
4 if it finds that a reasonable person would ~~take~~ not undertake the measure given
5 the type, scale, and transportation impacts of the proposed development or
6 subdivision.

7 * * *

8 (8) Ecosystem protection; scenic beauty; historic sites.

9 (A) Will not have an undue adverse effect on the scenic or natural
10 beauty of the area, aesthetics, or historic sites ~~or rare and irreplaceable natural~~
11 ~~areas.~~

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

17 (i) the economic, social, cultural, recreational, or other benefit to
18 the public from the development or subdivision will ~~not~~ outweigh the
19 economic, environmental, or recreational loss to the public from the
20 destruction or imperilment of the habitat or species; ~~or~~

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

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

7 (C) Will not result in an undue adverse impact on forest blocks,
8 connecting habitat, or rare and irreplaceable natural areas. If a project as
9 proposed would result in an undue adverse impact, a permit may only be
10 granted if effects are avoided, minimized, and mitigated in accordance with
11 rules adopted by the Board.

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

17 * * *

18 (F) Energy conservation and efficiency. A permit will be granted
19 when it has been demonstrated by the applicant that, in addition to all other
20 applicable criteria, the planning and design of the subdivision or development
21 reflect the principles of energy conservation and energy efficiency, including

1 reduction of greenhouse gas emissions from the use of energy, and incorporate
2 the best available technology for efficient use or recovery of energy. An
3 applicant seeking an affirmative finding under this criterion shall provide
4 evidence, by certification and established through inspection, that the
5 subdivision or development complies with the applicable building energy
6 standards and stretch codes under 30 V.S.A. § 51 or 53.

7 * * *

8 (K) Development affecting public investments. A permit will be
9 granted for the development or subdivision of lands adjacent to governmental
10 and public utility facilities, services, and lands, including highways, airports,
11 waste disposal facilities, office and maintenance buildings, fire and police
12 stations, universities, schools, hospitals, prisons, jails, electric generating and
13 transmission facilities, oil and gas pipe lines, parks, hiking trails ~~and~~, forest
14 and game lands, lands conserved under chapter 155 of this title, and facilities
15 or lands protected in perpetuity and funded by the Vermont Housing and
16 Conservation Board under chapter 15 of this title, when it is demonstrated that,
17 in addition to all other applicable criteria, the development or subdivision will
18 not unnecessarily or unreasonably endanger the public or quasi-public
19 investment in the facility, service, or lands, or materially jeopardize or interfere
20 with the function, efficiency, or safety of, or the public's use or enjoyment of
21 or access to the facility, service, or lands.

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* * *

(M) Climate adaptation. A permit will be granted for the development or subdivision when it has been demonstrated that, in addition to all other applicable criteria, the development or subdivision will employ building orientation, site and landscape design, and building design that are sufficient to enable the improvements to be sited and constructed, including buildings, roads, and other infrastructure, to withstand and adapt to the effects of climate change, including extreme temperature events, wind, and precipitation reasonably projected at the time of application.

(N) Environmental justice. A permit will be granted for the development or subdivision when it has been demonstrated by the applicant that, in addition to all other applicable criteria, no group of people or municipality will bear a disproportionate share of the negative environmental consequences of the development or subdivision.

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

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

1 (B) The District Commission shall decline to apply a provision of a
2 local or regional plan only if it is persuaded that the provision does not afford a
3 person of ordinary intelligence with a reasonable opportunity to understand
4 what the provision directs, requires, or proscribes.

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

9 * * *

10 (c) Permit Conditions.

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

1 (2) Permit conditions on a forest-based enterprise.

2 (A) A permit condition that sets hours of operation for a forest-based
3 enterprise shall only be imposed to mitigate an impact under subdivision
4 (a)(1), (5), or (8) of this section.

5 (B) Unless an impact under subdivision (a)(1) or (5) of this section
6 would result, a permit issued to a forest-based enterprise shall allow the
7 enterprise to ship and receive forest products outside regular hours of
8 operation. These permits shall allow for deliveries of forest products from
9 forestry operations to the enterprise outside of permitted hours of operation,
10 including nights, weekends, and holidays, for a minimum of 60 days per year.

11 (C) In making a determination under this subdivision (2) as to
12 whether an impact exists, the District Commission shall consider the
13 enterprise's role in sustaining forestland use and the impact of the permit
14 condition on the forest-based enterprise. Conditions shall impose the
15 minimum restriction necessary to address the undue adverse impact.

16 (3) Permit conditions on the delivery of wood heat fuels. A permit
17 issued to a forest-based enterprise that produces wood chips, pellets, cord
18 wood, or other fuel wood used for heat shall allow shipment of that fuel wood
19 from the enterprise to the end user outside permitted hours of operation,
20 including nights, weekends, and holidays, from October 1 through April 30 of
21 each year.

1 (4) Forest-based enterprises holding a permit may request an
2 amendment to existing permit conditions related to hours of operation and
3 seasonal restrictions to be consistent with subdivisions (2) and (3) of this
4 subsection. Requests for condition amendments under this subsection shall not
5 be subject to Act 250 Rule 34E.

6 (d) Other permits and approvals; presumptions. The Natural Resources
7 Board ~~may by rule~~ shall allow the acceptance of a permit or permits or
8 approval of any State agency with respect to subdivisions (a)(1) through (5) of
9 this section or a permit or permits of a specified municipal government with
10 respect to subdivisions (a)(1) through (7) and (9) and (10) of this section, or a
11 combination of such permits or approvals, in lieu of evidence by the applicant.
12 ~~A District Commission, in accordance with rules adopted by the Board, shall~~
13 ~~accept determinations issued by a development review board under the~~
14 ~~provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of~~
15 ~~municipal impacts.~~ The acceptance of such approval, ~~positive determinations,~~
16 permit, or permits shall create a presumption that the application is not
17 detrimental to the public health and welfare with respect to the specific
18 requirement for which it is accepted. In the case of approvals and permits
19 issued by the Agency of Natural Resources, technical determinations of the
20 Agency shall be accorded substantial deference by the Commissions. ~~The~~
21 ~~acceptance of negative 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 shall create a presumption that the application is~~
3 ~~detrimental to the public health and welfare with respect to the specific~~
4 ~~requirement for which it is accepted. Any determinations, positive or negative,~~
5 ~~under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the~~
6 ~~extent that the impacts under the criteria are limited to the municipality issuing~~
7 ~~the decision.~~ Such a rule may be revoked or amended pursuant to the
8 procedures set forth in ~~3 V.S.A., chapter 25,~~ the Vermont Administrative
9 Procedure Act.

10 (1) The rules adopted by the Board shall not approve the acceptance of a
11 permit or approval of such an agency or a permit of a municipal government
12 unless it satisfies the appropriate requirements of subsection (a) of this section.

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

15 (3) The District Commission, in accordance with rules adopted by the
16 Board, shall accept determinations issued by a development review board
17 under the provisions of 24 V.S.A. § 4420, with respect to local review of
18 municipal impacts under criteria of this section. The acceptance of such a
19 determination, if positive, shall create a presumption that the application is not
20 detrimental to the public health and welfare with respect to the specific
21 requirement for which it is accepted and, if negative, shall create a

1 presumption that the application is so detrimental. Any determinations,
2 positive or negative, under the provisions of 24 V.S.A. § 4420 shall create
3 presumptions only to the extent that the impacts under the criteria are limited
4 to the municipality issuing the decision. If a municipality fails to respond to a
5 request by the applicant within 90 days as to the impacts related to subdivision
6 (a)(6) or (7), the application will be presumed not to have an unreasonable
7 burden on educational, municipal, or governmental services.

8 * * *

9 § 6087. DENIAL OF APPLICATION

10 (a) No application shall be denied by the District Commission unless it
11 finds the proposed subdivision or development detrimental to the public health,
12 safety, or general welfare.

13 * * *

14 (d) The District Commission may deny an application without prejudice if
15 the applicant fails to respond to an incomplete determination or recess order
16 within six months of its issuance.

17 § 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

18 (a) The initial burden of production, to produce sufficient evidence for the
19 District Commission to make a factual determination, shall be on the applicant
20 with respect to subdivisions 6086(a)(1) through (10) of this title.

1 permits issued under this chapter shall be for an indefinite term, ~~as long as~~
2 provided there is compliance with the conditions of the permit.

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

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

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

13 (A) The use of the land as of the date of the application is not the
14 same as the use of the land that caused the obligation to obtain a permit under
15 this chapter or the municipality where the land is located has adopted
16 permanent zoning and subdivision bylaws, but had not when the permit was
17 issued.

18 (B) The use of the land as of the date of the application does not
19 constitute development or subdivision as defined in section 6001 of this title
20 and would not require a permit or permit amendment but for the fact that the
21 land is already subject to a permit under this chapter.

1 (C) The permittee or permittees are in compliance with the permit
2 and their obligations under this chapter.

3 (2) It shall be a condition of each affirmative decision under this
4 subsection that a subsequent proposal of a development or subdivision on the
5 land to which the decision applies shall be subject to this chapter as if the land
6 had never previously received a permit under the chapter.

7 (3) An application for a decision under this subsection shall be made on
8 a form prescribed by the Board. The form shall require evidence
9 demonstrating that the application complies with subdivisions (1)(A)
10 through (C) of this subsection. The application shall be processed in the
11 manner described in section 6084 of this title and may be treated as a minor
12 application under that section. In determining whether to treat as minor an
13 application under this subsection, the Board shall apply the criteria of this
14 subsection and not of subsection 6086(a) of this title.

15 * * *

16 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

17 * * *

18 (c) Mitigation and offsets for forest-based enterprises. Notwithstanding
19 any provision of this chapter to the contrary, a conversion of primary
20 agricultural soils by a forest-based enterprise permitted under this chapter shall

1 be entitled to a ratio of 1:1 protected acres to acres of affected primary
2 agricultural soil.

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
18 30 V.S.A. § 248(b)(5) and when commenting on or providing
19 recommendations under chapter 151 of this title to District Commissions on
20 other projects.

1 (c) The Secretary shall establish and maintain written procedures that
2 include a process and science-based criteria for updating resource maps
3 developed under subsection (a) of this section. Before establishing or revising
4 these procedures, the Secretary shall provide opportunities for affected parties
5 and the public to submit relevant information and recommendations.

6 * * * Designated Center Appeal * * *

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

8 § 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

9 (a) A person aggrieved by a designation decision of the State
10 Board under this chapter are not subject to appeal section 2793 or 2793e of this
11 title may appeal to the Natural Resources Board established under 10 V.S.A.
12 chapter 151 within 30 days of the decision.

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

1 * * * Regional and Municipal Planning * * *

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

3 (f) A regional plan or amendment shall be adopted by not less than a
4 60 percent vote of the commissioners representing municipalities, in
5 accordance with the bylaws of the regional planning commission, and
6 immediately submitted to the legislative bodies of the municipalities that
7 comprise the region.

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

14 (2) Upon adoption, the regional planning commission shall submit the
15 plan or amendment to the Natural Resources Board established under
16 10 V.S.A. chapter 151, which shall approve the plan or amendment if it
17 determines that the plan or amendment is consistent with the goals of section
18 4302 of this title. The plan or amendment shall take effect on the issuance of
19 such approval. The Board shall issue its decision within 30 days after
20 receiving the plan or amendment.

21 * * *

1 Sec. 7. 24 V.S.A. § 4382 is amended to read:

2 § 4382. THE PLAN FOR A MUNICIPALITY

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

7 * * *

8 Sec. 8. 24 V.S.A. § 4460 is amended to read:

9 § 4460. APPROPRIATE MUNICIPAL PANELS

10 * * *

11 (f)(1) This subsection shall apply to a subdivision or development that:

12 (A) was previously permitted pursuant to 10 V.S.A. chapter 151;

13 (B) is located in a downtown development district or neighborhood
14 development area designated pursuant to chapter 76A of this title; and

15 (C) has applied for a permit or permit amendment required by zoning
16 regulations or bylaws adopted pursuant to this subchapter.

17 (2) The appropriate municipal panel reviewing an application for a
18 municipal permit or permit amendment pursuant to this subsection shall
19 include conditions contained within a permit previously issued pursuant to
20 10 V.S.A. chapter 151 unless the panel determines that the permit condition
21 pertains to any of the following:

- 1 (A) the construction phase of the project that has already been
2 completed;
- 3 (B) compliance with another State permit that has independent
4 jurisdiction that addresses the condition in the previously issued permit;
- 5 (C) federal or State law that is no longer in effect or applicable;
- 6 (D) an issue that is addressed by municipal regulation, and the project
7 will meet the municipal standards; and
- 8 (E) a physical or use condition that is no longer in effect or
9 applicable, or that will no longer be in effect or applicable once the new project
10 is approved.
- 11 (3) After issuing or amending a permit containing conditions pursuant to
12 this subsection, the appropriate municipal panel shall provide notice and a
13 copy of the permit to the Natural Resources Board.
- 14 (4) The appropriate municipal panel’s determinations shall be made
15 following notice and a public hearing as provided in subdivision 4464(a)(1) of
16 this title and to those persons requiring notice pursuant to 10 V.S.A. § 6084(b).
17 The notice shall explicitly reference the existing Act 250 permit.
- 18 (5) The appropriate municipal panel’s decision shall be issued in accord
19 with subsection 4464(b) of this title and shall include specific findings with
20 respect to its determinations pursuant to subdivision (f)(2) of this section.

1 (6) Any final action by the appropriate municipal panel affecting a
2 condition of a permit previously issued pursuant to 10 V.S.A. chapter 151 shall
3 be recorded in the municipal land records.

4 Sec. 9. REPEAL

5 10 V.S.A. § 6086b (downtown development; findings) is repealed.

6 * * * River Permits * * *

7 Sec. 10. 10 V.S.A. § 754 is amended to read:

8 § 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM
9 MUNICIPAL REGULATION

10 (a) Rulemaking authority.

11 (1) On or before November 1, 2014, the Secretary shall adopt rules
12 pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuance
13 and enforcement of permits applicable to:

14 ~~(i)~~(A) uses exempt from municipal regulation that are located
15 within a flood hazard area or river corridor of a municipality that has adopted a
16 flood hazard bylaw or ordinance under 24 V.S.A. chapter 117; and

17 ~~(ii)~~(B) State-owned and State-operated institutions and facilities
18 that are located within a flood hazard area or river corridor.

19 (2) On or before November 1, 2022, the Secretary shall adopt rules
20 pursuant to 3 V.S.A. chapter 25 that designate highest priority river corridors
21 and establish requirements for the issuance and enforcement of permits

1 applicable to uses located in highest priority river corridors. Highest priority
2 river corridors are those that provide or have the potential to provide critical
3 floodwater storage or flood energy dissipation thereby protecting adjacent and
4 downstream lands and property that are highly vulnerable to flood-related
5 inundation and erosion.

6 (3) The Secretary shall not adopt rules under this subsection that
7 regulate agricultural activities without the consent of the Secretary of
8 Agriculture, Food and Markets, provided that the Secretary of Agriculture,
9 Food and Markets shall not withhold consent under this subdivision when lack
10 of such consent would result in the State's noncompliance with the National
11 Flood Insurance Program.

12 ~~(3)~~(4) The Secretary shall seek the guidance of the Federal Emergency
13 Management Agency in developing and drafting the rules required by this
14 section in order to ensure that the rules are sufficient to meet eligibility
15 requirements for the National Flood Insurance Program.

16 * * *

17 (d) General permit. The rules authorized by this section may establish
18 requirements for a general permit to implement the requirements of this
19 section, including authorization under the general permit to conduct a specified
20 use ~~exempt from municipal regulation~~ subject to regulation under this section

1 without notifying or reporting to the Secretary or an agency delegated under
2 subsection (g) of this section.

3 * * *

4 (f)(1) Permit requirement.

5 (A) A person shall not commence or conduct a use exempt from
6 municipal regulation in a flood hazard area or river corridor in a municipality
7 that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A.
8 chapter 117 or commence construction of a State-owned and State-operated
9 institution or facility located within a flood hazard area or river corridor,
10 without a permit issued under the rules required under subsection (a) of this
11 section by the Secretary or by a State agency delegated permitting authority
12 under subsection (g) of this section. When an application is filed under this
13 section, the Secretary or delegated State agency shall proceed in accordance
14 with chapter 170 of this title.

15 (B) Beginning on November 1, 2021, a person shall not commence
16 construction of a development or subdivision that is subject to a permit under
17 chapter 151 of this title without a permit issued pursuant under the rules
18 required under subsection (a) of this section by the Secretary or by a State
19 agency delegated permitting authority under subsection (g) of this section.

20 (C) Beginning on November 1, 2023, a person shall not commence or
21 conduct a use located in a highest priority river corridor without a permit

1 issued pursuant under the rules required under subsection (a) of this section by
2 the Secretary or by a State agency delegated permitting authority under
3 subsection (g) of this section.

4 * * * Racial Equity Review * * *

5 Sec. 11. IMPACTS ON RACIAL EQUITY AND DIVERSITY; REVIEW

6 (a) Pursuant to the duties and powers established under 3 V.S.A. chapter
7 68, the Executive Director of Racial Equity, in cooperation with the Racial
8 Equity Advisory Panel and the Human Rights Commission, shall conduct a
9 comprehensive review of the processes, procedures, and language of 10 V.S.A.
10 chapter 151 (Act 250) to assess the extent to which Act 250 has contributed to
11 adverse impacts on racial equity and diversity within the State. The review
12 shall:

13 (1) identify the impacts of acts or decisions made pursuant to Act 250 on
14 inequities in home ownership, land ownership, and land distribution within the
15 State;

16 (2) measure the extent to which minority populations in the State have
17 incurred disproportional environmental impacts due to acts or decisions of the
18 State pursuant to Act 250;

19 (3) assess the capability of the current public participation processes,
20 notice requirements, and appointment processes under Act 250 to fairly
21 represent the interests of minority populations within the State; and

1 (4) recommend legislative changes to Act 250 necessary to achieve the
2 goals of racial equity and diversity representation for minority population.

3 (b) On or before October 15, 2021, the Executive Director of Racial Equity
4 shall report to the General Assembly with its findings and any
5 recommendations for legislative action.

6 * * * Planning Review * * *

7 Sec. 12. VERMONT REGIONAL AND MUNICIPAL PLANNING REVIEW

8 (a) On or before December 15, 2020, the Natural Resources Board, in
9 consultation with the Agency of Commerce and Community Development,
10 shall submit a draft report, with recommendations, that addresses:

11 (1) How Sec. 7 of 1973 Acts and Resolves No. 85 (Capability and
12 Development Plan Findings) should be incorporated into 10 V.S.A. chapter
13 151 and what changes should be made, if any, to the Capability and
14 Development Plan Findings.

15 (2) How the State should update the Capability and Development Plan
16 authorized by 10 V.S.A. chapter 151, subchapter 3. If the recommendation is
17 to update the Capabilities and Development Plan, the report shall provide a
18 schedule and budget for the proposed update.

19 (3) How 10 V.S.A. chapter 151 should require the creation of Capability
20 and Development maps. If the recommendation is to require the creation of
21 Capability and Development maps, the report shall identify the resources and

1 land uses to be mapped and provide a schedule and budget for the proposed
2 update.

3 (4) How Capability and Development Plan Findings, the Capability and
4 Development Plan, and Capability and Development maps would be used in
5 permitting under 10 V.S.A. chapter 151 and how these would relate to the
6 criteria considered under 10 V.S.A. § 6086(a).

7 (5) Whether designations of village centers, growth centers, and new
8 town centers should be appealable. If these designations are appealable, which
9 tribunal should hear the appeal.

10 (b) The Natural Resources Board shall have a public comment period of at
11 least 30 days on the draft report required by subsection (a) of this section. The
12 Board shall hold at least one public informational meeting on the draft report.
13 Notice provided by the Board shall include affected State agencies,
14 municipalities, regional planning commissions, the Vermont Planners
15 Association, the Vermont Planning and Development Association, and other
16 interested persons.

17 (c) On or before March 1, 2021, the Natural Resources Board shall provide
18 a final report to the House Committee on Natural Resources, Fish, and Wildlife
19 and the Senate Committee on Natural Resources and Energy. The final report
20 shall incorporate recommendations from the public engagement process under

1 subsection (b) of this section and shall contain a response to stakeholder
2 comments as a part of the final report.

3 * * * Permit Fee Review * * *

4 Sec. 13. ACT 250 PERMIT FEE REVIEW

5 On or before December 15, 2020, the Secretary of Administration shall
6 submit to the House Committees on Appropriations, on Natural Resources,
7 Fish, and Wildlife, and on Ways and Means and the Senate Committees on
8 Appropriations, on Natural Resources and Energy, and on Finance a review of
9 the Act 250 permit program and fees. The review shall include the following:

10 (1) the workload of the Natural Resources Board,

11 (2) whether the Natural Resources Board has sufficient staff to
12 administer the Act 250 program,

13 (3) the sufficiency of the current Act 250 permit fee structure to cover
14 agency work done on Act 250 permit applications;

15 (4) the possibility of allocating Act 250 permit fees to other State
16 agencies; and

17 (5) the possibility of State agencies directly charging applicants for
18 work done on Act 250 permit applications.

19 * * * Revision Authority; Rulemaking; Effective Dates * * *

20 Sec. 14. REFERENCES; REVISION AUTHORITY

1 (a) In 10 V.S.A. § 6001 as amended by Sec. 3 of this act, the Office of
2 Legislative Council shall:

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

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

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

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

11 (2) in subdivision (a)(6): Educational services.

12 (3) in subdivision (a)(7): Local governmental services.

13 (4) in subsection (b): Partial findings.

14 (5) in subsection (e): Temporary improvements; film or TV.

15 (6) in subsection (f): Stay of construction.

16 Sec. 15. CRITERION 8(C) RULEMAKING

17 (a) The Natural Resources Board (Board), in consultation with the Agency
18 of Natural Resources shall adopt rules to implement the requirements for the
19 administration of 10 V.S.A. § 6086(a)(8)(C). Rules adopted by the Board shall
20 include:

1 (1) How forest blocks and connecting habitat are further defined,
2 including their size, location, and function, which may include:

3 (A) information that will be available to the public to determine
4 where forest blocks and connecting habitat are located; or

5 (B) advisory mapping resources, how they will be made available,
6 how they will be used, and how they will be updated.

7 (2) Standards establishing how fragmentation of forest block or
8 connecting habitat is avoided or minimized, which may include steps to
9 promote proactive site design of buildings, roadways and driveways, utility
10 location, and location relative to existing features such as roads, tree lines and
11 fence lines.

12 (3) Criteria to identify when a forest block or connecting habitat is
13 eligible for mitigation.

14 (4) Standards for how impacts to a forest block or connecting habitat
15 may be mitigated. Standards may include:

16 (A) appropriate ratios for compensation;

17 (B) appropriate forms of compensation such as conservation
18 easements, fee interests in land, and other forms of compensation; and

19 (C) appropriate uses of on-site and off-site mitigation.

1 (b) The Board shall convene a working group to provide input to the rule
2 prior to prefiling with the Interagency Committee on Administrative Rules.

3 The Board shall convene the working group on or before September 1, 2020.

4 (c) The Board shall file a final proposed rule with the Secretary of State
5 and Legislative Committee on Administrative Rules on or before September 1,
6 2021.

7 Sec. 16. EFFECTIVE DATES

8 This act shall take effect on passage, except that 10 V.S.A. § 6086(a)(8)
9 (Ecosystem protection; scenic beauty; historic sites) shall take effect on
10 September 1, 2021.

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15 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE