

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

2 Subchapter 1: General Provisions

3 § 6001. DEFINITIONS

4 In this chapter:

5 (1) "Board" means the Natural Resources Board.

6 (2) "Capability and Development Plan" means the Plan prepared pursuant to section 6042 of this
7 title.

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

9 * * *

10 (v) The construction of improvements on a tract of land involving more than 10 acres that is to
11 be used for municipal, county, or State purposes. In computing the amount of land involved;

12 (I) land shall be included that is incident to the use such as lawns, parking areas, roadways,
13 leaching fields and accessory buildings.

14 (II) land that was previously disturbed as the result of construction of a transportation
15 facility shall be excluded provided that the facility subject to this exclusion is a transportation
16 facility, the project is funded in whole or in part by federal aid, and the project complies with the
17 terms of the memorandum of understanding required by 19 V.S.A. § 7(l). This exclusion shall
18 not apply to the creation of new or additional points of access to, or exit from, the interstate
19 highway systems. For purposes of this subdivision, "previously disturbed" land that has been
20 changed by previous installation of transportation facilities including roads, railroads, runways,
21 trails, sidewalks, ditching, drainage features, ledge removal, utility work, clear zones or other
22 similar features associated with such facilities.

23 * * *

1 (xi) The construction of improvements for commercial, industrial or residential use at an
2 elevation of at least 1,500 feet and within 200 feet below the elevation of any portion of a
3 ridgeline. For purposes of this subdivision, “ridgeline” means the elongated crest or series of
4 crests at the apex or uppermost point of intersection between two opposite slopes or sides of a
5 mountain and includes all land. This subdivision shall not apply to the construction of
6 improvements for agricultural or forestry uses.

7 (xii) The construction of a road or roads and any associated driveways to provide access to or
8 within a tract of land of more than one acre owned or controlled by a person. For the purposes of
9 determining jurisdiction under this subdivision, any new development or subdivision on parcel of
10 land that will be provided access by the road and associated driveways is land involved in the
11 construction of the road. Jurisdiction under this subdivision shall not apply unless the length of
12 road and any associated driveways, in combination, is greater than 2,000 feet. As used in this
13 subdivision, “roads” shall include any new road or improvement to a Class IV road by a private
14 person for the purpose of accessing a development or subdivision, including roads that will be
15 transferred to or maintained by a municipality after their construction or improvement. For the
16 purpose of determining the length of any road and associated driveways, the length of all other
17 roads and driveways within the tract of land constructed within any continuous period of ten
18 years commencing after July 1, 2020 shall be included. This subdivision shall not apply to a
19 state or municipal road or a road used exclusively for agricultural or forestry purposes.

20 (xiii) The construction of improvements for commercial or industrial use within 2000 feet of a
21 point of access to or exit from the interstate highway system as measured from the midpoint of
22 the interconnecting roadways, unless a regional planning commission has determined, at the
23 request of the municipality where the interchange is located or any municipality with land in the

1 2,000ft radius, that municipal ordinances or bylaws applicable to properties around the
2 interchange:

3 (I) Ensure that planned development patterns will maintain the safety and function of the
4 interchange area for all road users, including non-motorized, for example, by limiting curb cuts,
5 and by sharing parking and access points and parcels will be interconnected to adjoining parcels
6 wherever physically possible.

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

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

12 (IV) The uses allowed in the area will not impose a burden on the financial capacity of a town or
13 the state.

14 (V) Allowed land uses must be of a type, scale, and design that complement rather than compete
15 with uses that exist in designated downtowns, village centers, growth centers, or other regional
16 growth areas. Principle retail should be discouraged or prohibited in highway interchange areas.

17 (VII) Development in this area may not establish or contribute to a pattern of strip development.
18 Where strip development already exists, development in this area must be infill that minimizes
19 the characteristics of strip development.

20 (VIII) Site design must use space efficiently by siting buildings close together, minimizing paved
21 services, locating parking to the side and rear, and minimizing the use of one story buildings.

22 (IX) The allowed uses, patterns of development, and aesthetics of development in these areas
23 must conform with the regional plan.

1 (X) The allowed uses, patterns of development, and aesthetics of development in these areas
2 must be consistent with the goals of 24 V.S.A. §4302.

3 * * *

4 (C) For the purposes of determining jurisdiction under subdivision (3)(A) of this section, the
5 following shall apply:

6 (v) Repealed. Permanently affordable housing. ~~Notwithstanding subdivisions (3)(A)(iv) and (19)~~
7 ~~of this section, jurisdiction shall be determined exclusively by counting affordable housing units,~~
8 ~~as defined by this section, that are subject to housing subsidy covenants as defined in 27 V.S.A.~~
9 ~~§ 610 that preserve their affordability for a period of 99 years or longer, provided the affordable~~
10 ~~housing units are located in a discrete project on a single tract or multiple contiguous tracts of~~
11 ~~land, regardless of whether located within an area designated under 24 V.S.A. chapter 76A.~~

12 * * *

13 (4) Repealed "District Commission" means the District Environmental Commission.

14 * * *

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

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

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(15) "Primary agricultural soils" means each of the following:

(A) An important farmland soils map unit that the Natural Resources Conservation Service of the U.S. Department of Agriculture (NRCS) has identified and determined to have a rating of prime, statewide, or local importance, unless the Board ~~District Commission~~ determines that the soils within the unit have lost their agricultural potential. In determining that soils within an important farmland soils map unit have lost their agricultural potential, the Board ~~Commission~~ shall consider:

- (i) impacts to the soils relevant to the agricultural potential of the soil from previously constructed improvements;
- (ii) the presence on the soils of a Class I or Class II wetland under chapter 37 of this title;
- (iii) the existence of topographic or physical barriers that reduce the accessibility of the rated soils so as to cause their isolation and that cannot reasonably be overcome; and
- (iv) other factors relevant to the agricultural potential of the soils, on a site-specific basis, as found by the Board ~~Commission~~ after considering the recommendation, if any, of the Secretary of Agriculture, Food and Markets.

(B) Soils on the project tract that the Board ~~District Commission~~ finds to be of agricultural importance, due to their present or recent use for agricultural activities and that have not been identified by the NRCS as important farmland soil map units.

* * *

(19)(A) "Subdivision" means each of the following:

1 (i) A tract or tracts of land, owned or controlled by a person, which the person has partitioned or
2 divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on
3 any lot, or within the jurisdictional area of the same administrative district ~~District Commission~~,
4 within any continuous period of five years. In determining the number of lots, a lot shall be
5 counted if any portion is within five miles or within the jurisdictional area of the same
6 administrative district ~~District Commission~~.

7 * * *

8 (23) “Adjoining property owner” means a person who owns land in fee simple, if that land:
9 (A) shares a property boundary with a tract of land where a proposed or actual development or
10 subdivision is located; or
11 (B) is adjacent to a tract of land where a proposed or actual development or subdivision is
12 located and the two properties are separated only by a river, stream, railroad, or public highway.

13 * * *

14
15 (27) “Mixed income housing” means a housing project in which the following apply:
16 (A) Owner-occupied housing. For not less than 15 years, at ~~At the option of the applicant,~~
17 ~~owner-occupied housing may be characterized by either of the following:~~
18 (i) ~~at least 15 percent of the housing units have a purchase price that at the time of first sale does~~
19 ~~not exceed 85 percent of the new construction, targeted area purchase price limits established~~
20 ~~and published annually by the Vermont Housing Finance Agency; or~~
21 (ii) ~~at least 20 percent of~~ each type of ~~the~~ housing units, where the type is determined by the total
22 number of bedrooms in the unit, ~~have~~ has a purchase price that ~~at the time of first sale~~ does not
23 exceed 90 percent of the new construction, targeted area purchase price limits for that same type

1 of housing unit for households earning 85 percent of the area median income as established and
2 published annually by the Vermont Housing Finance Agency.

3 (B) Rental housing. For not less than 15 years, at At least 20 percent of each type of the housing
4 units, where the type is determined by the total number of bedrooms in the unit, that is are rented
5 has a total annual cost of renting, including rent, utilities, parking fees, and any association fees,
6 that does not exceed the max gross rent for that same type of housing unit for households earning
7 80 percent of the area median income as established and published annually by the Vermont
8 Housing Finance Agency. constitute affordable housing and have a duration of affordability of
9 not less than 15 years.

10 (C) When calculating the percentage of housing units that must meet the applicable purchase
11 price limits and total annual cost thresholds of subsections (A) and (B) of this section, the
12 percentage shall be rounded up to the nearest whole number to avoid parts of units needing to be
13 affordable and when there is only one unit within a unit type that unit shall be excluded from the
14 percentage calculation.

15 * * *

16 (29) “Permanently affordable housing” means a housing project in which the following apply:

17 (A) Owner occupied housing. At least 20 percent of each type of housing unit is subject to
18 housing subsidy covenants as defined in 27 V.S.A. § 610 that require the subject housing units to
19 meet the affordability thresholds set forth in subsection 27 of this section each time the unit is
20 sold for not less than 99 years.

21 (B) Rental housing. At least 20 percent of each type of housing unit meets the affordability
22 thresholds in subsection 27 of this section for not less than 99 years.

23 "Affordable housing" means either of the following:

1 ~~(A) Owner-occupied housing for which the total annual cost of ownership, including principal,~~
2 ~~interest, taxes, insurance, and condominium association fees, does not exceed 30 percent of the~~
3 ~~gross annual income of a household at 120 percent of the highest of the following:~~

4 ~~(i) the county median income, as defined by the U.S. Department of Housing and Urban~~
5 ~~Development;~~

6 ~~(ii) the standard metropolitan statistical area median income if the municipality is located in such~~
7 ~~an area, as defined by the U.S. Department of Housing and Urban Development; or~~

8 ~~(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban~~
9 ~~Development.~~

10 ~~(B) Rental housing for which the total annual cost of renting, including rent, utilities, and~~
11 ~~condominium association fees, does not exceed 30 percent of the gross annual income of a~~
12 ~~household at 80 percent of the highest of the following:~~

13 ~~(i) the county median income, as defined by the U.S. Department of Housing and Urban~~
14 ~~Development;~~

15 ~~(ii) the standard metropolitan statistical area median income if the municipality is located in such~~
16 ~~an area, as defined by the U.S. Department of Housing and Urban Development; or~~

17 ~~(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban~~
18 ~~Development.~~

19 * * *

20 (35) "Priority housing project" means a discrete project located on a single tract or multiple
21 contiguous tracts of land that consists exclusively of:

22 (A) mixed income housing or mixed use, or any combination thereof, and is located entirely
23 within a ~~designated downtown development district~~, designated new town center, designated

1 growth center, or designated village center ~~that is also a designated neighborhood development~~
2 ~~area~~ under 24 V.S.A. chapter 76A; ~~or~~

3 ~~(B) mixed-income housing and is located entirely within a designated Vermont neighborhood or~~
4 ~~designated neighborhood development area under 24 V.S.A. chapter 76A.~~

5 (36) "Strip development" means linear commercial development along a public highway that
6 includes three or more of the following characteristics: broad road frontage, predominance of
7 single-story buildings, limited reliance on shared highway access, lack of connection to any
8 existing settlement except by highway, lack of connection to surrounding land uses except by
9 highway, lack of coordination with surrounding land uses, and limited accessibility for
10 pedestrians. In determining whether a proposed development or subdivision constitutes strip
11 development, the Board ~~District Commission~~ shall consider the topographic constraints in the
12 area in which the development or subdivision is to be located.

13 * * *

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

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

22 (40) "Forest-based enterprise" means an enterprise that aggregates forest products from forestry
23 operations and adds value through processing or marketing in the forest products supply chain or

1 directly to consumers through retail sales. "Forest-based enterprise" includes sawmills; veneer
2 mills; pulp mills; pellet mills; producers of firewood, woodchips, mulch and fuel wood; and log
3 and pulp concentration yards. "Forest-based enterprise" does not include facilities that purchase,
4 market, and resell finished goods, such as wood furniture, wood pellets, and milled lumber,
5 without first receiving forest products from forestry operations.

6 (41) "Forest product" means logs, pulpwood, veneer wood, bolt wood, wood chips, stud wood,
7 poles, pilings, biomass, fuel wood, maple sap, and bark.

8 * * *

9 § 6007. ACT 250 DISCLOSURE STATEMENT; JURISDICTIONAL DETERMINATION

10 (a) Prior to the division or partition of land, the seller or other person dividing or partitioning the
11 land shall prepare an "Act 250 Disclosure Statement." A person who is dividing or partitioning
12 land, but is not selling it, shall file a copy of the statement with the town clerk, who shall record
13 it in the land records. The seller who is dividing or partitioning land as part of the sale shall
14 provide the buyer with the statement within 10 days of entering into a purchase and sale
15 agreement for the sale or exchange of land, or at the time of transfer of title, if no purchase and
16 sales agreement was executed, and shall file a copy of the statement with the town clerk, who
17 shall record it in the land records. Failure to provide the statement as required shall, at the buyer's
18 option, render the purchase and sales agreement unenforceable. If the disclosure statement
19 establishes that the transfer is or may be subject to chapter 151 of this title, and that information
20 had not been disclosed previously, then at the buyer's option the contract may be rendered
21 unenforceable. The statement shall include the following, on forms determined jointly by the
22 Board and the Commissioner of Taxes:

1 (1) The name and tax identification number of the seller's or divider's or partitioner's spouse, and
2 parents and children, natural or adoptive, and whether or not any of the individuals named will
3 derive profit or consideration, or acquire any other beneficial interest from the partition or
4 division of the land in question. However, this information will be required only to the extent
5 that:

6 (A) the individuals in question have been sellers or buyers of record with respect to the partition
7 or division of other land within the previous five years; and

8 (B) that other land is located within five miles of any part of the land currently being divided or
9 partitioned, or is located within the jurisdictional area of the same administrative district ~~District~~
10 ~~Environmental Commission~~.

11 * * *

12 (c) With respect to the partition or division of land, or with respect to an activity which might or
13 might not constitute development, any person may submit to the district coordinator an "Act 250
14 Disclosure Statement" and other information required by the rules of the Board, and may request
15 a jurisdictional opinion from the district coordinator concerning the applicability of this chapter.

16 If a requestor wishes a final determination to be rendered on the question, the district
17 coordinator, at the expense of the requestor and in accordance with rules of the Board, shall
18 publish notice of the issuance of the opinion in a local newspaper generally circulating in the
19 area where the land which is the subject of the opinion is located, and shall serve the opinion on
20 all persons listed in subdivisions 6085(c)(1)(A) through (D) of this title. In addition, the
21 requestor who is seeking a final determination shall consult with the district coordinator and
22 obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be notified by the district
23 coordinator because they are adjoining property owners or other persons who would be likely to

1 be able to demonstrate a particularized interest protected by this chapter that may be affected by
2 an act or decision of the Board ~~by a District Commission.~~

3 (d) [Repealed.]

4 Subchapter 2: Administration

5 § 6021. BOARD; VACANCY, REMOVAL

6 (a) A Natural Resources Board is created.

7 (1) The Board shall consist of a Chair, two members, and two regional commissioners. Members
8 of the Board and regional commissioners shall not be required to be admitted to the practice of
9 law in this State. ~~five members appointed by the Governor, with the advice and consent of the~~
10 ~~Senate, so that one appointment expires in each year. In making these appointments, Governor~~
11 ~~and the Senate shall give consideration to experience, expertise, or skills relating to the~~
12 ~~environment or land use the~~

13 (A) The Chair of the Board shall be nominated, appointed, and confirmed in the manner of a
14 Superior judge.

15 (B) With respect to the two permanent members of the board, whenever a vacancy occurs, public
16 announcement of the vacancy shall be made. The Governor shall submit at least five names of
17 potential nominees to the Judicial Nominating Board for review. The Judicial Nominating Board
18 shall review the candidates in respect to judicial criteria and standards only and shall recommend
19 to the Governor those candidates the Board considers qualified. The Governor shall make the
20 appointment from the list of qualified candidates. The appointment shall be subject to the
21 consent of the Senate.

22 (C) With respect to a regional commissioner, the Governor shall appoint two commissioners and
23 one alternate for each administrative district established under section 6026 of this title. When

1 making these selections, the Governor shall give preference to former Environmental Board,
2 Natural Resources Board, or District Commission members.

3 (D) A member wishing to succeed himself or herself in office may seek reappointment under the
4 terms of this section.

5 (E) When making and confirming appointments under this section the Governor and the Senate
6 shall give consideration to:

7 (i) experience, expertise, or skills relating to the environmental science, natural resources law
8 and policy, land use planning, community development, racial equity, or environmental justice.

9 (ii) the overall membership of the Board to ensure that it includes racial, ethnic, gender, and
10 economic diversity.

11 ~~(A)~~ (F) The Governor shall appoint a chair and two permanent members of the Board, a position
12 that shall be a full-time position positions.

13 ~~(B)~~ (G) Following initial appointments, the chair, the members, and regional commissioners,
14 except for the Chair, shall be appointed for terms of four ~~four~~ six years.

15 (H) Notwithstanding 3 V.S.A. § 2004, or any other provision of law, the Chair, two members of
16 the Board, and regional commissioners may be removed only for cause.

17 (I) When the chair, a board member or a regional commissioner who hears all or a substantial
18 part of a case retires from office before such case is completed, he or she shall remain a member
19 of the Board for the purpose of concluding and deciding such case, and signing the findings,
20 orders, decrees, and judgments therein. A retiring chair shall also remain a member for the
21 purpose of certifying questions of law if appeal is taken. For such service, he or she shall receive
22 a reasonable compensation to be fixed by the remaining members of the Board and necessary
23 expenses while on official business.

1 (J) A case shall be deemed completed when the Board enters a final order therein even though
2 such order is appealed to the Supreme Court and the case remanded by that Court to the Board.
3 Upon remand the Board then in office may in its discretion consider relevant evidence including
4 any part of the transcript of testimony in the proceedings prior to appeal.

5 (K) The Chair shall have general charge of the offices and employees of the Board.

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

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

11 ~~(B) The Chair of the Board may assign alternates to sit on specific matters before the Board, in~~
12 ~~situations where fewer than five members are available to serve.~~

13 (b) Any vacancy occurring in the membership of the Board shall be filled by the Governor for
14 the unexpired portion of the term.

15 (c) Hearing officers. One Board member or any officer or employee of the Board duly appointed
16 by the Chair of the Board may inquire into and examine any matter within the jurisdiction of the
17 Board.

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

19 (2) Hearings conducted by a hearing officer shall be in accordance with 3 V.S.A. §§ 809–814. A
20 hearing officer may administer oaths and exercise the powers of the Board necessary to hear and
21 determine a matter for which the officer was appointed. A hearing officer shall report his or her
22 findings of fact in writing to the Board in the form of a proposal for decision. A copy shall be

1 served upon the parties pursuant to 3 V.S.A. § 811. However, judgment on those findings shall
2 be rendered only by a majority of the Board.

3 * * *

4 § 6025. RULES

5 (a) The Board may adopt rules of procedure for the administration of this chapter itself and the
6 District Commissions. When adopting rules of procedure under this subsection, the Board shall
7 make reasonable efforts that the processes maximize pro se participation.

8 (b) The Board may adopt substantive rules, in accordance with the provisions of 3 V.S.A.
9 chapter 25, that interpret and carry out the provisions of this chapter. These rules shall include
10 provisions that establish criteria under which applications for permits under this chapter may be
11 classified in terms of complexity and significance of impact under the standards of subsection
12 6086(a) of this chapter. In accordance with that classification, the rules may:

13 (1) provide for simplified or less stringent procedures than are otherwise required under sections
14 6083, 6084, and 6085 of this chapter;

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

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

20 (c)(1) This subsection shall apply to lots within a subdivision:

21 (A) that were created as part of a subdivision owned or controlled by a person who may have
22 been required to obtain a permit under this chapter; and

1 (B) with respect to which a determination has been made that a permit was needed under this
2 chapter; and

3 (C) that were sold to a purchaser prior to January 1, 1991 without a required permit.

4 (2) The rules shall provide for a modified process by which the sole purchaser, or the group of
5 purchasers, of one or more lots to which this subsection applies may apply for and obtain a
6 permit under this chapter that shall be issued in light of the existing improvements, facts, and
7 circumstances that pertain to the lots; provided, however, that the requirements of this chapter
8 shall be modified only to the extent needed to issue those permits. For purposes of these rules, a
9 purchaser eligible for relief under this subsection must not have been involved in creating the
10 lots, must not be a person who owned or controlled the land when it was divided or partitioned,
11 as a person is defined in this chapter, and must not have known at the time of purchase that the
12 transfer was subject to a permit requirement that had not been met.

13 (3) [Repealed.]

14 (d), (e) [Repealed.]

15 § 6026. ~~DISTRICT COMMISSIONERS~~ ADMINISTRATIVE DISTRICTS

16 (a) For the purposes of the administration of this chapter, the State is divided into five ~~nine~~
17 administrative districts.

18 (1) District No. 1, comprising Bennington and Rutland Counties ~~administrative district 1~~ as
19 ~~provided in 3 V.S.A. § 4001.~~

20 (2) District No. 2, comprising Orange, Windsor, and Windham Counties ~~administrative district 2~~
21 ~~as provided in 3 V.S.A. § 4001.~~

22 (3) District No. 3, comprising Caledonia, Essex, and Orleans Counties ~~administrative district 3~~ as
23 ~~provided in 3 V.S.A. § 4001.~~

1 (4) District No. 4, comprising Addison and Chittenden Counties ~~administrative district 4 as~~
2 ~~provided in 3 V.S.A. § 4001, excluding the towns of Addison, Bridport, Bristol, Cornwall,~~
3 ~~Ferrisburgh, Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton,~~
4 ~~Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge, and Whiting.~~

5 (5) District No. 5, comprising Lamoille and Washington Counties ~~administrative district 5 as~~
6 ~~provided in 3 V.S.A. § 4001.~~

7 (6) District No. 6, comprising Franklin and Grand Isle Counties ~~administrative district 6 as~~
8 ~~provided in 3 V.S.A. § 4001.~~

9 ~~(7) District No. 7, comprising administrative district 7 as provided in 3 V.S.A. § 4001.~~

10 ~~(8) District No. 8, comprising administrative district 8 as provided in 3 V.S.A. § 4001.~~

11 ~~(9) District No. 9, comprising the towns of Addison, Bridport, Bristol, Cornwall, Ferrisburg,~~
12 ~~Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton,~~
13 ~~Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge, and Whiting.~~

14 ~~(b) A District Environmental Commission is created for each district. Each District Commission~~
15 ~~shall consist of three members from that district appointed in the month of February by the~~
16 ~~Governor so that two appointments expire in each odd-numbered year. Two of the members shall~~
17 ~~be appointed for a term of four years, and the Chair (third member) of each District shall be~~
18 ~~appointed for a two-year term. In any district, the Governor may appoint not more than four~~
19 ~~alternate members from that district whose terms shall not exceed two years, who may hear any~~
20 ~~case when a regular member is disqualified or otherwise unable to serve.~~

21 ~~(c) Members shall be removable for cause only, except the Chair who shall serve at the pleasure~~
22 ~~of the Governor.~~

23 ~~(d) Any vacancy shall be filled by the Governor for the unexpired period of the term.~~

1 § 6027. POWERS

2 (a) ~~The Board and District Commissions each~~ shall have the power, with respect to any matter
3 within its jurisdiction, to:

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

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

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

11 (4)(A) authorize itself or the Agency of Agriculture, Food, and Markets, Agency of Commerce
12 and Community Development, Agency of Natural Resources or Agency of Transportation to
13 retain legal counsel, official stenographers, expert witnesses, advisors, temporary employees, and
14 other research, scientific, or engineering services in addition to its regular personnel for a
15 specific proceeding. With respect to the Agencies, additional personal may be retained only after
16 approval of the Governor and after notice to the applicant. The Agency retaining the additional
17 personnel shall fix the amount of compensation and expenses to be paid to the personnel retained
18 under this subdivision. Costs of additional personnel obtained under this subdivision may be
19 allocated to the applicant by the Agency or the Board.

20 (B) authorize the Agency of Agriculture, Food, and Markets, Agency of Commerce and
21 Community Development, Agency of Natural Resources or Agency of Transportation to allocate
22 the portion of its costs and expenses to the applicant of the costs of regular employees

1 participating in the proceeding. The costs of regular employees shall be computed on the basis of
2 working days within the salary period.

3 (C) with respect to costs and expenses allocated to an applicant under subdivisions (A) and (B)
4 of this subdivision, the Board shall, upon petition of an applicant to which costs are proposed to
5 be allocated, review and determine, after opportunity for hearing, having due regard for the size
6 and complexity of the project, the necessity and reasonableness of such costs, and may amend or
7 revise such allocations. Nothing in this section shall confer authority on the Board to select or
8 decide the personnel, the expenses of whom are being allocated, unless such personnel are
9 retained by the Board. Prior to allocating costs, the Board shall make a determination of the
10 purpose and use of the funds to be raised hereunder, identify the recipient of the funds, provide
11 for allocation of costs to the applicant, indicate an estimated duration of the retention of
12 personnel whose costs are being allocated, and estimate the total costs to be imposed. With the
13 approval of the Board, such estimates may be revised as necessary. From time to time during the
14 progress of the work of such additional personnel, the agency retaining the personnel shall render
15 to the applicant detailed statements showing the amount of money expended or contracted for in
16 the work of such personnel, which statements shall be paid by the applicant into the State
17 Treasury at such time and in such manner as the agency may reasonably direct; and

18 (5) apply for and receive grants from the federal government and from other sources.

19 (b) The Board shall have the powers of a court of record in the determination and adjudication of
20 all matters over which it is given jurisdiction. It may render judgments, make orders and decrees,
21 and enforce the same by any suitable process issuable by courts in this State. The Board shall
22 have an official seal on which shall be the words, "State of Vermont. Natural Resources Board.
23 Official Seal."

1 (c) The Board shall allow all members of the public to attend each of its hearings unless the
2 hearing is for the sole purpose of considering information to be treated as confidential pursuant
3 to a protective order duly adopted by the Board.

4 (1) The Board shall make all reasonable efforts to ensure that the location of each hearing is
5 sufficient to accommodate all members of the public seeking to attend.

6 (2) The Board shall ensure that the public may safely attend the hearing, including obtaining
7 such resources as may be necessary to fulfill this obligation.

8 (d) The Board shall hear all matters within its jurisdiction and make its findings of fact. It shall
9 state its rulings of law when they are excepted to. Upon appeal to the Supreme Court, its findings
10 of fact shall be accepted unless clearly erroneous. In all proceedings, questions of law shall be
11 decided by the Chair and the two members. Questions of fact shall be decided by the Board,
12 including the regional commissioners. Mixed questions of law and fact shall be deemed to be
13 questions of law. The Chair alone shall decide which are questions of law, questions of fact, and
14 mixed questions of law and fact. Written or oral stipulations of fact submitted by the parties shall
15 establish the facts related therein, except that the Chair, in his or her discretion, may order a
16 hearing on any such stipulated fact. Neither the decision of the Chair under this subsection nor
17 participation by a regional commissioner in a ruling of law shall be grounds for reversal unless a
18 party makes a timely objection and raises the issue on appeal.

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

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

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

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

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

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

19 (2) noncompliance with any permit or permit condition;

20 (3) failure to disclose all relevant and material facts in the application or during the permitting
21 process;

22 (4) misrepresentation of any relevant and material fact at any time;

1 (5) failure to pay a penalty or other sums owed pursuant to, or other failure to comply with, court
2 order, stipulation agreement, schedule of compliance, or other order issued under Vermont
3 statutes and related to the permit; or

4 (6) failure to provide certification of construction costs, as required under subsection 6083a(a) of
5 this title, or failure to pay supplemental fees as required under that section.

6 ~~(h) The Natural Resources Board may hear appeals of fee refund requests under section 6083a of~~
7 ~~this title.~~

8 ~~(i) The Chair, subject to the direction of the Board, shall have general charge of the offices and~~
9 ~~employees of the Board and the offices and employees of the District Commissions.~~

10 ~~(j) The Natural Resources Board may participate as a party in all matters before the~~
11 ~~Environmental Division that relate to land use permits issued under this chapter.~~

12 ~~(k) [Repealed.]~~

13 ~~(j)(l) A District Commission~~ The Board may reject an application under this chapter that
14 misrepresents any material fact and may after notice and opportunity for hearing award
15 reasonable attorney's fees and costs to any party or person who may have become a party but for
16 the false or misleading information or who has incurred attorney's fees or costs in connection
17 with the application.

18 ~~(m)~~ (k) After notice and opportunity for hearing, ~~a District Commission~~ the Board may withhold
19 a permit or suspend the processing of a permit application for failure of the applicant to pay costs
20 assessed under 3 V.S.A. § 2809 related to the participation of the Agency of Natural Resources
21 in the review of the permit or permit application.

22 (l) The Board may delegate authority to district coordinators determinations as to whether
23 applications are minor or major permits, minor permit and minor amendment decisions,

1 administrative amendments, and any additional authority to district coordinators necessary for
2 the effective administration of this chapter.

3 § 6028. COMPENSATION

4 ~~Members of the Board and District Commissions~~ Regional commissioners shall receive per diem
5 pay and all necessary and actual expenses in accordance with 32 V.S.A. § 1010.

6 * * *

7 § 6031. ETHICAL STANDARDS

8 ~~(a) The Chair and members of the Board and the Chair and members of each District~~

9 ~~Commission~~ Any member or employee of the Board shall comply with the following ethical
10 standards:

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

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

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

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

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

1 (b) As soon as practicable after grounds become known, a party may move to disqualify a
2 member or employee of the Board ~~Board member or District Commissioner~~ from a particular
3 matter before the Board ~~or District Commission~~.

4 (1) The motion shall contain a clear statement of the specific grounds for disqualification and
5 when such grounds were first known.

6 (2) On receipt of the motion, member or employee of the Board ~~a District Commissioner~~ who is
7 the subject of the motion shall disqualify himself or herself or shall refer the motion to the Chair
8 of the Board.

9 (A) The Chair of the Board may disqualify the member or employee of the Board ~~District~~
10 ~~Commissioner~~ from the matter before the Board ~~District Commission~~ if, on review of the
11 motion, the Chair determines that such disqualification is necessary to ensure compliance with
12 subsection (a)(ethical standards) of this section.

13 (B) On disqualification of a member or employee of the Board ~~District Commissioner~~ under this
14 subsection, the Chair of the Board shall assign another member or employee of the Board
15 ~~District Commissioner~~ to take the place of the disqualified member or employee of the Board
16 ~~Commissioner~~. When the member is a regional commissioner, the ~~The~~ Chair shall consider
17 making such an assignment from among the members of the same administrative district ~~District~~
18 ~~Commission~~ before assigning a member of another administrative district ~~District Commission~~.

19 (3) On receipt of the motion, ~~a Board member who~~ if the Chair is the subject of the motion, he or
20 she shall disqualify himself or herself or shall refer the motion to the full Board. The Board may
21 disqualify the Chair ~~a member~~ from the matter before the Board if, on review of the motion, the
22 Board determines that such disqualification is necessary to ensure compliance with subsection

1 (a) (ethical standards) of this section. ~~The Board member who is the subject of the motion shall~~
2 ~~not be eligible to vote on the motion.~~

3 (c) For one year after leaving office, a former appointee to the Board ~~or a District Commission~~
4 shall not, for pecuniary gain:

5 (1) be an advocate on any matter before the Board ~~or the District Commission~~ to which he or she
6 was appointed; or

7 (2) be an advocate before any other public body or the General Assembly or its committees
8 regarding any matter in which, while an appointee, he or she exercised any official responsibility
9 or participated personally and substantively.

10 * * *

11 Subchapter 4: Permits

12 § 6081. PERMITS REQUIRED; EXEMPTIONS

13 * * *

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

18 (p)(1) No permit or permit amendment is required for any subdivision, development, or change
19 to a project that is located entirely within a downtown development district designated pursuant
20 to 24 V.S.A. § 2793 or a neighborhood development area designated pursuant to 24 V.S.A. §
21 2793e. Upon receiving notice and a copy of the permit issued by the appropriate municipal
22 panel pursuant to 24 V.S.A. § 4460(f) a previously issued permit for a development or
23 subdivision located in a downtown development area or a new neighborhood area shall be

1 ~~extinguished.., if the change consists exclusively of any combination of mixed use and mixed~~
2 ~~income housing, and the cumulative changes within any continuous period of five years,~~
3 ~~commencing on or after the effective date of this subsection, remain below any applicable~~
4 ~~jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title.~~

5 * * *

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

15 * * *

16 § 6083. APPLICATIONS

17 (a) An application for a permit shall be filed with the Board ~~District Commission~~ as prescribed
18 by the rules of the Board and shall contain at least the following documents and information:

19 (1) The applicant's name, address, and the address of each of the applicant's offices in this State,
20 and, where the applicant is not an individual, municipality or State agency, the form, date, and
21 place of formation of the applicant.

22 (2) ~~Four copies~~ Copies of a plan of the proposed development or subdivision, in a form required
23 by the Board, showing the intended use of the land, the proposed improvements, the details of

1 the project, and any other information required by this chapter, or the rules adopted under this
2 chapter.

3 (3) The fee prescribed by section 6083a of this title.

4 (4) Certification of filing of notice as set forth in 6084 of this title.

5 (b) An applicant or petitioner shall grant the Board ~~or District Commission~~, or their agents,
6 permission to enter upon the applicant's or petitioner's land for these purposes.

7 (c) Where an application concerns the extraction or processing of fissionable source material,
8 before the application is considered the Board ~~District Commission~~ shall obtain the express
9 approval of the General Assembly by act of legislation stating that extraction or processing of
10 fissionable source material will promote the general welfare. The Board ~~District Commission~~
11 shall advise the General Assembly of any application for extraction or processing of fissionable
12 source material by delivering written notice to the Speaker of the House of Representatives and
13 to the President of the Senate, and shall make available all relevant material. The procedural
14 requirements and deadlines applicable to permit applications under this chapter shall be
15 suspended until the approval is granted. Approval by the General Assembly under this subsection
16 shall not be construed as approval of any particular application or proposal for development.

17 (d) The Board ~~and Commissions~~ shall make all practical efforts to process matters before the
18 Board and permits in a prompt manner. The Board shall establish time limits for the processing
19 of land use permits issued under section 6086 of this title as well as procedures and time periods
20 within which to notify applicants whether an application is complete. The Board shall report
21 annually by February 15 to the General Assembly by electronic submission. The annual report
22 shall assess the performance of the Board ~~and Commissions~~ in meeting the limits; identify areas
23 which hinder effective performance; list fees collected for each permit; summarize changes made

1 to improve performance; and describe staffing needs for the coming year. The annual report shall
2 list the number of enforcement actions taken by the Board, the disposition of such cases, and the
3 amount of penalties collected. The provisions of 2 V.S.A. § 20(d)(expiration of required reports)
4 shall not apply to the report to be made under this subsection.

5 (e) The ~~Board District Commissions~~ shall give priority to municipal projects that have been
6 mandated by the State through a permit, enforcement order, court order, enforcement settlement
7 agreement, statute, rule, or policy.

8 (f) In situations where the party seeking to file an application is a State agency, municipality, or
9 solid waste management district empowered to condemn the involved land or an interest in it, the
10 application need only be signed by that party.

11 (g)(1) ~~The Board A District Commission~~, pending resolution of noncompliance, may stay the
12 issuance of a permit or amendment if it finds, by clear and convincing evidence, that a person
13 who is an applicant:

14 (A) is not in compliance with a court order, an administrative order, or an assurance of
15 discontinuance with respect to a violation that is directly related to the activity which is the
16 subject of the application; or

17 (B) has one or more current violations of this chapter, or any rules, permits, assurances of
18 discontinuance, court order, or administrative orders related to this chapter, which, when viewed
19 together, constitute substantial noncompliance.

20 (2) Any decision under this subsection to issue a stay is subject to the contested case provisions
21 of 3 V.S.A. chapter 25~~may be subject to review by the Environmental Division, as provided by~~
22 ~~rule of the Supreme Court.~~

1 (3) If the same violation is the subject of an enforcement action under chapter 201 of this title,
2 then jurisdiction over the issuance of a stay shall remain with the Environmental Division and
3 shall not reside with the Board District Commission.

4 § 6083a. ACT 250 FEES

5 (a) All applicants for a land use permit under section 6086 of this title shall be directly
6 responsible for the costs involved in the publication of notice in a newspaper of general
7 circulation in the area of the proposed development or subdivision and the costs incurred in
8 recording any permit or permit amendment in the land records. In addition, applicants shall be
9 subject to the following fees for the purpose of compensating the State of Vermont for the direct
10 and indirect costs incurred with respect to the administration of the Act 250 program:

11 * * *

12 (5) For projects involving the review of a master plan, the fee established in subdivision (1) of
13 this section shall be due for any portion of the proposed project for which construction approval
14 is sought and a fee equivalent to \$0.10 per \$1,000.00 of total estimated construction costs in
15 current dollars in addition to the fee established in subdivision (1) of this subsection for any
16 portion of the project seeking construction approval shall be due for all other portions of the
17 proposed project. If construction approval is sought in future permit applications, the fee
18 established in subdivision (1) of this subsection shall be due, except to the extent that it is waived
19 pursuant to subsection (f) of this section.

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

21 * * *

22 (d) [Repealed] Neighborhood development area fees. Fees for residential development in a
23 Vermont neighborhood or neighborhood development area designated according to 24 V.S.A. §

1 ~~2793e shall be no more than 50 percent of the fee otherwise charged under this section. The fee~~
2 ~~shall be paid within 30 days after the permit is issued or denied.~~

3 (e) A written request for an application fee refund shall be submitted to the Board ~~District~~
4 ~~Commission to which the fee was paid~~ within 90 days of the withdrawal of the application.

5 (1) In the event that an application is withdrawn prior to the convening of a hearing, the Board
6 ~~District Commission~~ shall, upon request of the applicant, refund 50 percent of the fee paid
7 between \$100.00 and \$5,000.00, and all of that portion of the fee paid in excess of \$5,000.00
8 except that the Board ~~District Commission~~ may decrease the amount of the refund if the direct
9 and indirect costs incurred by the State of Vermont with respect to the administration of the Act
10 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the
11 Board ~~District Commission~~.

12 (2) In the event that an application is withdrawn after a hearing, the Board ~~District Commission~~
13 shall, upon request of the applicant, refund 25 percent of the fee paid between \$100.00 and
14 \$10,000.00 and all of that portion of the fee paid in excess of \$10,000.00 except that the Board
15 ~~District Commission~~ may decrease the amount of the refund if the direct and indirect costs
16 incurred by the State of Vermont with respect to the administration of the Act 250 program
17 clearly and unreasonably exceed the fee that would otherwise be retained by the Board ~~District~~
18 ~~Commission~~.

19 (3) The Board ~~District Commission~~ shall, upon request of the applicant, increase the amount of
20 the refund if the application of subdivisions (1) and (2) of this subsection clearly would result in
21 a fee that unreasonably exceeds the direct and indirect costs incurred by the State of Vermont
22 with respect to the administration of the Act 250 program.

1 ~~(4) District Commission decisions~~ Decisions regarding application fee refunds may be treated as
2 a contested case pursuant to 3 V.S.A. chapter 25 and appealed to the Natural Resources Board in
3 accordance with Board rules.

4 (5) For the purposes of this section, a "hearing" is a duly warned meeting concerning an
5 application convened by the Board ~~a quorum of the District Commission~~, at which parties may
6 be present. However, a hearing does not include a prehearing conference.

7 (6) In no event may an application fee or a portion thereof be refunded after the Board ~~a District~~
8 ~~Commission~~ has issued a final decision on the merits of an application.

9 (7) In no event may an application fee refund include the payment of interest on the application
10 fee.

11 ~~(f) In the event that an application involves a project or project impacts that previously have been~~
12 ~~reviewed, the~~ An applicant may petition in writing the Chair of the Board District Commission to
13 waive all or part of the application fee. If an application fee was paid previously in accordance
14 with subdivisions (a)(1) through (4) of this section, the Chair may waive all or part of the fee for
15 a new or revised project if the Chair finds that the impacts of the project have been reviewed in
16 an applicable master permit application, or that the project is not significantly altered from a
17 project previously reviewed, or that there will be substantial savings in the review process due to
18 the scope of review of the previous applications. In reviewing this petition, the Board n shall
19 consider the following:

20 (A) Whether a portion of the project's impacts have been reviewed by the Board in a previous
21 permit.

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

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

5 (D) Whether the applicant has engaged in any preapplication planning with the district
6 coordinator that will result in a decrease in the amount of time the Board will have to consider
7 the application.

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

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

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

17 (h) The costs of republishing a notice due to a scheduling change requested by a party shall be
18 borne by the party requesting the change.

19 § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF REVIEW

20 (a) The plans for the construction of any development or subdivision subject to the permitting
21 requirements of this subchapter must be submitted by the petitioner to the municipal and regional
22 planning commissions, affected state agencies, and adjoining landowners no less than 30 days

1 prior to filing an application under this chapter, unless the municipal and regional planning
2 commissions and affected state agencies waive such requirement.

3 (1) The municipal or regional planning commission may take one or more of the following
4 actions:

5 (A) Hold a public hearing on the proposed plans. The planning commission may request that the
6 applicant attend the hearing. The applicant shall have an obligation to comply with such a
7 request.

8 (B) Make recommendations to the applicant within 30 days of the petitioner's submittal to the
9 planning commission under this subsection.

10 (C) Once the application is filed with the Board, make recommendations to the Board by the
11 deadline for submitting comments or testimony set forth in the applicable provision of this
12 section, Board rule, or scheduling order issued by the Board.

13 (2) The application shall address the substantive written comments related to the criteria of
14 subsection 6086(a) of this title received by the petitioner within 30 days of the submittal made
15 under this subsection and the substantive oral comments related to those criteria made at a public
16 hearing under subdivision (1) of this subsection.

17 (3) This subsection shall not apply to projects that have been designated as using simplified
18 procedures pursuant to 6025(b)(1) or which are administrative amendments.

19 (b) ~~On or before the date of~~ Upon the filing of an application with the ~~District Commission~~
20 ~~Board,~~ the applicant ~~Board~~ shall send notice by electronic means ~~and a copy of the initial~~
21 application to the owner of the land if the applicant is not the owner; the municipality in which
22 the land is located; the municipal and regional planning commissions for the municipality in
23 which the land is located; the Vermont Agency of Natural Resources; and any adjacent Vermont

1 municipality and municipal and regional planning commission if the land is located on a
2 municipal or regional boundary. The applicant shall furnish to the District Commission Board
3 ~~the names of those furnished notice by affidavit, and shall post~~ send by electronic means, a copy
4 of the notice ~~in~~ to the town clerk's office of the town or towns in which the project lies. The town
5 clerk shall post the notice in the town office. The applicant shall also provide a list of adjoining
6 landowners to the Board ~~District Commission~~. Upon request and for good cause, the ~~District~~
7 ~~Commission Board~~ may authorize the applicant to provide a partial list of adjoining landowners
8 in accordance with Board rules.

9 ~~(b)(c)~~ Upon an application being ruled complete, the ~~District Commission Board~~ shall determine
10 whether to process the application as a major application ~~with a required public hearing and~~
11 transferred to the Board for review or process the application as a minor application ~~with the~~
12 ~~potential for a public hearing in accordance with Board rules.~~

13 (1) For major applications, the ~~District Commission Board~~ shall provide notice not less than 10
14 days prior to any scheduled hearing or prehearing conference to: the applicant; the owner of the
15 land if the applicant is not the owner; the municipality in which the land is located; the municipal
16 and regional planning commissions for the municipality in which the land is located; any
17 adjacent Vermont municipality and municipal and regional planning commission if the land is
18 located on a municipal or regional boundary; adjoining landowners as deemed appropriate by the
19 ~~District Commission Board~~ pursuant to ~~the~~ its rules ~~of the Board~~, and any other person the
20 ~~District Commission Board~~ deems appropriate.

21 (2) For minor applications, the ~~District Commission~~ administrative district shall provide notice
22 of the commencement of application review to the persons listed in subdivision (1) of this
23 subsection.

1 (3) For both major and minor applications, ~~the District Commission shall also provide such~~
2 notice and a copy of the application shall be provided to: the Board and any affected State
3 agency, and with respect to minor applications the Board; the solid waste management district in
4 which the land is located, if the development or subdivision constitutes a facility pursuant to
5 subdivision 6602(10) of this title; and any other municipality, State agency, or person the ~~District~~
6 ~~Commission~~ reviewing entity deems appropriate.

7 ~~(e)~~(d) Anyone required to receive notice of commencement of minor application review pursuant
8 to subsection ~~(c)~~(b) of this section may request that an application be treated as a major a hearing
9 by filing a request within the public comment period specified in the notice pursuant to Board
10 rules. The ~~District Commission~~ Board, on its own motion, may order ~~a hearing that an~~
11 application be treated as a major and transferred to it within 20 days of notice of commencement
12 of minor application review.

13 ~~(d)~~(e) Any hearing or prehearing conference for a major application shall be held within 40 days
14 of receipt of a complete application; or within 20 days of the end of the public comment period
15 specified in the notice of minor application review if the ~~District Commission~~ Board determines
16 that it is appropriate to treat the application as a major application ~~hold a hearing for a minor~~
17 ~~application.~~ Any hearing required shall be held in the municipality where the project is located
18 unless the parties agree to an alternate location. When conducting hearings and prehearing
19 conferences, the Board shall exercise reasonable flexibility with its rules of procedure and of
20 evidence to maximize pro se participation while ensuring the fairness of the proceeding.

21 ~~(e)~~(f) Any notice for a major or minor application, as required by this section, shall also be
22 published by ~~the District Commission~~ in a local newspaper generally circulating in the area

1 where the development or subdivision is located not more than ten days after receipt of a
2 complete application.

3 (1) Notice of any hearing for a major application shall be published, as required by this section,
4 not less than 10 days before the hearing or prehearing conference.

5 (2) If the ~~District Commission~~ Board determines that it is appropriate to hold a hearing for an
6 application that was originally noticed as a minor application, then the application shall be
7 renoticed as a major application in accordance with the requirements of this section and Board
8 rules, except that there shall be no requirement to publish the second notice in a local newspaper.
9 Direct notice of the hearing to all persons listed in subdivisions (b)(1) and (3) of this section shall
10 be deemed sufficient.

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

14 (1) The ~~District Commission~~ Board may authorize a district coordinator to issue such an
15 amendment, without notice and a hearing, if the applicant demonstrates that all parties to the
16 existing permit or existing permit amendment, which contains the condition or conditions
17 proposed to be changed, or their successors in interest have consented to the proposed changes to
18 conditions relative to the criteria for which the party obtained party status.

19 (2) If the applicant is not able to obtain the consent of a party or parties or their successors in
20 interest with respect to one or more of the conditions in the existing permit or permit amendment
21 proposed to be changed, the applicant shall file a permit application pursuant to this section.

22 However, review by the ~~District Commission~~ Board shall be limited to whether the changes to
23 conditions not consented to by the party or parties or their successors in interest enable positive

1 findings to be made under subsection 6086(a) and are authorized under subsection 6086(c) of
2 this title.

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

6 (1) a sawmill that produces three and one-half million board feet or less annually; or

7 (2) an operation that involves the primary processing of forest products of commercial value and
8 that annually produces:

9 (A) 3,500 cords or less of firewood or cordwood; or

10 (B) 10,000 tons or less of bole wood, whole tree chips, or wood pellets.

11 § 6085. HEARINGS; PARTY STATUS

12 (a), (b) [Repealed.]

13 (c)(1) Party status. In proceedings before the Board ~~District Commissions~~, the following persons
14 shall be entitled to party status:

15 (A) the applicant;

16 (B) the landowner, if the applicant is not the landowner;

17 (C) the municipality in which the project site is located, and the municipal and regional planning
18 commissions for that municipality; if the project site is located on a boundary, any Vermont
19 municipality adjacent to that border and the municipal and regional planning commissions for
20 that municipality; and the solid waste management district in which the land is located, if the
21 development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title;

22 (D) any State agency affected by the proposed project;

1 (E) any adjoining property owner or other person who has a particularized interest protected by
2 this chapter that may be affected by an act or decision by the Board ~~a District Commission~~.

3 (2) Content of petitions. All persons seeking to participate in proceedings before the Board
4 ~~District Commission~~ as parties pursuant to subdivision (c)(1)(E) of this section must petition for
5 party status. Any petition for party status may be made orally or in writing to the Board ~~District~~
6 ~~Commission~~. All petitions must include:

7 (A) A detailed statement of the petitioner's interest under the relevant criteria of the proceeding,
8 including, if known, whether the petitioner's position is in support of or in opposition to the relief
9 sought by the permit applicant, or petitioner.

10 (B) In the case of an organization, a description of the organization, its purposes, and the nature
11 of its membership.

12 (C) A statement of the reasons the petitioner believes the Board ~~District Commission~~ should
13 allow the petitioner party status in the pending proceeding.

14 (D) In the case of a person seeking party status under subdivision (c)(1)(E) of this section:

15 (i) If applicable, a description of the location of the petitioner's property in relation to the
16 proposed project, including a map, if available;

17 (ii) A description of the potential effect of the proposed project upon the petitioner's interest with
18 respect to each of the relevant criteria or subcriteria under which party status is being requested.

19 (3) Timeliness. A petition for party status pursuant to subdivision (c)(1)(E) of this section must
20 be made at or prior to an initial prehearing conference held pursuant to Board rule or at the
21 commencement of the hearing, whichever shall occur first, unless the Board ~~District Commission~~
22 directs otherwise. The Board ~~District Commission~~ may grant an untimely petition if it finds that
23 the petitioner has demonstrated good cause for failure to request party status in a timely fashion,

1 and that the late appearance will not unfairly delay the proceedings or place an unfair burden on
2 the parties.

3 (4) Conditions. Where a person has been granted party status pursuant to subdivision (c)(1)(E) of
4 this section, the Board ~~District Commission~~ shall restrict the person's participation to only those
5 issues in which the person has demonstrated an interest, and may encourage the person to join
6 with other persons with respect to representation, presentation of evidence, or other matters in
7 the interest of promoting judicial efficiency.

8 (5) Friends of the Board ~~Commission~~. The Board ~~District Commission~~, on its own motion or by
9 petition, may allow nonparties to participate in any of its proceedings, without being accorded
10 party status. Participation may be limited to the filing of memoranda, proposed findings of fact
11 and conclusions of law, and argument on legal issues. However, if approved by the Board
12 ~~District Commission~~, participation may be expanded to include the provision of testimony, the
13 filing of evidence, or the cross examination of witnesses. A petition for leave to participate as a
14 friend of the Board ~~Commission~~ shall identify the interest of the petitioner and the desired scope
15 of participation and shall state the reasons why the participation of the petitioner will be
16 beneficial to the Board ~~District Commission~~. Except where all parties consent or as otherwise
17 ordered by the Board ~~District Commission~~ or by the Chair of the ~~District Commission~~, all friends
18 of the Board ~~Commission~~ shall file their memoranda, testimony, or evidence within the times
19 allowed the parties.

20 (6) Reexamination of party status. The Board ~~A District Commission~~ shall reexamine party
21 status determinations before the close of hearings and state the results of that reexamination in
22 the Board ~~District Commission~~ decision. In the reexamination of party status coming before the
23 close of ~~District Commission~~ hearings, persons having attained party status up to that point in the

1 proceedings shall be presumed to retain party status. However, on motion of a party, or on its
2 own motion, the Board ~~a Commission~~ shall consider the extent to which parties continue to
3 qualify for party status. Determinations made before the close of ~~District Commission~~ hearings
4 shall supersede any preliminary determinations of party status.

5 (d) If no hearing has been requested or ordered within the prescribed period no hearing need be
6 held by the Board ~~District Commission~~. In such an event a permit shall be granted or denied
7 within 60 days of receipt; otherwise, it shall be deemed approved and a permit shall be issued.

8 (e) The ~~Natural Resources Board and any District Commission~~, acting through one or more duly
9 authorized representatives at any prehearing conference or at any other times deemed appropriate
10 by the ~~Natural Resources Board or by the District Commission~~, shall promote expeditious,
11 informal, and nonadversarial resolution of issues, require the timely exchange of information
12 concerning the application, and encourage participants to settle differences. No member or
13 employee of the Board ~~District Commissioner~~ who is participating as a decisionmaker in a
14 particular case may act as a duly authorized representative for the purposes of this subsection.

15 These efforts at dispute resolution shall not affect the burden of proof on issues before the Board
16 ~~a Commission or the Environmental Division~~, nor shall they affect the requirement that a permit
17 may be issued only after the issuance of affirmative findings under the criteria established in
18 section 6086 of this title.

19 (f) A hearing shall not be closed until the Board ~~a Commission~~ provides an opportunity to all
20 parties to respond to the last permit or evidence submitted. Once a hearing has been closed, the
21 Board ~~a Commission~~ shall conclude deliberations as soon as is reasonably practicable. A
22 decision of the Board ~~a Commission~~ shall be issued within 20 days of the completion of
23 deliberations.

1 § 6085a. Repealed.

2 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

3 (a) Before granting a permit, the Board ~~District Commission~~ shall find that the subdivision or
4 development:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (F) Shorelines. A permit will be granted whenever it is demonstrated by the applicant that, in
23 addition to all other criteria, the development or subdivision of shorelines must of necessity be

1 located on a shoreline in order to fulfill the purpose of the development or subdivision, and the
2 development or subdivision will, insofar as possible and reasonable in light of its purpose:

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

4 (ii) allow continued access to the waters and the recreational opportunities provided by the
5 waters;

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

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

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

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

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

15 (4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water
16 so that a dangerous or unhealthy condition may result.

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

20 (B) ~~As appropriate, will~~ Will incorporate transportation demand management strategies and
21 provide safe access and connections to adjacent lands and facilities and to existing and planned
22 pedestrian, bicycle, and transit networks and services. ~~In determining appropriateness under this~~

23 ~~subdivision (B), the District Commission shall consider whether~~ However, such a strategy,

1 access, or connection ~~constitutes a measure~~ may be declined upon a finding that a reasonable
2 person would ~~take~~ not undertake the measure given the type, scale, and transportation impacts of
3 the proposed development or subdivision.

4 (6) Will not cause an unreasonable burden on the ability of a municipality to provide educational
5 services. If a municipality fails to respond to a request by the Board within 90 days as to the
6 impacts, they will be presumed not to have an unreasonable burden on educational services.

7 (7) Will not place an unreasonable burden on the ability of the local governments to provide
8 municipal or governmental services. If a municipality fails to respond to a request by the Board
9 within 90 days as to the impacts, they will be presumed not to have an unreasonable burden on
10 municipal or governmental services.

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

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

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

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

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

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

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

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

11 (A) Impact of growth. In considering an application, the Board ~~District Commission~~ shall take
12 into consideration the growth in population experienced by the town and region in question and
13 whether or not the proposed development would significantly affect their existing and potential
14 financial capacity to reasonably accommodate both the total growth and the rate of growth
15 otherwise expected for the town and region and the total growth and rate of growth which would
16 result from the development if approved. After considering anticipated costs for education,
17 highway access and maintenance, sewage disposal, water supply, police and fire services, and
18 other factors relating to the public health, safety, and welfare, the Board ~~District Commission~~
19 shall impose conditions which prevent undue burden upon the town and region in
20 accommodating growth caused by the proposed development or subdivision. Notwithstanding
21 section 6088 of this title, the burden of proof that proposed development will significantly affect
22 existing or potential financial capacity of the town and region to accommodate such growth is

1 upon any party opposing an application, excepting however, where the town has a duly adopted
2 capital improvement program the burden shall be on the applicant.

3 * * *

4 (E) Extraction of earth resources. A permit will be granted for the extraction or processing of
5 mineral and earth resources, including fissionable source material:

6 * * *

7 (ii) Upon approval by the ~~Board District Commission~~ of a site rehabilitation plan that ensures
8 that upon completion of the extracting or processing operation the site will be left by the
9 applicant in a condition suited for an approved alternative use or development. A permit will not
10 be granted for the recovery or extraction of mineral or earth resources from beneath natural water
11 bodies or impoundments within the State, except that gravel, silt, and sediment may be removed
12 pursuant to the rules of the Agency of Natural Resources, and natural gas and oil may be
13 removed pursuant to the rules of the Natural Gas and Oil Resources Board.

14 (F) Energy conservation. A permit will be granted when it has been demonstrated by the
15 applicant that, in addition to all other applicable criteria, the planning and design of the
16 subdivision or development reflect the principles of energy conservation, including reduction of
17 greenhouse gas emissions from the use of energy, and incorporate the best available technology
18 for efficient use or recovery of energy. An applicant seeking an affirmative finding under this
19 criterion shall provide evidence that the subdivision or development complies with the applicable
20 building energy standards under 30 V.S.A. § 51 or 53, including the stretch code for residential
21 buildings adopted pursuant to 30 V.S.A. §51(d).

22 * * *

1 (H) Costs of scattered development. The Board ~~District Commission~~ will grant a permit for a
2 development or subdivision which is not physically contiguous to an existing settlement
3 whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs
4 of public services and facilities caused directly or indirectly by the proposed development or
5 subdivision do not outweigh the tax revenue and other public benefits of the development or
6 subdivision such as increased employment opportunities or the provision of needed and balanced
7 housing accessible to existing or planned employment centers.

8 * * *

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

20 * * *

21 (M) Climate adaptation. The development or subdivision will employ building orientation, site
22 and landscape design, and building design that are sufficient to enable the improvements to be
23 sited and constructed, including buildings, roads, and other infrastructure, to withstand and adapt

1 to the effects of climate change, including extreme temperature events, wind, and precipitation
2 reasonably projected at the time of application.

3 (10) Local plans. Is in conformance with any duly adopted local ~~or~~ plan that has been approved
4 under 24 V.S.A. § 4350, regional plan, or capital program under 24 V.S.A. ~~chapter 117~~ § 4430.

5 In making this finding, ~~if:~~

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

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

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

15 (b) At the request of an applicant, or upon its own motion, the Board ~~District Commission~~ shall
16 consider whether to review any criterion or group of criteria of subsection (a) of this section
17 before proceeding to or continuing to review other criteria. This request or motion may be made
18 at any time prior to or during the proceedings. The Board ~~District Commission~~, in its sole
19 discretion, shall, within 20 days of the completion of deliberations on the criteria that are the
20 subject of the request or motion, either issue its findings and decision thereon, or proceed to a
21 consideration of the remaining criteria.

22 (c) Permit conditions.

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

8 [NOTE ON THE FOLLOWING: THERE IS NOT COMPLETE CONSENSUS AROUND THIS
9 APPROACH, BUT ADDITIONAL INFORMATION IS BEING SOUGHT THAT MAY
10 CLARIFY ANY LINGERING CONCERNS. THE ADMINISTRATION AND VNRC
11 REMAIN COMMITTED TO ADDRESSING PERMIT CONDITIONS ON THE DELIVERY
12 OF FUEL.]

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

14 (A) A permit condition restricting a forest-based enterprise's hours of operation shall only be
15 imposed when the absence the condition would result in an impact under the criteria pursuant to
16 subdivision (a)(1), (5), or (8) of this section.

17 (B) Permits issued for a forest-based enterprise shall allow the enterprise to ship and receive
18 forest products, including delivery from the forestry operation to the enterprise, during hours
19 outside permitted hours of operation, including nights, weekends, and holidays, for a minimum
20 of 60 days per year unless there would be an impact under the criteria pursuant to subdivision
21 (a)(1) or (5) of this section.

22 (C) In making a determination for conditions under this subdivision (2) as to whether an impact
23 exists, the Board shall consider the benefits to forests, forest resources resulting from the forest-

1 based enterprise, and the impact to the operation of the forest-based enterprise that would result
2 from a condition and conditions shall impose the minimum restriction necessary to address the
3 undue adverse impact.

4 (3) Permit conditions on the delivery of wood fuels used for heat. Permits issued for a forest-
5 based enterprise that produces wood chips, pellets, cord wood, and other fuel wood used for heat
6 shall authorize the shipment from the enterprise of wood heat fuels to the end user during hours
7 outside permitted hours of operation, including nights, weekends, and holidays from October 1
8 through April 30 of each year.

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

13 (d) State and local permits; presumptions.

14 (1) State permits.

15 (A) The ~~Natural Resources Board may by rule~~ shall allow the acceptance of a permit or permits
16 ~~or approval~~ of any State agency with respect to subdivisions (a)(1) through (5) of this section ~~or~~
17 in lieu of evidence by the applicant. The presumption established by this subdivision (1) shall
18 only apply to the issues addressed as a part of the terms of the permit.

19 (B) In the case of permits issued by the Agency of Natural Resources, technical determinations
20 of the Agency shall be accorded substantial deference by the Board.

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

1 (2) Municipal permits.

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

6 (B) A District Commission, in accordance with rules adopted by the Board, shall accept
7 determinations issued by a development review board under the provisions of 24 V.S.A. § 4420,
8 with respect to local Act 250 review of municipal impacts.

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

21 (3) Rulemaking. The Board shall adopt rules to administer the requirements of this subsection.

22 The rules adopted by the Board shall not approve the acceptance of a permit or approval of such

1 an agency or a permit of a municipal government unless it satisfies the appropriate requirements
2 of 14 subsection (a) of this section.

3 (e) This subsection shall apply with respect to a development that consists of the construction of
4 temporary physical improvements for the purpose of producing films, television programs, or
5 advertisements. These improvements shall be considered "temporary improvements" if they
6 remain in place for less than one year, unless otherwise extended by the permit or a permit
7 amendment, and will not cause a long-term adverse impact under any of the 10 criteria after
8 completion of the project. In situations where this subsection applies, jurisdiction under this
9 chapter shall not continue after the improvements are no longer in place and the conditions in the
10 permit have been met, provided there is not a long-term adverse impact under any of the 10
11 criteria after completion of the project; except, however, if jurisdiction is otherwise established
12 under this chapter, this subsection shall not remove jurisdiction. This termination of jurisdiction
13 in these situations does not represent legislative intent with respect to continuing jurisdiction
14 over other types of development not specified in this subsection.

15 (f) ~~Repealed~~ Prior to any appeal of a permit issued by a District Commission, any aggrieved
16 party may file a request for a stay of construction with the District Commission together with a
17 declaration of intent to appeal the permit. The stay request shall be automatically granted for
18 seven days upon receipt and notice to all parties and pending a ruling on the merits of the stay
19 request pursuant to Board rules. The automatic stay shall not extend beyond the 30-day appeal
20 period unless a valid appeal has been filed with the Environmental Division. The automatic stay
21 may be granted only once under this subsection during the 30-day appeal period. Following
22 appeal of the District Commission decision, any stay request must be filed with the
23 Environmental Division pursuant to the provisions of chapter 220 of this title. A District

1 ~~Commission shall not stay construction authorized by a permit processed under the Board's~~
2 ~~minor application procedures.~~

3 * * *

4 § 6086b. ~~[Repealed] DOWNTOWN DEVELOPMENT; FINDINGS~~

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

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

16 ~~(2) The request shall be complete as to the criteria listed in subdivision (1) of this subsection and~~
17 ~~need not address other criteria of subsection 6086(a) of this title.~~

18 ~~(A) The requestor shall file the request in accordance with the requirements of subsection~~
19 ~~6084(a) of this title and the requestor shall provide a copy of the request to each agency and~~
20 ~~department listed in subdivision (3) of this section.~~

21 ~~(B) Within five days of the request's filing, the District Coordinator shall determine whether the~~
22 ~~request is complete. Within five days of the date the District Coordinator determines the request~~
23 ~~to be complete, the District Commission shall provide notice of the complete request to each~~

1 person required to receive a copy of the filing under subdivision (2)(A) of this section and to
2 each adjoining property owner and shall post the notice and a copy of the request on the Board's
3 web page. The computation of time under this subdivision (2)(B) shall exclude Saturdays,
4 Sundays, and State legal holidays.

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

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

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

11 ~~(C) The Secretary of Transportation or designee shall submit a written recommendation on~~
12 ~~whether the improvements will have a significant impact on any highway, transportation facility,~~
13 ~~or other land or structure under the Secretary's jurisdiction.~~

14 ~~(D) The Commissioner of Buildings and General Services or designee shall submit a written~~
15 ~~recommendation on whether the improvements will have a significant impact on any adjacent~~
16 ~~land or facilities under the Commissioner's jurisdiction.~~

17 ~~(E) The Secretary of Natural Resources or designee shall submit a written recommendation on~~
18 ~~whether the improvements will have a significant impact on any land or facilities under its~~
19 ~~jurisdiction or on any important natural resources, other than primary agricultural soils. In this~~
20 ~~subdivision (E), "important natural resources" shall have the same meaning as under 24 V.S.A. §~~
21 ~~2791.~~

22 ~~(F) The Secretary of Agriculture, Food and Markets or designee shall submit a written~~
23 ~~recommendation on whether the improvements will reduce or convert primary agricultural soils~~

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

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

7 ~~(5) The District Commission shall not hold a hearing on the request unless it determines that~~
8 ~~there is a substantial issue under one or more applicable criteria that requires a hearing. The~~
9 ~~District Commission shall hold any hearing within 20 days of the end of the comment period~~
10 ~~specified in subdivisions (3) and (4) of this section. Subdivisions 6085(c)(1)-(5) of this title shall~~
11 ~~govern participation in a hearing under this section.~~

12 ~~(6) The District Commission shall issue a decision within 60 days of issuing notice of a complete~~
13 ~~request under this section or, if it holds a hearing, within 15 days of adjourning the hearing. The~~
14 ~~District Commission shall send a copy of the decision to each State agency listed in subdivision~~
15 ~~(3) of this section, to the municipality, to the municipal and regional planning commissions for~~
16 ~~the municipality, and to each person that submitted a comment, requested a hearing, or~~
17 ~~participated in the hearing, if any. The decision may include conditions that meet the standards~~
18 ~~of subsection 6086(c) of this title.~~

19 ~~(7) The requestor may waive the time periods required under subdivisions (3), (4), and (6) of this~~
20 ~~section as to one or more agencies, departments, the District Commission, the District~~
21 ~~Coordinator, or other persons. Such a waiver shall extend the applicable and subsequent time~~
22 ~~periods by the amount of time waived. In the absence of a waiver under this subdivision, the~~
23 ~~failure of a State agency to file a written determination or a person to submit a comment or ask~~

1 for a hearing within the time periods specified in subdivisions (3) and (4) of this section shall not
2 delay the District Commission's issuance of a decision on a complete request.

3 * * *

4 § 6087. ~~DENIAL OF APPLICATION~~ FINAL DECISION ON PERMITS

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

7 (b) A permit may not be denied solely for the reasons set forth in subdivisions 6086(a)(5), (6),
8 and (7) of this title. However, reasonable conditions and requirements allowable in subsection
9 6086(c) of this title may be attached to alleviate the burdens created.

10 (c) A denial of a permit shall contain the specific reasons for denial. A person may, within six
11 months, apply for reconsideration of his or her permit which application shall include an
12 affidavit to the Board ~~District Commission~~ and all parties of record that the deficiencies have
13 been corrected. The Board ~~District Commission~~ shall hold a new hearing upon 25 days notice to
14 the parties. The hearing shall be held within 40 days of receipt of the request for reconsideration.

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

17 (e) When making a final determination with respect to a minor application, an administrative
18 district shall apply precedent from the Board when rendering its final decision.

19 § 6088. BURDEN OF PROOF

20 (a) The burden shall be on the applicant with respect to subdivisions 6086(a)(1), (2), (3),
21 (4), ~~(8)(B) and (C)~~, (9), and (10) of this title.

22 (b) The burden shall be on any party opposing the applicant with respect to subdivisions
23 6086(a)(5) through (8)~~(A)~~ of this title to show an unreasonable or adverse effect.

1 § 6089. APPEALS

2 (a) Appeals of certain actions to the Natural Resources Board.

3 (1) Applicability. The following acts or decisions are appealable de novo to the Board:

4 (A) A jurisdictional opinion issued by a district coordinator;

5 (B) A determination that an application is a minor application or administrative amendment by a
6 district coordinator;

7 (C) A determination by a regional planning commission with respect to the scope of Act 250
8 jurisdiction pursuant to subdivision 6001(3)(A)(xiii);

9 (D) A determination by a regional planning commission that a municipal plan is consistent with
10 the regional plan pursuant to 24 V.S.A. § 4350;

11 (E) A determination by the downtown development board designating a downtown development
12 district or neighborhood development district pursuant to 24 V.S.A. chapter 76A.

13 (2) Procedure.

14 (A) An appeal under this subsection may be brought by any person aggrieved as defined in 10
15 V.S.A. § 8502(7).

16 (B) A notice of appeal must be filed within 30 days of the act or decision.

17 (C) The Board shall conduct all appeals under this section as contested cases pursuant to 3
18 V.S.A. chapter 25 and procedural rules adopted by the Board.

19 (b) Appeals of decisions of the Board. A party to a cause who feels aggrieved by the final order,
20 judgment, or decree of the Board may appeal to the Supreme Court. However, the Board, in its
21 discretion and before final judgment, may permit an appeal to be taken by any party to the
22 Supreme Court for determination of questions of law in such manner as the Supreme Court may
23 by rule provide for appeals before final judgment from a Superior Court. Notwithstanding the

1 provisions of the Vermont Rules of Civil Procedure or the Vermont Rules of Appellate
2 Procedure, neither the time for filing a notice of appeal nor the filing of a notice of appeal, as
3 provided herein, shall operate as a stay of enforcement of an order of the Board unless the Board
4 or the Supreme Court grants a stay under the provisions of section 14 of this title.

5 ~~Appeals of any act or decision of a District Commission under this chapter or a district~~
6 ~~coordinator under subsection 6007(c) of this title shall be made to the Environmental Division in~~
7 ~~accordance with chapter 220 of this title. For the purpose of this section, a decision of the Chair~~
8 ~~of a District Commission under section 6001e of this title on whether action has been taken to~~
9 ~~circumvent the requirements of this chapter shall be considered an act or decision of the District~~
10 ~~Commission.~~

11 * * *

12 § 6091. RENEWALS AND NONUSE

13 * * *

14 (b) Nonuse of permit. Nonuse of a permit for a period of three years following the date of
15 issuance shall constitute an abandonment of the development or subdivision and the permit shall
16 be considered expired. For purposes of this section, for a permit to be considered "used,"
17 construction must have commenced and substantial progress toward completion must have
18 occurred within the three-year period, unless construction is delayed by litigation or proceedings
19 to secure other permits or to secure title through foreclosure, or unless, at the time the permit is
20 issued or in a subsequent proceeding, the Board ~~District Commission~~ provides that substantial
21 construction may be commenced more than three years from the date the permit is issued.

22 (c) Extensions. If the application is made for an extension prior to expiration, the Board ~~District~~
23 ~~Commission~~ may grant an extension and may waive the necessity of a hearing.

1 (d) Completion dates for developments and subdivisions. Permits shall include dates by which
2 there shall be full or phased completion. The ~~Natural Resources~~ Board, by rule, shall establish
3 requirements for review of those portions of developments and subdivisions that fail to meet
4 their completion dates, giving due consideration to fairness to the parties involved, competing
5 land use demands, and cumulative impacts on the resources involved. If completion has been
6 delayed by litigation, proceedings to secure other permits, proceedings to secure title through
7 foreclosure, or because of market conditions, the Board ~~District Commission~~ shall provide that
8 the completion dates be extended for a reasonable period of time.

9 * * *

10 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

11 (a) Mitigation for loss of primary agricultural soils. Suitable mitigation for the conversion of
12 primary agricultural soils necessary to satisfy subdivision 6086(a)(9)(B)(iv) of this title shall
13 depend on where the project tract is located.

14 (1) Project located in certain designated areas. This subdivision applies to projects located in the
15 following areas designated under 24 V.S.A. chapter 76A: a downtown development district, a
16 growth center, a new town center designated on or before January 1, 2014, and a neighborhood
17 development area associated with a designated downtown development district. If the project
18 tract is located in one of these designated areas, an applicant who complies with subdivision
19 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the Vermont Housing
20 and Conservation Trust Fund established under section 312 of this title for the purpose of
21 preserving primary agricultural soils of equal or greater value with the highest priority given to
22 preserving prime agricultural soils as defined by the U.S. Department of Agriculture. Any
23 required offsite mitigation fee shall be derived by:

1 * * *

2 (B) Multiplying the number of affected acres of primary agricultural soils by a factor resulting in
3 a ratio established as follows:

4 * * *

5 (ii) For residential construction that has a density of at least eight units of housing per acre, of
6 which at least eight units per acre or at least 40 percent of the units, on average, in the entire
7 development or subdivision, whichever is greater, meets the definition of permanently affordable
8 housing established in this chapter, no mitigation shall be required, regardless of location in or
9 outside a designated area described in this subdivision (a)(1). ~~However, all affordable housing~~
10 ~~units shall be subject to housing subsidy covenants, as defined in 27 V.S.A. § 610, that preserve~~
11 ~~their affordability for a period of 99 years or longer. As used in this section, housing that is~~
12 ~~rented shall be considered affordable housing when its inhabitants have a gross annual household~~
13 ~~income that does not exceed 60 percent of the county median income or 60 percent of the~~
14 ~~standard metropolitan statistical area income if the municipality is located in such an area.~~

15 * * *

16 (2) Project located outside certain designated areas. If the project tract is not located in a
17 designated area described in subdivision (1) of this subsection, mitigation shall be provided on
18 site in order to preserve primary agricultural soils for present and future agricultural use, with
19 special emphasis on preserving prime agricultural soils. Preservation of primary agricultural soils
20 shall be accomplished through innovative land use design resulting in compact development
21 patterns which will maintain a sufficient acreage of primary agricultural soils on the project tract
22 capable of supporting or contributing to an economic or commercial agricultural operation and

1 shall be enforceable by permit conditions issued by the Board ~~District Commission~~. The number
2 of acres of primary agricultural soils to be preserved shall be derived by:

3 * * *

4 (3) Mitigation flexibility.

5 (A) Notwithstanding the provisions of subdivision (a)(1) of this section pertaining to a
6 development or subdivision on primary agricultural soils within certain designated areas, the
7 Board ~~District Commission~~ may, in appropriate circumstances, require onsite mitigation with
8 special emphasis on preserving prime agricultural soils if that action is deemed consistent with
9 the agricultural elements of local and regional plans and the goals of 24 V.S.A. § 4302. In this
10 situation, the approved plans must designate specific soils that shall be preserved inside a
11 designated area described in subdivision (a)(1) of this section. For projects located within such a
12 designated area, all factors used to calculate suitable mitigation acreage or fees, or some
13 combination of these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

14 (B) Notwithstanding the provisions of subdivision (a)(2) of this section pertaining to a
15 development or subdivision on primary agricultural soils outside a designated area described in
16 subdivision (a)(1) of this section, the Board ~~District Commission~~ may, in appropriate
17 circumstances, approve off-site mitigation or some combination of onsite and off-site mitigation
18 if that action is deemed consistent with the agricultural elements of local and regional plans and
19 the goals of 24 V.S.A. § 4302. For projects located outside such a designated area, all factors
20 used to calculate suitable mitigation acreage or fees, or some combination of these measures,
21 shall be as specified in this subsection (a), subject to a ratio of no less than 2:1, but no more than
22 3:1.

23 (4) Industrial parks.

1 (A) Notwithstanding any provision of this chapter to the contrary, a conversion of primary
2 agricultural soils located in an industrial park permitted under this chapter and in existence as of
3 January 1, 2006, shall be allowed to pay a mitigation fee computed according to the provisions of
4 subdivision (1) of this subsection (a), except that it shall be entitled to a ratio of 1:1 protected
5 acres to acres of affected primary agricultural soil. If an industrial park is developed to the fullest
6 extent before any expansion, this ratio shall apply to any contiguous expansion of such an
7 industrial park that totals no more than 25 percent of the area of the park or no more than 10
8 acres, whichever is larger; provided any expansion based on percentage does not exceed 50
9 acres. Any expansion larger than that described in this subdivision shall be subject to the
10 mitigation provisions of this subsection at ratios that depend upon the location of the expansion.

11 (B) In any application to the Board ~~a District Commission~~ to amend a permit for an existing
12 industrial park, the most efficient and full use of land shall be allowed consistent with all
13 applicable criteria of subsection 6086(a) of this title. Industrial park expansions and industrial
14 park infill shall not be subject to requirements established in subdivision 6086(a)(9)(B)(iii) or
15 6086(a)(9)(C)(iii) of this title.

16 (b) Easements required for protected lands. All primary agricultural soils preserved for
17 commercial or economic agricultural use by the Vermont Housing and Conservation Board
18 pursuant to this section shall be protected by permanent conservation easements (grant of
19 development rights and conservation restrictions) conveyed to a qualified holder, as defined in
20 section 821 of this title, with the ability to monitor and enforce easements in perpetuity. Off-site
21 mitigation fees may be used by the Vermont Housing and Conservation Board and shall be used
22 by the Agency of Agriculture, Food and Markets to pay reasonable staff or transaction costs, or

1 both, of the Board and Agency related to the preservation of primary agricultural soils or to the
2 implementation of subdivision 6086(a)(9)(B) or section 6093 of this title.

3 * * * Alternative 1 * * *

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

7 (1) entitled to a ratio of 1:1 protected acres to acres of affected primary agricultural soil; and

8 (2) be allowed to mitigate impacts to primary agricultural soil by:

9 (A) paying a mitigation fee computed according to the provisions of subdivision (1) of this
10 subsection (a); or

11 (B) in accordance with a methodology developed by the Commissioner of Forests, Parks, and
12 Recreation, show that the forest based enterprise will offset the impacts to primary agricultural
13 soils through conservation of an equivalent or greater acreage of forested area.

14 * * * Alternative 2 * * *

15 (c) Mitigation and offsets for forest-based enterprises. Notwithstanding any provision of this
16 chapter to the contrary, a conversion of primary agricultural soils by a forest-based enterprise

17 permitted under this chapter shall be entitled to a ratio of 1:1 protected acres to acres of affected
18 primary agricultural soil.

19 Subchapter 5: Transportation Impact Fees

20 * * *

21 § 6102. DEFINITIONS

22 As used in this subchapter:

1 (~~5~~) ~~Repealed~~ "~~District Commission~~" shall have the same meaning as under section 6001 of this
2 title except that the term also shall include the Board in exercising its authority to make findings
3 of fact and conclusions of law.

4 * * *

5 § 6103. AUTHORITY

6 ~~The Board~~ ~~A District Commission~~ or the Agency may assess a transportation impact fee in
7 accordance with this subchapter.

8 § 6104. TRANSPORTATION IMPACT FEE; DISTRICT COMMISSION

9 (a) ~~The Board~~ ~~A District Commission~~ may require payment of a transportation impact fee in
10 accordance with section 6106 of this title to fund, in whole or in part, capital improvements that
11 are necessary to mitigate the transportation impacts of a proposed development or subdivision or
12 that benefit the proposed development or subdivision. The Agency shall review the application
13 and recommend to the ~~Board~~ ~~District Commission~~ whether to require mitigation of the
14 transportation impacts of the development or subdivision. The ~~Board~~ ~~District Commission~~ may
15 require an applicant to pay the entire cost of a capital transportation project and may provide for
16 reimbursement of the applicant by developments and subdivisions subsequently receiving
17 permits or amended permits under this chapter that benefit from the capital transportation
18 project. The period for reimbursement shall expire when the associated capital transportation
19 project ceases to provide additional capacity.

20 (b) ~~The Board~~ ~~A District Commission~~ may require an applicant for a development or subdivision
21 within a TID to pay the transportation impact fee established by the Secretary if the ~~Board~~
22 ~~Commission~~ determines that the fee will fund, in whole or in part, improvements to mitigate
23 transportation impacts of the development or subdivision.

1 (c) This subchapter shall apply to the exercise of authority by the Board ~~a District Commission~~
2 under any permit condition issued pursuant to subdivision 6086(a)(5) of this title in which the
3 Board ~~District Commission~~ has reserved the right to conduct proceedings that may result in
4 assessment and collection of impact fees to support transportation improvements.

5 (d) The authority granted to the Board ~~District Commissions~~ under this subchapter is in addition
6 to its ~~their~~ other authority.

7 * * *

8 § 6106. TRANSPORTATION IMPACT FEE; FORMULA

9 (a) When assessing a transportation impact fee to a land use project, the Secretary shall apply a
10 formula that reflects the performance standards for the TID, and the Board ~~District Commission~~
11 shall apply a formula that reflects those performance standards or the mitigation that the Board
12 ~~Commission~~ determines is required to address the transportation impacts of the development or
13 subdivision. In either case, the formula shall account for each of the following:

14 (1) the vehicle trips generated by the land use project estimated pursuant to a generally accepted
15 methodology;

16 (2) the capital costs of highway infrastructure, pedestrian and bicycle facilities, public
17 transportation, and other transportation infrastructure that benefit or mitigate the transportation
18 impacts of the land use project;

19 (3) conditions not attributable to the transportation impacts of the land use project including
20 forecasted growth in background traffic and existing infrastructure and capacity deficiencies;

21 (4) the proportional share of the capital costs of transportation infrastructure that provides benefit
22 to or is attributable to the transportation impacts of the land use project and determined pursuant
23 to a reasonably accepted methodology; and

- 1 (5) other funding sources available to finance the capital transportation project.
- 2 (b) When determining a transportation impact fee under this section for a land use project, the
- 3 Secretary or the Board ~~District Commission~~ may adjust the result of the formula to account for
- 4 one or more of the following:
 - 5 (1) a traffic allocation, if any, set for the land use project by a prior permit;
 - 6 (2) the net change in vehicle trip generation of a proposed land use project considering pass-by-
 - 7 trips and the amount of traffic already generated by the tract of land on which the land use
 - 8 project is to be located;
 - 9 (3) municipal traffic impact fees paid by the applicant to the extent that those fees fund
 - 10 improvements on which the transportation impact fee is based;
 - 11 (4) the fair market value of dedications of land, interests in land or transportation infrastructure
 - 12 improvements provided by the developer to mitigate offsite traffic impacts;
 - 13 (5) TDM programs offered by the applicant that reduce vehicle trips; and
 - 14 (6) the siting of a proposed land use project in a downtown, village center, new town center,
 - 15 growth center, Vermont neighborhood, or neighborhood development area designated under 24
 - 16 V.S.A. chapter 76A.
- 17 (c) A transportation impact fee for one or more capital transportation projects in a TID shall not
- 18 exceed the portion of the cost of each capital transportation project that is required to mitigate the
- 19 transportation impacts of the land use project and shall not include costs attributable to the
- 20 operation, administration, or maintenance of the capital transportation project.
- 21 (d) An applicant may choose to fund the entire cost of a capital transportation project. An
- 22 applicant for a permit under this chapter who chooses to fund the entire cost of a capital

1 transportation project may request and the Board ~~District Commission~~ may authorize
2 reimbursement in accordance with subsection 6104(a) of this title.

3 (e) In assessing a transportation impact fee to an applicant under this subchapter, the Agency or
4 Board ~~District Commission~~ shall require the applicant to pay the transportation impact fee prior
5 to commencement of construction of the applicant's land use project and shall not require the
6 applicant to delay commencement of construction of that project until construction of each
7 capital transportation project for which the fee was assessed, unless the Agency or Board ~~District~~
8 ~~Commission~~ determines that the capital transportation project must first be built to address a
9 transportation safety issue caused or exacerbated by the land use project. If a land use project is
10 to be constructed in stages, the Agency or Board ~~District Commission~~ may approve payment of a
11 proportionate amount of the fee prior to commencement of construction on each stage.

12 * * *

13 § 6108. PAYMENT OF FEES

14 (a) An applicant shall pay a transportation impact fee assessed under this subchapter to the
15 Agency, except that the Board ~~a District Commission~~ may direct an applicant to pay a
16 transportation impact fee to a municipality if the impacts of the applicant's development or
17 subdivision are limited to municipal highways and rights-of-way or other municipal
18 transportation facilities.

19 * * *

20 § 6110. APPEALS

21 * * *

22 (c) Appeal of an act or decision of the Board ~~a District Commission~~ under this subchapter shall
23 be pursuant to section 6089 of this title.

1 * * *

2 Sec. 2. 10 V.S.A. chapter 220 is amended to read:

3 Chapter 220: Consolidated Environmental Appeals

4 * * *

5 § 8502. DEFINITIONS

6 As used in this chapter:

7 ~~(1) "District Commission" means a District Environmental Commission established under~~
8 ~~chapter 151 of this title.~~

9 ~~(2) "District coordinator" means a district environmental coordinator attached to a District~~
10 ~~Commission established under chapter 151 of this title.~~

11 ~~(3) "Environmental Court" or "Environmental Division" means the Environmental Division of~~
12 ~~the Superior Court established by 4 V.S.A. § 30.~~

13 ~~(4) "Natural Resources Board" or "Board" means the Board established under chapter 151 of this~~
14 ~~title.~~

15 ~~(5)~~ (2) "Party by right" means the following:

16 (A) the applicant;

17 (B) the landowner, if the applicant is not the landowner;

18 (C) the municipality in which the project site is located, and the municipal and regional planning
19 commissions for that municipality;

20 (D) if the project site is located on a boundary, any Vermont municipality adjacent to that border
21 and the municipal and regional planning commissions for that municipality;

22 (E) the solid waste management district in which the land is located, if the development or
23 subdivision constitutes a facility pursuant to subdivision 6602(10) of this title;

1 (F) any State agency affected by the proposed project.

2 ~~(6)~~ (3) "Person" means any individual; partnership; company; corporation; association; joint
3 venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of
4 the State, any federal agency, or any other legal or commercial entity.

5 ~~(7)~~ (4) "Person aggrieved" means a person who alleges an injury to a particularized interest
6 protected by the provisions of law listed in section 8503 of this title, attributable to an act or
7 decision by ~~a district coordinator, District Commission,~~ the Secretary, or the Environmental
8 Division that can be redressed by the Environmental Division or the Supreme Court.

9 ~~(8)~~ (5) "Secretary" means the Secretary of Natural Resources or the Secretary's duly authorized
10 representative. As used in this chapter, "Secretary" shall also mean the Commissioner of
11 Environmental Conservation, the Commissioner of Forests, Parks and Recreation, and the
12 Commissioner of Fish and Wildlife, with respect to those statutes that refer to the authority of
13 that commissioner or department.

14 § 8503. APPLICABILITY

15 * * *

16 (b) ~~This chapter shall govern:~~

17 ~~(1) all appeals from an act or decision of a District Commission under chapter 151 of this title,~~
18 ~~excluding appeals of application fee refund requests;~~

19 ~~(2) appeals from an act or decision of a district coordinator under subsection 6007(c) of this title;~~

20 ~~(3) appeals from findings of fact and conclusions of law issued by the Natural Resources Board~~
21 ~~in its review of a designated growth center for conformance with the criteria of subsection~~
22 ~~6086(a) of this title, pursuant to authority granted at 24 V.S.A. § 2793c(f).~~

1 ~~(e)~~ This chapter shall govern all appeals arising under 24 V.S.A. chapter 117, the planning and
2 zoning chapter.

3 ~~(d)~~ (c) This chapter shall govern all appeals from an act or decision of the Environmental
4 Division under this chapter.

5 ~~(e)~~ (d) This chapter shall not govern appeals from rulemaking decisions by the Natural Resources
6 Board under chapter 151 of this title or enforcement actions under chapters 201 and 211 of this
7 title.

8 ~~(f)~~ (e) This chapter shall govern all appeals of acts or decisions of the legislative body of a
9 municipality arising under 24 V.S.A. chapter 61, subchapter 10, relating to the municipal
10 certificate of approved location for salvage yards.

11 ~~(g)~~ (f) This chapter shall govern all appeals of an act or decision of the Secretary of Natural
12 Resources that a solid waste implementation plan for a municipality proposed under 24 V.S.A. §
13 2202a conforms with the State Solid Waste Implementation Plan adopted pursuant to section
14 6604 of this title.

15 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

16 (a) ~~Act 250 and~~ Agency appeals. Within 30 days of the date of the act or decision, ~~any person~~
17 ~~aggrieved by an act or decision of the Secretary, a District Commission, or a district coordinator~~
18 ~~under the provisions of law listed in section 8503 of this title, or any party by right, may appeal~~
19 ~~to the Environmental Division, except for an act or decision of the Secretary under subdivision~~
20 ~~6086b(3)(E) of this title or governed by section 8506 of this title.~~

21 (c) Notice of the filing of an appeal.

22 (1) ~~Upon filing an appeal from an act or decision of the District Commission, the appellant shall~~
23 ~~notify all parties who had party status as of the end of the District Commission proceeding, all~~

1 ~~friends of the Commission, and the Natural Resources Board that an appeal is being filed. In~~
2 ~~addition, the appellant shall publish notice not more than 10 days after providing notice as~~
3 ~~required under this subsection, at the appellant's expense, in a newspaper of general circulation in~~
4 ~~the area of the project which is the subject of the decision.~~

5 (2) Upon the filing of an appeal from the act or decision of the Secretary under the provisions of
6 law listed in section 8503 of this title, the appellant shall provide notice of the filing of an appeal
7 to the following persons: the applicant before the Agency of Natural Resources, if other than the
8 appellant; the owner of the land where the project is located if the applicant is not the owner; the
9 municipality in which the project is located; the municipal and regional planning commissions
10 for the municipality in which the project is located; if the project site is located on a boundary,
11 any adjacent Vermont municipality and the municipal and regional planning commissions for
12 that municipality; any State agency affected; the solid waste management district in which the
13 project is located, if the project constitutes a facility pursuant to subdivision 6602(10) of this
14 title; all persons required to receive notice of receipt of an application or notice of the issuance of
15 a draft permit; and all persons on any mailing list for the decision involved. In addition, the
16 appellant shall publish notice not more than 10 days after providing notice as required under this
17 subsection, at the appellant's expense, in a newspaper of general circulation in the area of the
18 project which is the subject of the decision.

19 (3) In the case of appeals under 24 V.S.A. chapter 117, notice shall be as required under 24
20 V.S.A. § 4471.

21 (d) Requirement to participate before ~~the District Commission or the Secretary.~~

22 (1) ~~Participation before District Commission. An aggrieved person shall not appeal an act or~~
23 ~~decision that was made by a District Commission unless the person was granted party status by~~

1 ~~the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the~~
2 ~~proceedings before the District Commission, and retained party status at the end of the District~~
3 ~~Commission proceedings. In addition, the person may only appeal those issues under the criteria~~
4 ~~with respect to which the person was granted party status. However, notwithstanding these~~
5 ~~limitations, an aggrieved person may appeal an act or decision of the District Commission if the~~
6 ~~Environmental judge determines that:~~

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

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

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

12 ~~(2) Participation before the Secretary.~~

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

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

20 ~~(B)(ii) The appellant shall identify each comment that the appellant submitted to the Secretary~~
21 ~~that identifies or relates to an issue raised in his or her appeal.~~

1 ~~(C)(iii)~~ A person moving to dismiss an appeal or an issue raised by an appeal pursuant to this
2 subdivision ~~(1) (A)~~ shall have the burden to prove that the requirements of this subdivision ~~(1)~~
3 ~~(A)~~ are not satisfied.

4 ~~(2)(B)~~ Notwithstanding the limitations of subdivision ~~(1) (2)(A)~~ of this subsection, an aggrieved
5 person may appeal an act or decision of the Secretary if the Environmental judge determines
6 that:

7 ~~(A)(i)~~ there was a procedural defect that prevented the person from commenting during the
8 comment period or at the public meeting or otherwise participating in the proceeding;

9 ~~(B)(ii)~~ the Secretary did not conduct a comment period and did not hold a public meeting;

10 ~~(C)(iii)~~ the person demonstrates that an issue was not reasonably ascertainable during the review
11 of an application or other request that led to the Secretary's act or decision; or

12 ~~(D)(iv)~~ some other condition exists which would result in manifest injustice if the person's right
13 to appeal was disallowed.

14 ~~(e) Act 250 jurisdictional determinations by a district coordinator.~~

15 ~~(1) The appellant shall provide notice of the filing of an appeal to each person entitled to notice~~
16 ~~under subdivisions 6085(c)(1)(A) through (D) of this title, to each person on an approved~~
17 ~~subdivision 6085(c)(1)(E) list, and to the Natural Resources Board.~~

18 ~~(2) Failure to appeal within the time required under subsection (a) of this section shall render the~~
19 ~~decision of the district coordinator under subsection 6007(e) of this title the final determination~~
20 ~~regarding jurisdiction under chapter 151 of this title unless the underlying jurisdictional opinion~~
21 ~~was not properly served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title~~
22 ~~and on persons on a subdivision 6085(c)(1)(E) list approved under subsection 6007(e) of this~~
23 ~~title.~~

1 ~~(f)~~ Stays.

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

3 (A) acts or decisions involving stream alteration permits or shoreline encroachment permits
4 issued by the Secretary;

5 (B) the denial of interested person status by a board of adjustment, planning commission, or
6 development review board.

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

11 ~~(g)~~ (f) Consolidated appeals. The Environmental Division may consolidate or coordinate
12 different appeals where those appeals all relate to the same project.

13 ~~(h)~~ (g) De novo hearing. The Environmental Division, applying the substantive standards that
14 were applicable before the tribunal appealed from, shall hold a de novo hearing on those issues
15 which have been appealed, except in the case of:

16 (1) a decision being appealed on the record pursuant to 24 V.S.A. chapter 117;

17 (2) a decision of the Commissioner of Forests, Parks and Recreation under section 2625 of this
18 title being appealed on the record, in which case the court shall affirm the decision, unless it
19 finds that the Commissioner did not have reasonable grounds on which to base the decision.

20 ~~(i) Deference to Agency technical determinations. In the adjudication of appeals relating to land
21 use permits under chapter 151 of this title, technical determinations of the Secretary shall be
22 accorded the same deference as they are accorded by a District Commission under subsection
23 6086(d) of this title.~~

- 1 ~~(j)~~ (h) Appeals of authorizations or coverage under a general permit. Any appeal of an
2 authorization or coverage under the terms of a general permit shall be limited in scope to whether
3 the permitted activity complies with the terms and conditions of the general permit.
- 4 ~~(k)~~ (i) Limitations on appeals. Notwithstanding any other provision of this section:
5 ~~(1) there shall be no appeal from a District Commission decision when the Commission has~~
6 ~~issued a permit and no hearing was requested or held, or no motion to alter was filed following~~
7 ~~the issuance of an administrative amendment;~~
8 ~~(2) a municipal decision regarding whether a particular application qualifies for a recorded~~
9 ~~hearing under 24 V.S.A. § 4471(b) shall not be subject to appeal;~~
10 ~~(3) if a District Commission issues a partial decision under subsection 6086(b) of this title, any~~
11 ~~appeal of that decision must be taken within 30 days of the date of that decision.~~
- 12 ~~(j)~~ (f) Representation. The Secretary may represent the Agency of Natural Resources in all
13 appeals under this section. ~~The Chair of the Natural Resources Board may represent the Board in~~
14 ~~any appeal under this section, unless the Board directs otherwise. If more than one State agency,~~
15 ~~other than the Board,~~ either appeals or seeks to intervene in an appeal under this section, only the
16 Attorney General may represent the interests of those agencies of the State in the appeal.
- 17 ~~(k)~~ (m) Precedent. Prior decisions of the Environmental Board, Water Resources Board, and
18 Waste Facilities Panel shall be given the same weight and consideration as prior decisions of the
19 Environmental Division.
- 20 ~~(l)~~ (n) Intervention. Any person may intervene in a pending appeal if that person:
21 (1) appeared as a party in the action appealed from and retained party status;
22 (2) is a party by right;
23 (3) ~~is the Natural Resources Board;~~

1 ~~(4)~~ is a person aggrieved, as defined in this chapter;
2 ~~(4)~~ ~~(5)~~ qualifies as an "interested person," as established in 24 V.S.A. § 4465, with respect to
3 appeals under 24 V.S.A. chapter 117; or
4 ~~(5)~~ ~~(6)~~ meets the standard for intervention established in the Vermont Rules of Civil Procedure.
5 ~~(m)~~ ~~(n)~~ With respect to review of an act or decision of the Secretary pursuant to 3 V.S.A. § 2809,
6 the Division may reverse the act or decision or amend an allocation of costs to an applicant only
7 if the Division determines that the act, decision, or allocation was arbitrary, capricious, or an
8 abuse of discretion. In the absence of such a determination, the Division shall require the
9 applicant to pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.
10 ~~(o)~~ ~~(p)~~ Administrative record. The Secretary shall certify the administrative record as defined in
11 chapter 170 of this title and shall transfer a certified copy of that record to the Environmental
12 Division when:
13 (1) there is an appeal of an act or decision of the Secretary that is based on that record; or
14 (2) there is an appeal of a decision of a District Commission and the applicant used a decision of
15 the Secretary based on that record to create a presumption under a criterion of subsection 6086(a)
16 of this title that is at issue in the appeal.

17 * * *

18 Sec. 3. 10 V.S.A. § 754 is amended to read:

19 § 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM MUNICIPAL
20 REGULATION

21 (a) Rulemaking authority.

22 (1) On or before November 1, 2014, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter
23 25 that establish requirements for the issuance and enforcement of permits applicable to:

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

4 (ii) State-owned and -operated institutions and facilities that are located within a flood hazard
5 area or river corridor.

6 (2) On or before November 1, 2022, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter
7 25 that designate highest priority river corridors and establish requirements for the issuance and
8 enforcement of permits applicable to uses located in highest priority river corridors. Highest
9 priority river corridors are those that provide critical floodwater storage or are highly vulnerable
10 to flood related erosion.

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

16 (4) ~~(3)~~ The Secretary shall seek the guidance of the Federal Emergency Management Agency in
17 developing and drafting the rules required by this section in order to ensure that the rules are
18 sufficient to meet eligibility requirements for the National Flood Insurance Program.

19 * * *

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

1 ~~regulation~~ 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) Beginning November 1, 2014, 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 that has adopted a
7 flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 or commence construction of
8 a State-owned and -operated institution or facility located within a flood hazard area or river
9 corridor, without a permit issued under the rules required under subsection (a) of this section by
10 the Secretary or by a State agency delegated permitting authority under subsection (g) of this
11 section. When an application is filed under this section, the Secretary or delegated State agency
12 shall proceed in accordance with chapter 170 of this title;

13 (B) Beginning November 1, 2021, a person shall not commence construction of a development
14 or subdivision that is subject to a permit under 10 V.S.A. chapter 151 without a permit issued
15 pursuant under the rules required under subsection (a) of this section by the Secretary or by a
16 State agency delegated permitting authority under subsection (g) of this section;

17 (C) Beginning November 1, 2023, a person shall not commence or conduct a use that is located
18 in a highest priority river corridor without a permit issued pursuant under the rules required
19 under subsection (a) of this section by the Secretary or by a State agency delegated permitting
20 authority under subsection (g) of this section.

21 Sec. 4. 19 V.S.A. § 7(l) is added to read:

22 (l) The Secretary of Transportation and the Secretary of Agriculture, Food, and Markets shall
23 enter a memorandum of understanding to ensure that any transportation project subject to the

1 exclusion under 10 V.S.A. § 6001(3)(A)(v)(II) on a tract of land involving more than 10 acres
2 meets the requirements to protect primary agricultural soils consistent with 10 V.S.A. §
3 6086(a)(9)(B).

4 Sec. 5. REVISION OF STREAM CONSULTATION MEMORANDUM OF
5 UNDERSTANDING

6 On or before July 1, 2021, the Secretary of Natural Resources and Secretary of Transportation
7 shall revise the memorandum of understanding implementing the consultation process pursuant
8 to 19 V.S.A. § 10(12) to require that a project's proposed impact on fisheries is considered in the
9 consultation process.

10 Sec. 6. 24 V.S.A. § 2793 is amended to read:

11 § 2793. DESIGNATION OF DOWNTOWN DEVELOPMENT DISTRICTS

12 * * *

13 (b) Within 45 days of receipt of a completed application, the State Board shall designate a
14 downtown development district if the State Board finds in its written decision that the
15 municipality has:

16 (1) Demonstrated a commitment to protect and enhance the historic character of the downtown
17 through the adoption of a design review district, through the adoption of an historic district, or
18 through the adoption of regulations that adequately regulate the physical form and scale of
19 development that the State Board determines substantially meet the historic preservation
20 requirements in subdivisions 4414(1)(E) and (F) of this title, ~~or through the creation of a~~
21 ~~development review board authorized to undertake local Act 250 reviews of municipal impacts~~
22 ~~pursuant to section 4420 of this title.~~

23 Sec. 7. 24 V.S.A. § 2793e is amended to read:

1 § 2793e. NEIGHBORHOOD PLANNING AREAS; DESIGNATION OF NEIGHBORHOOD
2 DEVELOPMENT AREAS

3 * * *

4 (c) Application for designation of a neighborhood development area. The State Board shall
5 approve a neighborhood development area if the application demonstrates and includes all of the
6 following elements:

7 * * *

8 (7) The municipal bylaws allow minimum net residential densities within the neighborhood
9 development area greater than or equal to four single-family detached dwelling units per acre,
10 exclusive of accessory dwelling units, or no fewer than the average existing density of the
11 surrounding neighborhood, whichever is greater. The methodology for calculating density shall
12 be established in the guidelines developed by the Department pursuant to subsection 2792(d) of
13 this title.

14 (A) Regulations that adequately regulate the physical form and scale of development may be
15 used to demonstrate compliance with this requirement.

16 (B) Development in the neighborhood development areas that is lower than the minimum net
17 residential density required by this subdivision (7) shall not qualify for the benefits stated in
18 subsections (f) and (g) of this section. ~~The district coordinator shall determine whether~~
19 ~~development meets this minimum net residential density requirement in accordance with~~
20 ~~subsection (f) of this section.~~

21 * * *

22 (f) Neighborhood development area incentives for developers. Once a municipality has a
23 designated neighborhood development area or has a Vermont neighborhood designation pursuant

1 to section 2793d of this title, ~~any~~ a proposed development within that area shall be eligible for
2 each of the benefits listed in this subsection. ~~These benefits shall accrue upon approval by the~~
3 ~~district coordinator, who shall review~~ provided that the project meets the density requirements
4 set forth in subdivision (c)(7) of this section ~~to determine benefit eligibility and issue a~~
5 ~~jurisdictional opinion under 10 V.S.A. chapter 151 on whether the density requirements are met,~~
6 as determined by the administrative officer, as that term is defined in 24 V.S.A. chapter 117.

7 These benefits are:

8 (1) The application fee limit for wastewater applications stated in 3 V.S.A. § 2822(j)(4)(D).

9 ~~(2) The application fee reduction for residential development stated in 10 V.S.A. § 6083a(d).~~

10 ~~(3)~~ The exclusion from the land gains tax provided by 32 V.S.A. § 10002(p).

11 * * *

12 (h) Alternative designation. If a municipality has completed all of the planning and assessment
13 steps of this section but has not requested designation of a neighborhood development area, an
14 owner of land within a neighborhood planning area may apply to the State Board for
15 neighborhood development area designation status for a portion of land within the neighborhood
16 planning area. The applicant shall have the responsibility to demonstrate that all of the
17 requirements for a neighborhood development area designation have been satisfied and to notify
18 the municipality that the applicant is seeking the designation. The State Board shall provide the
19 municipality with at least 14 days' prior written notice of the Board's meeting to consider the
20 application, and the municipality shall submit to the State Board the municipality's response, if
21 any, to the application before or during that meeting. On approval of a neighborhood
22 development area designation under this subsection, the applicant ~~may proceed to obtain a~~
23 ~~jurisdictional opinion from the district coordinator under subsection (f) of this section in order to~~

1 ~~obtain~~ shall be eligible for the benefits granted to neighborhood development areas, subject to
2 approval by the Administrative Officer as set forth in subsection (f) of this section.

3 Sec. 8. 24 V.S.A. § 4382 is amended to read:

4 § 4382. THE PLAN FOR A MUNICIPALITY

5 (a) A plan for a municipality ~~may~~ shall be consistent with the goals

6 established in section 4302 of this title and compatible with approved plans of other

7 municipalities in the region and with the regional plan and shall include the following:

8 * * *

9 Sec. 9. 24. V.S.A. § 4419 is amended to read:

10 (b) Any municipality that has adopted unified development bylaws in conformance with the

11 requirements of sections 4410, 4411, 4412, 4413, and 4417, and 4418 of this title shall be

12 deemed to have adopted permanent zoning and subdivision regulations in accordance with 10

13 V.S.A. § 6001(3).

14 * * *

15 Sec. 10. 24 V.S.A. § 4460 is amended to read:

16 § 4460. APPROPRIATE MUNICIPAL PANELS

17 * * *

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

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

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

22 (C) has applied for a permit or permit amendment required by zoning regulations or bylaws

23 adopted pursuant to this subchapter.

- 1 (2) The appropriate municipal panel reviewing a municipal permit or permit amendment
2 pursuant to this subsection shall include conditions contained within a permit previously issued
3 pursuant to 10 V.S.A. chapter 151 unless the panel determines that the permit condition pertains
4 to any of the following:
- 5 (A) the construction phase of the project that has already been constructed.
6 (B) compliance with another state permit that has independent jurisdiction that addresses the
7 condition in the previously issued permit.
8 (C) federal or state law that is no longer in effect or applicable.
9 (D) an issue that is addressed by municipal regulation and the project will meet the municipal
10 standards.
11 (E) physical or use condition that is no longer in effect or applicable, or that will no longer be in
12 effect or applicable once the new project is approved.
- 13 (3) After issuing or amending a permit containing conditions pursuant to this subsection, the
14 appropriate municipal panel shall provide notice and a copy of the permit to the Natural
15 Resources Board.
- 16 (3) The appropriate municipal panel's determinations shall be made following notice and
17 hearing as provided in section 4464(a)(1) of this title and to those persons requiring notice
18 pursuant to 10 V.S.A. § 6084(b). The notice shall explicitly reference the existing Act 250
19 permit.
- 20 (4) The appropriate municipal panel's decision shall be issued in accord with section 4464(b) of
21 this title and shall include specific findings with respect to its determinations pursuant to
22 subdivision (f)(2) of this section.

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

4 Sec. 11. VERMONT REGIONAL AND MUNICIPAL PLANNING REVIEW

5 (a) On or before December 15, 2020, the Natural Resources Board, in consultation with the
6 Agency of Commerce and Community Development, shall develop shall publish a draft report,
7 with recommendations, that addresses:

8 (1) whether Sec. 7 of No. 85 of the Acts and Resolves of 1973 (capability and development
9 findings) should be incorporated into 10 V.S.A. chapter 151 and what changes should be made,
10 if any, to the capability and development findings.

11 (2) whether the State should update the capability and development plan authorized by 10 V.S.A.
12 chapter 151, subchapter 3. If the recommendation is to update the capabilities and development
13 plan, the Agency shall provide a schedule and budget for the proposed update.

14 (3) whether 10 V.S.A. chapter 151 should require the creation of capability and development
15 maps. If the recommendation is to require the creation of capability and development maps, the
16 Agency shall identify the resources and land uses to be mapped and provide a schedule and
17 budget for the proposed update.

18 (4) makes recommendations on how capability and development findings, the capability and
19 development plan, and capability and development maps would be used in permitting under 10
20 V.S.A. chapter 151 and how these would relate to the criteria considered under 10 V.S.A. §
21 6086(a).

1 (5) how regional plans are reviewed and approved, including any existing or new administrative
2 body to conduct that review; If a review is recommended, what State Agency should perform
3 that review.

4 (6) whether designations of growth centers and new town centers should be appealable. If these
5 designations are appealable, what tribunal should hear the appeal.

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

11 (c) On or before March 1, 2021, the Natural Resources Board shall provide a final report to the
12 House Committee on Natural Resources and Energy and Senate Committee on Natural
13 Resources and Energy. The final report shall incorporate recommendations from the public
14 engagement process under subsection (b) of this section and shall contain a response to
15 stakeholder comments as a part of the final report.

16 Sec. 12. VERMONT ENVIRONMENTAL APPEALS REVIEW

17 On or before January 15, 2021, the Secretary of Natural Resources shall make recommendations
18 to the House Committees on Natural Resources, Fish, and Wildlife and Judiciary and the Senate
19 Committees on Natural Resources and Energy and Judiciary as to whether permits issued by the
20 Secretary should be reviewed on the administrative record developed by the Secretary and the
21 presumptions provided to the Agency permits before the Natural Resources Board. In making
22 these recommendations, the Secretary shall consult with lawyers and other interested persons
23 who participate in Agency of Natural Resources Permitting processes.

1 Sec. 13. EFFECTIVE DATES; TRANSITION

2 (a) Secs. 3, 11, 12, and this section shall take effect on July 1, 2020.

3 (b) The remainder of this Act shall take effect on November 1, 2022, except that:

4 (1) The authority to make appointments to the Enhanced Natural Resources Board shall take
5 effect on passage and all appointments shall be made on or before December 15, 2020.

6 (2) The authority for municipalities to request modifications to the area established pursuant to
7 10 V.S.A. § 6003(3)(A)(xiii) shall take effect on passage. Any appeal of a decision of a regional
8 planning commission shall be calculated as if the decision were made on November 1, 2022.

9 (c) Terms of Board members. For the initial appointment of Board members:

10 (1) The Chair of the Board shall be appointed for a term of six years;

11 (2) One member of the Board shall be appointed for a term of four years and one member of the
12 Board shall be appointed for a term of two years;

13 (3) Each administrative district shall have one regional commissioner appointed for a term of six
14 years, one regional commissioner appointed for a term of four years, and one alternate appointed
15 for a term of two years.

16 (d) Terms of existing Natural Resources Board members. The terms of any Natural Resources
17 Board member not appointed consistent with the requirements of 10 V.S.A. § 6021(a)(1)(A) or
18 (B) of this Act shall expire on October 31, 2022.

19 (e) Terms of District Commissioners.

20 (1) A district commission shall continue to remain in effect until all applications before it as of
21 October 31, 2022 have been resolved and final permits have been issued in those matters.

22 (2) An application shall be deemed resolved when the Commission issues a final permit even if a
23 final permit is appealed. Upon remand the Board then in office may in its discretion consider

1 relevant evidence including any part of the transcript of testimony in the proceedings prior to

2 appeal.

3 (d) Rulemaking. On or before November 1, 2022, the Enhanced Natural Resources Board shall:

4 (1) adopt rules of procedure pursuant to 10 V.S.A. § 6025(a);

5 (2) adopt rules, in consultation with the Secretary of Natural Resources, for the administration of

6 10 V.S.A. § 6086(a)(8)(C), including how an applicant can avoid and mitigate impacts to

7 necessary wildlife habitat, forest blocks, connecting habitat, rare and irreplaceable natural areas

8 and endangered species.