

1 Introduced by

2 Referred to Committee on

3 Date:

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

5 Statement of purpose of bill as introduced: This bill proposes to make
6 revisions to the State land use law known as Act 250, including:

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

- 1 local and regional plan provisions apply to a project if they meet the same
2 standard of specificity applicable to statutes.
- 3 • As part of a balancing of interests to support economic development in
4 compact centers while promoting a rural countryside and protecting
5 important natural resources, amending Act 250 jurisdiction to allow
6 municipalities to ensure compliance with the Act 250 criteria in centers
7 receiving an enhanced designation under 24 V.S.A. chapter 76A and
8 increasing Act 250 jurisdiction in critical resource areas and at interstate
9 interchanges. Because the designation under 24 V.S.A. chapter 76A would
10 affect jurisdiction, the bill provides for appeal of designation decisions.
 - 11 • Clarifying the definition of “commercial purpose” so that it is not necessary
12 to determine whether monies received are essential to sustain a project.
 - 13 • Requiring the Development Cabinet to meet regularly.
 - 14 • Increasing the per diem rate for District Commissioners and the Board to
15 \$100.
 - 16 • Repealing the exemption for farming, logging, and forestry when those
17 activities take place in critical resource areas.
 - 18 • Replacing the Natural Resources Board (NRB) with a Vermont
19 Environmental Review Board (the Board), which would hear appeals from
20 the District Commissions and the Agency of Natural Resources in addition

- 1 to the NRB’s current duties. The Environmental Division of the Superior
2 Court would continue to hear enforcement and local zoning appeals.
- 3 • Reaffirming the supervisory authority in environmental matters of the
4 Board and District Commissions, in accordance with the original intent of
5 Act 250 as determined by the Vermont Supreme Court.
 - 6 • Revising and clarifying the statutory authority on the use of other permits to
7 demonstrate compliance with the criteria, including ensuring the reliability
8 of those other permits.

9 An act relating to changes to Act 250

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

11 * * * Revisions to Capability and Development Plan * * *

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

13 (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

14 Climate change poses serious risks to human health and safety, functioning
15 ecosystems that support a diversity of species and economic growth, and
16 Vermont’s tourist, forestry, and agricultural industries. The primary driver of
17 climate change in Vermont and elsewhere is the increase of atmospheric
18 carbon dioxide from the burning of fossil fuels, which has a warming effect
19 that is amplified because atmospheric water vapor, another greenhouse gas,
20 increases as temperature rises. Vermont should minimize its emission of

1 greenhouse gases and, because the climate is changing, ensure that the design
2 and materials used in development enable projects to withstand an increase in
3 extreme weather events and adapt to other changes in the weather and
4 environment.

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

6 (2) ECOSYSTEM PROTECTION AND UTILIZATION OF
7 NATURAL RESOURCES

8 (A) Healthy ecosystems clean water, purify air, maintain soil,
9 regulate the climate, recycle nutrients, and provide food. They provide raw
10 materials and resources for medicines and other purposes. They are at the
11 foundation of civilization and sustain the economy. These ecosystem services
12 are the State's natural capital.

13 (B) Biodiversity is the key indicator of an ecosystem's health. A
14 wide variety of species copes better with threats than a limited number of
15 species in large populations.

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

18 (D) Preservation Protection of healthy ecosystems in Vermont,
19 preservation of the agricultural and forest productivity of the land, and the
20 economic viability of agricultural units, conservation of the recreational
21 opportunity afforded by the state's hills, forests, streams and lakes, wise use of

1 the state’s non-renewable earth and mineral reserves, and protection of the
2 beauty of the landscape are matters of public good. Uses which threaten or
3 significantly inhibit ~~these~~ healthy ecosystems and the state’s natural and scenic
4 resources should be permitted only when the public interest is clearly benefited
5 thereby.

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

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

8 Subchapter 1. General Provisions

9 § 6000. PURPOSE; CONSTRUCTION

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

14 § 6001. DEFINITIONS

15 In this chapter:

16 (1) “Board” means the ~~Natural Resources~~ Vermont Environmental
17 Review Board.

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

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

1 (i) The construction of improvements on a tract or tracts of land,
2 owned or controlled by a person, involving more than 10 acres of land within a
3 radius of five miles of any point on any involved land, for commercial or
4 industrial purposes in a municipality that has adopted permanent zoning and
5 subdivision bylaws.

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

9 or

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

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

19 * * *

1 (i) The construction of improvements for farming, logging, or
2 forestry purposes below the elevation of ~~2,500~~ 2,000 feet, except when located
3 in a critical resource area.

4 * * *

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

8 * * *

9 (vii) The construction of improvements below the elevation of
10 ~~2,500~~ 2,000 feet for the ~~onsite~~ on-site storage, preparation, and sale of
11 compost, provided that one of the following applies:

12 * * *

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

19 ~~(7) “Floodway fringe” means an area which is outside a floodway and is~~
20 ~~flooded with an average frequency of once or more in each 100 years as~~
21 ~~determined by the Secretary of Natural Resources with full consideration given~~

1 ~~to upstream impoundments and flood control projects.~~ “River corridor” has the
2 same meaning as under section 752 of this title.

3 * * *

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

7 * * *

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

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

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

1 (iii) A tract or tracts of land, owned or controlled by a person, that
2 the person has partitioned or divided for the purpose of resale into [number of
3 lots to be determined] or more lots, within a continuous period of five years, in
4 a rural and working lands area.

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

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

12 (II) If sales described under this subdivision ~~(iii)~~ (iv) are of
13 interests that, when sold by means other than public auction, are exempt from
14 the provisions of this chapter under the provisions of subsection 6081(b) of this
15 title, the fact that these interests are sold by means of a public auction shall not,
16 in itself, create a requirement for a permit under this chapter.

17 (v) A tract or tracts of land, owned or controlled by a person,
18 located in a critical resource area, that have been partitioned or divided for the
19 purpose of resale.

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

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

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

7 * * *

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

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

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

1 of any building or other structure, or land, or extension of use of land.

2 However, fragmentation does not include the division or conversion of a forest
3 block or connecting habitat by a recreational trail or by improvements
4 constructed for farming, logging, or forestry purposes below the elevation of
5 2,500 feet.

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

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

12 (43) “Air contaminant” has the same meaning as under section 552 of
13 this title.

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

19 (45) “Critical resource area” means a river corridor, a significant
20 wetland as defined under section 902 of this title, land at or above 2,000 feet, a

1 ridgeline, and land characterized by slopes greater than 15 percent and shallow
2 depth to bedrock.

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

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

12 (48) “Rural and working lands area” means an area that is not an
13 existing settlement or a critical resource area.

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

19 (50) “Ridgeline” means a line marking or following a ridge, top of a hill,
20 or ledged area, behind which is open space or horizon.

21 § 6001e COMMERCIAL COMPOSTING FACILITY; CIRCUMVENTION

1 possible, the Board membership includes the racial, ethnic, gender, and
2 geographic diversity of the State.

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

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

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

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

14 ~~(b) Any vacancy occurring in the membership of the Board shall be filled~~
15 ~~by the Governor for the unexpired portion of the term. Terms; vacancy;~~
16 ~~succession. The term of each appointment subsequent to the initial~~
17 ~~appointments described in subdivision (a)(2) of this section shall be four years.~~
18 ~~Any appointment to fill a vacancy shall be for the unexpired portion of the~~
19 ~~term vacated. A member wishing to succeed himself or herself in office may~~
20 ~~seek reappointment under the terms of this section.~~

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

4 (d) ~~The Chair of the Board, upon request of the Chair of a District~~
5 ~~Commission, may appoint and assign former Commission members to sit on~~
6 ~~specific Commission cases when some or all of the regular members and~~
7 ~~alternates of the District Commission are disqualified or otherwise unable to~~
8 ~~serve. Use of alternates. When a member of the Board is unavailable to hear a~~
9 ~~case, the Chair may appoint an alternate member to hear the case. Retirement~~
10 ~~from office. When a Board member who hears all or a substantial part of a~~
11 ~~case retires from office before the case is completed, he or she shall remain a~~
12 ~~member of the Board for the purpose of concluding and deciding that case and~~
13 ~~signing the findings and judgments involved. A retiring Chair shall also~~
14 ~~remain a member for the purpose of certifying questions of law if a party~~
15 ~~appeals to the Supreme Court.~~

16 (e) Completion of case. A case shall be deemed completed when the Board
17 enters a final decision even though that decision is appealed to the Supreme
18 Court and remanded by that Court.

19 (f) Court of record; jurisdiction. The Board shall have the powers of a
20 court of record in the determination and adjudication of all matters within its
21 jurisdiction. It may initiate proceedings on any matter within its jurisdiction.

1 It may render judgments and enforce the same by any suitable process issuable
2 by courts in this State. An order issued by the Board on any matter within its
3 jurisdiction shall have the effect of a judicial order. The Board’s jurisdiction
4 shall include:

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

7 (2) the issuance of decisions on appeals pursuant to section 6089 and
8 chapter 219 of this title.

9 (g) Hearing officers. One Board member or any officer or employee of the
10 Board duly appointed by the Chair of the Board may inquire into and examine
11 any matter within the jurisdiction of the Board.

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

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

21 § 6022. PERSONNEL

1 (a) Regular personnel. The Board may ~~appoint~~ retain legal counsel,
2 scientists, engineers, experts, investigators, temporary employees, and
3 administrative personnel; as it finds necessary in carrying out its duties, ~~unless~~
4 the Governor shall otherwise provide and may authorize the District
5 Commissions to use funds to retain personnel to assist on matters within its
6 jurisdiction, including oversight and monitoring of permit compliance.
7 Personnel employed by the District Commissions pursuant to this subsection,
8 shall not report to the Board.

9 (b) Personnel for particular proceedings.

10 (1) Retention.

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

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

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

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

21 (2) Assessment of costs.

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

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

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

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

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

20 * * *

21 § 6026. DISTRICT COMMISSIONERS

1 (a) For the purposes of the administration of this chapter, the State is
2 divided into nine districts.

3 * * *

4 (b) A District Environmental Commission is created for each district. Each
5 District Commission shall consist of three members from that district
6 appointed in the month of February by the Governor so that two appointments
7 expire in each odd-numbered year. Two of the members shall be appointed for
8 a term of four years, and the Chair (third member) of each District shall be
9 appointed for a two-year term. In any district, the Governor may appoint not
10 more than four alternate members from that district whose terms shall not
11 exceed two years, who may hear any case when a regular member is
12 disqualified or otherwise unable to serve. The Governor shall ensure, to the
13 extent possible, each District Commission includes the racial, ethnic, gender,
14 and geographic diversity of the State.

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

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

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

1 alternates of the District Commission are disqualified or otherwise unable to
2 serve.

3 § 6027. POWERS

4 (a) The Board and District Commissions shall have supervisory authority in
5 environmental matters respecting projects within their jurisdiction and shall
6 apply their independent judgment in determining facts and interpreting law.

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

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

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

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

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

19 (b) The powers granted under this chapter are additional to any other
20 powers ~~which~~ that may be granted by other legislation.

1 (c) The ~~Natural Resources~~ Board may designate or establish such regional
2 offices as it deems necessary to implement the provisions of this chapter and
3 the rules adopted hereunder. The ~~Natural Resources~~ Board may designate or
4 require a regional planning commission to receive applications, provide
5 administrative assistance, perform investigations, and make recommendations.

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

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

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

18 (g) The ~~Natural Resources~~ Board shall manage the process by which land
19 use permits are issued under section 6086 of this title, may initiate enforcement
20 on related matters; under the provisions of chapters 201 and 211 of this title,

1 and may petition the Environmental Division for revocation of land use
2 permits issued under this chapter. Grounds for revocation are:

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

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

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

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

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

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

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

18 (i) The Chair, subject to the direction of the Board, shall have general
19 charge of the offices and employees of the Board and the offices and
20 employees of the District Commissions.

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

4 * * *

5 § 6028. COMPENSATION

6 Members of the ~~Board and~~ District Commissions shall receive per diem pay
7 of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A.~~
8 ~~§1010.~~

9 * * *

10 § 6030. ~~MAP OF WIRELESS TELECOMMUNICATIONS FACILITIES~~
11 CAPABILITY AND DEVELOPMENT MAPS

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

14 (a) Updates. On or before January 1, 2021, the Board and the Secretaries
15 of Commerce and Community Development, of Digital Services, of
16 Agriculture, Food and Markets, and of Natural Resources shall complete an
17 update to the capability and development maps created under this chapter in
18 1971 for reference in applying this chapter. Maps updated pursuant to this
19 section shall be consistent with the Capability and Development Plan and shall
20 include and identify environmental constraints, existing settlements, rural and
21 working lands areas, critical resource areas, facilities and infrastructure, and

1 areas targeted for conservation, public investment, and development. The
2 Board and these Secretaries shall complete further updates to these maps no
3 less frequently than every eight years. The Board shall lead and coordinate the
4 completion of updates pursuant to this section.

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

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

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

11 (c) Availability. The updated maps shall be maintained as a layer in the
12 Agency of Natural Resources' Natural Resources Atlas and shall be available
13 to the public.

14 § 6031. ETHICAL STANDARDS

15 (a) The Chair and the regular and alternate members of the Board and the
16 Chair and the regular and alternate members of each District Commission shall
17 comply with the following ethical standards:

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

19 (2) The Chair and each member shall conduct the affairs of his or her
20 office in such a manner as to instill public trust and confidence and shall take

1 all reasonable steps to avoid any action or circumstance that might result in any
2 one of the following:

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

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

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

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

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

11 (F) adversely affecting the confidence of the public in the integrity of
12 the Board or District Commission.

13 (3) In the case of the Board, no person who receives or has received
14 during the previous two years a significant portion of his or her income directly
15 or indirectly from permit holders or applicants for a permit under chapter 47 of
16 this title may hear appeals from acts or decisions of the Secretary relating to
17 permits issued under chapter 47.

18 * * *

19 Subchapter 4. Permits

20 * * *

21 § 6081. PERMITS REQUIRED; EXEMPTIONS

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* * *

(b) Subsection (a) of this section shall not apply to a subdivision exempt under the regulations of the Department of Health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the Board of Health regulations, or has pending a bona fide application for a permit under the regulations of the Board of Health on June 1, 1970, with respect to plats on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Subsection (a) of this section shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971. Subsection (a) of this section shall not apply to a State highway on which a hearing pursuant to 19 V.S.A. § 222 has been held prior to June 1, 1970. Subsection (a) of this section shall not apply to any telecommunications facility in existence prior to July 1, 1997, unless that facility is a “development” as defined in subdivision 6001(3) of this title. Subsection (a) of this section shall apply to any substantial change in such excepted subdivision or development. On or before July 1, 2020, owners of preexisting pits and quarries shall submit extraction data to the Board in order to establish a baseline against which substantial changes may be determined.

* * *

1 (j) ~~With respect to the extraction of slate from a slate quarry that is~~
2 ~~included in final slate quarry registration documents, if it were removed from a~~
3 ~~site prior to June 1, 1970, the site from which slate was actually removed, if~~
4 ~~lying unused at any time after those operations commenced, shall be deemed to~~
5 ~~be held in reserve, and shall not be deemed to be abandoned. [Repealed.]~~

6 (k)(1) With respect to the commercial extraction of slate from a slate
7 quarry, activities that are not ancillary to slate mining operations may
8 constitute substantial changes, and be subject to permitting requirements under
9 this chapter. “Ancillary activities” include the following activities that pertain
10 to slate and that take place within a registered parcel that contains a slate
11 quarry: drilling, crushing, grinding, sizing, washing, drying, sawing and
12 cutting stone, blasting, trimming, punching, splitting, and gauging, and use of
13 buildings and use and construction of equipment exclusively to carry out such
14 activities. Buildings that existed on April 1, 1995, or any replacements to
15 those buildings, shall be considered ancillary.

16 (2) Activities that are ancillary activities that involve crushing may
17 constitute substantial changes if they may result in significant impact with
18 respect to any of the criteria specified in subdivisions 6086(a)(1) through (10)
19 of this title.

20 (l)(1) By no later than January 1, 1997, any owner of land or mineral rights
21 or any owner of slate quarry leasehold rights on a parcel of land on which a

1 slate quarry was located as of June 1, 1970, may register the existence of the
2 slate quarry with the District Commission and with the clerk of the
3 municipality in which the slate quarry is located, while also providing each
4 with a map which indicates the boundaries of the parcel which contains the
5 slate quarry.

6 (2) Slate quarry registration shall state the name and address of the
7 owner of the land, mineral rights, or leasehold rights; whether that person
8 holds mineral rights, or leasehold rights or is the owner in fee simple; the
9 physical location of the same; the physical location and size of ancillary
10 buildings; and the book and page of the recorded deed or other instrument by
11 which the owner holds title to the land or rights.

12 (3) Slate quarry registration documents shall be submitted to the District
13 Commission together with a request, under the provisions of subsection
14 6007(c) of this title, for a final determination regarding the applicability of this
15 chapter.

16 (4) The final determination regarding a slate quarry registration under
17 subsection 6007(c) of this title shall be recorded in the municipal land records
18 at the expense of the registrant along with an accurate site plan of the parcel
19 depicting the site specific information contained in the registration documents.

20 The registrant must provide notice of the slate quarry's registration to the
21 adjacent landowners.

1 payment of a supplemental fee in the event that an application understated a
2 project's construction costs. Failure to file a certification or to pay a
3 supplemental fee shall be grounds for permit revocation.

4 * * *

5 § 6085. HEARINGS; PARTY STATUS

6 * * *

7 (e) The ~~Natural Resources~~ Board and any District Commission, acting
8 through one or more duly authorized representatives at any prehearing
9 conference or at any other times deemed appropriate by the ~~Natural Resources~~
10 Board or by the District Commission, shall promote expeditious, informal, and
11 nonadversarial resolution of issues, require the timely exchange of information
12 concerning the application, and encourage participants to settle differences.
13 No District Commissioner who is participating as a ~~decisionmaker~~ decision
14 maker in a particular case may act as a duly authorized representative for the
15 purposes of this subsection. These efforts at dispute resolution shall not affect
16 the burden of proof on issues before a Commission or the ~~Environmental~~
17 ~~Division~~ Board, nor shall they affect the requirement that a permit may be
18 issued only after the issuance of affirmative findings under the criteria
19 established in section 6086 of this title.

20 * * *

1 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

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

19 (i) The construction, use, operation, and maintenance of the
20 development or subdivision will:

1 (I) avoid the emission of greenhouse gases, including
2 greenhouse gases from the vehicular traffic to be generated by the development
3 or subdivision;

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

6 (III) if it is not feasible to avoid or minimize such emissions,
7 will mitigate them in accordance with rules adopted by the Board. Any offsets
8 used shall be third-party verified and enforceable by the applicant and its
9 successors and assigns and by the State of Vermont. The rules shall be
10 adopted in consultation with the Secretary of Natural Resources and shall
11 comply with the greenhouse gas reduction goals of section 578 of this title.
12 The rules shall only allow mitigation when demonstrated by the applicant that
13 it is not feasible to avoid or minimize emissions.

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

19 (2) Water pollution. Will not result in undue water pollution. In making
20 this determination ~~it~~ the District Commission shall at least consider: the
21 elevation of land above sea level; and in relation to the flood plains, the nature

1 of soils and subsoils and their ability to adequately support waste disposal; the
2 slope of the land and its effect on effluents; the availability of streams for
3 disposal of effluents; and the applicable Health and Environmental
4 Conservation Department regulations.

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

- 11 (i) headwaters of watersheds characterized by steep slopes and
12 shallow soils; or
13 (ii) drainage areas of 20 square miles or less; or
14 (iii) above 1,500 feet elevation; or
15 (iv) watersheds of public water supplies designated by the Agency
16 of Natural Resources; or
17 (v) areas supplying significant amounts of recharge waters to
18 aquifers.

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

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

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

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

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

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

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

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

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

13 (ii) allow continued access to the waters and the recreational
14 opportunities provided by the waters;

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

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

19 (G) Wetlands. A permit will be granted whenever it is demonstrated
20 by the applicant, in addition to other criteria, that the development or

1 subdivision will not violate the rules of the Secretary of Natural Resources, as
2 adopted under chapter 37 of this title, relating to significant wetlands.

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

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

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

8 * * *

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

13 (B) ~~As appropriate, will~~ Will incorporate transportation demand
14 management strategies and provide safe use, access, and connections to
15 adjacent lands and facilities and to existing and planned pedestrian, bicycle,
16 and transit networks and services. ~~In determining appropriateness under this~~
17 ~~subdivision (B) However,~~ the District Commission ~~shall consider whether~~ may
18 decline to require such a strategy, access, or connection ~~constitutes a measure~~
19 if it finds that a reasonable person would ~~take~~ not undertake the measure given
20 the type, scale, and transportation impacts of the proposed development or
21 subdivision.

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* * *

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

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

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

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

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

(B) Forest blocks.

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

3 (I) the development or subdivision will avoid fragmentation of
4 the forest block through the design of the project or the location of project
5 improvements, or both; or

6 (II) it is not feasible to avoid fragmentation of the forest block
7 and the design of the development or subdivision minimizes fragmentation of
8 the forest block.

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

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

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

19 (C) Connecting habitat.

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

1 ~~85 of 1973 shall not be used as criteria in the consideration of applications by a~~
2 ~~District Commission.~~

3 * * *

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

15 * * *

16 (I) Interchange areas. A permit will be granted for a development or
17 subdivision within an interchange area when it is demonstrated that, in addition
18 to all other applicable criteria, the development or subdivision complies with
19 the Vermont Interstate Interchange Planning and Design Guidelines applicable
20 to the category of land use as identified for that area in the regional plan. As
21 used in this subdivision (I), “Vermont Interstate Interchange Planning and

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

7 * * *

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

1 with the function, efficiency, or safety of, or the public’s use or enjoyment of
2 or access to the facility, service, or lands.

3 * * *

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

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

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

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

19 * * *

20 (c) Conditions. A permit may contain such requirements and conditions as
21 are allowable proper exercise of the police power and which are appropriate

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

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

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

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

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

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

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

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

7 * * *

8 § 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

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

12 (b) The burden of persuasion, to show that the application meets the
13 relevant standard, shall be on the applicant with respect to subdivisions
14 6086(a)(1), (2), (3), (4), (8)(A) through (C), (9), and (10) of this title.

15 (c) The burden shall be on any party opposing the applicant application
16 with respect to subdivisions 6086(a)(5) through (8), (6), (7), and (8), not
17 including (8)(A) through (8)(C) of this title to show an unreasonable or adverse
18 effect that the application does not meet the relevant standard.

19 § 6089. APPEALS

20 (a) Appeals of any act or decision of a District Commission under this
21 chapter or a district coordinator under subsection 6007(c) of this title shall be

1 made to the ~~Environmental Division~~ Board in accordance with chapter 220 of
2 this title. For the purpose of this section, a decision of the Chair of a District
3 Commission under section 6001e of this title on whether action has been taken
4 to circumvent the requirements of this chapter shall be considered an act or
5 decision of the District Commission.

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

11 § 6090. RECORDING; DURATION AND ~~REVOCA~~TION OF PERMITS

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

16 (b) Permits for specified period.

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

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

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

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

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

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

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

1 ~~requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District~~
2 ~~Commission may approve the proposal only if it finds that the proposal will~~
3 ~~meet the requirements of the rules adopted under this section and will preserve~~
4 ~~a forest block or habitat connector of similar quality and character to the block~~
5 ~~or connector affected by the development or subdivision.~~

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

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

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

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

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

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

20 ~~(1) Determine the number of acres of forest block or habitat~~
21 ~~connector, or both, affected by the proposed development or subdivision.~~

1 ~~(II) Multiply this number of affected acres by the ratio set forth~~
2 ~~in the rules.~~

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

8 ~~(ii) The Vermont Housing Conservation Board shall use such a fee~~
9 ~~to preserve a forest block or habitat connector of similar quality and character~~
10 ~~to the block or connector affected by the development or subdivision.~~

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

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

16 ~~(d) All forest blocks and habitat connectors preserved pursuant to this~~
17 ~~section shall be protected by permanent conservation easements that grant~~
18 ~~development rights and include conservation restrictions and are conveyed to a~~
19 ~~qualified holder, as defined in section 821 of this title, with the ability to~~
20 ~~monitor and enforce easements in perpetuity.~~

21 * * *

1 * * * Enhanced Designation; Appeal * * *

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

3 § 2793f. ENHANCED DESIGNATION

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

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

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

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

17 (3) identify those areas within the municipality that constitute critical
18 resource areas within the meaning of 10 V.S.A. § 6001; and

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

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

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

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

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

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

21 § 4348a. ELEMENTS OF A REGIONAL PLAN

1 (a) A regional plan shall be consistent with the goals established in section
2 4302 of this title and shall include the following:

3 * * *

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

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

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

17 * * *

18 (F) Indicates those areas that are important as forest blocks and
19 habitat connectors and plans for land development in those areas to minimize
20 forest fragmentation and promote the health, viability, and ecological function
21 of forests. A plan may include specific policies to encourage the active

1 management of those areas for wildlife habitat, water quality, timber
2 production, recreation, or other values or functions identified by the regional
3 planning commission.

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

6 * * *

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

8 § 4382. THE PLAN FOR A MUNICIPALITY

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

13 * * *

14 * * * Appeals * * *

15 Sec. 10. REPEAL

16 10 V.S.A. chapter 220 (consolidated environmental appeals) is repealed.

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

18 CHAPTER 219. STATE ENVIRONMENTAL PERMIT APPEALS

19 § 8401. PURPOSE

20 It is the purpose of this chapter to:

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

3 (2) consolidate appeal routes for acts or decisions of the District
4 Commissions and the Secretary;

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

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

11 (5) provide clear appeal routes for acts and decisions of the Secretary.

12 § 8402. DEFINITIONS

13 As used in this chapter:

14 (1) “Board” means the Vermont Environmental Review Board
15 established under chapter 151 of this title.

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

18 (3) “Person” means any individual, partnership, company, corporation,
19 association, unincorporated association, joint venture, trust, municipality, the
20 State of Vermont or any agency, department, or subdivision of the State, any
21 federal agency, or any other legal or commercial entity.

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

6 (5) “Secretary” means the Secretary of Natural Resources or the
7 Secretary’s duly authorized representative. For the purposes of this chapter,
8 “Secretary” shall also mean the Commissioner of Environmental Conservation,
9 the Commissioner of Forests, Parks and Recreation, and the Commissioner of
10 Fish and Wildlife, with respect to those statutes that refer to the authority of
11 that commissioner or the department overseen by that commissioner.

12 § 8403. APPLICABILITY

13 (a) This chapter shall govern all appeals of an act or decision of the
14 Secretary, excluding appeals of enforcement actions under chapters 201 and
15 211 of this title and rulemaking, under:

16 (1) The following provisions of this title:

17 (A) chapter 23 (air pollution control);

18 (B) chapter 50 (aquatic nuisance control);

19 (C) chapter 41 (regulation of stream flow);

20 (D) chapter 43 (dams);

21 (E) chapter 47 (water pollution control);

- 1 (F) chapter 48 (groundwater protection);
- 2 (G) chapter 53 (beverage containers; deposit-redemption system);
- 3 (H) chapter 55 (aid to municipalities for water supply and water
- 4 pollution abatement and control);
- 5 (I) chapter 56 (public water supply);
- 6 (J) chapter 59 (underground and aboveground liquid storage tanks);
- 7 (K) chapter 64 (potable water supply and wastewater system permit);
- 8 (L) section 2625 (regulation of heavy cutting);
- 9 (M) chapter 123 (protection of endangered species);
- 10 (N) chapter 159 (waste management);
- 11 (O) chapter 37 (wetlands protection and water resources
- 12 management);
- 13 (P) chapter 166 (collection and recycling of electronic devices);
- 14 (Q) chapter 164A (collection and disposal of mercury-containing
- 15 lamps);
- 16 (R) chapter 32 (flood hazard areas);
- 17 (S) chapter 49A (lake shoreland protection standards);
- 18 (T) chapter 83, subchapter 8 (importation of firewood); and
- 19 (U) chapter 168 (product stewardship for primary batteries and
- 20 rechargeable batteries);
- 21 (2) 29 V.S.A. chapter 11 (management of lakes and ponds); and

1 (3) 24 V.S.A. chapter 61, subchapter 10 (salvage yards).

2 (b) This chapter shall govern all appeals from an act or decision of a
3 District Commission under chapter 151 of this title.

4 (c) This chapter shall govern all appeals from a district coordinator
5 jurisdictional opinion under chapter 151 of this title.

6 (d) This chapter shall govern all appeals from an act or decision of the
7 Board under this chapter.

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

11 § 8404. APPEALS

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

16 (b) Notice of the filing of an appeal.

17 (1) On filing an appeal from an act or decision of a District
18 Commission, the appellant shall notify all parties who had party status as of the
19 end of the District Commission proceeding and all friends of the Commission
20 that an appeal is being filed. In addition, the appellant shall publish notice not
21 more than 10 days after providing notice as required under this subsection, at

1 the appellant's expense, in a newspaper of general circulation in the area of the
2 project that is the subject of the decision.

3 (2) On the filing of an appeal from the act or decision of the Secretary
4 under the provisions of law listed in section 8403 of this title, the appellant
5 shall provide notice of the filing of an appeal to the following persons: the
6 applicant before the Agency of Natural Resources, if other than the appellant;
7 the owner of the land where the project is located if the applicant is not the
8 owner; the municipality in which the project is located; the municipal and
9 regional planning commissions for the municipality in which the project is
10 located; if the project site is located on a boundary, any adjacent Vermont
11 municipality and the municipal and regional planning commissions for that
12 municipality; any State agency affected; the solid waste management district in
13 which the project is located, if the project constitutes a facility pursuant to
14 subdivision 6602(10) of this title; all persons required to receive notice of
15 receipt of an application or notice of the issuance of a draft permit; and all
16 persons on any mailing list for the decision involved. In addition, the appellant
17 shall publish notice not more than 10 days after providing notice as required
18 under this subsection, at the appellant's expense, in a newspaper of general
19 circulation in the area of the project that is the subject of the decision.

20 (c) Requirement to participate before the District Commission or the
21 Secretary.

1 (1) Participation before District Commission. An aggrieved person shall
2 not appeal an act or decision that was made by a District Commission unless
3 the person was granted party status by the District Commission pursuant to
4 subdivision 6085(c)(1)(E) of this title, participated in the proceedings before
5 the District Commission, and retained party status at the end of the District
6 Commission proceedings. In addition, the person may only appeal those issues
7 under the criteria with respect to which the person was granted party status.
8 However, notwithstanding these limitations, an aggrieved person may appeal
9 an act or decision of the District Commission if the Board determines that:

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

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

13 or

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

16 (2) Participation before the Secretary.

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

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

4 (ii) The appellant shall identify each comment that the appellant
5 submitted to the Secretary that identifies or relates to an issue raised in his or
6 her appeal.

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

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

13 (i) there was a procedural defect that prevented the person from
14 commenting during the comment period or at the public meeting or otherwise
15 participating in the proceeding;

16 (ii) the Secretary did not conduct a comment period and did not
17 hold a public meeting;

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

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

3 (d) District coordinator jurisdictional opinions.

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

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

14 (e) Stays.

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

17 (A) acts or decisions involving stream alteration permits or shoreline
18 encroachment permits issued by the Secretary; and

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

20 (2) On petition by a party or upon its own motion for a stay of an act or
21 decision, the Board shall perform the initial review of the request and may

1 grant a stay. Any decision under this subsection to issue a stay shall be subject
2 to appeal to the Supreme Court according to the Rules of Appellate Procedure.

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

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

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

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

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

19 (2) if a District Commission issues a partial decision under subsection
20 6086(b) of this title, any appeal of that decision must be taken within 30 days
21 following the date of that decision.

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

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

10 (l) Intervention. Any person may intervene in a pending appeal if that
11 person:

12 (1) appeared as a party in the action appealed from and retained party
13 status;

14 (2) is a party by right;

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

16 (4) meets the standard for intervention established in the Vermont Rules
17 of Civil Procedure.

18 (m) With respect to review of an act or decision of the Secretary pursuant
19 to 3 V.S.A. § 2809, the Board may reverse the act or decision or amend an
20 allocation of costs to an applicant only if the Board determines that the act,
21 decision, or allocation was arbitrary, capricious, or an abuse of discretion. In

1 the absence of such a determination, the Board shall require the applicant to
2 pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

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

6 (1) there is an appeal of an act or decision of the Secretary that is based
7 on that record; or

8 (2) there is an appeal of a decision of a District Commission and a
9 decision of the Secretary is relevant under a criterion of subsection 6086(a) of
10 this title that is at issue in the appeal.

11 § 8405. FEES

12 (a) All persons filing an appeal shall pay a fee of \$250.00, plus any
13 associated publication costs. The Board may waive the fee or publication costs
14 if the Board finds that the appellant or initiating party is unable to pay the fee
15 or publication costs. The fee of \$250.00 shall not apply to appeals or other
16 matters brought before the Board under this chapter in the name of the State by
17 public officials authorized to do so.

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

1 § 8406. APPEALS TO THE SUPREME COURT

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

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

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

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

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

18 (d) Only the Attorney General may represent the State in all appeals under
19 this section.

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

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

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

12 § 4471. APPEAL TO ENVIRONMENTAL DIVISION

13 (a) Participation required. An interested person who has participated in a
14 municipal regulatory proceeding authorized under this title may appeal a
15 decision rendered in that proceeding by an appropriate municipal panel to the
16 Environmental Division as provided by section 4471a of this title.

17 Participation in a local regulatory proceeding shall consist of offering, through
18 oral or written testimony, evidence or a statement of concern related to the
19 subject of the proceeding. An appeal from a decision of the appropriate
20 municipal panel, or from a decision of the municipal legislative body under
21 subsection 4415(d) of this title, shall be taken in such manner as the Supreme

1 Court may by rule provide for appeals from State agencies governed by 3
2 V.S.A. §§ 801–816, unless the decision is an appropriate municipal panel
3 decision ~~which~~ that the municipality has elected to be subject to review on the
4 record.

5 * * *

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

7 § 4471a. ENVIRONMENTAL DIVISION

8 (a) Applicability.

9 (1) This section and section 4471 of this title shall govern all appeals
10 arising under this chapter, except for appeals under section 4352 of this title.

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

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

17 (b) Appeals; exceptions.

18 (1) Within 30 days after the date of the act or decision, an interested
19 person as defined in section 4465 of this title who has participated as defined
20 in section 4471 of this title in the municipal regulatory proceeding under this
21 chapter may appeal to the Environmental Division an act or decision made

1 under this chapter by an appropriate municipal panel; provided, however, that
2 decisions of a development review board under section 4420 of this title with
3 respect to review of municipal impacts under 10 V.S.A. chapter 151 are not
4 subject to appeal but shall serve as presumptions in accordance with that
5 chapter.

6 (2) Notwithstanding subdivision (1) of this subsection, an interested
7 person may appeal an act or decision under this chapter if the Environmental
8 judge determines that:

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

11 (B) the decision being appealed is the grant or denial of interested
12 person status; or

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

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

17 (d) Stays.

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

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

6 (e) De novo hearing. The Environmental Division, applying the
7 substantive standards that were applicable before the tribunal appealed from,
8 shall hold a de novo hearing on those issues that have been appealed, except in
9 the case of a decision being appealed on the record pursuant to subsection
10 4471(b) of this title.

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

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

17 (1) appeared as a party in the action appealed from and retained party
18 status;

19 (2) is a party by right;

20 (3) qualifies as an “interested person” as established in section 4465 of
21 this title; or

1 (4) meets the standard for intervention established in the Vermont Rules
2 of Civil Procedure.

3 (h) Appeals to Supreme Court.

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

8 (A) the person was a party to the proceeding before the
9 Environmental Division;

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

11 (C) the Supreme Court determines that:

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

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

16 (2) An objection that has not been raised before the Environmental
17 Division may not be considered by the Supreme Court unless the failure or
18 neglect to raise that objection is excused by the Supreme Court because of
19 extraordinary circumstances.

20 * * *Development Cabinet* * *

21 Sec. 17. 3 V.S.A. § 2293 is amended to read:

1 § 2293. DEVELOPMENT CABINET

2 * * *

3 (b) Development Cabinet.

4 (1) A Development Cabinet is created, to consist of the Secretaries of
5 the Agencies of Administration, of Agriculture, Food and Markets, of
6 Commerce and Community Development, of Education, of Natural Resources,
7 and of Transportation. The Governor or the Governor’s designee shall chair
8 the Development Cabinet.

9 (2) The Development Cabinet shall advise the Governor on how best to
10 implement the purposes of this section, and shall recommend changes as
11 appropriate to improve implementation of those purposes.

12 (3) The Development Cabinet may establish interagency work groups to
13 support its mission, drawing membership from any agency or department of
14 State government. Any interagency work groups established under this
15 subsection shall evaluate, test the feasibility of, and suggest alternatives to
16 economic development proposals, including proposals for public-private
17 partnerships, submitted to them for consideration. The Development Cabinet
18 shall refer to appropriate interagency workgroups any economic development
19 proposal that has a significant impact on the inventory or use of State land or
20 buildings.

1 (4) The Development Cabinet shall meet regularly in order to carry out
2 the purposes of this section.

3 *** Racial Equity Review ***

4 Sec. 18. IMPACTS ON RACIAL EQUITY AND DIVERSITY; REVIEW

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

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

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

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

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

1 (b) On or before October 15, 2020, the Executive Director of Racial Equity
2 shall report to the General Assembly with its findings and any
3 recommendations for legislative action.

4 * * * Revision Authority; Transition; Effective Dates * * *

5 Sec. 19. REFERENCES; REVISION AUTHORITY

6 (a) In the Vermont Statutes Annotated, all references to the Natural
7 Resources Board are deemed to be references to the Vermont Environmental
8 Review Board.

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

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

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

16 (c) In the Vermont Statutes Annotated, the Office of Legislative Council
17 shall:

18 (1) replace “Natural Resources Board” with “Vermont Environmental
19 Review Board”;

20 (2) replace “10 V.S.A. chapter 220” and “chapter 220 of Title 10” with
21 “10 V.S.A. chapter 219”;

1 (3) in Title 10, replace “chapter 220 of this title” with “chapter 219 of
2 this title”; and

3 (4) when a statute concerns an appeal governed by Sec. 11 of this act, 10
4 V.S.A. chapter 219, replace the reference, if any, to the Environmental
5 Division of the Superior Court with a reference to the Vermont Environmental
6 Review Board.

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

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

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

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

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

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

14 (6) In subsection (f): Stay of construction.

15 Sec. 20. RULES

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

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

4 Sec. 21. ENVIRONMENTAL REVIEW BOARD; BUDGET;
5 POSITIONS

6 As of February 1, 2020, all appropriations and employee positions of the
7 Natural Resources Board are transferred to the Vermont Environmental
8 Review Board.

9 Sec. 22. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

10 Notwithstanding the repeal of its jurisdictional authority to hear appeals
11 relative to State environmental permits under Sec. 10 of this act, the
12 Environmental Division shall continue to have jurisdiction to complete its
13 consideration of any such appeal that is pending before it as of February 1,
14 2020 if, with respect to such act or appeal, mediation or discovery has
15 commenced, a dispositive motion has been filed, or a trial has begun.

16 Sec. 23. EFFECTIVE DATES

17 (a) This section and Sec. 18 shall take effect on passage.

18 (b) The remainder of this act shall take effect on February 1, 2020, except
19 that:

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

4 (2) On or before April 1, 2020, the Vermont Environmental Review
5 Board shall file with the Secretary of State proposed rules to implement Sec. 3,
6 10 V.S.A. §§ 6086(a)(1)(B) (mitigation of greenhouse gas emissions).

DRAFT