

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 • Reorganizing the air and water pollution criteria.
- 8 • Amending the transportation, public investment, and energy conservation  
9 criteria.
- 10 • Amending the criteria to address ecosystem protection through protecting  
11 forest blocks and connecting habitat. The bill also would increase the  
12 program’s ability to protect ecosystems on ridgelines by reducing the  
13 elevation threshold from 2,500 to 2,000 feet.
- 14 • Requiring that, to be used in Act 250, local and regional plans must be  
15 approved as consistent with the statutory planning goals and clarifying that  
16 local and regional plan provisions apply to a project if they meet the same  
17 standard of specificity applicable to statutes.
- 18 • As part of a balancing of interests to support economic development in  
19 compact centers while promoting a rural countryside and protecting  
20 important natural resources, exempting designated downtowns and  
21 neighborhood development areas from Act 250 and increasing Act 250

- 1 jurisdiction at interstate interchanges and over new roads. Because the  
2 designation under 24 V.S.A. chapter 76A would affect jurisdiction, the bill  
3 provides for appeal of designation decisions.
- 4 • Clarifying the definition of “commercial purpose” so that it is not necessary  
5 to determine whether monies received are essential to sustain a project.
  - 6 • Increasing the per diem rate for District Commissioners and the Board to  
7 \$100.
  - 8 • Amending the permit process by giving the Natural Resources Board the  
9 power to issue major permits, in addition to the NRB’s current duties.
- 10 Appeals of Act 250 permits would go to the Supreme Court. The  
11 Environmental Division of the Superior Court would continue to hear other  
12 permit appeals and enforcement.
- 13 • Reaffirming the supervisory authority in environmental matters of the  
14 Board and District Commissions, in accordance with the original intent of  
15 Act 250 as determined by the Vermont Supreme Court.
  - 16 • Revising and clarifying the statutory authority on the use of other permits to  
17 demonstrate compliance with the criteria, including ensuring the reliability  
18 of those other permits.
  - 19 • Creating a process that would allow properties to be released from Act 250  
20 jurisdiction.

1 An act relating to changes to Act 250

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

3 \* \* \* Revisions to Capability and Development Plan \* \* \*

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

5 (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

6 Climate change poses serious risks to human health and safety, functioning  
7 ecosystems that support a diversity of species and economic growth, and  
8 Vermont’s tourist, forestry, and agricultural industries. The primary driver of  
9 climate change in Vermont and elsewhere is the increase of atmospheric  
10 carbon dioxide from the burning of fossil fuels, which has a warming effect  
11 that is amplified because atmospheric water vapor, another greenhouse gas,  
12 increases as temperature rises. Vermont should minimize its emission of  
13 greenhouse gases and, because the climate is changing, ensure that the design  
14 and materials used in development enable projects to withstand an increase in  
15 extreme weather events and adapt to other changes in the weather and  
16 environment.

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

18 (2) ECOSYSTEM PROTECTION AND UTILIZATION OF NATURAL

19 RESOURCES

20 (A) Healthy ecosystems clean water, purify air, maintain soil,  
21 regulate the climate, recycle nutrients, and provide food. They provide raw

1 materials and resources for medicines and other purposes. They are at the  
2 foundation of civilization and sustain the economy. These ecosystem services  
3 are the state’s natural capital.

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

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

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

18 \* \* \* Revisions to State Land Use Law \* \* \*

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

20 CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS

21 Subchapter 1. General Provisions



1 or any municipality with land in the 2,000-foot radius, that municipal  
2 ordinances or bylaws applicable to properties around the interchange:

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

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

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

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

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

19 (VI) Ensure that development in this area not establish or  
20 contribute to a pattern of strip development. Where strip development already

1 exists, development in this area must be infill that minimizes the characteristics  
2 of strip development.

3 (VII) Require site design to use space efficiently by siting  
4 buildings close together; minimizing paved services; locating parking to  
5 consider aesthetics, neighborhoods, and new corridors; and minimizing the use  
6 of one-story buildings.

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

10 (xii) The construction of a road or roads and any associated  
11 driveways to provide access to or within a tract of land of more than one acre  
12 owned or controlled by a person. For the purposes of determining jurisdiction  
13 under this subdivision, any parcel of land that will be provided access by the  
14 road and associated driveways is land involved in the construction of the road.  
15 Jurisdiction under this subdivision shall not apply unless the length of road and  
16 any associated driveways, in combination, is greater than 2,000 feet. For the  
17 purpose of determining the length of any road and associated driveways, the  
18 length of all other roads and driveways within the tract of land constructed  
19 within any continuous period of 10 years commencing after July 1, 2020 shall  
20 be included.

21 \* \* \*

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

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

4 \* \* \*

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

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

16 \* \* \*

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

20 \* \* \*

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



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

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

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

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

21 \* \* \*

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

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

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

16           However, fragmentation does not include the division or conversion of a forest  
17           block or connecting habitat by a recreational trail or by improvements  
18           constructed for farming, logging, or forestry purposes below the elevation of  
19           2,500 feet.

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

1           (42) As used in subdivisions (38), (39), and (40) of this section,  
2           “recreational trail” means a corridor that is not paved and that is used for  
3           recreational purposes, including hiking, walking, bicycling, cross-country  
4           skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.

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

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

12           (45) “Greenhouse gas” means carbon dioxide, methane, nitrous oxide,  
13           hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other  
14           chemical or physical substance that is emitted into the air and that the  
15           Secretary of Natural Resources or District Commission reasonably anticipates  
16           to cause or contribute to climate change.

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

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

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

13           (49) “Environmental justice” means that all people and communities  
14           have the right to equal environmental protection under the law and the right to  
15           live, work, and play in communities that are safe, healthy, and free of life-  
16           threatening conditions.

17           (50) “Road” means a shared right-of way serving two or more lots that  
18           vehicles can use and any new road or improvement to a Class IV road by a  
19           private person for the purpose of accessing a parcel, including roads that will  
20           be transferred to or maintained by a municipality after their construction or  
21           improvement. It shall not include:

1 (A) a State or municipal road;

2 (B) a utility corridor of an electric transmission or distribution  
3 company;

4 (C) a road used exclusively by a farm regulated by the Required  
5 Agricultural Practices; or

6 (D) a road regulated by the Acceptable Management Practices for  
7 Maintaining Water Quality on Logging Jobs in Vermont as adopted by the  
8 Commissioner under 10 V.S.A. § 2622.

9 \* \* \*

10 Subchapter 2. Administration

11 § 6021. BOARD; VACANCY, REMOVAL

12 (a) A Natural Resources Board is created.

13 ~~(4)~~ The Board shall consist of ~~five~~ three members nominated, appointed  
14 ~~by the Governor, with the advice and consent of the Senate, and confirmed in~~  
15 ~~the manner of a Superior judge so~~ that one each appointment expires in each a  
16 different year. The Board members shall be full-time employees. In making  
17 these appointments, ~~the Governor and the Senate shall give consideration to~~  
18 candidates shall be sought who have experience, expertise, or skills relating to  
19 ~~the environment or land use~~ environmental science, natural resources law and  
20 policy, land use planning, community development, environmental justice, or  
21 racial equity.

1           (A) ~~The Governor shall appoint a chair of the Board, a position that~~  
2 ~~shall be a full-time position~~ appointing authority shall ensure, to the extent  
3 possible, that the Board membership reflects the racial, ethnic, gender, and  
4 geographic diversity of the State.

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

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

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

13           (B) The Chair of the Board may assign alternates **District**  
14 **Commissioners** to sit on specific matters before the Board, in situations where  
15 fewer than five members are available to serve.

16           (b) ~~Any vacancy occurring in the membership of the Board shall be filled~~  
17 ~~by the Governor for the unexpired portion of the term.~~ Terms; vacancy;  
18 succession. The term of each appointment subsequent to the initial  
19 appointments described in subsection (a) of this section shall be four years.  
20 Any appointment to fill a vacancy shall be for the unexpired portion of the

1 term vacated. A member wishing to succeed himself or herself in office may  
2 seek reappointment under the terms of this section.

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

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

16 § 6022. PERSONNEL

17 (a) Regular personnel. The Board may ~~appoint~~ retain legal counsel,  
18 scientists, engineers, experts, investigators, temporary employees, and  
19 administrative personnel, as it finds necessary in carrying out its duties, unless  
20 the Governor shall otherwise provide and may authorize the District  
21 Commissions to retain personnel to assist on matters within its jurisdiction,

1 including oversight and monitoring of permit compliance. Personnel  
2 employed by the District Commissions pursuant to this subsection, shall not  
3 report to the Board.

4 (b) Personnel for particular proceedings.

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

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

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

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

15 \* \* \*

16 § 6026. DISTRICT COMMISSIONERS

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

19 \* \* \*

20 (b) A District Environmental Commission is created for each district. Each  
21 District Commission shall consist of three members from that district



1 appointed in the month of February by the Governor so that two appointments  
2 expire in each odd-numbered year. Two of the members shall be appointed for  
3 a term of four years, and the Chair (third member) of each District shall be  
4 appointed for a two-year term. In any district, the Governor may appoint not  
5 more than four alternate members from that district whose terms shall not  
6 exceed two years, who may hear any case when a regular member is  
7 disqualified or otherwise unable to serve. The Governor shall ensure, to the  
8 extent possible, that appointments are made in a timely manner and that each  
9 District Commission reflects the racial, ethnic, gender, and geographic  
10 diversity of the State.

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

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

15 (e) The Chair of the Board may appoint and assign District Commissioners  
16 to sit on specific cases when some or all of the regular members and alternates  
17 of the Board are disqualified or otherwise unable to serve.

18 § 6027. POWERS

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

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

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

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

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

11 (4) apply for and receive grants from the federal government and from  
12 other sources.

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

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

20 (d) At the request of a District Commission, if the Board Chair determines  
21 that the workload in the requesting district is likely to result in unreasonable

1 delays or that the requesting District Commission is disqualified to hear a case,  
2 the Chair may authorize the District Commission of another district to sit in the  
3 requesting district to consider one or more applications.

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

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

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

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

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

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

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

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

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

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

10 (i) The Chair, subject to the direction of the Board, shall have general  
11 charge of the offices and employees of the Board and the offices and  
12 employees of the District Commissions.

13 ~~(j) The Natural Resources Board may participate as a party in all matters~~  
14 ~~before the Environmental Division that relate to land use permits issued under~~  
15 ~~this chapter. [Repealed.]~~

16 \* \* \*

17 (n)(1) The Board may delegate to district coordinators authority:

18 (A) to determine whether an application is for a major or minor  
19 permit; and

20 (B) to issue minor permits, minor permit amendments, and  
21 administrative amendments.



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

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

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

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

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

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

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

20 (B) The District Commission may obtain the advice of a disinterested  
21 expert on the law applicable to a proceeding if the District Commission gives

1 notice to the parties of the person consulted and the substance of the advice,  
2 and affords the parties reasonable opportunity to respond.

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

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

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

11 (b) As soon as practicable after grounds become known, a party may move  
12 to disqualify a Board member or District Commissioner from a particular  
13 matter before the Board or District Commission.

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

16 (2) On receipt of the motion, a District Commissioner who is the subject  
17 of the motion shall disqualify himself or herself or shall refer the motion to the  
18 Chair of the Board.

19 (A) The Chair of the Board may disqualify the District Commissioner  
20 from the matter before the District Commission if, on review of the motion, the

1 Chair determines that such disqualification is necessary to ensure compliance  
2 with subsection (a)(ethical standards) of this section.

3 (B) On disqualification of a District Commissioner under this  
4 subsection, the Chair of the Board shall assign another District Commissioner  
5 to take the place of the disqualified Commissioner. The Chair shall consider  
6 making such an assignment from among the members of the same District  
7 Commission before assigning a member of another District Commission.

8 (3) On receipt of the motion, a Board member who is the subject of the  
9 motion shall disqualify himself or herself or shall refer the motion to the full  
10 Board. The Board may disqualify a member from the matter before the Board  
11 if, on review of the motion, the Board determines that such disqualification is  
12 necessary to ensure compliance with subsection (a) (ethical standards) of this  
13 section. The Board member who is the subject of the motion shall not be  
14 eligible to vote on the motion.

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

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

19 (2) be an advocate before any other public body or the General  
20 Assembly or its committees regarding any matter in which, while an appointee,



1 he or she exercised any official responsibility or participated personally and  
2 substantively.

3 \* \* \*

4 Subchapter 4. Permits

5 \* \* \*

6 § 6081. PERMITS REQUIRED; EXEMPTIONS

7 \* \* \*

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

15 \* \* \*

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

18 \* \* \*

19 (o) If a designation pursuant to 24 V.S.A. chapter 76A is removed,  
20 subsection (a) of this section shall apply to any subsequent substantial change  
21 to a priority housing project development or subdivision that was originally

1 exempt pursuant to subdivision 6001(3)(A)(iv)(I) of this title or subsection (p)  
2 of this section on the basis of that designation.

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

16 \* \* \*

17 (v) ~~A permit or permit amendment shall not be required for a development~~  
18 ~~or subdivision in a designated downtown development district for which the~~  
19 ~~District Commission has issued positive findings and conclusions under~~  
20 ~~section 6086b of this title on all the criteria listed in that section. A person shall~~  
21 ~~obtain new or amended findings and conclusions from the District Commission~~

1 ~~under section 6086b of this title prior to commencement of a material change,~~  
2 ~~as defined in the rules of the Board, to a development or subdivision for which~~  
3 ~~the District Commission has issued such findings and conclusions. A person~~  
4 ~~may seek a jurisdictional opinion under section 6007 of this title concerning~~  
5 ~~whether such a change is a material change. [Repealed.]~~

6 \* \* \*

7 § 6083. APPLICATIONS

8 \* \* \*

9 (e) The **Board and** District Commissions shall give priority to municipal  
10 projects that have been mandated by the State through a permit, enforcement  
11 order, court order, enforcement settlement agreement, statute, rule, or policy.

12 \* \* \*

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

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

19 (B) has one or more current violations of this chapter, or any rules,  
20 permits, assurances of discontinuance, court order, or administrative orders

1 related to this chapter, which, when viewed together, constitute substantial  
2 noncompliance.

3 (2) Any decision under this subsection to issue a stay may be subject to  
4 review by ~~the Environmental Division, as provided by rule of the Supreme~~  
5 Court.

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

10 § 6083a. ACT 250 FEES

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

19 (1) For projects involving construction, ~~\$6.65~~ \$9.65 for each \$1,000.00  
20 of the first \$15,000,000.00 of construction costs, and \$3.12 for each \$1,000.00  
21 of construction costs above \$15,000,000.00. An additional \$0.75 for each

1 \$1,000.00 of the first \$15,000,000.00 of construction costs shall be paid to the  
2 Agency of National Resources to account for the Agency of Natural  
3 Resources' review of Act 250 applications.

4 (2) For projects involving the creation of lots, \$125.00 for each lot.

5 (3) For projects involving exploration for or removal of oil, gas, and  
6 fissionable source materials, a fee as determined under subdivision (1) of this  
7 subsection or \$1,000.00 for each day of Commission hearings required for  
8 such projects, whichever is greater.

9 (4) For projects involving the extraction of earth resources, including  
10 sand, gravel, peat, topsoil, crushed stone, or quarried material, the greater of:  
11 a fee as determined under subdivision (1) of this subsection; or a fee equivalent  
12 to the rate of ~~\$0.02~~ \$0.03 per cubic yard of the first million cubic yards of the  
13 total volume of earth resources to be extracted over the life of the permit, and  
14 \$.01 per cubic yard of any such earth resource extraction above one million  
15 cubic yards. Extracted material that is not sold or does not otherwise enter the  
16 commercial marketplace shall not be subject to the fee. The fee assessed under  
17 this subdivision for an amendment to a permit shall be based solely upon any  
18 additional volume of earth resources to be extracted under the amendment.

19 (5) For projects involving the review of a master plan, the fee  
20 established in subdivision (1) of this section shall be due for any portion of the  
21 proposed project for which construction approval is sought and a fee

1 equivalent to \$0.10 per \$1,000.00 of total estimated construction costs in  
2 current dollars ~~in addition to the fee established in subdivision (1) of this~~  
3 ~~subsection for any portion of the project seeking construction approval~~ shall be  
4 due for all other portions of the proposed project. If construction approval is  
5 sought in future permit applications, the fee established in subdivision (1) of  
6 this subsection shall be due, except to the extent that it is waived pursuant to  
7 subsection (f) of this section.

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

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

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

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

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

4 \* \* \*

5 (4) District Commission decisions regarding application fee refunds  
6 may be appealed to the Natural Resources Board in accordance with Board  
7 rules.

8 \* \* \*

9 \* \* \*

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

20 (1) In reviewing this petition, the District Commission shall consider the  
21 following:

1           (A) Whether a portion of the project’s impacts have been reviewed in  
2           a previous permit;

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

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

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

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

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

19           (g) A Commission or the Natural Resources Board may require any  
20           permittee to file a certification of actual construction costs and may direct the  
21           payment of a supplemental fee in the event that an application understated a



1 project's construction costs. Failure to file a certification or to pay a  
2 supplemental fee shall be grounds for permit revocation.

3 \* \* \*

4 § 6084. NOTICE OF APPLICATION; **PREAPPLICATION PROCESS;**

5 HEARINGS; COMMENCEMENT OF REVIEW

6 (a) The plans for the construction of any development or subdivision  
7 subject to the permitting requirements of this chapter must be submitted by the  
8 applicant to the District Commission, municipal and regional planning  
9 commissions, affected State agencies, and adjoining landowners no less than  
10 30 days prior to filing an application under this chapter, unless the municipal  
11 and regional planning commissions and affected state agencies waive such  
12 requirement.

13 (1) The **District Commission may** hold a meeting on the proposed plans  
14 and the municipal or regional planning commission may take one or more of  
15 the following actions:

16 (A) Make recommendations to the applicant within 30 days.

17 (B) Once the application is filed with the District Commission, make  
18 recommendations to the District Commission by the deadline established in the  
19 applicable provision of this section, Board rule, or scheduling order issued by  
20 the District Commission.

1           (2) The application shall address the substantive written comments and  
2           recommendations made by the planning commissions related to the criteria of  
3           subsection 6086(a) of this title received by the applicant and the substantive  
4           oral comments related to those criteria made at a public hearing under  
5           subdivision (1) of this subsection.

6           (3) This subsection shall not apply to a project that have been designated  
7           as using simplified procedures pursuant to 6025(b)(1) or an administrative  
8           amendment.

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

1 Upon request and for good cause, the District Commission may authorize the  
2 applicant to provide a partial list of adjoining landowners in accordance with  
3 Board rules.

4 ~~(b)~~(c) Upon an application being ruled complete, the District Commission  
5 shall determine whether to process the application as a major application with  
6 a required public hearing or process the application as a minor application with  
7 the potential for a public hearing in accordance with Board rules.

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

18 \* \* \*

19 ~~(e)~~(d) Anyone required to receive notice of commencement of minor  
20 application review pursuant to subsection ~~(b)~~(c) of this section may request a  
21 ~~hearing~~ that an application be treated as a major by filing a request within the

1 public comment period specified in the notice pursuant to Board rules. The  
2 ~~District Commission~~ Board, on its own motion, may order ~~a hearing that an~~  
3 application be treated as a major within 20 days of notice of commencement of  
4 minor application review.

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

15 ~~(e)~~(f) Any notice for a major or minor application, as required by this  
16 section, shall also be published by the District Commission in a local  
17 newspaper generally circulating in the area where the development or  
18 subdivision is located and on the Board's website not more than ten days after  
19 receipt of a complete application.

20 \* \* \*



1 to be treated as confidential pursuant to a protective order duly adopted by the  
2 Board.

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

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

9 (e) 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 a 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 and the  
21 District Commissioners.



1 (C) the municipality in which the project site is located, and the  
2 municipal and regional planning commissions for that municipality; if the  
3 project site is located on a boundary, any Vermont municipality adjacent to  
4 that border and the municipal and regional planning commissions for that  
5 municipality; and the solid waste management district in which the land is  
6 located, if the development or subdivision constitutes a facility pursuant to  
7 subdivision 6602(10) of this title;

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

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

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

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



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

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

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

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

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

13 (3) Timeliness. A petition for party status pursuant to subdivision  
14 (c)(1)(E) of this section must be made at or prior to an initial prehearing  
15 conference held pursuant to Board rule or at the commencement of the hearing,  
16 whichever shall occur first, unless the ~~District Commission~~ Board directs  
17 otherwise. The ~~District Commission~~ Board may grant an untimely petition if it  
18 finds that the petitioner has demonstrated good cause for failure to request  
19 party status in a timely fashion, and that the late appearance will not unfairly  
20 delay the proceedings or place an unfair burden on the parties.

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

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

1           (6) Reexamination of party status. ~~A District Commission~~ The Board  
2           shall reexamine party status determinations before the close of hearings and  
3           state the results of that reexamination in the ~~District Commission~~ Board  
4           decision. In the reexamination of party status coming before the close of  
5           ~~District Commission~~ hearings, persons having attained party status up to that  
6           point in the proceedings shall be presumed to retain party status. However, on  
7           motion of a party, or on its own motion, ~~a Commission~~ the Board shall  
8           consider the extent to which parties continue to qualify for party status.  
9           Determinations made before the close of ~~District Commission~~ hearings shall  
10          supersede any preliminary determinations of party status.

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

15          (e) The Natural Resources Board and any District Commission, acting  
16          through one or more duly authorized representatives at any prehearing  
17          conference or at any other times deemed appropriate by the Natural Resources  
18          Board or by the District Commission, shall promote expeditious, informal, and  
19          nonadversarial resolution of issues, require the timely exchange of information  
20          concerning the application, and encourage participants to settle differences.  
21          No District Commissioner who is participating as a ~~decisionmaker~~ decision

1 maker in a particular case may act as a duly authorized representative for the  
2 purposes of this subsection. These efforts at dispute resolution shall not affect  
3 the burden of proof on issues before a Commission or the ~~Environmental~~  
4 ~~Division~~ Board, nor shall they affect the requirement that a permit may be  
5 issued only after the issuance of affirmative findings under the criteria  
6 established in section 6086 of this title.

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

12 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 \* \* \*

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



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

10           (6) Will not cause an unreasonable burden on the ability of a  
11 municipality to provide educational services.

12           (7) Will not place an unreasonable burden on the ability of the local  
13 governments to provide municipal or governmental services.

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

15           (A) Will not have an undue adverse effect on the scenic or natural  
16 beauty of the area, aesthetics, or historic sites or rare and irreplaceable natural  
17 areas.

18           ~~(A)(B)~~ Necessary wildlife habitat and endangered species. A permit  
19 will not be granted if unless it is demonstrated by ~~any party opposing~~ the  
20 applicant that a development or subdivision will not destroy or significantly

1 imperil necessary wildlife habitat or any endangered species; ~~and~~ or, if such  
2 destruction or imperilment will occur:

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

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

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

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

18  
19 \* \* \*

20 (9) Capability and development plan. Is in conformance with a duly  
21 adopted capability and development plan, and land use plan when adopted.

1 However, the legislative findings of subdivisions 7(a)(1) through (19) of Act  
2 85 of 1973 shall not be used as criteria in the consideration of applications by  
3 the Board or a District Commission.

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

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

\* \* \*

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

(F) Energy conservation and efficiency. A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation and energy efficiency, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide

1 evidence, by certification and established through inspection, that the  
2 subdivision or development complies with the applicable building energy  
3 standards and stretch codes under 30 V.S.A. § 51 or 53.

4 \* \* \*

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

14 \* \* \*

15 (K) Development affecting public investments. A permit will be  
16 granted for the development or subdivision of lands adjacent to governmental  
17 and public utility facilities, services, and lands, including highways, airports,  
18 waste disposal facilities, office and maintenance buildings, fire and police  
19 stations, universities, schools, hospitals, prisons, jails, electric generating and  
20 transmission facilities, oil and gas pipe lines, parks, hiking trails, ~~and~~ forest  
21 and game lands, lands conserved under chapter 155 of this title, and facilities

1 or lands protected in perpetuity and funded by the Vermont Housing and  
2 Conservation Board under chapter 15 of this title, when it is demonstrated that,  
3 in addition to all other applicable criteria, the development or subdivision will  
4 not unnecessarily or unreasonably endanger the public or quasi-public  
5 investment in the facility, service, or lands, or materially jeopardize or interfere  
6 with the function, efficiency, or safety of, or the public’s use or enjoyment of  
7 or access to the facility, service, or lands.

8 \* \* \*

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

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

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

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

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

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

17           (b) At the request of an applicant, or upon its own motion, the Board or  
18           District Commission shall consider whether to review any criterion or group of  
19           criteria of subsection (a) of this section before proceeding to or continuing to  
20           review other criteria. This request or motion may be made at any time prior to  
21           or during the proceedings. The Board or District Commission, in its sole

1 discretion, shall, within 20 days of the completion of deliberations on the  
2 criteria that are the subject of the request or motion, either issue its findings  
3 and decision thereon, or proceed to a consideration of the remaining criteria.

4 (c) Permit Conditions.

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

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

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

18 (B) Unless an impact under subdivision (a)(1) or (5) of this section  
19 would result, a permit issued to a forest-based enterprise shall allow the  
20 enterprise to ship and receive forest products outside regular hours of  
21 operation. These permits shall allow for delivery from the forestry operation to



1 the enterprise on nights, weekends, and holidays for a minimum of 60 days per  
2 year.

3 (C) In making a determination under this subdivision (2) as to  
4 whether an impact exists, the Board or District Commission shall consider the  
5 benefits to forests, the forest resources resulting from the forest-based  
6 enterprise, and the impact of the permit condition on the forest-based  
7 enterprise. Conditions shall impose the minimum restriction necessary to  
8 address the undue adverse impact.

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

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

19 (d) Other permits and approvals; presumptions. The Natural Resources  
20 Board ~~may by rule~~ shall allow the acceptance of a permit or permits or  
21 approval of any State agency with respect to subdivisions (a)(1) through (5) of

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

1 procedures set forth in ~~3 V.S.A., chapter 25~~, the Vermont Administrative  
2 Procedure Act.

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

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

8 (3) The Board or District Commission, in accordance with rules adopted  
9 by the Board, shall accept determinations issued by a development review  
10 board under the provisions of 24 V.S.A. § 4420, with respect to local review of  
11 municipal impacts under criteria of this section. The acceptance of such a  
12 determination, if positive, shall create a presumption that the application is not  
13 detrimental to the public health and welfare with respect to the specific  
14 requirement for which it is accepted and, if negative, shall create a  
15 presumption that the application is so detrimental. Any determinations,  
16 positive or negative, under the provisions of 24 V.S.A. § 4420 shall create  
17 presumptions only to the extent that the impacts under the criteria are limited  
18 to the municipality issuing the decision. If a municipality fails to respond to a  
19 request by the applicant within 90 days as to the impacts related to subdivision  
20 (a)(6) or (7), the application will be presumed not to have an unreasonable  
21 burden on educational, municipal, or governmental services.

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(f) Prior to any appeal of a permit issued by the Board or a District Commission, any aggrieved party may file a request for a stay of construction with the Board or District Commission together with a declaration of intent to appeal the permit. The stay request shall be automatically granted for seven days upon receipt and notice to all parties and pending a ruling on the merits of the stay request pursuant to Board rules. The automatic stay shall not extend beyond the 30-day appeal period unless a valid appeal has been filed with the ~~Environmental Division~~ Supreme Court. The automatic stay may be granted only once under this subsection during the 30-day appeal period. Following appeal of the ~~District Commission~~ decision, any stay request must be filed with the ~~Environmental Division~~ Supreme Court pursuant to the provisions of chapter 220 of this title. ~~A~~ The Board or District Commission shall not stay construction authorized by a permit processed under the Board’s minor application procedures.

§ 6087. DENIAL OF APPLICATION

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

(b) A permit may not be denied solely for the reasons set forth in subdivisions 6086(a)(5), (6), and (7) of this title. However, reasonable

1 conditions and requirements allowable in subsection 6086(c) of this title may  
2 be attached to alleviate the burdens created.

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

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

13 § 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

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

17 (b) The burden of persuasion, to show that the application meets the  
18 relevant standard, shall be on the applicant with respect to subdivisions  
19 6086(a)(1), (2), (3), (4), (8)(A) through (C), (9), and (10) of this title.

20 ~~(b)~~(c) The burden shall be on any party opposing the applicant application  
21 with respect to subdivisions 6086(a)(5) through (8), (6), (7), and (8), not

1 including (8)(A) through (8)(C), of this title to show an unreasonable or  
2 adverse effect that the application does not meet the relevant standard.

3 § 6089. APPEALS

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

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

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

15 (B) A determination that an application is a minor application or  
16 administrative amendment by a District Commission;

17 (C) A determination by a regional planning as to the sufficiency of  
18 municipal bylaws pursuant to subdivision 6001(3)(A)(xiii);

19 (D) A determination by a regional planning made pursuant to  
20 24 V.S.A. § 4350;

1           (E) A determination by the Downtown Development Board  
2           designating a downtown development district or neighborhood development  
3           district pursuant to 24 V.S.A. chapter 76A.

4           (2) Procedure.

5           (A) An appeal under this subsection may be brought by any person  
6           aggrieved. As used in this subdivision, “person aggrieved” means a person  
7           who alleges an injury to a particularized interest protected by the provisions of  
8           law listed in this chapter, attributable to an act or decision by a district  
9           coordinator, District Commission, Downtown Development Board, regional  
10           planning commission or the Board that can be redressed by the Board.

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

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

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

1 § 6090. RECORDING; DURATION ~~AND REVOCATION~~ OF PERMITS

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

6 (b) Permits for specified period.

7 (1) Any permit granted under this chapter for extraction of mineral  
8 resources, operation of solid waste disposal facilities, or logging above 2,500  
9 feet, shall be for a specified period determined by the Board in accordance  
10 with the rules adopted under this chapter as a reasonable projection of the time  
11 during which the land will remain suitable for use if developed or subdivided  
12 as contemplated in the application, and with due regard for the economic  
13 considerations attending the proposed development or subdivision. Other  
14 permits issued under this chapter shall be for an indefinite term, as long as  
15 there is compliance with the conditions of the permit.

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

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



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

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

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

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

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

20           (3) An application for a decision under this subsection shall be made on  
21           a form prescribed by the Board. The form shall require evidence

1 demonstrating that the application complies with subdivisions (1)(A)  
2 through (C) of this subsection. The application shall be processed in the  
3 manner described in section 6084 of this title and may be treated as a minor  
4 application under that section. In determining whether to treat as minor an  
5 application under this subsection, the District Commission shall apply the  
6 criteria of this subsection and not of subsection 6086(a) of this title.

7 \* \* \*

8 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

9 \* \* \*

10 (c) Mitigation and offsets for forest-based enterprises. Notwithstanding  
11 any provision of this chapter to the contrary, a conversion of primary  
12 agricultural soils by a forest-based enterprise permitted under this chapter shall  
13 be entitled to a ratio of 1:1 protected acres to acres of affected primary  
14 agricultural soil.

15 § 6094. ASSESSMENT OF COSTS

16 (a)(1) The Board may authorize itself or the Agency of Agriculture, Food  
17 and Markets, the Agency of Commerce and Community Development, the  
18 Agency of Natural Resources and its Departments, or the Agency of  
19 Transportation to retain legal counsel, official stenographers, expert witnesses,  
20 advisors, temporary employees, and other research, scientific, or engineering  
21 services in addition to its regular personnel necessary for the review,

1 processing, and adjudication of any permit application specific proceeding.

2 With respect to the Agencies:

3 (A) additional personal may be retained only after approval of the  
4 Governor; and

5 (B) after notice to the applicant, including an estimate of the duration  
6 and costs of the personnel and services.

7 (2) The Agency retaining the additional personnel shall fix the amount  
8 of compensation and expenses to be paid to the personnel retained under this  
9 subdivision. Costs of additional personnel obtained under this subdivision  
10 may be allocated to the applicant by the Agency or the Board.

11 (3) Notwithstanding any other provision of law, the Agency of  
12 Agriculture, Food, and Markets, Agency of Commerce and Community  
13 Development, Agency of Natural Resources and its Departments, or Agency of  
14 Transportation shall have the authority to bill the applicant for the costs of  
15 participating in any major proceeding before the Board, including the costs of  
16 employee application review, submissions, comments and testimony before the  
17 Board. An Agency may recover those costs from the applicant after notice to  
18 the applicant, including an estimate of the costs of the personnel or services.

19 (4) From time to time, the Board or Agency charging an applicant for  
20 personnel of services under this section shall provide the applicant with  
21 detailed statements showing the amount of money expended or contracted for

1 in the work of such personnel and services. All funds collected from  
2 applicants under this section shall be paid directly to the Board, Agency, or  
3 Department.

4 (5) The Board shall, upon petition of an applicant to which costs are  
5 allocated, review and determine, after opportunity for hearing, the  
6 reasonableness of such costs. The Board shall consider the size and  
7 complexity of the project and may revise such cost allocations if determined  
8 unreasonable.

9 (6) Nothing in this section shall confer authority on the Board to select  
10 or hire the personnel unless such personnel are retained by the Board.

11 (b) Prior to allocating costs, the Board shall make a determination of the  
12 purpose and use of the funds, identify the recipient of the funds, provide for  
13 allocation of costs to the applicant, indicate an estimated duration of the  
14 retention of personnel whose costs are being allocated, and estimate the total  
15 costs to be imposed. With the approval of the Board, such estimates may be  
16 revised as necessary.

17 \* \* \*

18 \* \* \* Resource Mapping; Forest Blocks \* \* \*

19 Sec. 4. 10 V.S.A. § 127 is amended to read:

20 § 127. RESOURCE MAPPING

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

9       (b) ~~The Secretary of Natural Resources~~ shall consider the ~~GIS-based~~  
10      resource maps developed under subsection (a) of this section when providing  
11      evidence and recommendations to the Public Utility Commission under  
12      30 V.S.A. § 248(b)(5) and when commenting on or providing  
13      recommendations under chapter 151 of this title to District Commissions on  
14      other projects.

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





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

2 § 4382. THE PLAN FOR A MUNICIPALITY

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

7 \* \* \*

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

9 § 4460. APPROPRIATE MUNICIPAL PANELS

10 \* \* \*

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

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

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

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

17 (2) The appropriate municipal panel reviewing an application for a

18 municipal permit or permit amendment pursuant to this subsection shall

19 include conditions contained within a permit previously issued pursuant to 10

20 V.S.A. chapter 151 unless the panel determines that the permit condition

21 pertains to any of the following:



1           (A) the construction phase of the project that has already been  
2           completed;

3           (B) compliance with another State permit that has independent  
4           jurisdiction that addresses the condition in the previously issued permit;

5           (C) federal or State law that is no longer in effect or applicable;

6           (D) an issue that is addressed by municipal regulation, and the project  
7           will meet the municipal standards; and

8           (E) a physical or use condition that is no longer in effect or  
9           applicable, or that will no longer be in effect or applicable once the new project  
10          is approved.

11          (3) After issuing or amending a permit containing conditions pursuant to  
12          this subsection, the appropriate municipal panel shall provide notice and a  
13          copy of the permit to the Natural Resources Board.

14          (4) The appropriate municipal panel’s determinations shall be made  
15          following notice and a public hearing as provided in section 4464(a)(1) of this  
16          title and to those persons requiring notice pursuant to 10 V.S.A. § 6084(b). The  
17          notice shall explicitly reference the existing Act 250 permit.

18          (5) The appropriate municipal panel’s decision shall be issued in accord  
19          with section 4464(b) of this title and shall include specific findings with  
20          respect to its determinations pursuant to subdivision (f)(2) of this section.



1 ~~participation as a prerequisite for an appeal of a District Commission decision~~  
2 ~~to the Environmental Division;~~

3 ~~(4) assure~~ ensure that clear appeal routes exist for acts and decisions of  
4 the Secretary of Natural Resources;

5 ~~(5)~~(4) consolidate appeals of decisions related to renewable energy  
6 generation plants and telecommunications facilities with review under,  
7 respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of  
8 proceedings pertaining to telecommunications facilities occurring only while  
9 30 V.S.A. § 248a remains in effect.

10 \* \* \*

11 § 8503. APPLICABILITY

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

15 \* \* \*

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

17 ~~(1) appeals from an act or decision of a District Commission under~~  
18 ~~chapter 151 of this title.~~

19 ~~(2) appeals from a district coordinator jurisdictional opinion under~~  
20 ~~§ 6007(e) of this title.~~



1 ~~general circulation in the area of the project which is the subject of the~~  
2 ~~decision.~~

3       (2) Upon the filing of an appeal from the act or decision of the Secretary  
4 under the provisions of law listed in section 8503 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 which is the subject of the decision.

20       (3)(2) In the case of appeals under 24 V.S.A. chapter 117, notice shall  
21 be as required under 24 V.S.A. § 4471.

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

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

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

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

16          ~~or~~

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

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

20                   (A) ~~An aggrieved person shall not appeal an act or decision of the~~  
21                   ~~Secretary unless the person submitted to the Secretary a written comment~~

1 during the comment period or an oral comment at the public meeting  
2 conducted by the Secretary. In addition, the person may only appeal issues  
3 related to the person's comment to the Secretary.

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

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

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

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

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

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

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

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

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

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

11           ~~(2) Failure to appeal within the time required under subsection (a) of this~~  
12           ~~section shall render the decision of the district coordinator under subsection~~  
13           ~~6007(e) of this title the final determination regarding jurisdiction under chapter~~  
14           ~~151 of this title unless the underlying jurisdictional opinion was not properly~~  
15           ~~served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title~~  
16           ~~and on persons on a subdivision 6085(c)(1)(E) list approved under subsection~~  
17           ~~6007(e) of this title.~~

18           ~~(f) Stays.~~

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



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

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

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

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

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

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

19 (2) a decision of the Commissioner of Forests, Parks and Recreation  
20 under section 2625 of this title being appealed on the record, in which case the

1 court shall affirm the decision, unless it finds that the Commissioner did not  
2 have reasonable grounds on which to base the decision.

3 ~~(i) Deference to Agency technical determinations. In the~~  
4 ~~adjudication of appeals relating to land use permits under chapter 151 of this~~  
5 ~~title, technical determinations of the Secretary shall be accorded the same~~  
6 ~~deference as they are accorded by a District Commission under subsection~~  
7 ~~6086(d) of this title.~~

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

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

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

18 ~~(2)~~ a municipal decision regarding whether a particular application  
19 qualifies for a recorded hearing under 24 V.S.A. § 4471(b) shall not be subject  
20 to appeal;

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

4           ~~(4)(j)~~ Representation. The Secretary may represent the Agency of Natural  
5           Resources in all appeals under this section. ~~The Chair of the Natural~~  
6           ~~Resources Board may represent the Board in any appeal under this section,~~  
7           ~~unless the Board directs otherwise. If more than one State agency, other than~~  
8           ~~the Board, either appeals or seeks to intervene in an appeal under this section,~~  
9           only the Attorney General may represent the interests of those agencies of the  
10          State in the appeal.

11          ~~(m)(k)~~ Precedent. Prior decisions of the Environmental Board, Water  
12          Resources Board, and Waste Facilities Panel shall be given the same weight  
13          and consideration as prior decisions of the Environmental Division.

14          ~~(n)(l)~~ Intervention. Any person may intervene in a pending appeal if that  
15          person:

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

18               (2) is a party by right;

19               (3) is the Natural Resources Board;

20               ~~(4)~~ is a person aggrieved, as defined in this chapter;







1 (d) General permit. The rules authorized by this section may establish  
2 requirements for a general permit to implement the requirements of this  
3 section, including authorization under the general permit to conduct a specified  
4 use ~~exempt from municipal regulation~~ subject to regulation under this section  
5 without notifying or reporting to the Secretary or an agency delegated under  
6 subsection (g) of this section.

7 \* \* \*

8 (f)(1) Permit requirement.

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

19 (B) Beginning on November 1, 2021, a person shall not commence  
20 construction of a development or subdivision that is subject to a permit under  
21 chapter 151 of this title without a permit issued pursuant under the rules

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

3 (C) Beginning on November 1, 2023, a person shall not commence or  
4 conduct a use located in a highest priority river corridor without a permit  
5 issued pursuant under the rules required under subsection (a) of this section by  
6 the Secretary or by a State agency delegated permitting authority under  
7 subsection (g) of this section.

8 \* \* \* Racial Equity Review \* \* \*

9 Sec. 13. IMPACTS ON RACIAL EQUITY AND DIVERSITY; REVIEW

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

17 (1) identify the impacts of acts or decisions made pursuant to Act 250 on  
18 inequities in **home ownership**, land ownership, and land distribution within the  
19 State;





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

5           (3) Whether 10 V.S.A. chapter 151 should require the creation of  
6           capability and development maps. If the recommendation is to require the  
7           creation of capability and development maps, the Agency shall identify the  
8           resources and land uses to be mapped and provide a schedule and budget for  
9           the proposed update.

10          (4) How capability and development findings, the capability and  
11          development plan, and capability and development maps would be used in  
12          permitting under 10 V.S.A. chapter 151 and how these would relate to the  
13          criteria considered under 10 V.S.A. § 6086(a).

14          (5) How regional plans are reviewed and approved, including any  
15          existing or new administrative body to conduct that review; if a review is  
16          recommended, which State agency should perform that review.

17          (6) Whether designations of growth centers and new town centers  
18          should be appealable. If these designations are appealable, which tribunal  
19          should hear the appeal.

20          (b) The Natural Resources Board shall have a public comment period of at  
21          least 30 days on the draft report required by subsection (a) of this section. The

1 Board shall hold at least one public informational meeting on the draft report.

2 Notice provided by the Board shall include affected State agencies,

3 municipalities, regional planning commissions, the Vermont Planners

4 Association, the Vermont Planning and Development Association, and other

5 interested persons.

6 (c) On or before March 1, 2021, the Natural Resources Board shall provide

7 a final report to the House Committee on Natural Resources and Energy and

8 the Senate Committee on Natural Resources and Energy. The final report shall

9 incorporate recommendations from the public engagement process under

10 subsection (b) of this section and shall contain a response to stakeholder

11 comments as a part of the final report.

12 \* \* \* Revision Authority; Transition; Effective Dates \* \* \*

13 Sec. 15. REFERENCES; REVISION AUTHORITY

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

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

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

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

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

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

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

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

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

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

9           Sec. 16. RULEMAKING

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

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

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

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

20                   (2) Standards establishing how fragmentation of forest block or  
21           connecting habitat is avoided or minimized, which may include steps to

1 promote proactive site design of buildings, roadways and driveways, utility  
2 location, and location relative to existing features such as roads, tree lines and  
3 fence lines.

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

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

8 (A) appropriate ratios for compensation;

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

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

12 (b) The Board shall convene a working group to provide input to the rule  
13 prior to pre-filing with the Interagency Committee on Administrative Rules.

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

15 (c) The Board shall file a final proposed rule with the Secretary of State  
16 and Legislative Committee on Administrative Rules on or before September 1,  
17 2021.

18 Sec. 17. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

19 Notwithstanding the repeal of its jurisdictional authority to hear appeals  
20 relative to Act 250 permits under Sec. 10 of this act, the Environmental  
21 Division shall continue to have jurisdiction to complete its consideration of any

1 such appeal that is pending before it as of February 1, 2021 if, with respect to  
2 such act or appeal, mediation or discovery has commenced, a dispositive  
3 motion has been filed, or a trial has begun.

4 \* \* \* Effective Dates \* \* \*

5 Sec. 18. EFFECTIVE DATES

6 (a) This section and Sec. 13 (Racial Equity Review) shall take effect on  
7 passage.

8 (b) Secs. 12 (River Permits) and 14 (Planning Review) and this section  
9 shall take effect on July 1, 2020.

10 (c) The remainder of this act shall take effect on February 1, 2021, except:

11 (1) the authority to make appointments to the Natural Resources Board  
12 shall take effect on passage and each such appointment shall be made on or  
13 before December 15, 2020.

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

18 (d) Terms of existing Natural Resources Board members. The terms of any  
19 Natural Resources Board member not appointed consistent with the  
20 requirements of 10 V.S.A. § 6021(a)(1)(A) or (B) shall expire on October 31,  
21 2022.

- 1 (e) Rulemaking. On or before November 1, 2022, the Enhanced Natural
- 2 Resources Board shall adopt rules of procedure pursuant to 10 V.S.A.
- 3 § 6025(a).

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