

Comments on draft 5.3  
Committee bill on Act 250  
draft 5.3  
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1 § 8403. APPLICABILITY

2 (a) This chapter shall govern all appeals of an act or decision of the  
3 Secretary, excluding appeals of enforcement actions under chapters 201 and  
4 211 of this title and rulemaking, under:



5 (1) The following provisions of this title:

- 6 (A) chapter 23 (air pollution control);  
7 (B) chapter 50 (aquatic nuisance control);  
8 (C) chapter 41 (regulation of stream flow);  
9 (D) chapter 43 (dams);  
10 (E) chapter 47 (water pollution control);  
11 (F) chapter 48 (groundwater protection);  
12 (G) chapter 53 (beverage containers; deposit-redemption system);  
13 (H) chapter 55 (aid to municipalities for water supply and water  
14 pollution abatement and control);  
15 (I) chapter 56 (public water supply);  
16 (J) chapter 59 (underground and aboveground liquid storage tanks);  
17 (K) chapter 64 (potable water supply and wastewater system permit);  
18 (L) section 2625 (regulation of heavy cutting);  
19 (M) chapter 123 (protection of endangered species);  
20 (N) chapter 159 (waste management);

1 § 8404. APPEALS

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

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

7 (1) On filing an appeal from an act or decision of a District  
8 Commission, the appellant shall notify all parties who had party status as of the  
9 end of the District Commission proceeding and all friends of the Commission  
10 that an appeal is being filed. In addition, the appellant shall publish notice not  
11 more than 10 days after providing notice as required under this subsection, at  
12 the appellant's expense, in a newspaper of general circulation in the area of the  
13 project that is the subject of the decision.

14 (2) On the filing of an appeal from the act or decision of the Secretary  
15 under the provisions of law listed in section 8403 of this title, the appellant  
16 shall provide notice of the filing of an appeal to the following persons: the  
17 applicant before the Agency of Natural Resources, if other than the appellant;  
18 the owner of the land where the project is located if the applicant is not the  
19 owner; the municipality in which the project is located; the municipal and  
20 regional planning commissions for the municipality in which the project is  
21 located; if the project site is located on a boundary, any adjacent Vermont

1 municipality and the municipal and regional planning commissions for that  
2 municipality; any State agency affected; the solid waste management district in  
3 which the project is located; if the project constitutes a facility pursuant to  
4 subdivision 6602(10) of this title; all persons required to receive notice of  
5 receipt of an application or notice of the issuance of a draft permit; and all  
6 persons on any mailing list for the decision involved. In addition, the appellant  
7 shall publish notice not more than 10 days after providing notice as required  
8 under this subsection, at the appellant's expense, in a newspaper of general  
9 circulation in the area of the project that is the subject of the decision.



10 (c) Requirement to participate before the District Commission or the  
11 Secretary.

12 (1) Participation before District Commission. An aggrieved person shall  
13 not appeal an act or decision that was made by a District Commission unless  
14 the person was granted party status by the District Commission pursuant to  
15 subdivision 6085(c)(1)(E) of this title, participated in the proceedings before  
16 the District Commission, and retained party status at the end of the District  
17 Commission proceedings. In addition, the person may only appeal those issues  
18 under the criteria with respect to which the person was granted party status.  
19 However, notwithstanding these limitations, an aggrieved person may appeal  
20 an act or decision of the District Commission if the Board determines that:



- 1           (A) there was a procedural defect that prevented the person from  
2 obtaining party status or participating in the proceeding;
- 3           (B) the decision being appealed is the grant or denial of party status;  
4 or
- 5           (C) some other condition exists that would result in manifest injustice  
6 if the person’s right to appeal was disallowed.
- 7           (2) Participation before the Secretary.
- 8           (A) An aggrieved person shall not appeal an act or decision of the  
9 Secretary unless the person submitted to the Secretary a written comment  
10 during the comment period or an oral comment at the public meeting  
11 conducted by the Secretary. In addition, the person may only appeal issues  
12 related to the person’s comment to the Secretary.
- 13           (i) To be sufficient for the purpose of appeal, a comment to the  
14 Secretary shall identify each reasonably ascertainable issue with enough  
15 particularity so that a meaningful response can be provided.
- 16           (ii) The appellant shall identify each comment that the appellant  
17 submitted to the Secretary that identifies or relates to an issue raised in his or  
18 her appeal.
- 19           (iii) A person moving to dismiss an appeal or an issue raised by an  
20 appeal pursuant to this subdivision (A) shall have the burden to prove that the  
21 requirements of this subdivision (A) are not satisfied.



1 properly served on persons listed in subdivisions 6085(c)(1)(A)–(D) of this  
2 title and each person on a list pursuant to subdivision 6085(c)(1)(E) of this title  
3 that is approved under subsection 6007(c) of this title.

4 (e) Stays.

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

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

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

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

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

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

20 (h) Appeals of authorizations or coverage under a general permit. Any  
21 appeal of an authorization or coverage under the terms of a general permit shall



1 be limited in scope to whether the permitted activity complies with the terms  
2 and conditions of the general permit.

3 (j) Limitations on appeals. Notwithstanding any other provision of this  
4 section:

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

9 (2) if a District Commission issues a partial decision under subsection  
10 6086(b) of this title, any appeal of that decision must be taken within 30 days  
11 following the date of that decision.

12 (i) Representation. The Secretary may represent the Agency in all appeals  
13 under this section. If more than one State agency either appeals or seeks to  
14 intervene in an appeal under this section, only the Attorney General may  
15 represent the interests of the State in the appeal.

16 (k) Prior decisions. Prior decisions of the Water Resources Board, the  
17 Environmental Board, the Waste Facilities Panel, and the Environmental  
18 Division on matters arising under the chapters listed in section 8403 of this title  
19 shall be given the same weight and consideration as prior decisions of the  
20 Board.





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

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

5               (2) is a party by right;

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

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

9       (m) With respect to review of an act or decision of the Secretary pursuant  
10       to 3 V.S.A. § 2809, the Board may reverse the act or decision or amend an  
11       allocation of costs to an applicant only if the Board determines that the act,  
12       decision, or allocation was arbitrary, capricious, or an abuse of discretion. In  
13       the absence of such a determination, the Board shall require the applicant to  
14       pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

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

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



- 1     • Reaffirming the supervisory authority in environmental matters of the  
2         Board and District Commissions, in accordance with the original intent of  
3         Act 250 as determined by the Vermont Supreme Court.
- 4     • Revising and clarifying the statutory authority on the use of other permits to  
5         demonstrate compliance with the criteria, including ensuring the reliability  
6         of those other permits.

7         An act relating to changes to Act 250

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

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

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

11                 **(20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE**

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



1 (i) The Chair, subject to the direction of the Board, shall have general  
2 charge of the offices and employees of the Board and the offices and  
3 employees of the District Commissions.

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

7 \* \* \*

8 § 6028. COMPENSATION

9 Members of the Board and District Commissions shall receive per diem pay  
10 of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A.~~  
11 ~~§ 1010.~~

12 ~~§ 6030. MAP OF WIRELESS TELECOMMUNICATIONS FACILITIES~~  
13 ~~CAPABILITY AND DEVELOPMENT MAPS~~

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

16 (a) Updates. On or before January 1, 2021, the Board and the Secretaries  
17 of Commerce and Community Development, of Digital Services, of  
18 Agriculture, Food and Markets, and of Natural Resources shall complete an  
19 update to the capability and development maps created under this chapter in  
20 1971 for reference in applying this chapter. Maps updated pursuant to this  
21 section shall be consistent with the Capability and Development Plan and shall



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

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

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

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

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

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

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

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

20           \* \* \*

21           Subchapter 4. Permits





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

3 (5) With respect to a slate quarry located on a particular registered  
4 parcel of land, ancillary activities on the parcel related to the extraction and  
5 processing of slate into products that are primarily other than crushed stone  
6 products shall not be deemed to be substantial changes, as long as the activities  
7 do not involve the creation of one or more new slate quarry holes that are not  
8 related to an existing slate quarry hole.

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

11 \* \* \*

12 § 6083a. ACT 250 FEES

13 \* \* \*

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

17 \* \* \*

18 (4) District Commission decisions regarding application fee refunds  
19 may be appealed to the Natural Resources Board in accordance with Board  
20 rules.

21 \* \* \*

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

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

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

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

16 (B) Forest blocks.

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

19 (1) the development or subdivision will avoid fragmentation of  
20 the forest block through the design of the project or the location of project  
21 improvements, or both;



1                    (I) the development or subdivision will avoid fragmentation of  
2 a connecting habitat through the design of the project or the location of project  
3 improvements, or both;

4                    (II) it is not feasible to avoid fragmentation of the connecting  
5 habitat and the design of the development or subdivision minimizes  
6 fragmentation of the connector; or

7                    (III) it is not feasible to avoid or minimize fragmentation of the  
8 connecting habitat and the applicant will mitigate the fragmentation in  
9 accordance with section 6094 of this title.

10                   (ii) Methods for avoiding or minimizing the fragmentation of a  
11 connecting habitat may include:

12                   (I) locating buildings and other improvements at the farthest  
13 feasible location from the center of the connector;

14                   (II) designing the location of buildings and other improvements  
15 to leave the greatest contiguous portion of the area undisturbed in order to  
16 facilitate wildlife travel through the connector; or

17                   (III) when there is no feasible site for construction of buildings  
18 and other improvements outside the connector, designing the buildings and  
19 improvements to facilitate the continued viability of the connector for use by  
20 wildlife.

21

• • •



1           (B) Deposit of an off-site mitigation fee into the Vermont Housing  
2           and Conservation Trust Fund under section 312 of this title.

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

4           (I) Determine the number of acres of forest block or connecting  
5           habitat, or both, affected by the proposed development or subdivision.

6           (II) Multiply this number of affected acres by the ratio set forth  
7           in the rules.

8           (III) Multiply the resulting product by a “price-per-acre” value,  
9           which shall be based on the amount that the Commissioner of Forests, Parks  
10           and Recreation determines to be the recent, per-acre cost to acquire  
11           conservation easements for forest blocks and connecting habitats of similar  
12           quality and character in the same geographic region as the proposed  
13           development or subdivision.

14           (ii) The Vermont Housing and Conservation Board shall use such  
15           a fee to preserve, in the adjacent geographic area, a forest block or connecting  
16           habitat of similar quality and character to the block or connector affected by  
17           the development or subdivision.

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





1 and of Transportation. The Governor or the Governor's designee shall chair  
2 the Development Cabinet.

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

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

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

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

18 Sec. 18. REFERENCES; REVISION AUTHORITY

19 (a) In the Vermont Statutes Annotated, all references to the Natural  
20 Resources Board are deemed to be references to the Vermont Environmental  
21 Review Board.



