

1 TO THE HOUSE OF REPRESENTATIVES:

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

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

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

8                   (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

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

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

21                   (2) ECOSYSTEM PROTECTION AND UTILIZATION OF NATURAL

1                   RESOURCES

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

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

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

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

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

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

## CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS

## **Subchapter 1. General Provisions**

## § 6000. PURPOSE; CONSTRUCTION

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

## § 6001. DEFINITIONS

In As used in this chapter:

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

(2) “Capability and Development Plan” means the Plan prepared

pursuant to section 6042 of this title and adopted pursuant to 1973 Acts and  
Resolves No. 85, Secs. 6 and 7, as amended by this act.

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

\* \* \*

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

\* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

10 \* \* \*

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

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

1

\* \* \*

2

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

5

\* \* \*

6

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

7

(i) A tract or tracts of land, owned or controlled by a person,

8

~~which located outside of a designated downtown or neighborhood development~~  
~~area, that~~ the person has partitioned or divided for the purpose of resale into  
10 or more lots within a radius of five miles of any point on any lot, or within  
11 the jurisdictional area of the same District Commission, within any continuous  
12 period of five years. In determining the number of lots, a lot shall be counted  
13 if any portion is outside such an area and within five miles or within the  
14 jurisdictional area of the same District Commission.

15

(ii) A tract or tracts of land, owned or controlled by a person,

16

~~which that~~ the person has partitioned or divided for the purpose of resale into  
17 six or more lots, within a continuous period of five years, in a municipality  
18 ~~which that~~ does not have duly adopted permanent zoning and subdivision  
19 bylaws.

20

(iii) A tract or tracts of land, owned or controlled by a person,

21

~~which that~~ have been partitioned or divided for the purpose of resale into five

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

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

6 \* \* \*

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

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

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

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

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

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

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

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

18               (45) “Greenhouse gas” means carbon dioxide, methane, nitrous oxide,  
19      hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other  
20      chemical or physical substance that is emitted into the air and that the

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

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

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

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

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

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

3 \* \* \*

4 Subchapter 2. Administration

5 \* \* \*

6 § 6022. PERSONNEL

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

16 (b) Personnel for particular proceedings.

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

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

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

6                   \* \* \*

7                   § 6031. ETHICAL STANDARDS

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

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

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

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

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

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

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

1                         (E) using his or her office for the advancement of personal interest or  
2 to secure special privileges or exemptions; or  
3                         (F) adversely affecting the confidence of the public in the integrity of  
4 the District Commission.

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

9                         (A) Where circumstances require, ex parte communications for  
10 scheduling, administrative purposes or emergencies that do not deal with  
11 substantive matters or issues on the merits are authorized, provided:  
12                         (i) the District Commission reasonably believes that no party will  
13 gain a procedural or tactical advantage as a result of the ex parte  
14 communication, and

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

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

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

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

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

Subchapter 4 Permits

## Subchapter 4. Permits

## § 6081. PERMITS REQUIRED; EXEMPTIONS

\* \* \*

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

\* \* \*

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

3 \* \* \*

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

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

1

\* \* \*

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

12

\* \* \*

13                  § 6083a. ACT 250 FEES

14

\* \* \*

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

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

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

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

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

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

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

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

\* \* \*

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

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

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

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

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

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

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

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

20 \* \* \*

1       § 6084. NOTICE OF APPLICATION; PREAPPLICATION PROCESS:

2                   HEARINGS; COMMENCEMENT OF REVIEW

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

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

13       (A) make recommendations to the applicant within 30 days;  
14       (B) once the application is filed with the District Commission, make  
15       recommendations to the District Commission by the deadline established in the  
16       applicable provision of this section, Board rule, or scheduling order issued by  
17       the District Commission.

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

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

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

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

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

5 \* \* \*

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

12           ~~(d)~~(e) Any hearing or prehearing conference for a major application shall  
13       be held within 40 days of receipt of a complete application; or within 20 days  
14       of the end of the public comment period specified in the notice of minor  
15       application review if the District Commission determines that it is appropriate  
16       to hold a hearing for a minor.

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

1

\* \* \*

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

6

\* \* \*

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

10

\* \* \*

11      § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

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

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

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

- 18                       (i) headwaters of watersheds characterized by steep slopes and  
19       shallow soils; or  
20                       (ii) drainage areas of 20 square miles or less; or  
21                       (iii) above 1,500 feet elevation; or

- (iv) watersheds of public water supplies designated by the Agency of Natural Resources; or
  - (v) areas supplying significant amounts of recharge waters to aquifers.

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

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

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

13               (F) Shorelines. A permit will be granted whenever it is demonstrated  
14       by the applicant that, in addition to all other criteria, the development or  
15       subdivision of shorelines must of necessity be located on a shoreline in order to  
16       fulfill the purpose of the development or subdivision, and the development or  
17       subdivision will, insofar as possible and reasonable in light of its purpose:  
18               (i) retain the shoreline and the waters in their natural condition;  
19               (ii) allow continued access to the waters and the recreational  
20       opportunities provided by the waters;

- (iii) retain or provide vegetation which that screen the development or subdivision from the waters; and
  - (iv) stabilize the bank from erosion, as necessary, with vegetation cover.

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

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

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

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

14

\* \* \*

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

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

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

7 \* \* \*

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

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

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

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

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

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

17 \* \* \*

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

7 \* \* \*

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

1

\* \* \*

2

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

10

11

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14

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

15

16

17

18

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

19

20

21

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

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

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

9 \* \* \*

### 10 (c) Permit Conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \*

9       § 6087. DENIAL OF APPLICATION

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

13 \* \* \*

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

17       § 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

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

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

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

\* \* \*

9       § 6090. RECORDING; DURATION AND REVOCATION OF PERMITS

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

14 (b) Permits for specified period.

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

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

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

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

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

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

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

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

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

15 \* \* \*

16       § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

17 \* \* \*

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

1      be entitled to a ratio of 1:1 protected acres to acres of affected primary

2      agricultural soil.

3 \* \* \*

## \* \* \* Resource Mapping; Forest Blocks \* \* \*

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

6 § 127. RESOURCE MAPPING

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

15                         (b) The Secretary of Natural Resources shall consider the ~~GIS~~-based  
16 resource maps developed under subsection (a) of this section when providing  
17 evidence and recommendations to the Public Utility Commission under  
18 30 V.S.A. § 248(b)(5) and when commenting on or providing  
19 recommendations under chapter 151 of this title to District Commissions on  
20 other projects.

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

6 \* \* \* Designated Center Appeal \* \* \*

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

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

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

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

1                           \* \* \* Regional and Municipal Planning \* \* \*

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

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

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

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

21                           \* \* \*

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

2 § 4382. THE PLAN FOR A MUNICIPALITY

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

7 \* \* \*

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

9 § 4460. APPROPRIATE MUNICIPAL PANELS

10 \* \* \*

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

12 (A) was previously permitted pursuant to 10 V.S.A. chapter 151;  
13 (B) is located in a downtown development district or neighborhood  
14 development area designated pursuant to chapter 76A of this title; and  
15 (C) has applied for a permit or permit amendment required by zoning  
16 regulations or bylaws adopted pursuant to this subchapter.

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

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

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

## 4 Sec. 9. REPEAL

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

6 \* \* \* River Permits \* \* \*

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

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

10 (a) Rulemaking authority.

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

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

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

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

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

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

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

3 \* \* \*

4 (f)(1) Permit requirement.

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

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

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

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

4 \* \* \* Racial Equity Review \* \* \*

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

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

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

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

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

1                   (4) recommend legislative changes to Act 250 necessary to achieve the  
2                   goals of racial equity and diversity representation for minority population.  
3                   (b) On or before October 15, 2021, the Executive Director of Racial Equity  
4                   shall report to the General Assembly with its findings and any  
5                   recommendations for legislative action.

6                   \* \* \* Planning Review \* \* \*

7                   Sec. 12. VERMONT REGIONAL AND MUNICIPAL PLANNING REVIEW

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

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

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

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

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

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

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

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

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

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

3 \* \* \* Permit Fee Review \* \* \*

## 4 Sec. 13. ACT 250 PERMIT FEE REVIEW

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

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

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

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

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

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

## \* \* \* Revision Authority; Rulemaking; Effective Dates \* \* \*

## 20 Sec. 14. REFERENCES; REVISION AUTHORITY

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

2           Legislative Council shall:

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

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

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

- 10           (1) in subdivision (a)(4): Soil erosion; capacity of land to hold water.  
11           (2) in subdivision (a)(6): Educational services.  
12           (3) in subdivision (a)(7): Local governmental services.  
13           (4) in subsection (b): Partial findings.  
14           (5) in subsection (e): Temporary improvements; film or TV.  
15           (6) in subsection (f): Stay of construction.

16           Sec. 15. CRITERION 8(C) RULEMAKING

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

1           (1) How forest blocks and connecting habitat are further defined,

2           including their size, location, and function, which may include:

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

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

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

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

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

16           (A) appropriate ratios for compensation;  
17           (B) appropriate forms of compensation such as conservation  
18          easements, fee interests in land, and other forms of compensation; and  
19           (C) appropriate uses of on-site and off-site mitigation.

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

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

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

7           Sec. 16. EFFECTIVE DATES

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

11

12

13

14

15          (Committee vote: \_\_\_\_\_)

16

17

Representative \_\_\_\_\_

18

FOR THE COMMITTEE