

1 Introduced by
2 Referred to Committee on
3 Date:
4 Subject: Conservation and development; land use; natural resources; Act 250
5 Statement of purpose of bill as introduced: This bill proposes to make
6 revisions to the State land use law known as Act 250, including:
7 • Proposing revisions to Act 250's Capability and Development Plan to
8 address climate change and ecosystem protection.
9 • Amending Act 250 to include a purpose section that refers to that plan and
10 the specific statutory goals for municipal and regional planning.
11 • Amending the criteria to address climate change, including requiring
12 projects to avoid, minimize, or mitigate greenhouse gas emissions and to be
13 designed to withstand and adapt to climate change.
14 • Amending the criteria to address ecosystem protection through protecting
15 forest blocks and connecting habitat. The bill also would increase the
16 program's ability to protect ecosystems on ridgelines by reducing the
17 elevation threshold from 2,500 to 2,000 feet.
18 • Requiring that, to be used in Act 250, local and regional plans must be
19 approved as consistent with the statutory planning goals and clarifying that
20 local and regional plan provisions apply to a project if they meet the same
21 standard of specificity applicable to statutes.

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

- 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 extreme weather events and adapt to other changes in the weather and
2 environment.

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

4 (2) ECOSYSTEM PROTECTION AND UTILIZATION OF
5 NATURAL RESOURCES

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

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

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

16 (D) Preservation Protection of healthy ecosystems in Vermont,
17 preservation of the agricultural and forest productivity of the land; and the
18 economic viability of agricultural units, conservation of the recreational
19 opportunity afforded by the state's hills, forests, streams and lakes, wise use of
20 the state's non-renewable earth and mineral reserves, and protection of the
21 beauty of the landscape are matters of public good. Uses which threaten or

1 significantly inhibit ~~these healthy ecosystems and the state's natural and scenic~~
2 resources should be permitted only when the public interest is clearly benefited
3 thereby.

4 * * * Revisions to State Land Use Law * * *

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

6 Subchapter 1. General Provisions

7 § 6000. PURPOSE; CONSTRUCTION

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

12 § 6001. DEFINITIONS

13 In this chapter:

14 (1) “Board” means the ~~Natural Resources~~ Vermont Environmental
15 Review Board.

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

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

20 (i) The construction of improvements on a tract or tracts of land,
21 owned or controlled by a person, involving more than 10 acres of land within a

1 radius of five miles of any point on any involved land, for commercial or
2 industrial purposes.

3 (ii) The construction of improvements for commercial or
4 industrial purposes on more than one acre of land within a municipality that:

5 (I) has not adopted permanent zoning and subdivision bylaws;
6 or

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

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

16 * * *

17 (vi) The construction of improvements for commercial, industrial,
18 or residential use at or above the elevation of 2,500 2,000 feet or in a critical
19 resource area below that elevation.

20 * * *

1 (xi) The construction of improvements for commercial or
2 industrial purposes in an interchange area, unless it is within an existing
3 settlement.

4 * * *

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

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

9 * * *

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

13 * * *

14 (vii) The construction of improvements below the elevation of
15 2,500 2,000 feet for the onsite on-site storage, preparation, and sale of
16 compost, provided that one of the following applies:

17 * * *

18 (6) “Floodway” means the channel of a waterrcourse which is expected to
19 flood on an average of at least once every 100 years and the adjacent land areas
20 which are required to carry and discharge the flood of the waterrcourse, as
21 determined by the Secretary of Natural Resources with full consideration given

1 to upstream impoundments and flood control projects. "Flood hazard area" has
2 the same meaning as under section 752 of this title.

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

8 * * *

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

12 * * *

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

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

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

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

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

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

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

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

4 (B) The word “subdivision” shall not include each of the following:
5 (i) a lot or lots created for the purpose of conveyance to the State
6 or to a qualified organization, as defined under section 6301a of this title, if the
7 land to be transferred includes and will preserve a segment of the Long Trail;
8 (ii) a lot or lots created for the purpose of conveyance to the State
9 or to a “qualified holder” of “conservation rights and interest,” as defined in
10 section 821 of this title.

11 * * *

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

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

1 (40) “Fragmentation” means the division or conversion of a forest block
2 or connecting habitat by the separation of a parcel into two or more parcels; the
3 construction, conversion, relocation, or enlargement of any building or other
4 structure, or of any mining, excavation, or landfill; and any change in the use
5 of any building or other structure, or land, or extension of use of land.
6 However, fragmentation does not include the division or conversion of a forest
7 block or connecting habitat by a recreational trail or by improvements
8 constructed for farming, logging, or forestry purposes below the elevation of
9 2,000 feet.

10 (41) “Habitat” means the physical and biological environment in which
11 a particular species of plant or animal lives.

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

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

18 (44) “Commercial purpose” means the provision of facilities, goods, or
19 services by a person other than for a municipal or State purpose to others in
20 exchange for payment of a purchase price, fee, contribution, donation, or other

1 object or service having value, regardless of whether the payment is essential
2 to sustain the provision of the facilities, goods, or services.

3 (45) “Critical resource area” means a river corridor, a significant
4 wetland as defined under section 902 of this title, land at or above 2,000 feet,
5 and land characterized by slopes greater than 15 percent and shallow depth to
6 bedrock.

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

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

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

18 (49) “Technical determination” means a decision that results from the
19 application of scientific, engineering, or other similar expertise to the facts to
20 determine whether activity for which a permit is requested meets the standards

1 for issuing the permit under statute and rule. The term does not include an
2 interpretation of a statute or rule.

3 § 6001e COMMERCIAL COMPOSTING FACILITY; CIRCUMVENTION

4 Notwithstanding subdivisions 6001(3)(D)(vii)(I)-(VI) of this title, a
5 permit under this chapter may be required for the construction of
6 improvements below the elevation of 2,500 2,000 feet for the onsite on-site
7 storage, preparation, and sale of compost if the Chair of the District
8 Commission, based on the information available to the Chair, determines that
9 action has been taken to circumvent the requirements of this chapter.

10 * * *

11 Subchapter 2. Administration

12 § 6021. BOARD; VACANCY, REMOVAL

13 (a) A Natural Resources Establishment. The Vermont Environmental
14 Review Board is created. The Board shall consist of a chair and [structure and
15 membership, including whether to be professional or semiprofessional, and
16 whether to have alternate members, to be determined].

17 (1) The Board shall consist of five members appointed by the Governor,
18 with the advice and consent of the Senate, so that one appointment expires in
19 each year. The Chair, members, and alternate members shall be appointed by
20 the Governor, with the advice and consent of Senate. In making these
21 appointments, the Governor and the Senate shall give consideration to

1 candidates shall be sought who have experience, expertise, or skills relating to
2 the environment or land use.

3 (A) ~~The Governor shall appoint a chair of the Board, a position that~~
4 ~~shall be a full-time position.~~

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

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

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

13 (B) ~~The Chair of the Board may assign alternates to sit on specific~~
14 ~~matters before the Board, in situations where fewer than five members are~~
15 ~~available to serve. Initial appointments to the Board shall be made so that the~~
16 ~~terms of the Chair and the members expire in a staggered manner. [Length of~~
17 ~~initial terms to be determined.]~~

18 (b) ~~Any vacancy occurring in the membership of the Board shall be filled~~
19 ~~by the Governor for the unexpired portion of the term. Terms; vacancy;~~
20 ~~succession. The term of each appointment subsequent to the initial~~
21 ~~appointments described in subdivision (a)(2) of this section shall be [length of~~

1 *terms to be determined* years. Any appointment to fill a vacancy shall be for
2 the unexpired portion of the term vacated. A member wishing to succeed
3 himself or herself in office may seek reappointment under the terms of this
4 section.

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

8 (d) ~~The Chair of the Board, upon request of the Chair of a District~~
9 Commission, may appoint and assign former Commission members to sit on
10 specific Commission cases when some or all of the regular members and
11 alternates of the District Commission are disqualified or otherwise unable to
12 serve. Use of alternates. When a member of the Board is unavailable to hear a
13 case, the Chair may appoint an alternate member to hear the case.

14 (e) Retirement from office. When a Board member or alternate who hears
15 all or a substantial part of a case retires from office before the case is
16 completed, he or she shall remain a member of the Board for the purpose of
17 concluding and deciding that case and signing the findings and judgments
18 involved. A retiring Chair shall also remain a member for the purpose of
19 certifying questions of law if a party appeals to the Supreme Court.

1 (f) Completion of case. A case shall be deemed completed when the Board
2 enters a final decision even though that decision is appealed to the Supreme
3 Court and remanded by that Court.

4 (g) Court of record; jurisdiction. The Board shall have the powers of a
5 court of record in the determination and adjudication of all matters within its
6 jurisdiction. It may initiate proceedings on any matter within its jurisdiction.
7 It may render judgments and enforce the same by any suitable process issuable
8 by courts in this State. An order issued by the Board on any matter within its
9 jurisdiction shall have the effect of a judicial order. The Board's jurisdiction
10 shall include:

11 (1) the issuance of declaratory rulings on the applicability of this chapter
12 and rules or orders issued under this chapter, pursuant to 3 V.S.A. § 808; and
13 (2) the issuance of decisions on appeals pursuant to section 6089 and
14 chapter 219 of this title.

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

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

20 (2) Hearings conducted by a hearing officer shall be in accordance with
21 3 V.S.A. §§ 809–814. A hearing officer may administer oaths and exercise the

1 powers of the Board necessary to hear and determine a matter for which the
2 officer was appointed. A hearing officer shall report his or her findings of fact
3 in writing to the Board in the form of a proposal for decision. A copy shall be
4 served upon the parties pursuant to 3 V.S.A. § 811. However, judgment on
5 those findings shall be rendered only by a majority of the Board.

6 § 6022. PERSONNEL

7 (a) Regular personnel. The Board may appoint legal counsel, scientists,
8 engineers, experts, investigators, temporary employees, and administrative
9 personnel; as it finds necessary in carrying out its duties, ~~unless the Governor~~
10 shall otherwise provide in providing personnel to assist the District
11 Commissions and in investigating matters within its jurisdiction, including
12 oversight and monitoring of permit compliance.

13 (b) Personnel for particular proceedings.

14 (1) Retention.

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

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

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

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

4 (2) Assessment of costs.

5 (A) The Board may allocate to an applicant the portion of its
6 expenses incurred by retaining additional personnel for a proceeding. On
7 petition of an applicant to which costs are proposed to be allocated, the Board
8 shall review and determine, after opportunity for hearing, the necessity and
9 reasonableness of those costs, having due regard for the size and complexity of
10 the project, and may amend or revise an allocation.

11 (B) Prior to allocating costs, the Board shall make a determination of
12 the purpose and use of the funds to be raised under this section, identify the
13 recipient of the funds, provide for allocation of costs among applicants to be
14 assessed, indicate an estimated duration of the proceedings, and estimate the
15 total costs to be imposed. With the approval of the Board, estimates may be
16 revised as necessary. From time to time during the progress of the work, the
17 Board shall render to the applicant detailed statements showing the amount of
18 money expended or contracted for in the work of additional personnel, which
19 statements shall be paid into the State Treasury at the time and in the manner
20 as the Board may reasonably direct.

1 (C) All payments for costs allocated pursuant to this section shall be
2 deposited into the fund created under section 6029 of this title.

3 * * *

4 § 6025. RULES

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

9 (b) The Board may adopt substantive rules, in accordance with the
10 provisions of 3 V.S.A. chapter 25, that interpret and carry out the provisions of
11 this chapter. These rules shall include provisions that establish criteria under
12 which applications for permits under this chapter may be classified in terms of
13 complexity and significance of impact under the standards of subsection
14 6086(a) of this chapter. In accordance with that classification, the rules may:

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

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

20 (3) provide a procedure by which a District Commission may authorize
21 a district coordinator to issue a permit that the District Commission has

1 determined under Natural Resources Board rules is a minor application with no
2 undue adverse impact.

3 * * *

4 § 6026. DISTRICT COMMISSIONERS

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

* * *

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

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

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

1 (e) The Chair of the Board, upon request of the Chair of a District
2 Commission, may appoint and assign former Commission members to sit on
3 specific Commission cases when some or all of the regular members and
4 alternates of the District Commission are disqualified or otherwise unable to
5 serve.

6 § 6027. POWERS

7 (a) The Board and District Commissions shall have supervisory authority in
8 environmental matters respecting projects within their jurisdiction and shall
9 apply their independent judgment in determining facts and interpreting law.
10 They each shall have the power, with respect to any matter within its
11 jurisdiction, to:

- 12 (1) administer oaths, take depositions, subpoena and compel the
13 attendance of witnesses, and require the production of evidence;
- 14 (2) allow parties to enter upon lands of other parties for the purposes of
15 inspecting and investigating conditions related to the matter before the Board
16 or Commission;
- 17 (3) enter upon lands for the purpose of conducting inspections,
18 investigations, examinations, tests, and site evaluations as it deems necessary
19 to verify information presented in any matter within its jurisdiction; and
- 20 (4) apply for and receive grants from the federal government and from
21 other sources.

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

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

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

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

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

20 (g) The ~~Natural Resources~~ Board shall manage the process by which land
21 use permits are issued under section 6086 of this title, may initiate enforcement

1 on related matters; under the provisions of chapters 201 and 211 of this title,
2 and may petition the Environmental Division for revocation of land use
3 permits issued under this chapter. Grounds for revocation are:

- 4 (1) noncompliance with this chapter, rules adopted under this chapter, or
5 an order that is issued that relates to this chapter;
- 6 (2) noncompliance with any permit or permit condition;
- 7 (3) failure to disclose all relevant and material facts in the application or
8 during the permitting process;
- 9 (4) misrepresentation of any relevant and material fact at any time;
- 10 (5) failure to pay a penalty or other sums owed pursuant to, or other
11 failure to comply with, court order, stipulation agreement, schedule of
12 compliance, or other order issued under Vermont statutes and related to the
13 permit; or
- 14 (6) failure to provide certification of construction costs, as required
15 under subsection 6083a(a) of this title, or failure to pay supplemental fees as
16 required under that section.

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

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

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

4 * * *

§ 6028. COMPENSATION

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

§ 6030. MAP OF WIRELESS TELECOMMUNICATIONS FACILITIES

CAPABILITY AND DEVELOPMENT MAPS

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

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

1 Board and these Secretaries shall complete further updates to these maps no
2 less frequently than every eight years. The Board shall lead and coordinate the
3 completion of updates pursuant to this section.

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

6 (1) consult with the regional planning commissions; and
7 (2) issue a draft update, provide public notice of the draft update, and
8 offer an opportunity for written public comment and conduct one or more
9 public meetings to receive oral comment on the draft update.

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

13 § 6031. ETHICAL STANDARDS

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

17 (1) The provisions of 12 V.S.A. § 61 (disqualification for interest).
18 (2) The Chair and each member shall conduct the affairs of his or her
19 office in such a manner as to instill public trust and confidence and shall take
20 all reasonable steps to avoid any action or circumstance that might result in any
21 one of the following:

1 (A) undermining his or her independence or impartiality of action;
2 (B) taking official action on the basis of unfair considerations;
3 (C) giving preferential treatment to any private interest on the basis
4 of unfair considerations;
5 (D) giving preferential treatment to any family member or member of
6 his or her household;
7 (E) using his or her office for the advancement of personal interest or
8 to secure special privileges or exemptions; or
9 (F) adversely affecting the confidence of the public in the integrity of
10 the Board or District Commission.

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

16 * * *

17 Subchapter 4. Permits

18 * * *

19 § 6081. PERMITS REQUIRED; EXEMPTIONS

20 * * *

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

19 * * *

20 (j) ~~With respect to the extraction of slate from a slate quarry that is~~
21 ~~included in final slate quarry registration documents, if it were removed from a~~

1 site prior to June 1, 1970, the site from which slate was actually removed, if
2 lying unused at any time after those operations commenced, shall be deemed to
3 be held in reserve, and shall not be deemed to be abandoned. [Repealed.]

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

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

18 (l)(1) By no later than January 1, 1997, any owner of land or mineral rights
19 or any owner of slate quarry leasehold rights on a parcel of land on which a
20 slate quarry was located as of June 1, 1970, may register the existence of the
21 slate quarry with the District Commission and with the clerk of the

1 municipality in which the slate quarry is located, while also providing each
2 with a map which indicates the boundaries of the parcel which contains the
3 slate quarry.

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

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

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

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

20 (5) With respect to a slate quarry located on a particular registered
21 parcel of land, ancillary activities on the parcel related to the extraction and

1 processing of slate into products that are primarily other than crushed stone
2 products shall not be deemed to be substantial changes, as long as the activities
3 do not involve the creation of one or more new slate quarry holes that are not
4 related to an existing slate quarry hole.

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

7 * * *

8 § 6083a. ACT 250 FEES

9 * * *

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

13 * * *

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

17 * * *

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

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

3 * * *

4 § 6085. HEARINGS; PARTY STATUS

5 * * *

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

19 * * *

1 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

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

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

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

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

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

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

17 (2) Water pollution. Will not result in undue water pollution. In making
18 this determination ~~it~~ the District Commission shall at least consider: the
19 elevation of land above sea level; and in relation to the flood plains, the nature
20 of soils and subsoils and their ability to adequately support waste disposal; the
21 slope of the land and its effect on effluents; the availability of streams for

1 disposal of effluents; and the applicable Health and Environmental
2 Conservation Department regulations.

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

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

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

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

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

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

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

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

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

1 development or subdivision of lands on or adjacent to the banks of a stream
2 will, whenever feasible, maintain the natural condition of the stream, and will
3 not endanger the health, safety, or welfare of the public or of adjoining
4 landowners.

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

- 10 (i) retain the shoreline and the waters in their natural condition;
11 (ii) allow continued access to the waters and the recreational
12 opportunities provided by the waters;
13 (iii) retain or provide vegetation ~~which~~ that screen the
14 development or subdivision from the waters; and
15 (iv) stabilize the bank from erosion, as necessary, with vegetation
16 cover.

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

21 (2)(3) Water supply.

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

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

* * *

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

18 * * *

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 (I) 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 (II) it is not feasible to avoid fragmentation of the forest block
2 and the design of the development or subdivision minimizes fragmentation of
3 the forest block; or

4 (III) it is not feasible to avoid or minimize fragmentation of the
5 forest block and the applicant will mitigate the fragmentation in accordance
6 with section 6094 of this title.

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

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

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

17 (C) Connecting habitat.

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

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 (9) Capability and development plan. Is in conformance with a duly
2 adopted capability and development plan, and land use plan when adopted.
3 ~~However, the legislative findings of subdivisions 7(a)(1) through (19) of Act~~
4 ~~85 of 1973 shall not be used as criteria in the consideration of applications by a~~
5 ~~District Commission.~~

6 * * *

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

16 * * *

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

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

* * *

1 investment in the facility, service, or lands, or materially jeopardize or interfere
2 with the function, efficiency, or safety of, or the public's use or enjoyment of
3 or access to the facility, service, or lands.

4 * * *

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

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

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

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

20 * * *

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

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

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

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

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

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

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

3 (3) In the case of approvals and permits issued by the Agency of Natural
4 Resources:

5 (A) There shall be no presumption for a permit or approval
6 authorizing the discharge of a pollutant into a water if uses of that water are
7 already impaired by the pollutant.

8 (B) Admissible evidence of the technical determinations of the
9 Agency shall be accorded substantial deference by the District Commissions.

10 (4) A District Commission, in accordance with rules adopted by the
11 Board, shall accept determinations issued by a development review board
12 under the provisions of 24 V.S.A. § 4420, with respect to local review of
13 municipal impacts under criteria of this section. The acceptance of such a
14 determination, if positive, shall create a presumption that the application is not
15 detrimental to the public health and welfare with respect to the specific
16 requirement for which it is accepted and, if negative, shall create a
17 presumption that the application is so detrimental. Any determinations,
18 positive or negative, under the provisions of 24 V.S.A. § 4420 shall create
19 presumptions only to the extent that the impacts under the criteria are limited
20 to the municipality issuing the decision.

1

* * *

2 § 6087. DENIAL OF APPLICATION

3

* * *

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

10

* * *

11 § 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

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

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

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

1 § 6089. APPEALS

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

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

14 § 6090. RECORDING; DURATION AND REVOCATION OF PERMITS

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

19 (b) Permits for specified period.

20 (1) Any permit granted under this chapter for extraction of mineral
21 resources, operation of solid waste disposal facilities, or logging above 2,500

1 feet, shall be for a specified period determined by the Board in accordance
2 with the rules adopted under this chapter as a reasonable projection of the time
3 during which the land will remain suitable for use if developed or subdivided
4 as contemplated in the application, and with due regard for the economic
5 considerations attending the proposed development or subdivision. Other
6 permits issued under this chapter shall be for an indefinite term, as long as
7 there is compliance with the conditions of the permit.

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

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

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

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

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

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

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

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

19 * * *

20 § 6094. MITIGATION OF FOREST BLOCKS AND CONNECTING
21 HABITAT

1 (a) A District Commission may consider a proposal to mitigate, through
2 compensation, the fragmentation of a forest block or connecting habitat if the
3 applicant demonstrates that it is not feasible to avoid or minimize
4 fragmentation of the block or connector in accordance with the respective
5 requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District
6 Commission may approve the proposal only if it finds that the proposal will
7 meet the requirements of the rules adopted under this section and will preserve
8 a forest block or connecting habitat of similar quality and character to the
9 block or connector affected by the development or subdivision.

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

12 (1) The rules shall state the acreage ratio of forest block or connecting
13 habitat to be preserved in relation to the block or connector affected by the
14 development or subdivision.

15 (2) Compensation measures to be allowed under the rules shall be based
16 on the ratio of land developed pursuant to subdivision (1) of this subsection
17 and shall include:

18 (A) Preservation of a forest block or connecting habitat of similar
19 quality and character to the block or connector that the development or
20 subdivision will affect.

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 (c) The mitigation of impact on a forest block or a connecting habitat, or
2 both, shall be structured also to mitigate the impacts, under the criteria of
3 subsection 6086(a) of this title other than subdivisions (8)(B) and (C), to land
4 or resources within the block or connector.

5 (d) All forest blocks and connecting habitats preserved pursuant to this
6 section shall be protected by permanent conservation easements that grant
7 development rights and include conservation restrictions and are conveyed to a
8 qualified holder, as defined in section 821 of this title, with the ability to
9 monitor and enforce easements in perpetuity.

10 * * *

11 * * * Resource Mapping; Forest Blocks * * *

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

13 **§ 127. RESOURCE MAPPING**

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

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

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

11 * * * Enhanced Designation; Appeal * * *

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

13 § 2793f. ENHANCED DESIGNATION

14 (a) A municipality that has received or applies for designation of a
15 downtown development district, village center, new town center, or growth
16 center under this chapter may also apply for an enhanced designation pursuant
17 to this section in order to allow the municipality, in lieu of the District
18 Commissions under 10 V.S.A. chapter 151, to ensure that land development
19 within the designated area complies with the criteria set forth in 10 V.S.A. §
20 6086(a). As used in this section, “land development” has the same meaning as
21 in section 4303 of this title.

- 1 **(b) A municipality seeking an enhanced designation shall:**
- 2 **(1) demonstrate that its bylaws ensure that land development in the**
- 3 **designated area complies with the criteria set forth in 10 V.S.A. § 6086(a);**
- 4 **(2) demonstrate that it has the capability to review land development for**
- 5 **compliance with those criteria and to enforce its decisions;**
- 6 **(3) identify those areas within the municipality that constitute critical**
- 7 **resource areas within the meaning of 10 V.S.A. § 6001; and**
- 8 **(4) satisfy such other requirements as the State Board shall adopt by**
- 9 **rule.**
- 10 **(c) The State Board shall adopt rules to implement this section and may**
- 11 **grant or conditionally grant an application for enhanced designation if it meets**
- 12 **the requirements of this section and the adopted rules.**
- 13 Sec. 6. 24 V.S.A. § 2798 is amended to read:
- 14 **§ 2798. DESIGNATION DECISIONS; NONAPPEAL APPEAL**
- 15 **(a) The A person aggrieved by a designation decisions decision of the State**
- 16 **Board under this chapter are not subject to appeal one or more of sections 2793**
- 17 **through 2793f of this title may appeal to the Vermont Environmental Review**
- 18 **Board established under 10 V.S.A. chapter 151 within 30 days of the decision.**
- 19 **If the decision pertains to designation of a growth center under section 2793c**
- 20 **of this title, the period for filing an appeal shall be tolled by the filing of a**

request for reconsideration under that section and shall commence to run in full

on the State Board's issuance of a decision on that request.

3 (b) The Vermont Environmental Review Board shall conduct a de novo
4 hearing on the decision under appeal and shall proceed in accordance with the
5 contested case requirements of the Vermont Administrative Procedure Act.

The Vermont Environmental Review Board shall issue a final decision within 90 days of the filing of the appeal. The provisions of 10 V.S.A. § 6024 regarding assistance to the Vermont Environmental Review Board from other departments and agencies of the State shall apply to appeals under this section.

10 * * * Regional and Municipal Planning * * *

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

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

17 (1) The plan or amendment shall be considered duly adopted ~~and shall~~
18 ~~take effect~~ 35 days after the date of adoption, unless, within 35 days of the date
19 of adoption, the regional planning commission receives certification from the
20 legislative bodies of a majority of the municipalities in the region vetoing the

1 proposed plan or amendment. In case of such a veto, the plan or amendment
2 shall be deemed rejected.

3 (2) Upon adoption, the regional planning commission shall submit the
4 plan or amendment to the Vermont Environmental Review Board established
5 under 10 V.S.A. chapter 151, which shall approve the plan or amendment if it
6 determines that the plan or amendment is consistent with the goals of section
7 4302 of this title. The plan or amendment shall take effect on the issuance of
8 such approval. The Board shall issue its decision within 30 days after
9 receiving the plan or amendment.

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

11 § 4348a. ELEMENTS OF A REGIONAL PLAN

12 (a) A regional plan shall be consistent with the goals established in section
13 4302 of this title and shall include the following:

14 * * *

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

17 (A) Indicates those areas proposed for forests, recreation, agriculture
18 (using the agricultural lands identification process established in 6 V.S.A. § 8),
19 residence, commerce, industry, public, and semi-public uses, open spaces,
20 areas reserved for flood plain, and areas identified by the State, regional
21 planning commissions, or municipalities that require special consideration for

1 aquifer protection; for wetland protection; for the maintenance of forest blocks,
2 wildlife habitat, and habitat connectors; or for other conservation purposes.

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

7 * * *

8 (F) Indicates those areas that are important as forest blocks and
9 habitat connectors and plans for land development in those areas to minimize
10 forest fragmentation and promote the health, viability, and ecological function
11 of forests. A plan may include specific policies to encourage the active
12 management of those areas for wildlife habitat, water quality, timber
13 production, recreation, or other values or functions identified by the regional
14 planning commission.

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

17 * * *

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

19 § 4382. THE PLAN FOR A MUNICIPALITY

20 (a) A plan for a municipality may shall be consistent with the goals
21 established in section 4302 of this title and compatible with approved plans of

1 other municipalities in the region and with the regional plan and shall include
2 the following:

3 * * *

4 * * * Appeals * * *

5 Sec. 10. REPEAL

6 10 V.S.A. chapter 220 (consolidated environmental appeals) is repealed.

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

8 CHAPTER 219. STATE ENVIRONMENTAL PERMIT APPEALS

9 § 8401. PURPOSE

10 It is the purpose of this chapter to:

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

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

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

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

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

1 § 8402. DEFINITIONS

2 As used in this chapter:

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

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

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

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

16 (5) “Secretary” means the Secretary of Natural Resources or the
17 Secretary’s duly authorized representative. For the purposes of this chapter,
18 “Secretary” shall also mean the Commissioner of Environmental Conservation,
19 the Commissioner of Forests, Parks and Recreation, and the Commissioner of
20 Fish and Wildlife, with respect to those statutes that refer to the authority of
21 that commissioner or the department overseen by that commissioner.

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 (O) chapter 37 (wetlands protection and water resources
2 management);
3 (P) chapter 166 (collection and recycling of electronic devices);
4 (Q) chapter 164A (collection and disposal of mercury-containing
5 lamps);
6 (R) chapter 32 (flood hazard areas);
7 (S) chapter 49A (lake shoreland protection standards);
8 (T) chapter 83, subchapter 8 (importation of firewood); and
9 (U) chapter 168 (product stewardship for primary batteries and
10 rechargeable batteries);
11 (2) 29 V.S.A. chapter 11 (management of lakes and ponds); and
12 (3) 24 V.S.A. chapter 61, subchapter 10 (salvage yards).
13 (b) This chapter shall govern all appeals from an act or decision of a
14 District Commission under chapter 151 of this title.
15 (c) This chapter shall govern all appeals from a district coordinator
16 jurisdictional opinion under chapter 151 of this title.
17 (d) This chapter shall govern all appeals from an act or decision of the
18 Board under this chapter.
19 (e) This chapter shall not govern appeals from enforcement actions under
20 chapters 201 and 211 of this title or from rulemaking decisions by the Board or
21 the Secretary.

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

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

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

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

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

14 (d) District coordinator jurisdictional opinions.

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

19 (2) Failure to appeal within the time required under subsection (a) of
20 this section shall render the jurisdictional opinion the final determination
21 regarding jurisdiction under chapter 151 of this title unless the opinion was not

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

4 § 8405. FEES

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

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

13 § 8406. APPEALS TO THE SUPREME COURT

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

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

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

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

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

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

11 * * * Environmental Division * * *

12 Sec. 12. 4 V.S.A. § 34 is amended to read:

13 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

14 The Environmental Division shall have:

15 (1) jurisdiction of matters arising under 10 V.S.A. chapters chapter 201
16 and 220;

17 (2) jurisdiction of matters arising under 24 V.S.A. chapter 61,
18 subchapter 12 and 24 V.S.A. chapter 117; and

19 (3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.

1 Sec. 13. 24 V.S.A. § 2283 is amended to read:

2 § 2283. APPEALS

3 After exhausting the right of administrative appeal to the Board under 19
4 V.S.A. § 5(d)(5), a person aggrieved by any order, act, or decision of the
5 Agency of Transportation may appeal to the Superior Court, and all
6 proceedings shall be de novo. Any person, including the Agency of
7 Transportation, may appeal to the Supreme Court from a judgment or ruling of
8 the Superior Court. Appeals of acts or decisions of the Secretary of Natural
9 Resources ~~or~~ under this subchapter shall be appealed to the Vermont
10 Environmental Review Board under 10 V.S.A. § 8403. Acts or decisions of a
11 legislative body of a municipality under this subchapter shall be appealed to
12 the Environmental Division under 10 V.S.A. § 8503 section 4471a of this title.

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

14 (3) No permit issued pursuant to this section shall take effect until the
15 time for appeal in section 4465 of this title has passed, or in the event that a
16 notice of appeal is properly filed, no such permit shall take effect until
17 adjudication of that appeal by the appropriate municipal panel is complete and
18 the time for taking an appeal to the Environmental Division has passed without
19 an appeal being taken. If an appeal is taken to the Environmental Division, the
20 permit shall not take effect until the Environmental Division rules in

1 accordance with ~~10 V.S.A. § 8504~~ section 4471a of this title on whether to
2 issue a stay, or until the expiration of 15 days, whichever comes first.

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

4 **§ 4471. APPEAL TO ENVIRONMENTAL DIVISION**

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

9 Participation in a local regulatory proceeding shall consist of offering, through
10 oral or written testimony, evidence or a statement of concern related to the
11 subject of the proceeding. An appeal from a decision of the appropriate
12 municipal panel, or from a decision of the municipal legislative body under
13 subsection 4415(d) of this title, shall be taken in such manner as the Supreme
14 Court may by rule provide for appeals from State agencies governed by
15 V.S.A. §§ 801–816, unless the decision is an appropriate municipal panel
16 decision which that the municipality has elected to be subject to review on the
17 record.

18 * * *

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

20 **§ 4471a. ENVIRONMENTAL DIVISION**

21 (a) Applicability.

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

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

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

9 (b) Appeals; exceptions.

10 (1) Within 30 days after the date of the act or decision, an interested
11 person as defined in section 4465 of this title who has participated as defined
12 in section 4471 of this title in the municipal regulatory proceeding under this
13 chapter may appeal to the Environmental Division an act or decision made
14 under this chapter by an appropriate municipal panel; provided, however, that
15 decisions of a development review board under section 4420 of this title with
16 respect to review of municipal impacts under 10 V.S.A. chapter 151 are not
17 subject to appeal but shall serve as presumptions in accordance with that
18 chapter.

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

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

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

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

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

9 (d) Stays.

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

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

18 (e) De novo hearing. The Environmental Division, applying the
19 substantive standards that were applicable before the tribunal appealed from,
20 shall hold a de novo hearing on those issues that have been appealed, except in

1 the case of a decision being appealed on the record pursuant to subsection
2 4471(b) of this title.

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

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

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

11 (2) is a party by right;

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

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

16 (h) Appeals to Supreme Court.

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

1 (A) the person was a party to the proceeding before the
2 Environmental Division;
3 (B) the decision being appealed is the denial of party status; or
4 (C) the Supreme Court determines that:
5 (i) there was a procedural defect that prevented the person from
6 participating in the proceeding; or
7 (ii) some other condition exists that would result in manifest
8 injustice if the person's right to appeal were disallowed.

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

13 * * *Development Cabinet* * *

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

15 § 2293. DEVELOPMENT CABINET

* * *

17 (b) Development Cabinet.

18 (1) A Development Cabinet is created, to consist of the Secretaries of
19 the Agencies of Administration, of Agriculture, Food and Markets, of
20 Commerce and Community Development, of Education, of Natural Resource

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.

1 (b) 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 (c) In the Vermont Statutes Annotated, the Office of Legislative Council
9 shall:

10 (1) replace “Natural Resources Board” with “Vermont Environmental
11 Review Board”;

12 (2) replace “10 V.S.A. chapter 220” and “chapter 220 of Title 10” with
13 “10 V.S.A. chapter 219”;

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

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

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

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

7 Sec. 19. RULES

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

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

16 Sec. 20. ENVIRONMENTAL REVIEW BOARD; BUDGET;

17 POSITIONS

18 As of February 1, 2020, all appropriations and employee positions of the
19 Natural Resources Board are transferred to the Vermont Environmental
20 Review Board.

21 Sec. 21. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

1 Notwithstanding the repeal of its jurisdictional authority to hear appeals
2 relative to State environmental permits under Sec. 10 of this act, the
3 Environmental Division shall continue to have jurisdiction to complete its
4 consideration of any such appeal that is pending before it as of February 1,
5 2020 if, with respect to such act or appeal, mediation or discovery has
6 commenced, a dispositive motion has been filed, or a trial has begun.

7 Sec. 22. EFFECTIVE DATES

- 8 (a) This section shall take effect on passage.
9 (b) The remainder of this act shall take effect on February 1, 2020, except
10 that:
11 (1) The authority to make appointments to the Vermont Environmental
12 Review Board shall take effect on passage and each such appointment shall be
13 made on or before December 15, 2019.
14 (2) On or before April 1, 2020, the Vermont Environmental Review
15 Board shall file with the Secretary of State proposed rules to implement Sec. 3,
16 10 V.S.A. §§ 6086(a)(1)(B) (mitigation of greenhouse gas emissions) and 6094
17 (mitigation of forest blocks and connecting habitat).