

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 in a municipality that has adopted permanent zoning and  
3 subdivision bylaws.

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

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

7 or

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

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

17 \* \* \*

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

21 \* \* \*

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 watercourse 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 watercourse, 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 **wildlife** 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           2,500 feet.

10           (41) “Habitat” means the physical and biological environment in which  
11           a particular species of plant or **wildlife** 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, a  
5 ridgeline, and land characterized by slopes greater than 15 percent and shallow  
6 depth to 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 **(50) “Ridgeline” means a long narrow section of the earth’s surface,**  
4 **such as a chain of mountains or hills that forms a continuous crest at or**  
5 **above 1,500 feet in elevation.**

6 § 6001e COMMERCIAL COMPOSTING FACILITY; CIRCUMVENTION

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

13 \* \* \*

14 Subchapter 2. Administration

15 § 6021. BOARD; VACANCY, REMOVAL

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

20 (1) ~~The Board shall consist of five members appointed by the Governor,~~  
21 ~~with the advice and consent of the Senate, so that one appointment expires in~~

1 ~~each year.~~ The Chair, members, and alternate members shall be appointed by  
2 the Governor with the advice and consent of the Senate. In making these  
3 appointments, ~~the Governor and the Senate shall give consideration to~~  
4 candidates shall be sought who have experience, expertise, or skills relating to  
5 the environment or land use.

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

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

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

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

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

1       (b) ~~Any vacancy occurring in the membership of the Board shall be filled~~  
2 ~~by the Governor for the unexpired portion of the term. Terms; vacancy;~~  
3 ~~succession. The term of each appointment subsequent to the initial~~  
4 ~~appointments described in subdivision (a)(2) of this section shall be [length of  
5 terms to be determined] years. Any appointment to fill a vacancy shall be for  
6 ~~the unexpired portion of the term vacated. A member wishing to succeed~~  
7 ~~himself or herself in office may seek reappointment under the terms of this~~  
8 ~~section.~~~~

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

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

18       (e) Retirement from office. When a Board member or alternate who hears  
19 all or a substantial part of a case retires from office before the case is  
20 completed, he or she shall remain a member of the Board for the purpose of  
21 concluding and deciding that case and signing the findings and judgments

1 involved. A retiring Chair shall also remain a member for the purpose of  
2 certifying questions of law if a party appeals to the Supreme Court.

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

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

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

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

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

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



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

8           § 6022. PERSONNEL

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

15           (b) Personnel for particular proceedings.

16           (1) Retention.

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

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

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

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

6                    (2) Assessment of costs.

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

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

1 statements shall be paid into the State Treasury at the time and in the manner  
2 as the Board may reasonably direct.

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

5 \* \* \*

6 § 6025. RULES

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

11 (b) The Board may adopt substantive rules, in accordance with the  
12 provisions of 3 V.S.A. chapter 25, that interpret and carry out the provisions of  
13 this chapter. These rules shall include provisions that establish criteria under  
14 which applications for permits under this chapter may be classified in terms of  
15 complexity and significance of impact under the standards of subsection  
16 6086(a) of this chapter. In accordance with that classification, the rules may:

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

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

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

5 \* \* \*

6 § 6026. DISTRICT COMMISSIONERS

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

9 \* \* \*

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

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

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

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

8 § 6027. POWERS

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

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

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

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

1           (4) apply for and receive grants from the federal government and from  
2 other sources.

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

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

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

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

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

1 (g) The ~~Natural Resources~~ Board shall manage the process by which land  
2 use permits are issued under section 6086 of this title, may initiate enforcement  
3 on related matters; under the provisions of chapters 201 and 211 of this title,  
4 and may petition the Environmental Division for revocation of land use  
5 permits issued under this chapter. Grounds for revocation are:

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

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

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

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

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

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

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

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

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

7 \* \* \*

8 § 6028. COMPENSATION

9 Members of the Board and District Commissions shall receive per diem pay  
10 of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A.~~  
11 ~~§ 4010.~~

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

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

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



1 include and identify environmental constraints, existing settlements, rural and  
2 working lands areas, critical resource areas, facilities and infrastructure, and  
3 areas targeted for conservation, public investment, and development. The  
4 Board and these Secretaries shall complete further updates to these maps no  
5 less frequently than every eight years. The Board shall lead and coordinate the  
6 completion of updates pursuant to this section.

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

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

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

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

16 § 6031. ETHICAL STANDARDS

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

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

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

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

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

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

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

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

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

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

20                           \* \* \*

21                           Subchapter 4. Permits

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§ 6081. PERMITS REQUIRED; EXEMPTIONS

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

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

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

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

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

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

14          (3) Slate quarry registration documents shall be submitted to the District  
15          Commission together with a request, under the provisions of subsection  
16          6007(c) of this title, for a final determination regarding the applicability of this  
17          chapter.

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

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

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

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

11 \* \* \*

12 § 6083a. ACT 250 FEES

13 \* \* \*

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

17 \* \* \*

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

21 \* \* \*

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

6 \* \* \*

7 § 6085. HEARINGS; PARTY STATUS

8 \* \* \*

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

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§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

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

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

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

20 (E) Streams. A permit will be granted whenever it is demonstrated  
21 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.



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, stone walls, 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 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.

8 \* \* \*

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

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.

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§ 6087. DENIAL OF APPLICATION

\* \* \*

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

\* \* \*

§ 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

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

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

(c) The burden shall be on any party opposing the ~~applicant~~ application with respect to subdivisions 6086(a)(5) ~~through (8)~~, (6), (7), exception (8)(A) through (8)(C) of this title to show ~~an unreasonable or adverse effect~~ that the 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 (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

1 request for reconsideration under that section and shall commence to run in full  
2 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.

6 The Vermont Environmental Review Board shall issue a final decision within  
7 90 days of the filing of the appeal. The provisions of 10 V.S.A. § 6024  
8 regarding assistance to the Vermont Environmental Review Board from other  
9 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 3  
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

16 \* \* \*

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 Resources,

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).