

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 • Reorganizing the air and water pollution criteria.
- 15 • Amending the transportation criteria and energy conservation criteria.
- 16 • Amending the criteria to address ecosystem protection through protecting  
17 forest blocks and connecting habitat. The bill also would increase the  
18 program’s ability to protect ecosystems on ridgelines by reducing the  
19 elevation threshold from 2,500 to 2,000 feet.
- 20 • Requiring that, to be used in Act 250, local and regional plans must be  
21 approved as consistent with the statutory planning goals and clarifying that

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

- 1 to the NRB’s current duties. The Environmental Division of the Superior  
2 Court would continue to hear enforcement and local zoning appeals.
- 3 • Reaffirming the supervisory authority in environmental matters of the  
4 Board and District Commissions, in accordance with the original intent of  
5 Act 250 as determined by the Vermont Supreme Court.
  - 6 • Revising and clarifying the statutory authority on the use of other permits to  
7 demonstrate compliance with the criteria, including ensuring the reliability  
8 of those other permits.

9 An act relating to changes to Act 250

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

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

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

13 (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

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

1 greenhouse gases and, because the climate is changing, ensure that the design  
2 and materials used in development enable projects to withstand an increase in  
3 extreme weather events and adapt to other changes in the weather and  
4 environment.

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

6 (2) ECOSYSTEM PROTECTION AND UTILIZATION OF  
7 NATURAL RESOURCES

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

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

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

18 (D) Preservation Protection of healthy ecosystems in Vermont,  
19 preservation of the agricultural and forest productivity of the land, and the  
20 economic viability of agricultural units, conservation of the recreational  
21 opportunity afforded by the state's hills, forests, streams and lakes, wise use of

1 the state’s non-renewable earth and mineral reserves, and protection of the  
2 beauty of the landscape are matters of public good. Uses which threaten or  
3 significantly inhibit ~~these~~ healthy ecosystems and the state’s natural and scenic  
4 resources should be permitted only when the public interest is clearly benefited  
5 thereby.

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

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

8 Subchapter 1. General Provisions

9 § 6000. PURPOSE; CONSTRUCTION

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

14 § 6001. DEFINITIONS

15 In this chapter:

16 (1) “Board” means the ~~Natural Resources~~ Vermont Environmental  
17 Review Board.

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

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

1 (i) The construction of improvements on a tract or tracts of land,  
2 owned or controlled by a person, involving more than 10 acres of land within a  
3 radius of five miles of any point on any involved land, for commercial or  
4 industrial purposes in a municipality that has adopted permanent zoning and  
5 subdivision bylaws.

6 (ii) The construction of improvements for commercial or  
7 industrial purposes on more than one acre of land within a municipality that:  
8 (I) has not adopted permanent zoning and subdivision bylaws;

9 or

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

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

19 \* \* \*



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

4 \* \* \*

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

8 \* \* \*

9 (vii) The construction of improvements below the elevation of  
10 ~~2,500~~ 2,000 feet for the ~~onsite~~ on-site storage, preparation, and sale of  
11 compost, provided that one of the following applies:

12 \* \* \*

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

19 ~~(7) “Floodway fringe” means an area which is outside a floodway and is~~  
20 ~~flooded with an average frequency of once or more in each 100 years as~~  
21 ~~determined by the Secretary of Natural Resources with full consideration given~~



1 ~~to upstream impoundments and flood control projects.~~ “River corridor” has the  
2 same meaning as under section 752 of this title.

3 \* \* \*

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

7 \* \* \*

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

9 (i) A tract or tracts of land, owned or controlled by a person,  
10 ~~which~~ located outside an area that has received an enhanced designation under  
11 24 V.S.A. chapter 76A, that the person has partitioned or divided for the  
12 purpose of resale into 10 or more lots within a radius of five miles of any point  
13 on any lot, or within the jurisdictional area of the same District Commission,  
14 within any continuous period of five years. In determining the number of lots,  
15 a lot shall be counted if any portion is outside such an area and within five  
16 miles or within the jurisdictional area of the same District Commission.

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

1           (iii) A tract or tracts of land, owned or controlled by a person, that  
2 the person has partitioned or divided for the purpose of resale into **number of**  
3 **lots to be determined** or more lots, within a continuous period of five years, in  
4 a rural and working lands area.

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

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

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

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

20           (B) The word “subdivision” shall not include each of the following:

1 (i) a lot or lots created for the purpose of conveyance to the State  
2 or to a qualified organization, as defined under section 6301a of this title, if the  
3 land to be transferred includes and will preserve a segment of the Long Trail;

4 (ii) a lot or lots created for the purpose of conveyance to the State  
5 or to a “qualified holder” of “conservation rights and interest,” as defined in  
6 section 821 of this title.

7 \* \* \*

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

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

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

1 of any building or other structure, or land, or extension of use of land.

2 However, fragmentation does not include the division or conversion of a forest  
3 block or connecting habitat by a recreational trail or by improvements  
4 constructed for farming, logging, or forestry purposes below the elevation of  
5 2,500 feet.

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

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

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

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

19 (45) “Critical resource area” means a river corridor, a significant  
20 wetland as defined under section 902 of this title, land at or above 2,000 feet, a

1 ridgeline, and land characterized by slopes greater than 15 percent and shallow  
2 depth to bedrock.

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

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

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

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

19 (50) “Ridgeline” means a line marking or following a ridge, top of a hill,  
20 or ledged area, behind which is open space or horizon.

21 § 6001e COMMERCIAL COMPOSTING FACILITY; CIRCUMVENTION



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

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

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

9           ~~(B) The Chair of the Board may assign alternates to sit on specific~~  
10           ~~matters before the Board, in situations where fewer than five members are~~  
11           ~~available to serve.~~

12           ~~(b) Any vacancy occurring in the membership of the Board shall be filled~~  
13           ~~by the Governor for the unexpired portion of the term. Terms; vacancy;~~  
14           ~~succession. The term of each appointment subsequent to the initial~~  
15           ~~appointments described in subdivision (a)(2) of this section shall be four years.~~  
16           ~~Any appointment to fill a vacancy shall be for the unexpired portion of the~~  
17           ~~term vacated. A member wishing to succeed himself or herself in office may~~  
18           ~~seek reappointment under the terms of this section.~~

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

1       (d) ~~The Chair of the Board, upon request of the Chair of a District~~  
2       ~~Commission, may appoint and assign former Commission members to sit on~~  
3       ~~specific Commission cases when some or all of the regular members and~~  
4       ~~alternates of the District Commission are disqualified or otherwise unable to~~  
5       ~~serve.~~ Use of alternates. When a member of the Board is unavailable to hear a  
6       case, the Chair may appoint an alternate member to hear the case.

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

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

16       (g) Court of record; jurisdiction. The Board shall have the powers of a  
17       court of record in the determination and adjudication of all matters within its  
18       jurisdiction. It may initiate proceedings on any matter within its jurisdiction.  
19       It may render judgments and enforce the same by any suitable process issuable  
20       by courts in this State. An order issued by the Board on any matter within its



1 jurisdiction shall have the effect of a judicial order. The Board’s jurisdiction  
2 shall include:

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

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

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

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

12 (2) Hearings conducted by a hearing officer shall be in accordance with  
13 3 V.S.A. §§ 809–814. A hearing officer may administer oaths and exercise the  
14 powers of the Board necessary to hear and determine a matter for which the  
15 officer was appointed. A hearing officer shall report his or her findings of fact  
16 in writing to the Board in the form of a proposal for decision. A copy shall be  
17 served upon the parties pursuant to 3 V.S.A. § 811. However, judgment on  
18 those findings shall be rendered only by a majority of the Board.

19 § 6022. PERSONNEL

20 (a) Regular personnel. The Board may ~~appoint~~ retain legal counsel,  
21 scientists, engineers, experts, investigators, temporary employees, and

1 administrative personnel; as it finds necessary in carrying out its duties, ~~unless~~  
2 ~~the Governor shall otherwise provide~~ and may authorize the District  
3 Commissions to use funds to retain personnel to assist on matters within its  
4 jurisdiction, including oversight and monitoring of permit compliance.

5 Personnel employed by the District Commissions shall not report to the Board.

6 (b) Personnel for particular proceedings.

7 (1) Retention.

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

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

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

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

18 (2) Assessment of costs.

19 (A) The Board may allocate to an applicant the portion of its  
20 expenses incurred by retaining additional personnel for a proceeding. On  
21 petition of an applicant to which costs are proposed to be allocated, the Board

1 shall review and determine, after opportunity for hearing, the necessity and  
2 reasonableness of those costs, having due regard for the size and complexity of  
3 the project, and may amend or revise an allocation.

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

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

16 \* \* \*

17 § 6025. RULES

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

1 (b) The Board may adopt substantive rules, in accordance with the  
2 provisions of 3 V.S.A. chapter 25, that interpret and carry out the provisions of  
3 this chapter. These rules shall include provisions that establish criteria under  
4 which applications for permits under this chapter may be classified in terms of  
5 complexity and significance of impact under the standards of subsection  
6 6086(a) of this chapter. In accordance with that classification, the rules may:

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

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

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

16 \* \* \*

17 § 6026. DISTRICT COMMISSIONERS

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

20 \* \* \*

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

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

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

14 (e) The Chair of the Board, upon request of the Chair of a District  
15 Commission, may appoint and assign former Commission members to sit on  
16 specific Commission cases when some or all of the regular members and  
17 alternates of the District Commission are disqualified or otherwise unable to  
18 serve.

19 § 6027. POWERS

20 (a) The Board and District Commissions shall have supervisory authority in  
21 environmental matters respecting projects within their jurisdiction and shall

1 apply their independent judgment in determining facts and interpreting law.

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

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

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

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

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

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

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

1 (d) At the request of a District Commission, if the Board Chair determines  
2 that the workload in the requesting district is likely to result in unreasonable  
3 delays or that the requesting District Commission is disqualified to hear a case,  
4 the Chair may authorize the District Commission of another district to sit in the  
5 requesting district to consider one or more applications.

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

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

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

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

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

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

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

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

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

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

13 (i) The Chair, subject to the direction of the Board, shall have general  
14 charge of the offices and employees of the Board and the offices and  
15 employees of the District Commissions.

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

19 \* \* \*

20 § 6028. COMPENSATION



1 Members of the Board and District Commissions shall receive per diem pay  
2 of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A.~~  
3 ~~§ 1010.~~

4 \* \* \*

5 ~~§ 6030. MAP OF WIRELESS TELECOMMUNICATIONS FACILITIES~~  
6 CAPABILITY AND DEVELOPMENT MAPS

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

9 (a) Updates. On or before January 1, 2021, the Board and the Secretaries  
10 of Commerce and Community Development, of Digital Services, of  
11 Agriculture, Food and Markets, and of Natural Resources shall complete an  
12 update to the capability and development maps created under this chapter in  
13 1971 for reference in applying this chapter. Maps updated pursuant to this  
14 section shall be consistent with the Capability and Development Plan and shall  
15 include and identify environmental constraints, existing settlements, rural and  
16 working lands areas, critical resource areas, facilities and infrastructure, and  
17 areas targeted for conservation, public investment, and development. The  
18 Board and these Secretaries shall complete further updates to these maps no  
19 less frequently than every eight years. The Board shall lead and coordinate the  
20 completion of updates pursuant to this section.

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

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

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

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

10       § 6031. ETHICAL STANDARDS

11       (a) The Chair and the regular and alternate members of the Board and the  
12       Chair and the regular and alternate members of each District Commission shall  
13       comply with the following ethical standards:

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

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

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

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

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

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

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

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

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

14 \* \* \*

15 Subchapter 4. Permits

16 \* \* \*

17 § 6081. PERMITS REQUIRED; EXEMPTIONS

18 \* \* \*

19 (b) Subsection (a) of this section shall not apply to a subdivision exempt  
20 under the regulations of the Department of Health in effect on January 21,  
21 1970 or any subdivision which has a permit issued prior to June 1, 1970 under

1 the Board of Health regulations, or has pending a bona fide application for a  
2 permit under the regulations of the Board of Health on June 1, 1970, with  
3 respect to plats on file as of June 1, 1970 provided such permit is granted prior  
4 to August 1, 1970. Subsection (a) of this section shall not apply to  
5 development which is not also a subdivision, which has been commenced prior  
6 to June 1, 1970, if the construction will be completed by March 1, 1971.

7 Subsection (a) of this section shall not apply to a State highway on which a  
8 hearing pursuant to 19 V.S.A. § 222 has been held prior to June 1, 1970.

9 Subsection (a) of this section shall not apply to any telecommunications  
10 facility in existence prior to July 1, 1997, unless that facility is a  
11 “development” as defined in subdivision 6001(3) of this title. Subsection (a)  
12 of this section shall apply to any substantial change in such excepted  
13 subdivision or development. On or before July 1, 2020, owners of preexisting  
14 pits and quarries shall submit extraction data to the Board in order to establish  
15 a baseline against which substantial changes may be determined.

16 \* \* \*

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

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

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

15           (1)(1) By no later than January 1, 1997, any owner of land or mineral rights  
16 or any owner of slate quarry leasehold rights on a parcel of land on which a  
17 slate quarry was located as of June 1, 1970, may register the existence of the  
18 slate quarry with the District Commission and with the clerk of the  
19 municipality in which the slate quarry is located, while also providing each  
20 with a map which indicates the boundaries of the parcel which contains the  
21 slate quarry.

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

7           (3) Slate quarry registration documents shall be submitted to the District  
8 Commission together with a request, under the provisions of subsection  
9 6007(c) of this title, for a final determination regarding the applicability of this  
10 chapter.

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

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

17           (5) With respect to a slate quarry located on a particular registered  
18 parcel of land, ancillary activities on the parcel related to the extraction and  
19 processing of slate into products that are primarily other than crushed stone  
20 products shall not be deemed to be substantial changes, as long as the activities

1 do not involve the creation of one or more new slate quarry holes that are not  
2 related to an existing slate quarry hole.

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

5 \* \* \*

6 § 6083a. ACT 250 FEES

7 \* \* \*

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

11 \* \* \*

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

15 \* \* \*

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

21 \* \* \*

1 § 6085. HEARINGS; PARTY STATUS

2 \* \* \*

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

16 \* \* \*

17 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

20 (1) Air pollution. Will not result in undue ~~water or~~ air pollution. In  
21 making this determination, the District Commission shall at least consider: the



1 air contaminants, greenhouse gas emissions, and noise to be emitted by the  
2 development or subdivision, if any; the proximity of the emission source to  
3 residences, population centers, and other sensitive receptors; and emission  
4 dispersion characteristics at or near the source.

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

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

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

16 (I) avoid the emission of greenhouse gases, including  
17 greenhouse gases from the vehicular traffic to be generated by the development  
18 or subdivision;

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

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

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

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

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

7           (i) headwaters of watersheds characterized by steep slopes and  
8 shallow soils; or

9           (ii) drainage areas of 20 square miles or less; or

10           (iii) above 1,500 feet elevation; or

11           (iv) watersheds of public water supplies designated by the Agency  
12 of Natural Resources; or

13           (v) areas supplying significant amounts of recharge waters to  
14 aquifers.

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

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

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

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

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

18 (E) Streams. A permit will be granted whenever it is demonstrated  
19 by the applicant that, in addition to all other applicable criteria, the  
20 development or subdivision of lands on or adjacent to the banks of a stream  
21 will, whenever feasible, maintain the natural condition of the stream, and will

1 not endanger the health, safety, or welfare of the public or of adjoining  
2 landowners.

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

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

9 (ii) allow continued access to the waters and the recreational  
10 opportunities provided by the waters;

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

13 (iv) stabilize the bank from erosion, as necessary, with vegetation  
14 cover.

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

19 ~~(2)~~(3) Water supply.

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



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; or

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.

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

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

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

14                  (C) Connecting habitat.

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

17                  (I) the development or subdivision will avoid fragmentation of  
18                  a connecting habitat through the design of the project or the location of project  
19                  improvements, or both; or



1                   (II) it is not feasible to avoid fragmentation of the connecting  
2 habitat and the design of the development or subdivision minimizes  
3 fragmentation of the connector.

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

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

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

11                   (III) when there is no feasible site for construction of buildings  
12 and other improvements outside the connector, designing the buildings and  
13 improvements to facilitate the continued viability of the connector for use by  
14 wildlife.

15   \* \* \*

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

21   \* \* \*

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

12 \* \* \*

13 (I) Interchange areas. A permit will be granted for a development or  
14 subdivision within an interchange area when it is demonstrated that, in addition  
15 to all other applicable criteria, the development or subdivision complies with  
16 the Vermont Interstate Interchange Planning and Design Guidelines applicable  
17 to the category of land use as identified for that area in the regional plan. As  
18 used in this subdivision (I), “Vermont Interstate Interchange Planning and  
19 Design Guidelines” refers to the guidelines by that name published by the  
20 Agency of Commerce and Community Development in 2004 or such update to  
21 those guidelines as the Commissioner of Housing and Community

1 Development may subsequently publish, provided that the update is at least as  
2 protective of existing settlements, scenic beauty and aesthetics, farmland, and  
3 natural resources as the 2004 guidelines.

4 \* \* \*

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

21 \* \* \*

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

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

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

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

16 \* \* \*

17 (c) Conditions. A permit may contain such requirements and conditions as  
18 are allowable proper exercise of the police power and which are appropriate  
19 within the respect to subdivisions (a)(1) through (10) of this section, including  
20 those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b),  
21 and 4464, the dedication of lands for public use, and the filing of bonds to

1 ~~insure~~ ensure compliance. The requirements and conditions incorporated from  
2 Title 24 may be applied whether or not a local plan has been adopted. General  
3 requirements and conditions may be established by rule of the ~~Natural~~  
4 ~~Resources~~ Board.

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

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

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

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

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

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

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



1 Reasonable conditions and requirements allowable in subsection 6086(c) of  
2 this title may be attached to alleviate the burdens created. However, a permit  
3 may be denied under subdivision 6086(a)(5) of this title if the permit is for  
4 development in an interchange area that is not within an existing settlement.

5 \* \* \*

6 § 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

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

10 (b) The burden of persuasion, to show that the application meets the  
11 relevant standard, shall be on the applicant with respect to subdivisions  
12 6086(a)(1), (2), (3), (4), (8)(A) through (C), (9), and (10) of this title.

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

17 § 6089. APPEALS

18 (a) Appeals of any act or decision of a District Commission under this  
19 chapter or a district coordinator under subsection 6007(c) of this title shall be  
20 made to the ~~Environmental Division~~ Board in accordance with chapter 220 of  
21 this title. For the purpose of this section, a decision of the Chair of a District



1 Commission under section 6001e of this title on whether action has been taken  
2 to circumvent the requirements of this chapter shall be considered an act or  
3 decision of the District Commission.

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

9 § 6090. RECORDING; DURATION AND REVOCATION OF PERMITS

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

14 (b) Permits for specified period.

15 (1) Any permit granted under this chapter for extraction of mineral  
16 resources, operation of solid waste disposal facilities, or logging above 2,500  
17 feet, shall be for a specified period determined by the Board in accordance  
18 with the rules adopted under this chapter as a reasonable projection of the time  
19 during which the land will remain suitable for use if developed or subdivided  
20 as contemplated in the application, and with due regard for the economic  
21 considerations attending the proposed development or subdivision. Other

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

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

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

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

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

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

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



1 chapter 151 of this title. The Center for Geographic Information shall be  
2 available to provide assistance to the Secretary in carrying out the ~~GIS-based~~  
3 resource mapping.

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

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

14 \* \* \* Enhanced Designation; Appeal \* \* \*

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

16 § 2793f. ENHANCED DESIGNATION

17 (a) A municipality that has received or applies for designation of a  
18 downtown development district, village center, new town center, or growth  
19 center under this chapter may also apply for an enhanced designation pursuant  
20 to this section in order to allow the municipality, in lieu of the District  
21 Commissions under 10 V.S.A. chapter 151, to ensure that land development

1 within the designated area complies with the criteria set forth in 10 V.S.A. §  
2 6086(a). As used in this section, “land development” has the same meaning as  
3 in section 4303 of this title.

4 (b) A municipality seeking an enhanced designation shall:

5 (1) demonstrate that its bylaws ensure that land development in the  
6 designated area complies with the criteria set forth in 10 V.S.A. § 6086(a);

7 (2) demonstrate that it has the capability to review land development for  
8 compliance with those criteria and to enforce its decisions;

9 (3) identify those areas within the municipality that constitute critical  
10 resource areas within the meaning of 10 V.S.A. § 6001; and

11 (4) satisfy such other requirements as the State Board shall adopt by  
12 rule.

13 (c) The State Board shall adopt rules to implement this section and may  
14 grant or conditionally grant an application for enhanced designation if it meets  
15 the requirements of this section and the adopted rules.

16 Sec. 6. 24 V.S.A. § 2798 is amended to read:

17 § 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

18 (a) The A person aggrieved by a designation ~~decisions~~ decision of the State  
19 Board under ~~this chapter~~ are not subject to appeal one or more of sections 2793  
20 through 2793f of this title may appeal to the Vermont Environmental Review  
21 Board established under 10 V.S.A. chapter 151 within 30 days of the decision.

1 If the decision pertains to designation of a growth center under section 2793c  
2 of this title, the period for filing an appeal shall be tolled by the filing of a  
3 request for reconsideration under that section and shall commence to run in full  
4 on the State Board’s issuance of a decision on that request.

5 (b) The Vermont Environmental Review Board shall conduct a de novo  
6 hearing on the decision under appeal and shall proceed in accordance with the  
7 contested case requirements of the Vermont Administrative Procedure Act.  
8 The Vermont Environmental Review Board shall issue a final decision within  
9 90 days of the filing of the appeal. The provisions of 10 V.S.A. § 6024  
10 regarding assistance to the Vermont Environmental Review Board from other  
11 departments and agencies of the State shall apply to appeals under this section.

12 \* \* \* Regional and Municipal Planning \* \* \*

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

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

19 (1) The plan or amendment shall be considered duly adopted ~~and shall~~  
20 ~~take effect~~ 35 days after the date of adoption, unless, within 35 days of the date  
21 of adoption, the regional planning commission receives certification from the

1 legislative bodies of a majority of the municipalities in the region vetoing the  
2 proposed plan or amendment. In case of such a veto, the plan or amendment  
3 shall be deemed rejected.

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

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

12 § 4348a. ELEMENTS OF A REGIONAL PLAN

13 (a) A regional plan shall be consistent with the goals established in section  
14 4302 of this title and shall include the following:

15 \* \* \*

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

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

1 planning commissions, or municipalities that require special consideration for  
2 aquifer protection; for wetland protection; for the maintenance of forest blocks,  
3 wildlife habitat, and habitat connectors; or for other conservation purposes.

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

8 \* \* \*

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

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

18 \* \* \*

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

20 § 4382. THE PLAN FOR A MUNICIPALITY



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

5 \* \* \*

6 \* \* \* Appeals \* \* \*

7 Sec. 10. REPEAL

8 10 V.S.A. chapter 220 (consolidated environmental appeals) is repealed.

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

10 CHAPTER 219. STATE ENVIRONMENTAL PERMIT APPEALS

11 § 8401. PURPOSE

12 It is the purpose of this chapter to:

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

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

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

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

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

5           § 8402. DEFINITIONS

6           As used in this chapter:

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

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

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

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

20           (5) “Secretary” means the Secretary of Natural Resources or the  
21           Secretary’s duly authorized representative. For the purposes of this chapter,

1 “Secretary” shall also mean the Commissioner of Environmental Conservation,  
2 the Commissioner of Forests, Parks and Recreation, and the Commissioner of  
3 Fish and Wildlife, with respect to those statutes that refer to the authority of  
4 that commissioner or the department overseen by that commissioner.

5 § 8403. APPLICABILITY

6 (a) This chapter shall govern all appeals of an act or decision of the  
7 Secretary, excluding appeals of enforcement actions under chapters 201 and  
8 211 of this title and rulemaking, under:

9 (1) The following provisions of this title:

10 (A) chapter 23 (air pollution control);

11 (B) chapter 50 (aquatic nuisance control);

12 (C) chapter 41 (regulation of stream flow);

13 (D) chapter 43 (dams);

14 (E) chapter 47 (water pollution control);

15 (F) chapter 48 (groundwater protection);

16 (G) chapter 53 (beverage containers; deposit-redemption system);

17 (H) chapter 55 (aid to municipalities for water supply and water  
18 pollution abatement and control);

19 (I) chapter 56 (public water supply);

20 (J) chapter 59 (underground and aboveground liquid storage tanks);

21 (K) chapter 64 (potable water supply and wastewater system permit);

- 1           (L) section 2625 (regulation of heavy cutting);
- 2           (M) chapter 123 (protection of endangered species);
- 3           (N) chapter 159 (waste management);
- 4           (O) chapter 37 (wetlands protection and water resources
- 5 management);
- 6           (P) chapter 166 (collection and recycling of electronic devices);
- 7           (Q) chapter 164A (collection and disposal of mercury-containing
- 8 lamps);
- 9           (R) chapter 32 (flood hazard areas);
- 10          (S) chapter 49A (lake shoreland protection standards);
- 11          (T) chapter 83, subchapter 8 (importation of firewood); and
- 12          (U) chapter 168 (product stewardship for primary batteries and
- 13 rechargeable batteries);
- 14          (2) 29 V.S.A. chapter 11 (management of lakes and ponds); and
- 15          (3) 24 V.S.A. chapter 61, subchapter 10 (salvage yards).
- 16          (b) This chapter shall govern all appeals from an act or decision of a
- 17 District Commission under chapter 151 of this title.
- 18          (c) This chapter shall govern all appeals from a district coordinator
- 19 jurisdictional opinion under chapter 151 of this title.
- 20          (d) This chapter shall govern all appeals from an act or decision of the
- 21 Board under this chapter.

1       (e) This chapter shall not govern appeals from enforcement actions under  
2       chapters 201 and 211 of this title or from rulemaking decisions by the Board or  
3       the Secretary.

4       § 8404. APPEALS

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

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

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

17       (2) On the filing of an appeal from the act or decision of the Secretary  
18       under the provisions of law listed in section 8403 of this title, the appellant  
19       shall provide notice of the filing of an appeal to the following persons: the  
20       applicant before the Agency of Natural Resources, if other than the appellant;  
21       the owner of the land where the project is located if the applicant is not the

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

13 (c) Requirement to participate before the District Commission or the  
14 Secretary.

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

1 However, notwithstanding these limitations, an aggrieved person may appeal  
2 an act or decision of the District Commission if the Board determines that:

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

5 (B) the decision being appealed is the grant or denial of party status;  
6 or

7 (C) some other condition exists that would result in manifest injustice  
8 if the person’s right to appeal was disallowed.

9 (2) Participation before the Secretary.

10 (A) An aggrieved person shall not appeal an act or decision of the  
11 Secretary unless the person submitted to the Secretary a written comment  
12 during the comment period or an oral comment at the public meeting  
13 conducted by the Secretary. In addition, the person may only appeal issues  
14 related to the person’s comment to the Secretary.

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

18 (ii) The appellant shall identify each comment that the appellant  
19 submitted to the Secretary that identifies or relates to an issue raised in his or  
20 her appeal.

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

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

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

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

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

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

17           (d) District coordinator jurisdictional opinions.

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



1           (2) Failure to appeal within the time required under subsection (a) of  
2           this section shall render the jurisdictional opinion the final determination  
3           regarding jurisdiction under chapter 151 of this title unless the opinion was not  
4           properly served on persons listed in subdivisions 6085(c)(1)(A)–(D) of this  
5           title and each person on a list pursuant to subdivision 6085(c)(1)(E) of this title  
6           that is approved under subsection 6007(c) of this title.

7           (e) Stays.

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

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

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

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

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

19           (g) De novo. The Board, applying the substantive standards that were  
20           applicable to the District Commission, district coordinator, or Secretary, shall

1 hear and review de novo those issues that have been appealed. The Board shall  
2 apply its independent judgement in finding facts and interpreting law.

3 (h) Appeals of authorizations or coverage under a general permit. Any  
4 appeal of an authorization or coverage under the terms of a general permit shall  
5 be limited in scope to whether the permitted activity complies with the terms  
6 and conditions of the general permit.

7 (i) Limitations on appeals. Notwithstanding any other provision of this  
8 section:

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

13 (2) if a District Commission issues a partial decision under subsection  
14 6086(b) of this title, any appeal of that decision must be taken within 30 days  
15 following the date of that decision.

16 (j) Representation. The Secretary may represent the Agency in all appeals  
17 under this section. If more than one State agency either appeals or seeks to  
18 intervene in an appeal under this section, only the Attorney General may  
19 represent the interests of the State in the appeal.

20 (k) Prior decisions. Prior decisions of the Water Resources Board, the  
21 Environmental Board, the Waste Facilities Panel, and the Environmental

1 Division on matters arising under the chapters listed in section 8403 of this title  
2 shall be given the same weight and consideration as prior decisions of the  
3 Board.

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

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

8 (2) is a party by right;

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

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

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

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

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

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

6           § 8405. FEES

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

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

15           § 8406. APPEALS TO THE SUPREME COURT

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

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

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

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

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

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

13                                   \* \* \* Environmental Division \* \* \*

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

15           § 34. JURISDICTION; ENVIRONMENTAL DIVISION

16           The Environmental Division shall have:

17           (1) jurisdiction of matters arising under 10 V.S.A. ~~chapters~~ chapter 201  
18           and 220;

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

21           (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).