

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
- 12 • Reorganizing the air and water pollution criteria.
- 13 • Amending the transportation criteria, public investment criterion, and
14 energy conservation criterion.
- 15 • Amending the criteria to address ecosystem protection through protecting
16 forest blocks and connecting habitat. The bill also would increase the
17 program’s ability to protect ecosystems on ridgelines by reducing the
18 elevation threshold from 2,500 to 2,000 feet.
- 19 • Requiring that, to be used in Act 250, local and regional plans must be
20 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, exempting designated downtowns and
6 neighborhood development areas from Act 250 and increasing Act 250
7 jurisdiction at interstate interchanges and over new roads. Because the
8 designation under 24 V.S.A. chapter 76A would affect jurisdiction, the bill
9 provides for appeal of designation decisions.
 - 10 • Clarifying the definition of “commercial purpose” so that it is not necessary
11 to determine whether monies received are essential to sustain a project.
 - 12 • Increasing the per diem rate for District Commissioners and the Board to
13 \$100.
 - 14 • Replacing the Natural Resources Board (NRB) with a Vermont
15 Environmental Review Board (the Board), which would hear appeals from
16 the District Commissions and the Agency of Natural Resources in addition
17 to the NRB’s current duties. The Environmental Division of the Superior
18 Court would continue to hear enforcement and local zoning appeals.
 - 19 • Reaffirming the supervisory authority in environmental matters of the
20 Board and District Commissions, in accordance with the original intent of
21 Act 250 as determined by the Vermont Supreme Court.

- 1 • Revising and clarifying the statutory authority on the use of other permits to
2 demonstrate compliance with the criteria, including ensuring the reliability
3 of those other permits.
- 4 • Maps
- 5 • Preexisting pits and quarries
- 6 • Release from jurisdiction

7 An act relating to changes to Act 250

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

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

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

11 (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

12 Climate change poses serious risks to human health and safety, functioning

13 ecosystems that support a diversity of species and economic growth, and

14 Vermont’s tourist, forestry, and agricultural industries. The primary driver of

15 climate change in Vermont and elsewhere is the increase of atmospheric

16 carbon dioxide from the burning of fossil fuels, which has a warming effect

17 that is amplified because atmospheric water vapor, another greenhouse gas,

18 increases as temperature rises. Vermont should minimize its emission of

19 greenhouse gases and, because the climate is changing, ensure that the design

1 and materials used in development enable projects to withstand an increase in
2 extreme weather events and adapt to other changes in the weather and
3 environment.

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

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

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

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

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

17 (D) Preservation Protection of healthy ecosystems in Vermont,
18 preservation of the agricultural and forest productivity of the land; and the
19 economic viability of agricultural units, conservation of the recreational
20 opportunity afforded by the state’s hills, forests, streams and lakes, wise use of
21 the state’s non-renewable earth and mineral reserves, and protection of the

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

5 * * * Revisions to State Land Use Law * * *

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

7 CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS

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~~ As used 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:

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

(xi) The construction of improvements for commercial or industrial use within 2,000 feet of a point of access to or exit from the interstate highway system as measured from the midpoint of the interconnecting roadways, unless a regional planning commission has determined, at the request of the municipality where the interchange is located or any municipality with land in the 2,000-foot radius, that municipal ordinances or bylaws applicable to properties around the interchange:

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

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

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

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

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

7 (VII) Ensure that development in this area not establish or
8 contribute to a pattern of strip development. Where strip development already
9 exists, development in this area must be infill that minimizes the characteristics
10 of strip development.

11 (VIII) Require site design to use space efficiently by siting
12 buildings close together, minimizing paved services, locating parking to the
13 side and rear, and minimizing the use of one-story buildings.

14 (IX) Require the permitted uses, patterns of development, and
15 aesthetics of development in these areas to conform with the regional plan and
16 be consistent with the goals of 24 V.S.A. § 4302.

17 (xii) The construction of a road or roads and any associated
18 driveways to provide access to or within a tract of land of more than one acre
19 owned or controlled by a person. For the purposes of determining jurisdiction
20 under this subdivision, any parcel of land that will be provided access by the
21 road and associated driveways is land involved in the construction of the road.

1 Jurisdiction under this subdivision shall not apply unless the length of road and
2 any associated driveways, in combination, is greater than 2,000 feet. As used
3 in this subdivision, “roads” shall include any new road or improvement to a
4 Class IV road by a private person for the purpose of accessing a development
5 or subdivision, including roads that will be transferred to or maintained by a
6 municipality after their construction or improvement. For the purpose of
7 determining the length of any road and associated driveways, the length of all
8 other roads and driveways within the tract of land constructed within any
9 continuous period of 10 years commencing after July 1, 2020 shall be
10 included. This subdivision shall not apply to a State or municipal road or a
11 road used exclusively for agricultural or forestry purposes.

12 * * *

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

14 (i) The construction of improvements for farming, logging, or
15 forestry purposes below the elevation of 2,500 feet.

16 * * *

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

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

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

8 * * *

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

12 * * *

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

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

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

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

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

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

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

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

1 constructed for farming, logging, or forestry purposes below the elevation of
2 2,500 feet.

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

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

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

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

16 (45) “Greenhouse gas” means carbon dioxide, methane, nitrous oxide,
17 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other
18 chemical or physical substance that is emitted into the air and that the
19 Secretary of Natural Resources or District Commission reasonably anticipates
20 to cause or contribute to climate change.

1 (c) With respect to the partition or division of land, or with respect to an
2 activity which might or might not constitute development, any person may
3 submit to the ~~district coordinator~~ District Commission an “Act 250 Disclosure
4 Statement” and other information required by the rules of the Board, and may
5 request a jurisdictional opinion from the ~~district coordinator~~ District
6 Commission concerning the applicability of this chapter. If a requestor wishes
7 a final determination to be rendered on the question, the district coordinator, at
8 the expense of the requestor and in accordance with rules of the Board, shall
9 publish notice of the issuance of the opinion in a local newspaper generally
10 circulating in the area where the land ~~which~~ that is the subject of the opinion is
11 located, and shall serve the opinion on all persons listed in subdivisions
12 6085(c)(1)(A) through (D) of this title. In addition, the requestor who is
13 seeking a final determination shall consult with the district coordinator and
14 obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be
15 notified by the district coordinator because they are adjoining property owners
16 or other persons who would be likely to be able to demonstrate a particularized
17 interest protected by this chapter that may be affected by an act or decision by
18 a District Commission.

19 (d) [Repealed.]

20 Subchapter 2. Administration

21 § 6021. BOARD; VACANCY, REMOVAL

1 (a) ~~A Natural Resources~~ Establishment. The Vermont Environmental
2 Review Board is created to hear appeals and adopt rules.

3 ~~(1)~~ The Board shall consist of five members nominated, appointed by
4 ~~the Governor, with the advice and consent of the Senate, and confirmed in the~~
5 manner of a Superior judge so that one appointment expires in each year. The
6 Chair shall be a full-time position. In making these appointments, ~~the~~
7 ~~Governor and the Senate shall give consideration to~~ candidates shall be sought
8 who have experience, expertise, or skills relating to ~~the environment or land~~
9 use environmental science, natural resources law and policy, land use planning,
10 community development, environmental justice, or racial equity.

11 ~~(A)~~ The Governor shall ~~appoint a chair of the Board, a position that~~
12 ~~shall be a full-time position~~ appointing authority shall ensure, to the extent
13 possible, the Board membership includes the racial, ethnic, gender, and
14 geographic diversity of the State.

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

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

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

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

6 ~~(b) Any vacancy occurring in the membership of the Board shall be filled~~
7 ~~by the Governor for the unexpired portion of the term. Terms; vacancy;~~
8 ~~succession. The term of each appointment subsequent to the initial~~
9 ~~appointments described in subsection (a) of this section shall be four years.~~
10 ~~Any appointment to fill a vacancy shall be for the unexpired portion of the~~
11 ~~term vacated. A member wishing to succeed himself or herself in office may~~
12 ~~seek reappointment under the terms of this section.~~

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

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

1 from office. When a Board member who hears all or a substantial part of a
2 case retires from office before the case is completed, he or she shall remain a
3 member of the Board for the purpose of concluding and deciding that case and
4 signing the findings and judgments involved. A retiring Chair shall also
5 remain a member for the purpose of certifying questions of law if a party
6 appeals to the Supreme Court.

7 (e) Completion of case. A case shall be deemed completed when the Board
8 enters a final decision even though that decision is appealed to the Supreme
9 Court and remanded by that Court.

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

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

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

1 (g) Hearing officers. One Board member or any officer or employee of the
2 Board duly appointed by the Chair of the Board may inquire into and examine
3 any matter within the jurisdiction of the Board.

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

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

13 § 6022. PERSONNEL

14 (a) Regular personnel. The Board may ~~appoint~~ retain legal counsel,
15 scientists, engineers, experts, investigators, temporary employees, and
16 administrative personnel, as it finds necessary in carrying out its duties, ~~unless~~
17 the Governor shall otherwise provide and may authorize the District
18 Commissions to use funds to retain personnel to assist on matters within its
19 jurisdiction, including oversight and monitoring of permit compliance.
20 Personnel employed by the District Commissions pursuant to this subsection,
21 shall not report to the Board.

1 (b) Personnel for particular proceedings.

2 (1) Retention.

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

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

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

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

13 (2) Assessment of costs.

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

20 (B) Prior to allocating costs, the Board shall make a determination of
21 the purpose and use of the funds to be raised under this section, identify the

1 recipient of the funds, provide for allocation of costs among applicants to be
2 assessed, indicate an estimated duration of the proceedings, and estimate the
3 total costs to be imposed. With the approval of the Board, estimates may be
4 revised as necessary. From time to time during the progress of the work, the
5 Board shall render to the applicant detailed statements showing the amount of
6 money expended or contracted for in the work of additional personnel, which
7 statements shall be paid into the State Treasury at the time and in the manner
8 as the Board may reasonably direct.

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

11 (c) The District Commissions may retain legal counsel, scientists,
12 engineers, experts, investigators, temporary employees, and administrative
13 personnel to assist in its recorded hearings. The District Commissions may use
14 funds collected under section 6083a of this title for this purpose.

15 * * *

16 § 6025. RULES

17 (a) The Board may adopt rules of procedure for itself and the District
18 Commissions. The Board shall adopt rules of procedure that govern appeals
19 and other contested cases before it and are consistent with this chapter and
20 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. The Governor shall ensure, to the
10 extent possible, each District Commission includes the racial, ethnic, gender,
11 and geographic diversity of the State.

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

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

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

1 § 6027. POWERS

2 (a) The Board and District Commissions shall have supervisory authority in
3 environmental matters respecting projects within their jurisdiction and shall
4 apply their independent judgment in determining facts and interpreting law.

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

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

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

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

15 (4) apply for and receive grants from the federal government and from
16 other sources.

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

19 (c) The ~~Natural Resources~~ Board may designate or establish such regional
20 offices as it deems necessary to implement the provisions of this chapter and
21 the rules adopted hereunder. The ~~Natural Resources~~ Board may designate or

1 require a regional planning commission to receive applications, provide
2 administrative assistance, perform investigations, and make recommendations.

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

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

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

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

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

1 § 6028. COMPENSATION

2 Members of the ~~Board and~~ District Commissions shall receive per diem pay
3 of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A.~~
4 ~~§ 1010.~~

5 * * *

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

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

10 (a) Updates. On or before January 1, 2022, the Board and the Secretaries
11 of Commerce and Community Development, of Digital Services, of
12 Agriculture, Food and Markets, and of Natural Resources shall complete an
13 update to the capability and development maps created under this chapter in
14 1971 for use in issuing permits under this chapter. Maps updated pursuant to
15 this section shall be consistent with the Capability and Development Plan and
16 shall include and identify environmental constraints, existing settlements, rural
17 and working lands areas, critical resource areas, facilities and infrastructure,
18 and areas targeted for conservation, public investment, and development. The
19 Board and these Secretaries shall complete further updates to these maps not
20 less frequently than every eight years. The Board shall lead and coordinate the
21 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 members of the Board and the Chair and the regular and
12 alternate members of each District Commission shall comply with the
13 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 (4) The District Commission shall not initiate, permit, or consider ex
15 parte communications, or consider other communications made to the District
16 Commission outside the presence of the parties concerning a pending or
17 impending proceeding except that:

18 (A) Where circumstances require, ex parte communications for
19 scheduling, administrative purposes or emergencies that do not deal with
20 substantive matters or issues on the merits are authorized; provided:

1 (i) the District Commission reasonably believes that no party will
2 gain a procedural or tactical advantage as a result of the ex parte
3 communication, and

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

7 (B) The District Commission may obtain the advice of a disinterested
8 expert on the law applicable to a proceeding if the District Commission gives
9 notice to the parties of the person consulted and the substance of the advice,
10 and affords the parties reasonable opportunity to respond.

11 (C) The District Commission may consult with personnel whose
12 function is to aid the District Commission in carrying out its adjudicative
13 responsibilities.

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

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

19 (b) As soon as practicable after grounds become known, a party may move
20 to disqualify a ~~Board member or~~ District Commissioner from a particular
21 matter before the ~~Board or~~ District Commission.

1 (1) The motion shall contain a clear statement of the specific grounds
2 for disqualification and when such grounds were first known.

3 (2) On receipt of the motion, a District Commissioner who is the subject
4 of the motion shall ~~disqualify himself or herself or shall refer the motion to the~~
5 ~~Chair of the Board~~ issue a decision after consultation with the Commission's
6 counsel.

7 ~~(A) The Chair of the Board may disqualify the District Commissioner~~
8 ~~from the matter before the District Commission if, on review of the motion, the~~
9 ~~Chair determines that such disqualification is necessary to ensure compliance~~
10 ~~with subsection (a)(ethical standards) of this section.~~

11 ~~(B)~~ On disqualification of a District Commissioner under this
12 subsection, the Chair of the ~~Board~~ District Commission shall assign another
13 District Commissioner to take the place of the disqualified Commissioner. The
14 Chair shall consider making such an assignment from among the members of
15 the same District Commission before assigning a member of another District
16 Commission.

17 ~~(3) On receipt of the motion, a Board member who is the subject of the~~
18 ~~motion shall disqualify himself or herself or shall refer the motion to the full~~
19 ~~Board. The Board may disqualify a member from the matter before the Board~~
20 ~~if, on review of the motion, the Board determines that such disqualification is~~
21 ~~necessary to ensure compliance with subsection (a) (ethical standards) of this~~

1 ~~section. The Board member who is the subject of the motion shall not be~~
2 ~~eligible to vote on the motion.~~

3 (c) For one year after leaving office, a former appointee to ~~the Board~~ or a
4 District Commission shall not, for pecuniary gain:

5 (1) be an advocate on any matter before ~~the Board~~ or the District
6 Commission to which he or she was appointed; or

7 (2) be an advocate before any other public body or the General
8 Assembly or its committees regarding any matter in which, while an appointee,
9 he or she exercised any official responsibility or participated personally and
10 substantively.

11 * * *

12 Subchapter 4. Permits

13 * * *

14 § 6081. PERMITS REQUIRED; EXEMPTIONS

15 * * *

16 (b) Subsection (a) of this section shall not apply to a subdivision exempt
17 under the regulations of the Department of Health in effect on January 21,
18 1970 or any subdivision ~~which~~ that has a permit issued prior to June 1, 1970
19 under the Board of Health regulations, or has pending a bona fide application
20 for a permit under the regulations of the Board of Health on June 1, 1970, with
21 respect to plats on file as of June 1, 1970 provided such permit is granted prior

1 to August 1, 1970. Subsection (a) of this section shall not apply to
2 development ~~which~~ that is not also a subdivision, which has been commenced
3 prior to June 1, 1970, if the construction will be completed by March 1, 1971.

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

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

13 * * *

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

1 activities do not involve the creation of one or more new slate quarry holes that
2 are not 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 (o) If a designation pursuant to 24 V.S.A. chapter 76A is removed,
7 subsection (a) of this section shall apply to any subsequent substantial change
8 to a ~~priority housing project~~ development or subdivision that was originally
9 exempt pursuant to subdivision 6001(3)(A)(iv)(I) of this title or subsection (p)
10 of this section on the basis of that designation.

11 (p)(1) No permit or permit amendment is required for any subdivision,
12 development, or change to a project that is located entirely within a downtown
13 development district designated pursuant to 24 V.S.A. § 2793 ~~if the change~~
14 ~~consists exclusively of any combination of mixed use and mixed income~~
15 ~~housing, and the cumulative changes within any continuous period of five~~
16 ~~years, commencing on or after the effective date of this subsection, remain~~
17 ~~below any applicable jurisdictional threshold specified in subdivision~~
18 ~~6001(3)(A)(iv)(I) of this title~~ or a neighborhood development area designated
19 pursuant to 24 V.S.A. § 2793e. Upon receiving notice and a copy of the permit
20 issued by the appropriate municipal panel pursuant to 24 V.S.A. § 4460(f) a
21 previously issued permit for a development or subdivision located in a

1 downtown development area or a new neighborhood area shall be
2 extinguished.

3 * * *

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

14 * * *

15 § 6083a. ACT 250 FEES

16 (a) All applicants for a land use permit under section 6086 of this title shall
17 be directly responsible for the costs involved in the publication of notice in a
18 newspaper of general circulation in the area of the proposed development or
19 subdivision and the costs incurred in recording any permit or permit
20 amendment in the land records. In addition, applicants shall be subject to the
21 following fees for the purpose of compensating the State of Vermont for the

1 direct and indirect costs incurred with respect to the administration of the
2 Act 250 program:

3 (1) For projects involving construction, \$6.65 for each \$1,000.00 of the
4 first \$15,000,000.00 of construction costs, and \$3.12 for each \$1,000.00 of
5 construction costs above \$15,000,000.00. An additional \$0.75 for each
6 \$1,000.00 of the first \$15,000,000.00 of construction costs shall be paid to the
7 Agency of National Resources to account for the Agency of Natural
8 Resources' review of Act 250 applications. An additional \$3.00 for every
9 \$1,000.00 of construction costs shall be deposited in the Fund created under
10 section 6029 of this title for reimbursement of the District Commission's costs
11 incurred in retaining its own expert witnesses in that matter. Any unused fee
12 shall be returned to the applicant at the conclusion of the matter.

13 (2) For projects involving the creation of lots, \$125.00 for each lot.

14 (3) For projects involving exploration for or removal of oil, gas, and
15 fissionable source materials, a fee as determined under subdivision (1) of this
16 subsection or \$1,000.00 for each day of Commission hearings required for
17 such projects, whichever is greater.

18 (4) For projects involving the extraction of earth resources, including
19 sand, gravel, peat, topsoil, crushed stone, or quarried material, the greater of:
20 a fee as determined under subdivision (1) of this subsection; or a fee equivalent
21 to the rate of \$0.02 per cubic yard of the first million cubic yards of the total

1 volume of earth resources to be extracted over the life of the permit, and
2 \$.01 per cubic yard of any such earth resource extraction above one million
3 cubic yards. An additional \$.02 per cubic yard of the first million cubic yards,
4 and \$.01 per cubic yard of any such earth resource extraction above one
5 million cubic yards shall be deposited in the Fund created under section 6029
6 of this title for reimbursement of the District Commission’s costs incurred in
7 retaining its own expert witnesses in that matter. Any unused fee shall be
8 returned to the applicant at the conclusion of the matter. Extracted material
9 that is not sold or does not otherwise enter the commercial marketplace shall
10 not be subject to the fee. The fee assessed under this subdivision for an
11 amendment to a permit shall be based solely upon any additional volume of
12 earth resources to be extracted under the amendment.

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

1 this subsection shall be due, except to the extent that it is waived pursuant to
2 subsection (f) of this section.

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

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

9 (c) Fees, other than fees paid to reimburse the Commission for
10 expenditures on expert witnesses, shall not be required for projects undertaken
11 by municipal agencies or by State governmental agencies, except for
12 publication and recording costs.

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

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

21 * * *

1 § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF
2 REVIEW

3 (a) The plans for the construction of any development or subdivision
4 subject to the permitting requirements of this chapter must be submitted by the
5 applicant to the District Commission, municipal and regional planning
6 commissions, affected State agencies, and adjoining landowners no less than
7 30 days prior to filing an application under this chapter, unless the municipal
8 and regional planning commissions and affected state agencies waive such
9 requirement.

10 (1) The municipal or regional planning commission may take one or
11 more of the following actions:

12 (A) Hold a public hearing on the proposed plans. The planning
13 commission may require that the applicant attend the hearing.

14 (B) Make recommendations to the applicant within 30 days.

15 (C) Once the application is filed with the District Commission, make
16 recommendations to the District Commission by the deadline established in the
17 applicable provision of this section, Board rule, or scheduling order issued by
18 the District Commission.

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

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

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

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

1 exercise reasonable flexibility with its rules of procedure and of evidence to
2 maximize pro se participation while ensuring the fairness of the proceeding.

3 ~~(e)~~(f) Any notice for a major or minor application, as required by this
4 section, shall also be published by the District Commission in a local
5 newspaper generally circulating in the area where the development or
6 subdivision is located not more than ten days after receipt of a complete
7 application.

8 * * *

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

13 * * *

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

17 * * *

18 (i) Hearings on major applications shall be governed by the Vermont
19 Administrative Procedure Act. Each District Commission shall be assisted by
20 counsel, shall have the authority to retain expert witnesses, and, together with

1 their counsel, shall comply with the ethical standards established in section
2 6031 of this title.

3 § 6085. HEARINGS; PARTY STATUS

4 * * *

5 (e) ~~The Natural Resources Board and any~~ District Commission, acting
6 through one or more duly authorized representatives at any prehearing
7 conference or at any other times deemed appropriate by the ~~Natural Resources~~
8 ~~Board or by the~~ District Commission, shall promote expeditious, informal, and
9 nonadversarial resolution of issues, require the timely exchange of information
10 concerning the application, and encourage participants to settle differences.

11 No District Commissioner who is participating as a ~~decisionmaker~~ decision
12 maker in a particular case may act as a duly authorized representative for the
13 purposes of this subsection. These efforts at dispute resolution shall not affect
14 the burden of proof on issues before a Commission or the ~~Environmental~~
15 ~~Division Board~~, nor shall they affect the requirement that a permit may be
16 issued only after the issuance of affirmative findings under the criteria
17 established in section 6086 of this title.

18 (f) At the prehearing conference or a subsequent scheduling hearing or
19 hearings, the District Commission shall establish a schedule for pretrial
20 discovery pursuant to the Vermont Rules of Civil Procedure and for disclosure
21 of and discovery with regard to any expert testimony by experts retained by the

1 District Commission. The Commission shall have the same authority to
2 supervise or limit pretrial discovery as a Superior Court Judge under the
3 Vermont Rules of Civil Procedure.

4 (g) A hearing shall not be closed until a Commission provides an
5 opportunity to all parties to respond to the last permit or evidence submitted.
6 Once a hearing has been closed, a Commission shall conclude deliberations as
7 soon as is reasonably practicable. A decision of a Commission shall be issued
8 within 20 days of the completion of deliberations.

9 § 6085a. RECORDED HEARINGS

10 (a) Any appeal under section 6089 of this title shall be a review of the
11 record of the proceeding before the District Commission in accordance with
12 subdivision 8504(h)(3) of this title.

13 (b) Within 10 calendar days of receipt of a complete application under
14 section 6084 of this title, the District Commission shall provide notice of the
15 recorded hearings in accordance with the procedures of subdivision 6084(b)(1)
16 of this title.

17 (c) Each of the following shall apply to the review of an application under
18 this section:

19 (1) The District Commission shall extend the hearing schedule or take
20 other appropriate action as necessary to provide a fair and reasonable

1 opportunity for parties to prepare, present, and respond to evidence without
2 creating undue delay in the review of the application.

3 (2) The District Commission may require parties to submit prefiled
4 testimony and exhibits. If the District Commission requires submission of
5 prefiled evidence, the applicant and any parties supporting the application shall
6 submit their prefiled direct evidence first, and then other parties shall be given
7 a reasonable opportunity to submit their prefiled direct evidence. The District
8 Commission may then allow the submission or presentation of rebuttal
9 testimony and exhibits in the sequence and form that it determines to be
10 appropriate.

11 (3) Unless the parties agree otherwise, the District Commission in a
12 prehearing order shall establish the type, sequence, and amount of discovery
13 available under Rules 26–37 of the Vermont Rules of Civil Procedure, limiting
14 the discovery permitted to that necessary for a full and fair determination of the
15 proceeding.

16 (d) On receipt of a request from the District Commission for assistance
17 with regard to an application heard under this section, the Board shall provide
18 assistance to the District Commission as necessary, or the District Commission
19 may hire personnel pursuant to section 6022 of this title.

20 (e) At the expense of the applicant, the District Commission shall record by
21 video any hearing on an application. In the event that appeal is taken from a

1 District Commission act or decision on such an application, the District
2 Commission shall provide the Environmental Division with the original
3 recording of the hearing and a copy of the complete written record and shall
4 make and preserve a copy of the original recording for its own records.

5 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

20 (2) Water pollution. Will not result in undue water pollution. In making
21 this determination ~~it~~, the District Commission shall at least consider: the

1 elevation of land above sea level; and in relation to the flood plains, the nature
2 of soils and subsoils and their ability to adequately support waste disposal; the
3 slope of the land and its effect on effluents; the availability of streams for
4 disposal of effluents; and the applicable Health and Environmental
5 Conservation Department regulations.

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

12 (i) headwaters of watersheds characterized by steep slopes and
13 shallow soils; or

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

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

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

18 (v) areas supplying significant amounts of recharge waters to
19 aquifers.

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

1 the development or subdivision will meet any applicable Health and
2 Environmental Conservation Department regulations regarding the disposal of
3 wastes, and will not involve the injection of waste materials or any harmful or
4 toxic substances into ground water or wells.

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

11 (D) ~~Floodways~~ Flood hazard areas; river corridors. 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 development or subdivision of lands within a floodway~~
15 flood hazard area or river corridor will not restrict or divert the flow of flood
16 waters, cause or contribute to fluvial erosion, and endanger the health, safety,
17 and welfare of the public or of riparian owners during flooding; ~~and~~

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

1 (E) Streams. A permit will be granted whenever it is demonstrated
2 by the applicant that, in addition to all other applicable criteria, the
3 development or subdivision of lands on or adjacent to the banks of a stream
4 will, whenever feasible, maintain the natural condition of the stream, and will
5 not endanger the health, safety, or welfare of the public or of adjoining
6 landowners.

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

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

13 (ii) allow continued access to the waters and the recreational
14 opportunities provided by the waters;

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

17 (iv) stabilize the bank from erosion, as necessary, with vegetation
18 cover.

19 (G) Wetlands. A permit will be granted whenever it is demonstrated
20 by the applicant, in addition to other criteria, that the development or

1 subdivision will not violate the rules of the Secretary of Natural Resources, as
2 adopted under chapter 37 of this title, relating to significant wetlands.

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

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

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

8 * * *

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

13 (B) ~~As appropriate, will~~ Will incorporate transportation demand
14 management strategies and provide safe use, access, and connections to
15 adjacent lands and facilities and to existing and planned pedestrian, bicycle,
16 and transit networks and services. ~~In determining appropriateness under this~~
17 ~~subdivision (B) However,~~ the District Commission ~~shall consider whether~~ may
18 decline to require such a strategy, access, or connection ~~constitutes a measure~~
19 if it finds that a reasonable person would ~~take~~ not undertake the measure given
20 the type, scale, and transportation impacts of the proposed development or
21 subdivision.

1 (6) Will not cause an unreasonable burden on the ability of a
2 municipality to provide educational services. If a municipality fails to respond
3 to a request by the District Commission within 90 days as to the impacts, the
4 application will be presumed not to have an unreasonable burden on
5 educational services.

6 (7) Will not place an unreasonable burden on the ability of the local
7 governments to provide municipal or governmental services. If a municipality
8 fails to respond to a request by the District Commission within 90 days as to
9 the impacts, the application will be presumed not to have an unreasonable
10 burden on municipal or governmental services.

11 (8) Ecosystem protection; scenic beauty; historic sites. Will not have an
12 undue adverse effect on the scenic or natural beauty of the area, aesthetics,
13 historic sites, or rare and irreplaceable natural areas.

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

19 (i) the economic, social, cultural, recreational, or other benefit to
20 the public from the development or subdivision will ~~not~~ outweigh the

1 economic, environmental, or recreational loss to the public from the
2 destruction or imperilment of the habitat or species; ~~or~~

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

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

9 (B) Forest blocks.

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

12 (I) the development or subdivision will avoid fragmentation of
13 the forest block through the design of the project or the location of project
14 improvements, or both; or

15 (II) it is not feasible to avoid fragmentation of the forest block
16 and the design of the development or subdivision minimizes fragmentation of
17 the forest block.

18 (ii) Methods for avoiding or minimizing the fragmentation of a
19 forest block include:

20 (I) Locating buildings and other improvements and operating
21 the project in a manner that avoids or minimizes incursion into and disturbance

1 of the forest block, including clustering of buildings and associated
2 improvements.

3 (II) Designing roads, driveways, and utilities that serve the
4 development or subdivision to avoid or minimize fragmentation of the forest
5 block. Such design may be accomplished by following or sharing existing
6 features on the land such as roads, tree lines, stone walls, and fence lines.

7 (C) Connecting habitat.

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

10 (I) the development or subdivision will avoid fragmentation of
11 a connecting habitat through the design of the project or the location of project
12 improvements, or both; or

13 (II) it is not feasible to avoid fragmentation of the connecting
14 habitat and the design of the development or subdivision minimizes
15 fragmentation of the connector.

16 (ii) Methods for avoiding or minimizing the fragmentation of a
17 connecting habitat include:

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

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

4 (III) when there is no feasible site for construction of buildings
5 and other improvements outside the connector, designing the buildings and
6 improvements to facilitate the continued viability of the connector for use by
7 wildlife.

8 * * *

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

14 * * *

15 (F) Energy conservation and efficiency. A permit will be granted
16 when it has been demonstrated by the applicant that, in addition to all other
17 applicable criteria, the planning and design of the subdivision or development
18 reflect the principles of energy conservation and energy efficiency, including
19 reduction of greenhouse gas emissions from the use of energy, and incorporate
20 the best available technology for efficient use or recovery of energy. An
21 applicant seeking an affirmative finding under this criterion shall provide

1 evidence, by certification and established through inspection, that the
2 subdivision or development complies with the applicable building energy
3 standards and stretch codes under 30 V.S.A. § 51 or 53.

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, when it is demonstrated that, in addition to
14 all other applicable criteria, the development or subdivision will not
15 unnecessarily or unreasonably endanger the public or quasi-public investment
16 in the facility, service, or lands, or materially jeopardize or interfere with the
17 function, efficiency, or safety of, or the public's use or enjoyment of or access
18 to the facility, service, or lands.

19 * * *

20 (M) Climate adaptation. A permit will be granted for the
21 development or subdivision when it has been demonstrated that, in addition to

1 all other applicable criteria, the development or subdivision will employ
2 building orientation, site and landscape design, and building design that are
3 sufficient to enable the improvements to be sited and constructed, including
4 buildings, roads, and other infrastructure, to withstand and adapt to the effects
5 of climate change, including extreme temperature events, wind, and
6 precipitation reasonably projected at the time of application.

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

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

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

19 (B) A District Commission shall decline to apply a provision of a
20 local or regional plan only if the Commission is persuaded that the provision

1 does not afford a person of ordinary intelligence with a reasonable opportunity
2 to understand what the provision directs, requires, or proscribes.

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

7 * * *

8 (c) Conditions.

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

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

19 (A) A permit condition restricting a forest-based enterprise's hours of
20 operation shall only be imposed when the absence the condition would result

1 in an impact under the criteria pursuant to subdivision (a)(1), (5), or (8) of this
2 section.

3 (B) Permits issued for a forest-based enterprise shall allow the
4 enterprise to ship and receive forest products, including delivery from the
5 forestry operation to the enterprise, during hours outside permitted hours of
6 operation, including nights, weekends, and holidays, for a minimum of 60 days
7 per year unless there would be an impact under the criteria pursuant to
8 subdivision (a)(1) or (5) of this section.

9 (C) In making a determination under this subdivision (2) as to
10 whether an impact exists, the District Commission shall consider the benefits
11 to forests, the forest resources resulting from the forest-based enterprise, and
12 the impact on the forest-based enterprise that would result from a condition.
13 Conditions shall impose the minimum restriction necessary to address the
14 undue adverse impact.

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

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

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

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

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

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

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

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

19 (3) In the case of approvals and permits issued by the Agency of Natural
20 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 ~~(b)(c)~~ (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
16 adverse effect that the application does not meet the relevant standard.

17 (d) With respect to permit conditions to mitigate impacts under
18 subdivisions 6086(a)(5) through (8) of this title, the burden shall be on the
19 applicant to demonstrate that is not feasible to avoid the impact.

20 § 6089. APPEALS

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

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

13 § 6090. ~~RECORDING; DURATION AND REVOCATION OF PERMITS~~

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

18 (b) Permits for specified period.

19 (1) Any permit granted under this chapter for extraction of mineral
20 resources, operation of solid waste disposal facilities, or logging above 2,500
21 feet, shall be for a specified period determined by the Board in accordance

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

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

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

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

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

20 (B) The use of the land as of the date of the application does not
21 constitute development or subdivision as defined in section 6001 of this title

1 and would not require a permit or permit amendment but for the fact that the
2 land is already subject to a permit under this chapter.

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

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

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

17 * * *

18 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

19 * * *

20 (c) Mitigation and offsets for forest-based enterprises. Notwithstanding
21 any provision of this chapter to the contrary, a conversion of primary

1 agricultural soils by a forest-based enterprise permitted under this chapter shall
2 be entitled to a ratio of 1:1 protected acres to acres of affected primary
3 agricultural soil.

4 * * *

5 § 6094. MITIGATION OF FOREST BLOCKS AND HABITAT

6 CONNECTORS

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

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

18 (1) The rules shall state the acreage ratio of forest block or habitat
19 connector to be preserved in relation to the block or connector affected by the
20 development or subdivision.

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

4 ~~(A) Preservation of a forest block or habitat connector of similar~~
5 ~~quality and character to the block or connector that the development or~~
6 ~~subdivision will affect.~~

7 ~~(B) Deposit of an offsite mitigation fee into the Vermont Housing~~
8 ~~and Conservation Trust Fund under section 312 of this title.~~

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

10 ~~(I) Determine the number of acres of forest block or habitat~~
11 ~~connector, or both, affected by the proposed development or subdivision.~~

12 ~~(II) Multiply this number of affected acres by the ratio set forth~~
13 ~~in the rules.~~

14 ~~(III) Multiply the resulting product by a “price per acre” value,~~
15 ~~which shall be based on the amount that Commissioner of Forests, Parks and~~
16 ~~Recreation to be the recent, per acre cost to acquire conservation easements for~~
17 ~~forest blocks and habitat connectors of similar quality and character in the~~
18 ~~same geographic region as the proposed development or subdivision.~~

19 ~~(ii) The Vermont Housing Conservation Board shall use such a fee~~
20 ~~to preserve a forest block or habitat connector of similar quality and character~~
21 ~~to the block or connector affected by the development or subdivision.~~

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

2 ~~(e) The mitigation of impact on a forest block or a habitat connector, or~~

3 ~~both, shall be structured also to mitigate the impacts, under the criteria of~~

4 ~~subsection 6086(a) of this title other than subdivisions (8)(B) and (C), to land~~

5 ~~or resources within the block or connector.~~

6 ~~(d) All forest blocks and habitat connectors preserved pursuant to this~~

7 ~~section shall be protected by permanent conservation easements that grant~~

8 ~~development rights and include conservation restrictions and are conveyed to a~~

9 ~~qualified holder, as defined in section 821 of this title, with the ability to~~

10 ~~monitor and enforce easements in perpetuity.~~

11 * * *

12 * * * Resource Mapping; Forest Blocks * * *

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

14 § 127. RESOURCE MAPPING

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

1 available to provide assistance to the Secretary in carrying out the ~~GIS-based~~
2 resource mapping.

3 (b) The Secretary of ~~Natural Resources~~ shall consider the ~~GIS-based~~
4 resource maps developed under subsection (a) of this section when providing
5 evidence and recommendations to the Public Utility Commission under
6 30 V.S.A. § 248(b)(5) and when commenting on or providing
7 recommendations under chapter 151 of this title to District Commissions on
8 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. § 2798 is amended to read:

16 § 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

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

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

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

11 * * * Regional and Municipal Planning * * *

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

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

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

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

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

10 Sec. 7. 24 V.S.A. § 4348a is amended to read:

11 § 4348a. ELEMENTS OF A REGIONAL PLAN

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

14 * * *

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

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

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

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

7 * * *

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

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

17 * * *

18 Sec. 8. 24 V.S.A. § 4382 is amended to read:

19 § 4382. THE PLAN FOR A MUNICIPALITY

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

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

3 * * *

4 Sec. 9. 24 V.S.A. § 4460 is amended to read:

5 § 4460. APPROPRIATE MUNICIPAL PANELS

6 * * *

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

8 (A) was previously permitted pursuant to 10 V.S.A. chapter 151;

9 (B) is located in a downtown development district or neighborhood
10 development area designated pursuant to chapter 76A of this title; and

11 (C) has applied for a permit or permit amendment required by zoning
12 regulations or bylaws adopted pursuant to this subchapter.

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

18 (A) the construction phase of the project that has already been
19 completed;

20 (B) compliance with another State permit that has independent
21 jurisdiction that addresses the condition in the previously issued permit;

1 (C) federal or State law that is no longer in effect or applicable;

2 (D) an issue that is addressed by municipal regulation, and the project
3 will meet the municipal standards; and

4 (E) a physical or use condition that is no longer in effect or
5 applicable, or that will no longer be in effect or applicable once the new project
6 is approved.

7 (3) After issuing or amending a permit containing conditions pursuant to
8 this subsection, the appropriate municipal panel shall provide notice and a
9 copy of the permit to the Natural Resources Board.

10 (4) The appropriate municipal panel’s determinations shall be made
11 following notice and a public hearing as provided in section 4464(a)(1) of this
12 title and to those persons requiring notice pursuant to 10 V.S.A. § 6084(b). The
13 notice shall explicitly reference the existing Act 250 permit.

14 (5) The appropriate municipal panel’s decision shall be issued in accord
15 with section 4464(b) of this title and shall include specific findings with
16 respect to its determinations pursuant to subdivision (f)(2) of this section.

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

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

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

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

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

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

1 § 8403. APPLICABILITY

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

5 (1) the following provisions of this title:

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

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

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

9 (D) chapter 43 (dams);

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

11 (F) chapter 48 (groundwater protection);

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

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

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

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

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

18 (L) section 2625 (regulation of heavy cutting);

19 (M) chapter 123 (protection of endangered species);

20 (N) chapter 159 (waste management);

1 (O) chapter 37 (wetlands protection and water resources
2 management);

3 (P) chapter 166 (collection and recycling of electronic devices);

4 (Q) chapter 164A (collection and disposal of mercury-containing
5 lamps);

6 (R) chapter 32 (flood hazard areas);

7 (S) chapter 49A (lake shoreland protection standards);

8 (T) chapter 83, subchapter 8 (importation of firewood); and

9 (U) chapter 168 (product stewardship for primary batteries and
10 rechargeable batteries);

11 (2) 29 V.S.A. chapter 11 (management of lakes and ponds); and

12 (3) 24 V.S.A. chapter 61, subchapter 10 (salvage yards).

13 (b) This chapter shall govern all appeals from an act or decision of a
14 District Commission under chapter 151 of this title.

15 (c) This chapter shall govern all appeals from a district coordinator
16 jurisdictional opinion under chapter 151 of this title.

17 (d) This chapter shall govern all appeals from an act or decision of the
18 Board under this chapter.

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

1 (f) An appeal of an act or decision of an appropriate municipal panel under
2 24 V.S.A. chapter 117 may be to the Board if the act or decision pertains to
3 land development, as defined in 24 V.S.A. § 4303(10), that requires a permit,
4 certificate, or other approval from the Agency of Natural Resources or a
5 District Commission under a statute listed in subsections (a) or (b) of this
6 section. The provisions of 24 V.S.A. §§ 4471 (appeals to environmental
7 division) and 4471a(b) through (g) (environmental division) shall apply to such
8 an appeal, except that the appeal shall be before the Board and may be
9 consolidated with other appeals before the Board pursuant to subsection
10 8411(f) of this title. If an appeal is filed with the Board, any party may move
11 to consolidate appeals or move to have the appeal of an act or decision of an
12 appropriate municipal panel heard individually by the Environmental Division
13 of the Superior Court.

14 (g) This chapter shall govern all appeals from an act or decision of a
15 regional planning commission made pursuant to section 6001 (3)(A)(xi) of this
16 title.

17 § 8404. APPEALS

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

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

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

9 (2) On the filing of an appeal from the act or decision of the Secretary
10 under the provisions of law listed in section 8403 of this title, the appellant
11 shall provide notice of the filing of an appeal to the following persons: the
12 applicant before the Agency of Natural Resources if other than the appellant;
13 the owner of the land where the project is located if the applicant is not the
14 owner; the municipality in which the project is located; the municipal and
15 regional planning commissions for the municipality in which the project is
16 located; if the project site is located on a boundary, any adjacent Vermont
17 municipality and the municipal and regional planning commissions for that
18 municipality; any State agency affected; the solid waste management district in
19 which the project is located if the project constitutes a facility pursuant to
20 subdivision 6602(10) of this title; all persons required to receive notice of
21 receipt of an application or notice of the issuance of a draft permit; and all

1 persons on any mailing list for the decision involved. In addition, the appellant
2 shall publish notice not more than 10 days after providing notice as required
3 under this subsection, at the appellant’s expense, in a newspaper of general
4 circulation in the area of the project that is the subject of the decision.

5 (c) Requirement to participate before the District Commission or the
6 Secretary.

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

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

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

19 or

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

1 (2) Participation before the Secretary.

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

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

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

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

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

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

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

3 (iii) the person demonstrates that an issue was not reasonably
4 ascertainable during the review of an application or other request that led to the
5 Secretary’s act or decision; or

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

8 (d) District Commission jurisdictional opinions.

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

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

19 (e) Stays.

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

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

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

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

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

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

14 However, a permit decision from a District Commission under chapter 151
15 shall be on the record.

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

20 (i) Limitations on appeals. Notwithstanding any other provision of this
21 section:

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

5 (2) if a District Commission issues a partial decision under subsection
6 6086(b) of this title, any appeal of that decision must be taken within 30 days
7 following the date of that decision.

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

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

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

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

21 (2) is a party by right;

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

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

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

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

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

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

18 § 8405. FEES

19 (a) All persons filing an appeal shall pay a fee of \$250.00, plus any
20 associated publication costs. The Board may waive the fee or publication costs
21 if the Board finds that the appellant or initiating party is unable to pay the fee

1 or publication costs. The fee of \$250.00 shall not apply to appeals or other
2 matters brought before the Board under this chapter in the name of the State by
3 public officials authorized to do so.

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

6 § 8406. APPEALS TO THE SUPREME COURT

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

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

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

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

17 (c) An objection that has not been raised before the Board may not be
18 considered by the Supreme Court, unless the failure or neglect to raise that
19 objection is excused by the Supreme Court because of extraordinary
20 circumstances. The findings of the Board with respect to questions of fact, if

1 supported by substantial evidence on the record as a whole, shall be
2 conclusive.

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

5 * * * Environmental Division * * *

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

7 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

8 The Environmental Division shall have:

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

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

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

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

15 § 2283. APPEALS

16 After exhausting the right of administrative appeal to the Board under
17 19 V.S.A. § 5(d)(5), a person aggrieved by any order, act, or decision of the
18 Agency of Transportation may appeal to the Superior Court, and all
19 proceedings shall be de novo. Any person, including the Agency of
20 Transportation, may appeal to the Supreme Court from a judgment or ruling of
21 the Superior Court. Appeals of acts or decisions of the Secretary of Natural

1 Resources ~~or~~ under this subchapter shall be appealed to the Vermont
2 Environmental Review Board under 10 V.S.A. § 8403. Acts or decisions of a
3 legislative body of a municipality under this subchapter shall be appealed to
4 the Environmental Division under ~~10 V.S.A. § 8503~~ section 4471a of this title.

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

6 (3) No permit issued pursuant to this section shall take effect until the
7 time for appeal in section 4465 of this title has passed, or in the event that a
8 notice of appeal is properly filed, no such permit shall take effect until
9 adjudication of that appeal by the appropriate municipal panel is complete and
10 the time for taking an appeal to the Environmental Division has passed without
11 an appeal being taken. If an appeal is taken to the Environmental Division, the
12 permit shall not take effect until the Environmental Division rules in
13 accordance with ~~10 V.S.A. § 8504~~ section 4471a of this title on whether to
14 issue a stay, or until the expiration of 15 days, whichever comes first.

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

16 § 4471. APPEAL TO ENVIRONMENTAL DIVISION

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

21 Participation in a local regulatory proceeding shall consist of offering, through

1 oral or written testimony, evidence or a statement of concern related to the
2 subject of the proceeding. An appeal from a decision of the appropriate
3 municipal panel, or from a decision of the municipal legislative body under
4 subsection 4415(d) of this title, shall be taken in such manner as the Supreme
5 Court may by rule provide for appeals from State agencies governed by
6 3 V.S.A. §§ 801–816, unless the decision is an appropriate municipal panel
7 decision ~~which~~ that the municipality has elected to be subject to review on the
8 record.

9 * * *

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

11 § 4471a. ENVIRONMENTAL DIVISION

12 (a) Applicability.

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

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

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

21 (b) Appeals; exceptions.

1 (1) Within 30 days following the date of the act or decision, an
2 interested person, as defined in section 4465 of this title, who has participated,
3 as defined in section 4471 of this title, in the municipal regulatory proceeding
4 under this chapter may appeal to the Environmental Division an act or decision
5 made under the chapter by an appropriate municipal panel; provided, however,
6 that:

7 (A) decisions of a development review board under section 4420 of
8 this title with respect to local Act 250 review of municipal impacts are not
9 subject to appeal but shall serve as presumptions under 10 V.S.A.
10 chapter 151; and

11 (B) an appeal of an act or decision of an appropriate municipal panel
12 may be to the Vermont Environmental Review Board established under
13 10 V.S.A. chapter 219 if the act or decision pertains to land development that
14 requires a permit, certificate, or other approval from the Agency of Natural
15 Resources or a District Commission under a statute listed in 10 V.S.A.
16 § 8403(a) or (b) (applicability).

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

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

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

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

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

7 (d) Stays.

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

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

16 (e) De novo hearing. The Environmental Division, applying the
17 substantive standards that were applicable before the tribunal appealed from,
18 shall hold a de novo hearing on those issues that have been appealed, except in
19 the case of a decision being appealed on the record pursuant to subsection
20 4471(b) of this title.

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

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

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

9 (2) is a party by right;

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

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

14 (h) Appeals to Supreme Court.

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

19 (A) the person was a party to the proceeding before the
20 Environmental Division;

21 (B) the decision being appealed is the denial of party status; or

1 (C) the Supreme Court determines that:

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

4 (ii) some other condition exists that would result in manifest
5 injustice if the person’s right to appeal were disallowed.

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

10 * * * River Permits * * *

11 Sec. 17. 10 V.S.A. § 754 is amended to read:

12 § 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM
13 MUNICIPAL REGULATION

14 (a) Rulemaking authority.

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

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

1 (d) General permit. The rules authorized by this section may establish
2 requirements for a general permit to implement the requirements of this
3 section, including authorization under the general permit to conduct a specified
4 use ~~exempt from municipal regulation~~ subject to regulation under this section
5 without notifying or reporting to the Secretary or an agency delegated under
6 subsection (g) of this section.

7 * * *

8 (f)(1) Permit requirement.

9 (A) ~~A~~ Beginning November 1, 2014, a person shall not commence or
10 conduct a use exempt from municipal regulation in a flood hazard area or river
11 corridor in a municipality that has adopted a flood hazard area bylaw or
12 ordinance under 24 V.S.A. chapter 117 or commence construction of a State-
13 owned and State-operated institution or facility located within a flood hazard
14 area or river corridor, without a permit issued under the rules required under
15 subsection (a) of this section by the Secretary or by a State agency delegated
16 permitting authority under subsection (g) of this section. When an application
17 is filed under this section, the Secretary or delegated State agency shall
18 proceed in accordance with chapter 170 of this title.

19 (B) Beginning on November 1, 2021, a person shall not commence
20 construction of a development or subdivision that is subject to a permit under
21 chapter 151 of this title without a permit issued pursuant under the rules

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

3 (C) Beginning on November 1, 2023, a person shall not commence or
4 conduct a use located in a highest priority river corridor without a permit
5 issued pursuant under the rules required under subsection (a) of this section by
6 the Secretary or by a State agency delegated permitting authority under
7 subsection (g) of this section.

8 * * * Racial Equity Review * * *

9 Sec. 18. IMPACTS ON RACIAL EQUITY AND DIVERSITY; REVIEW

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

17 (1) identify the impacts of acts or decisions made pursuant to Act 250 on
18 inequities in land ownership and land distribution within the State;

19 (2) measure the extent to which minority populations in the State have
20 incurred disproportional environmental impacts due to acts or decisions of the
21 State pursuant to Act 250;

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

4 (4) recommend legislative changes to Act 250 necessary to achieve the
5 goals of racial equity and diversity representation for minority population.

6 (b) On or before October 15, 2020, the Executive Director of Racial Equity
7 shall report to the General Assembly with its findings and any
8 recommendations for legislative action.

9 * * * Revision Authority; Transition; Effective Dates * * *

10 Sec. 19. REFERENCES; REVISION AUTHORITY

11 (a) In the Vermont Statutes Annotated, all references to the Natural
12 Resources Board are deemed to be references to the Vermont Environmental
13 Review Board.

14 (b) In 10 V.S.A. § 6001 as amended by Sec. 3 of this act, the Office of
15 Legislative Council shall:

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

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

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

3 (1) replace “Natural Resources Board” with “Vermont Environmental
4 Review Board”;

5 (2) replace “10 V.S.A. chapter 220” and “chapter 220 of Title 10” with
6 “10 V.S.A. chapter 219”;

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

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

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

15 (1) in subdivision (a)(4): Soil erosion; capacity of land to hold water.

16 (2) in subdivision (a)(6): Educational services.

17 (3) in subdivision (a)(7): Local governmental services.

18 (4) in subsection (b): Partial findings.

19 (5) in subsection (e): Temporary improvements; film or TV.

20 (6) in subsection (f): Stay of construction.

1 Sec. 20. RULES

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

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

10 Sec. 21. ENVIRONMENTAL REVIEW BOARD; BUDGET;

11 POSITIONS

12 As of February 1, 2020, all appropriations and employee positions of the
13 Natural Resources Board are transferred to the Vermont Environmental
14 Review Board.

15 Sec. 22. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

16 Notwithstanding the repeal of its jurisdictional authority to hear appeals
17 relative to State environmental permits under Sec. 10 of this act, the
18 Environmental Division shall continue to have jurisdiction to complete its
19 consideration of any such appeal that is pending before it as of February 1,
20 2020 if, with respect to such act or appeal, mediation or discovery has
21 commenced, a dispositive motion has been filed, or a trial has begun.

1 Sec. 23. EFFECTIVE DATES

2 (a) This section and Sec. 18 shall take effect on passage.

3 (b) The remainder of this act shall take effect on February 1, 2020, except
4 that the authority to make appointments to the Vermont Environmental Review
5 Board shall take effect on passage and each such appointment shall be made on
6 or before December 15, 2019.

DRAFT