

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 • Amending the Capability and Development Plan Findings.
- 8 • Reorganizing the air and water pollution criteria.
- 9 • Amending the transportation, energy conservation, and public investment
10 criteria.
- 11 • Amending the criteria to address ecosystem protection through protecting
12 forest blocks and connecting habitat. The bill also would increase the
13 program’s ability to protect ecosystems on ridgelines by reducing the
14 elevation threshold from 2,500 to 2,000 feet.
- 15 • Adding new criteria related to climate adaptation and environmental justice.
- 16 • Requiring that, to be used in Act 250, local and regional plans must be
17 approved as consistent with the statutory planning goals and clarifying that
18 local and regional plan provisions apply to a project if they meet the same
19 standard of specificity applicable to statutes.
- 20 • As part of a balancing of interests to support economic development in
21 compact centers while promoting a rural countryside, supporting a working

- 1 landscape, and protecting important natural resources, exempting
2 designated downtowns and neighborhood development areas from Act 250
3 and increasing Act 250 jurisdiction at interstate interchanges and over
4 certain new roads. Because the designation under 24 V.S.A. chapter 76A
5 would affect jurisdiction, the bill provides for appeal of designation
6 decisions.
- 7 • Clarifying the definition of “commercial purpose” so that it is not necessary
8 to determine whether monies received are essential to sustain a project.
 - 9 • Increasing the per diem rate for District Commissioners to \$100.00 and
10 raising the Act 250 permit fees.
 - 11 • Amending the permit process by giving the Natural Resources Board the
12 power to issue major permits, in addition to the NRB’s current duties. The
13 Board will have three full time members. Major permit applications will be
14 heard by a panel of the Board and two District Commissioners from the
15 district where the project is located. Appeals of Act 250 permits would go
16 to the Supreme Court. The Environmental Division of the Superior Court
17 would continue to hear other permit appeals and enforcement.
 - 18 • Reaffirming the supervisory authority in environmental matters of the
19 Board and District Commissions, in accordance with the original intent of
20 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.
- 3 • Creating a process that would allow properties to be released from Act 250
- 4 jurisdiction.
- 5 • Requiring slate quarries to be added to the Agency of Natural Resources
- 6 Natural Resource Atlas.
- 7 • Establishing a preapplication process to allow municipal and regional
- 8 planning commissions to weigh in on a project before the Act 250 permit
- 9 application is filed.
- 10 • Allowing forest-based enterprises to operate outside of permitted hours of
- 11 operations and to mitigate primary agricultural soil on a 1:1 ratio.
- 12 • Shifting the burden of persuasion to the applicant under criterion 8.
- 13 • Requiring the Agency of Natural Resources to establish a permit program
- 14 for highest priority river corridors.

15 An act relating to changes to Act 250

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

17 * * * Revisions to Capability and Development Plan * * *

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

19 (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

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

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

13 (2) ECOSYSTEM PROTECTION AND UTILIZATION OF NATURAL
14 RESOURCES

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

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

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

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

15 * * * Revisions to State Land Use Law * * *

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

17 CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS

18 Subchapter 1. General Provisions

19 § 6000. PURPOSE; CONSTRUCTION

20 The purposes of this chapter are to protect and conserve the environment of
21 the State and to support the achievement of the goals of the Capability and

1 Development Plan and of 24 V.S.A. § 4302(c). The chapter shall be construed
2 broadly to effect these purposes.

3 § 6001. DEFINITIONS

4 ~~It~~ As used in this chapter:

5 (1) “Board” means the Natural Resources Board.

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

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

10 * * *

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

13 * * *

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

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

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

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

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

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

17 (VI) Ensure that development in this area not establish or
18 contribute to a pattern of strip development. Where strip development already
19 exists, development in this area must be infill that minimizes the characteristics
20 of strip development.

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

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

8 (xii) The construction of a road or roads and any associated
9 driveways to provide access to or within a tract of land of more than one acre
10 owned or controlled by a person. For the purposes of determining jurisdiction
11 under this subdivision, any new development or subdivision on a parcel of land
12 that will be provided access by the road and associated driveways is land
13 involved in the construction of the road. Jurisdiction under this subdivision
14 shall not apply unless the length of the road and any associated driveways in
15 combination is greater than 2,000 feet. As used in this subdivision, “roads”
16 shall include any new road or improvement to a Class IV road by a private
17 person, including roads that will be transferred to or maintained by a
18 municipality after their construction or improvement. For the purpose of
19 determining the length of any road and associated driveways, the length of all
20 other roads and driveways within the tract of land constructed within any
21 continuous period of 10 years commencing after July 1, 2020 shall be

1 included. This subdivision shall not apply to a State or municipal road, a
2 utility corridor of an electric transmission or distribution company, or a road
3 used primarily for farming or forestry purposes. The conversion of a road used
4 for farming or forestry purposes that also meets the requirements of this
5 subdivision shall constitute development.

6 * * *

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

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

18 * * *

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

* * *

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

- (i) A tract or tracts of land, owned or controlled by a person,
which located outside of a designated downtown or neighborhood development area, that the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same District Commission, within any continuous period of five years. In determining the number of lots, a lot shall be counted if any portion is outside such an area and within five miles or within the jurisdictional area of the same District Commission.
- (ii) A tract or tracts of land, owned or controlled by a person,
which that the person has partitioned or divided for the purpose of resale into six or more lots, within a continuous period of five years, in a municipality which that does not have duly adopted permanent zoning and subdivision bylaws.
- (iii) A tract or tracts of land, owned or controlled by a person,
which that have been partitioned or divided for the purpose of resale into five or more separate parcels of any size within a radius of five miles of any point on any such parcel, and within any period of ten years, by public auction.

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

4 * * *

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

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

15 (40) “Fragmentation” means the division or conversion of a forest block
16 or connecting habitat by the separation of a parcel into two or more parcels; the
17 construction, conversion, relocation, or enlargement of any building or other
18 structure, or of any mining, excavation, or landfill; and any change in the use
19 of any building or other structure, or land, or extension of use of land.
20 However, fragmentation does not include the division or conversion of a forest
21 block or connecting habitat by a recreational trail or by improvements

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

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

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

18 (49) “Environmental justice” means that all people and communities
19 have the right to equal environmental protection under the law and the right to
20 live, work, and play in communities that are safe, healthy, and free of life-
21 threatening conditions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

Subchapter 2. Administration

§ 6021. BOARD; VACANCY, REMOVAL

(a) A Natural Resources Board is created.

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

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

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

~~(2)~~ The Governor shall appoint up to five persons, ~~with preference given to former Environmental Board, Natural Resources Board, or District~~

1 ~~Commission members, with the advice and consent of the Senate, to serve as~~
2 ~~alternates for Board members.~~

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

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

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

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

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

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

7 § 6022. PERSONNEL

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

17 (b) Personnel for particular proceedings.

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

1 shall ensure, to the extent possible, that appointments are made in a timely
2 manner and that each District Commission reflects the racial, ethnic, gender,
3 and geographic diversity of the State.

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

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

8 (e) The Chair of the Board may appoint and assign District Commissioners
9 to sit on specific cases when some or all of the regular members of the Board
10 are disqualified or otherwise unable to serve.

11 § 6027. POWERS

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

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

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

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

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

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

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

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

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

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

20 (f) The Board may publish or contract to publish annotations and indices of
21 its decisions and the decisions of the Environmental Division and the Supreme

1 Court, and the text of those decisions. The published product shall be available
2 at a reasonable rate to the general public and at a reduced rate to libraries and
3 governmental bodies within the State.

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

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

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

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

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

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

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

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

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

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

9 * * *

10 (n)(1) The Board may delegate to District Commissions authority:

11 (A) to determine whether an application is for a major or minor
12 permit; and

13 (B) to issue minor permits, minor permit amendments, and
14 administrative amendments.

15 (2) The Board may delegate to District Commissions or district
16 coordinators any additional authority necessary for the effective administration
17 of this chapter.

18 § 6028. COMPENSATION

19 Members of the Board and District Commissions shall receive per diem pay
20 of \$100.00 and all necessary and actual expenses, except when working on a
21 major permit application in accordance with 32 V.S.A. § 1010. Members of

1 the District Commission working on a major permit application shall receive
2 pay comensurate with Board members.

3 * * *

4 § 6031. ETHICAL STANDARDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (C) The District Commission may consult with personnel whose
19 function is to aid the District Commission in carrying out its adjudicative
20 responsibilities.

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

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

19 * * *

20 (v) ~~A permit or permit amendment shall not be required for a development~~
21 ~~or subdivision in a designated downtown development district for which the~~

1 ~~District Commission has issued positive findings and conclusions under~~
2 ~~section 6086b of this title on all the criteria listed in that section. A person shall~~
3 ~~obtain new or amended findings and conclusions from the District Commission~~
4 ~~under section 6086b of this title prior to commencement of a material change,~~
5 ~~as defined in the rules of the Board, to a development or subdivision for which~~
6 ~~the District Commission has issued such findings and conclusions. A person~~
7 ~~may seek a jurisdictional opinion under section 6007 of this title concerning~~
8 ~~whether such a change is a material change. [Repealed.]~~

9 * * *

10 § 6083. APPLICATIONS

11 * * *

12 (e) The Board and District Commissions shall give priority to municipal
13 projects that have been mandated by the State through a permit, enforcement
14 order, court order, enforcement settlement agreement, statute, rule, or policy.

15 * * *

16 (g)(1) ~~A District Commission~~ The Board, pending resolution of
17 noncompliance, may stay the issuance of a permit or amendment if it finds, by
18 clear and convincing evidence, that a person who is an applicant:

19 (A) is not in compliance with a court order, an administrative order,
20 or an assurance of discontinuance with respect to a violation that is directly
21 related to the activity which is the subject of the application; or

1 (B) has one or more current violations of this chapter, or any rules,
2 permits, assurances of discontinuance, court order, or administrative orders
3 related to this chapter, which, when viewed together, constitute substantial
4 noncompliance.

5 (2) Any decision under this subsection to issue a stay may be subject to
6 review by ~~the Environmental Division, as provided by rule of the Supreme~~
7 ~~Court.~~

8 (3) If the same violation is the subject of an enforcement action under
9 chapter 201 of this title, then jurisdiction over the issuance of a stay shall
10 remain with the Environmental Division and shall not reside with the ~~District~~
11 ~~Commission Board.~~

12 § 6083a. ACT 250 FEES

13 (a) All applicants for a land use permit under section 6086 of this title shall
14 be directly responsible for the costs involved in the publication of notice in a
15 newspaper of general circulation in the area of the proposed development or
16 subdivision and the costs incurred in recording any permit or permit
17 amendment in the land records. In addition, applicants shall be subject to the
18 following fees for the purpose of compensating the State of Vermont for the
19 direct and indirect costs incurred with respect to the administration of the
20 Act 250 program:

1 current dollars ~~in addition to the fee established in subdivision (1) of this~~
2 ~~subsection for any portion of the project seeking construction approval~~ shall be
3 due for all other portions of the proposed project. If construction approval is
4 sought in future permit applications, the fee established in subdivision (1) of
5 this subsection shall be due, except to the extent that it is waived pursuant to
6 subsection (f) of this section.

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

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

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

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

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

4 * * *

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

8 * * *

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

19 (1) In reviewing this petition, the District Commission shall consider the
20 following:

1 (A) Whether a portion of the project’s impacts have been reviewed in
2 a previous permit;

3 (B) Whether the project is being reviewed as a major application,
4 minor application, or administrative amendment;

5 (C) Whether the applicant relies on any presumptions permitted
6 under subsection 6086(d) of this title and has, at the time of the permit
7 application, already obtained the permits necessary to trigger the presumptions.
8 If a presumption is rebutted, the District Commission may require the applicant
9 to pay the previously waived fee.

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

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

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

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

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

3 * * *

4 § 6084. NOTICE OF APPLICATION; PREAPPLICATION PROCESS;
5 HEARINGS; COMMENCEMENT OF REVIEW

6 (a) The plans for the construction of any development or subdivision
7 subject to the permitting requirements of this chapter must be submitted by the
8 applicant to the District Commission, municipal and regional planning
9 commissions, affected State agencies, and adjoining landowners no less than
10 30 days prior to filing an application under this chapter, unless the municipal
11 and regional planning commissions and affected state agencies waive this
12 requirement.

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

16 (A) Make recommendations to the applicant within 30 days.

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

1 (2) The application shall address the substantive written comments and
2 recommendations made by the planning commissions related to the criteria of
3 subsection 6086(a) of this title received by the applicant and the substantive
4 oral comments related to those criteria made at a public hearing under
5 subdivision (1) of this subsection.

6 (3) This subsection shall not apply to a project that has been designated
7 as using simplified procedures pursuant to 6025(b)(1) or an administrative
8 amendment.

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

1 Upon request and for good cause, the District Commission may authorize the
2 applicant to provide a partial list of adjoining landowners in accordance with
3 Board rules.

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

8 (1) For major applications, the ~~District Commission~~ Board shall provide
9 notice not less than 10 days prior to any scheduled hearing or prehearing
10 conference to: the applicant; the owner of the land if the applicant is not the
11 owner; the municipality in which the land is located; the municipal and
12 regional planning commissions for the municipality in which the land is
13 located; any adjacent Vermont municipality and municipal and regional
14 planning commission if the land is located on a municipal or regional
15 boundary; adjoining landowners as deemed appropriate by the ~~District~~
16 ~~Commission~~ Board pursuant to the rules of the Board, and any other person the
17 ~~District Commission~~ Board deems appropriate.

18 * * *

19 ~~(e)~~(d) Anyone required to receive notice of commencement of minor
20 application review pursuant to subsection ~~(b)~~(c) of this section may request a
21 ~~hearing~~ that an application be treated as a major by filing a request within the

1 public comment period specified in the notice pursuant to Board rules. The
2 District Commission, on its own motion, may order ~~a hearing~~ that an
3 application be treated as a major within 20 days of notice of commencement of
4 minor application review.

5 ~~(d)~~(e) Any hearing or prehearing conference for a major application shall
6 be held within 40 days of receipt of a complete application; or within 20 days
7 of the end of the public comment period specified in the notice of minor
8 application review if the District Commission determines that it is appropriate
9 to ~~hold a hearing for a minor application~~ treat the application as a major
10 application. Any hearing required shall be held in the municipality where the
11 project is located unless the parties agree to an alternate location. When
12 conducting hearings and prehearing conferences, the Board shall exercise
13 reasonable flexibility with its rules of procedure and of evidence to maximize
14 pro se participation while ensuring the fairness of the proceeding.

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

20 * * *

1 to be treated as confidential pursuant to a protective order duly adopted by the
2 Board.

3 (2) The Board shall make all reasonable efforts to ensure that the
4 location of each hearing is sufficient to accommodate all members of the
5 public seeking to attend.

6 (3) The Board shall ensure that the public may safely attend the hearing,
7 including obtaining such resources as may be necessary to fulfill this
8 obligation.

9 (e) Completion of case. A case shall be deemed completed when the Board
10 and District Commissioners enter a final decision even though that decision is
11 appealed to the Supreme Court and remanded by that Court.

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

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

1 subdivision (c)(1)(E) of this section must petition for party status. Any
2 petition for party status may be made orally or in writing to the ~~District~~
3 ~~Commission~~ Board. All petitions must include:

4 (A) A detailed statement of the petitioner’s interest under the relevant
5 criteria of the proceeding, including, if known, whether the petitioner’s
6 position is in support of or in opposition to the relief sought by the permit
7 applicant, or petitioner.

8 (B) In the case of an organization, a description of the organization,
9 its purposes, and the nature of its membership.

10 (C) A statement of the reasons the petitioner believes the ~~District~~
11 ~~Commission~~ Board should allow the petitioner party status in the pending
12 proceeding.

13 (D) In the case of a person seeking party status under subdivision
14 (c)(1)(E) of this section:

15 (i) If applicable, a description of the location of the petitioner’s
16 property in relation to the proposed project, including a map, if available;

17 (ii) A description of the potential effect of the proposed project
18 upon the petitioner’s interest with respect to each of the relevant criteria or
19 subcriteria under which party status is being requested.

20 (3) Timeliness. A petition for party status pursuant to subdivision
21 (c)(1)(E) of this section must be made at or prior to an initial prehearing

1 conference held pursuant to Board rule or at the commencement of the hearing,
2 whichever shall occur first, unless the ~~District Commission~~ Board directs
3 otherwise. The ~~District Commission~~ Board may grant an untimely petition if it
4 finds that the petitioner has demonstrated good cause for failure to request
5 party status in a timely fashion, and that the late appearance will not unfairly
6 delay the proceedings or place an unfair burden on the parties.

7 (4) Conditions. Where a person has been granted party status pursuant
8 to subdivision (c)(1)(E) of this section, the ~~District Commission~~ Board shall
9 restrict the person's participation to only those issues in which the person has
10 demonstrated an interest, and may encourage the person to join with other
11 persons with respect to representation, presentation of evidence, or other
12 matters in the interest of promoting judicial efficiency.

13 (5) Friends of the ~~Commission~~ Board. The ~~District Commission~~ Board,
14 on its own motion or by petition, may allow nonparties to participate in any of
15 its proceedings, without being accorded party status. Participation may be
16 limited to the filing of memoranda, proposed findings of fact and conclusions
17 of law, and argument on legal issues. However, if approved by the ~~District~~
18 ~~Commission~~ Board, participation may be expanded to include the provision of
19 testimony, the filing of evidence, or the cross examination of witnesses. A
20 petition for leave to participate as a friend of the ~~Commission~~ Board shall
21 identify the interest of the petitioner and the desired scope of participation and

1 shall state the reasons why the participation of the petitioner will be beneficial
2 to the ~~District Commission~~ Board. Except where all parties consent or as
3 otherwise ordered by the ~~District Commission~~ or by the Chair of the District
4 ~~Commission~~ Board, all friends of the ~~Commission~~ Board shall file their
5 memoranda, testimony, or evidence within the times allowed the parties.

6 (6) Reexamination of party status. ~~A District Commission~~ The Board
7 shall reexamine party status determinations before the close of hearings and
8 state the results of that reexamination in the ~~District Commission~~ Board
9 decision. In the reexamination of party status coming before the close of
10 ~~District Commission~~ hearings, persons having attained party status up to that
11 point in the proceedings shall be presumed to retain party status. However, on
12 motion of a party, or on its own motion, a ~~Commission~~ the Board shall
13 consider the extent to which parties continue to qualify for party status.
14 Determinations made before the close of ~~District Commission~~ hearings shall
15 supersede any preliminary determinations of party status.

16 (d) If no hearing has been requested or ordered within the prescribed period
17 no hearing need be held by the ~~District Commission~~ Board. In such an event a
18 permit shall be granted or denied within 60 days of receipt; otherwise, it shall
19 be deemed approved and a permit shall be issued.

20 (e) The Natural Resources Board and any District Commission, acting
21 through one or more duly authorized representatives at any prehearing

1 conference or at any other times deemed appropriate by the Natural Resources
2 Board or by the District Commission, shall promote expeditious, informal, and
3 nonadversarial resolution of issues, require the timely exchange of information
4 concerning the application, and encourage participants to settle differences.

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

12 (f) A hearing shall not be closed until a ~~Commission~~ the Board provides an
13 opportunity to all parties to respond to the last permit or evidence submitted.
14 Once a hearing has been closed, a ~~Commission~~ the Board shall conclude
15 deliberations as soon as is reasonably practicable. A decision of a ~~Commission~~
16 the Board shall be issued within 20 days of the completion of deliberations.

17 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

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

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

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

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

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

1 quality of the ground or surface waters flowing through or upon lands ~~which~~
2 that are not devoted to intensive development, and which lands are:

3 (i) headwaters of watersheds characterized by steep slopes and
4 shallow soils; or

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

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

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

9 (v) areas supplying significant amounts of recharge waters to
10 aquifers.

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

17 (C) Water conservation. A permit will be granted whenever it is
18 demonstrated by the applicant that, in addition to all other applicable criteria,
19 the design has considered water conservation, incorporates multiple use or
20 recycling where technically and economically practical, utilizes the best

1 available technology for such applications, and provides for continued efficient
2 operation of these systems.

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

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

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

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

20 (F) Shorelines. A permit will be granted whenever it is demonstrated
21 by the applicant that, in addition to all other criteria, the development or

1 subdivision of shorelines must of necessity be located on a shoreline in order to
2 fulfill the purpose of the development or subdivision, and the development or
3 subdivision will, insofar as possible and reasonable in light of its purpose:

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

5 (ii) allow continued access to the waters and the recreational
6 opportunities provided by the waters;

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

9 (iv) stabilize the bank from erosion, as necessary, with vegetation
10 cover.

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

15 ~~(2)~~(3) Water supply.

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

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

20 * * *

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

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

14 (6) Will not cause an unreasonable burden on the ability of a
15 municipality to provide educational services.

16 (7) Will not place an unreasonable burden on the ability of the local
17 governments to provide municipal or governmental services.

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

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

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

6 (i) the economic, social, cultural, recreational, or other benefit to
7 the public from the development or subdivision will ~~not~~ outweigh the
8 economic, environmental, or recreational loss to the public from the
9 destruction or imperilment of the habitat or species; ~~or~~

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

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

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

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

6 (A) Impact of growth. In considering an application, the Board or
7 District Commission shall take into consideration the growth in population
8 experienced by the town and region in question and whether or not the
9 proposed development would significantly affect their existing and potential
10 financial capacity to reasonably accommodate both the total growth and the
11 rate of growth otherwise expected for the town and region and the total growth
12 and rate of growth which would result from the development if approved. After
13 considering anticipated costs for education, highway access and maintenance,
14 sewage disposal, water supply, police and fire services, and other factors
15 relating to the public health, safety, and welfare, the Board or District
16 Commission shall impose conditions which prevent undue burden upon the
17 town and region in accommodating growth caused by the proposed
18 development or subdivision. Notwithstanding section 6088 of this title, the
19 burden of proof that proposed development will significantly affect existing or
20 potential financial capacity of the town and region to accommodate such
21 growth is upon any party opposing an application, excepting however, where

1 the town has a duly adopted capital improvement program the burden shall be
2 on the applicant.

3 * * *

4 (E) Extraction of earth resources. A permit will be granted for the
5 extraction or processing of mineral and earth resources, including fissionable
6 source material:

7 * * *

8 (ii) Upon approval by the Board or District Commission of a site
9 rehabilitation plan that ensures that upon completion of the extracting or
10 processing operation the site will be left by the applicant in a condition suited
11 for an approved alternative use or development. A permit will not be granted
12 for the recovery or extraction of mineral or earth resources from beneath
13 natural water bodies or impoundments within the State, except that gravel, silt,
14 and sediment may be removed pursuant to the rules of the Agency of Natural
15 Resources, and natural gas and oil may be removed pursuant to the rules of the
16 Natural Gas and Oil Resources Board.

17 (F) Energy conservation and efficiency. A permit will be granted
18 when it has been demonstrated by the applicant that, in addition to all other
19 applicable criteria, the planning and design of the subdivision or development
20 reflect the principles of energy conservation and energy efficiency, including
21 reduction of greenhouse gas emissions from the use of energy, and incorporate

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

6 * * *

7 (H) Costs of scattered development. The Board or District
8 Commission will grant a permit for a development or subdivision which is not
9 physically contiguous to an existing settlement whenever it is demonstrated
10 that, in addition to all other applicable criteria, the additional costs of public
11 services and facilities caused directly or indirectly by the proposed
12 development or subdivision do not outweigh the tax revenue and other public
13 benefits of the development or subdivision such as increased employment
14 opportunities or the provision of needed and balanced housing accessible to
15 existing or planned employment centers.

16 * * *

17 (K) Development affecting public investments. A permit will be
18 granted for the development or subdivision of lands adjacent to governmental
19 and public utility facilities, services, and lands, including highways, airports,
20 waste disposal facilities, office and maintenance buildings, fire and police
21 stations, universities, schools, hospitals, prisons, jails, electric generating and

1 transmission facilities, oil and gas pipe lines, parks, hiking trails, ~~and~~ forest
2 and game lands, lands conserved under chapter 155 of this title, and facilities
3 or lands protected in perpetuity and funded by the Vermont Housing and
4 Conservation Board under chapter 15 of this title, when it is demonstrated that,
5 in addition to all other applicable criteria, the development or subdivision will
6 not unnecessarily or unreasonably endanger the public or quasi-public
7 investment in the facility, service, or lands, or materially jeopardize or interfere
8 with the function, efficiency, or safety of, or the public's use or enjoyment of
9 or access to the facility, service, or lands.

10 * * *

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

19 (N) Environmental justice. A permit will be granted for the
20 development or subdivision when it has been demonstrated by the applicant
21 that, in addition to all other applicable criteria, no group of people or

1 municipality will bear a disproportionate share of the negative environmental
2 consequences of the development or subdivision.

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

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

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

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

19 (b) At the request of an applicant, or upon its own motion, the Board or
20 District Commission shall consider whether to review any criterion or group of
21 criteria of subsection (a) of this section before proceeding to or continuing to

1 review other criteria. This request or motion may be made at any time prior to
2 or during the proceedings. The Board or District Commission, in its sole
3 discretion, shall, within 20 days of the completion of deliberations on the
4 criteria that are the subject of the request or motion, either issue its findings
5 and decision thereon, or proceed to a consideration of the remaining criteria.

6 (c) Permit Conditions.

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

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

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

20 (B) Unless an impact under subdivision (a)(1) or (5) of this section
21 would result, a permit issued to a forest-based enterprise shall allow the

1 enterprise to ship and receive forest products outside regular hours of
2 operation. These permits shall allow for deliveries of forest products from
3 forestry operations to the enterprise outside of permitted hours of operation,
4 including nights, weekends, and holidays, for a minimum of 60 days per year.

5 (C) In making a determination under this subdivision (2) as to
6 whether an impact exists, the Board or District Commission shall consider the
7 enterprise’s role in sustaining forestland use and the impact of the permit
8 condition on the forest-based enterprise. Conditions shall impose the
9 minimum restriction necessary to address the undue adverse impact.

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

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

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

1 ~~extent that the impacts under the criteria are limited to the municipality issuing~~
2 ~~the decision.~~ Such a rule may be revoked or amended pursuant to the
3 procedures set forth in ~~3 V.S.A., chapter 25,~~ the Vermont Administrative
4 Procedure Act.

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

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

10 (3) The Board or District Commission, in accordance with rules adopted
11 by the Board, shall accept determinations issued by a development review
12 board under the provisions of 24 V.S.A. § 4420, with respect to local review of
13 municipal impacts under criteria of this section. The acceptance of such a
14 determination, if positive, shall create a presumption that the application is not
15 detrimental to the public health and welfare with respect to the specific
16 requirement for which it is accepted and, if negative, shall create a
17 presumption that the application is so detrimental. Any determinations,
18 positive or negative, under the provisions of 24 V.S.A. § 4420 shall create
19 presumptions only to the extent that the impacts under the criteria are limited
20 to the municipality issuing the decision. If a municipality fails to respond to a
21 request by the applicant within 90 days as to the impacts related to subdivision

1 (a)(6) or (7), the application will be presumed not to have an unreasonable
2 burden on educational, municipal, or governmental services.

3 * * *

4 (f) Prior to any appeal of a permit issued by the Board or a District
5 Commission, any aggrieved party may file a request for a stay of construction
6 with the Board or District Commission together with a declaration of intent to
7 appeal the permit. The stay request shall be automatically granted for seven
8 days upon receipt and notice to all parties and pending a ruling on the merits of
9 the stay request pursuant to Board rules. The automatic stay shall not extend
10 beyond the 30-day appeal period unless a valid appeal has been filed with the
11 ~~Environmental Division~~ Supreme Court. The automatic stay may be granted
12 only once under this subsection during the 30-day appeal period. Following
13 appeal of the ~~District Commission~~ decision, any stay request must be filed with
14 the ~~Environmental Division~~ Supreme Court pursuant to the provisions of
15 chapter 220 of this title. ~~A~~ The Board or District Commission shall not stay
16 construction authorized by a permit processed under the Board's minor
17 application procedures.

18 § 6087. DENIAL OF APPLICATION

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

1 (b) A permit may not be denied solely for the reasons set forth in
2 subdivisions 6086(a)(5), (6), and (7) of this title. However, reasonable
3 conditions and requirements allowable in subsection 6086(c) of this title may
4 be attached to alleviate the burdens created.

5 (c) A denial of a permit shall contain the specific reasons for denial. A
6 person may, within six months, apply for reconsideration of his or her permit
7 which application shall include an affidavit to the ~~District Commission~~ Board
8 and all parties of record that the deficiencies have been corrected. The ~~District~~
9 ~~Commission~~ Board shall hold a new hearing upon 25 ~~days~~ days' notice to the
10 parties. The hearing shall be held within 40 days of receipt of the request for
11 reconsideration.

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

15 § 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

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

19 (b) The burden of persuasion, to show that the application meets the
20 relevant standard, shall be on the applicant with respect to subdivisions
21 6086(a)(1), (2), (3), (4), (8)(A) through (C), (9), and (10) of this title.

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

5 § 6089. APPEALS

6 ~~(a) Appeals of any act or decision of a District Commission under this~~
7 ~~chapter or a district coordinator under subsection 6007(c) of this title shall be~~
8 ~~made to the Environmental Division in accordance with chapter 220 of this~~
9 ~~title. For the purpose of this section, a decision of the Chair of a District~~
10 ~~Commission under section 6001e of this title on whether action has been taken~~
11 ~~to circumvent the requirements of this chapter shall be considered an act or~~
12 ~~decision of the District Commission~~ Appeals of certain actions to the Natural
13 Resources Board.

14 (1) Applicability. The following acts or decisions are appealable de
15 novo to the Board:

16 (A) A jurisdictional opinion issued by a district coordinator;

17 (B) A determination that an application is a minor application or
18 administrative amendment by a District Commission;

19 (C) A determination by a regional planning commission as to the
20 sufficiency of municipal bylaws pursuant to subdivision 6001(3)(A)(xiii);

1 (D) A determination by a regional planning commission made
2 pursuant to 24 V.S.A. § 4350;

3 (E) A determination by the Downtown Development Board
4 designating a downtown development district or neighborhood development
5 area pursuant to 24 V.S.A. chapter 76A.

6 (2) Procedure.

7 (A) An appeal under this subsection may be brought by any person
8 aggrieved. As used in this subdivision, “person aggrieved” means a person
9 who alleges an injury to a particularized interest protected by the provisions of
10 law listed in this chapter, attributable to an act or decision by a district
11 coordinator, District Commission, Downtown Development Board, regional
12 planning commission, or the Board that can be redressed by the Board.

13 (B) A notice of appeal must be filed within 30 days of the act or
14 decision.

15 (C) The Board shall conduct all appeals under this section as
16 contested cases pursuant to 3 V.S.A. chapter 25 using the procedural rules
17 adopted by the Board.

18 (b) Appeals of decisions of the Board. A party aggrieved by the final
19 order, judgment, or decree of the Board may appeal to the Supreme Court.
20 However, the Board, in its discretion and before final judgment, may permit an
21 appeal to be taken by any party to the Supreme Court for determination of

1 questions of law in such manner as the Supreme Court may by rule provide for
2 appeals before final judgment from a Superior Court.

3 § 6090. RECORDING; DURATION AND REVOCATION OF PERMITS

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

8 (b) Permits for specified period.

9 (1) Any permit granted under this chapter for extraction of mineral
10 resources, operation of solid waste disposal facilities, or logging above 2,500
11 feet, shall be for a specified period determined by the Board in accordance
12 with the rules adopted under this chapter as a reasonable projection of the time
13 during which the land will remain suitable for use if developed or subdivided
14 as contemplated in the application, and with due regard for the economic
15 considerations attending the proposed development or subdivision. Other
16 permits issued under this chapter shall be for an indefinite term, as long as
17 there is compliance with the conditions of the permit.

18 (2) Expiration dates contained in permits issued before July 1, 1994
19 (involving developments that are not for extraction of mineral resources,
20 operation of solid waste disposal facilities, or logging above ~~2,500~~ 2,000 feet)

1 are extended for an indefinite term, ~~as long as~~ provided there is compliance
2 with the conditions of the permits.

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

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

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

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

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

19 (2) It shall be a condition of each affirmative decision under this
20 subsection that a subsequent proposal of a development or subdivision on the

1 land to which the decision applies shall be subject to this chapter as if the land
2 had never previously received a permit under the chapter.

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

11 * * *

12 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

13 * * *

14 (c) Mitigation and offsets for forest-based enterprises. Notwithstanding
15 any provision of this chapter to the contrary, a conversion of primary
16 agricultural soils by a forest-based enterprise permitted under this chapter shall
17 be entitled to a ratio of 1:1 protected acres to acres of affected primary
18 agricultural soil.

19 § 6094. ASSESSMENT OF COSTS

20 (a)(1) The Board may authorize itself or the Agency of Agriculture, Food
21 and Markets, the Agency of Commerce and Community Development, the

1 Agency of Natural Resources and its Departments, or the Agency of
2 Transportation to retain legal counsel, official stenographers, expert witnesses,
3 advisors, temporary employees, and other research, scientific, or engineering
4 services in addition to its regular personnel necessary for the review,
5 processing, and adjudication of any permit application specific proceeding.

6 With respect to the Agencies:

7 (A) additional personal may be retained only after approval of the
8 Governor; and

9 (B) after notice to the applicant, including an estimate of the duration
10 and costs of the personnel and services.

11 (2) The Agency retaining the additional personnel shall fix the amount
12 of compensation and expenses to be paid to the personnel retained under this
13 subdivision. Costs of additional personnel obtained under this subdivision
14 may be allocated to the applicant by the Agency or the Board.

15 (3) Notwithstanding any other provision of law, the Agency of
16 Agriculture, Food, and Markets, Agency of Commerce and Community
17 Development, Agency of Natural Resources and its Departments, or Agency of
18 Transportation shall have the authority to bill the applicant for the costs of
19 participating in any major proceeding before the Board, including the costs of
20 employee application review, submissions, comments and testimony before the

1 Board. An Agency may recover those costs from the applicant after notice to
2 the applicant, including an estimate of the costs of the personnel or services.

3 (4) From time to time, the Board or Agency charging an applicant for
4 personnel of services under this section shall provide the applicant with
5 detailed statements showing the amount of money expended or contracted for
6 in the work of such personnel and services. All funds collected from
7 applicants under this section shall be paid directly to the Board, Agency, or
8 Department.

9 (5) The Board shall, upon petition of an applicant to which costs are
10 allocated, review and determine, after opportunity for hearing, the
11 reasonableness of such costs. The Board shall consider the size and
12 complexity of the project and may revise such cost allocations if determined
13 unreasonable.

14 (6) Nothing in this section shall confer authority on the Board to select
15 or hire the personnel unless such personnel are retained by the Board.

16 (b) Prior to allocating costs, the Board shall make a determination of the
17 purpose and use of the funds, identify the recipient of the funds, provide for
18 allocation of costs to the applicant, indicate an estimated duration of the
19 retention of personnel whose costs are being allocated, and estimate the total
20 costs to be imposed. With the approval of the Board, such estimates may be
21 revised as necessary.

1 * * * Resource Mapping; Forest Blocks * * *

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

3 § 127. RESOURCE MAPPING

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

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

18 (c) The Secretary shall establish and maintain written procedures that
19 include a process and science-based criteria for updating resource maps
20 developed under subsection (a) of this section. Before establishing or revising

1 these procedures, the Secretary shall provide opportunities for affected parties
2 and the public to submit relevant information and recommendations.

3 * * * Designated Center Appeal * * *

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

5 § 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

6 (a) The A person aggrieved by a designation decisions decision of the State
7 Board under this chapter are not subject to appeal one or more of sections 2793
8 through 2793e of this title may appeal to the Natural Resources Board
9 established under 10 V.S.A. chapter 151 within 30 days of the decision. If the
10 decision pertains to designation of a growth center under section 2793c of this
11 title, the period for filing an appeal shall be tolled by the filing of a request for
12 reconsideration under that section and shall commence to run in full on the
13 State Board's issuance of a decision on that request.

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

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

2 § 4382. THE PLAN FOR A MUNICIPALITY

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

7 * * *

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

9 § 4460. APPROPRIATE MUNICIPAL PANELS

10 * * *

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

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

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

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

17 (2) The appropriate municipal panel reviewing an application for a

18 municipal permit or permit amendment pursuant to this subsection shall

19 include conditions contained within a permit previously issued pursuant to 10

20 V.S.A. chapter 151 unless the panel determines that the permit condition

21 pertains to any of the following:

1 (A) the construction phase of the project that has already been
2 completed;

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

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

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

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

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

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

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

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

4 Sec. 9. REPEAL

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

6 * * * Environmental Division * * *

7 Sec. 10. 10 V.S.A. chapter 220 is amended to read:

8 CHAPTER 220. ~~CONSOLIDATED ENVIRONMENTAL APPEALS~~

9 § 8501. PURPOSE

10 It is the purpose of this chapter to:

11 (1) consolidate existing appeal routes for municipal zoning and
12 subdivision decisions and acts or decisions of the Secretary of Natural
13 Resources, ~~district environmental coordinators, and District Commissions,~~
14 excluding enforcement actions brought pursuant to chapters 201 and 211 of
15 this title and the adoption of rules under 3 V.S.A. chapter 25;

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

19 (3) ~~encourage people to get involved in the Act 250 permitting process~~
20 ~~at the initial stages of review by a District Commission by requiring~~

1 ~~participation as a prerequisite for an appeal of a District Commission decision~~
2 ~~to the Environmental Division;~~

3 ~~(4) assure~~ ensure that clear appeal routes exist for acts and decisions of
4 the Secretary of Natural Resources;

5 ~~(5)(4)~~ consolidate appeals of decisions related to renewable energy
6 generation plants and telecommunications facilities with review under,
7 respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of
8 proceedings pertaining to telecommunications facilities occurring only while
9 30 V.S.A. § 248a remains in effect.

10 * * *

11 § 8503. APPLICABILITY

12 (a) This chapter shall govern all appeals of an act or decision of the
13 Secretary, excluding appeals of enforcement actions under chapters 201 and
14 211 of this title and rulemaking, under:

15 * * *

16 (b) ~~This chapter shall govern:~~

17 ~~(1) appeals from an act or decision of a District Commission under~~
18 ~~chapter 151 of this title.~~

19 ~~(2) appeals from a district coordinator jurisdictional opinion under~~
20 ~~§ 6007(e) of this title.~~

1 ~~general circulation in the area of the project which is the subject of the~~
2 ~~decision.~~

3 (2) Upon the filing of an appeal from the act or decision of the Secretary
4 under the provisions of law listed in section 8503 of this title, the appellant
5 shall provide notice of the filing of an appeal to the following persons: the
6 applicant before the Agency of Natural Resources, if other than the appellant;
7 the owner of the land where the project is located if the applicant is not the
8 owner; the municipality in which the project is located; the municipal and
9 regional planning commissions for the municipality in which the project is
10 located; if the project site is located on a boundary, any adjacent Vermont
11 municipality and the municipal and regional planning commissions for that
12 municipality; any State agency affected; the solid waste management district in
13 which the project is located, if the project constitutes a facility pursuant to
14 subdivision 6602(10) of this title; all persons required to receive notice of
15 receipt of an application or notice of the issuance of a draft permit; and all
16 persons on any mailing list for the decision involved. In addition, the appellant
17 shall publish notice not more than 10 days after providing notice as required
18 under this subsection, at the appellant's expense, in a newspaper of general
19 circulation in the area of the project which is the subject of the decision.

20 (3)(2) In the case of appeals under 24 V.S.A. chapter 117, notice shall
21 be as required under 24 V.S.A. § 4471.

1 (d) Requirement to participate before ~~the District Commission or the~~
2 Secretary.

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

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

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

16 ~~or~~

17 (C) ~~some other condition exists which would result in manifest~~
18 ~~injustice if the person's right to appeal was disallowed.~~

19 (2) ~~Participation before the Secretary.~~

20 (A) ~~An aggrieved person shall not appeal an act or decision of the~~
21 ~~Secretary unless the person submitted to the Secretary a written comment~~

1 during the comment period or an oral comment at the public meeting
2 conducted by the Secretary. In addition, the person may only appeal issues
3 related to the person’s comment to the Secretary.

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

7 ~~(ii)~~(B) The appellant shall identify each comment that the
8 appellant submitted to the Secretary that identifies or relates to an issue raised
9 in his or her appeal.

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

13 ~~(B)~~(2) Notwithstanding the limitations of subdivision ~~(2)~~~~(A)~~ (1) of
14 this subsection, an aggrieved person may appeal an act or decision of the
15 Secretary if the Environmental judge determines that:

16 ~~(i)~~(A) there was a procedural defect that prevented the person
17 from commenting during the comment period or at the public meeting or
18 otherwise participating in the proceeding;

19 ~~(ii)~~(B) the Secretary did not conduct a comment period and did not
20 hold a public meeting;

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

4 ~~(iv)~~(D) some other condition exists which would result in manifest
5 injustice if the person’s right to appeal was disallowed.

6 ~~(e) Act 250 jurisdictional determinations by a district coordinator.~~

7 ~~(1) The appellant shall provide notice of the filing of an appeal to each~~
8 ~~person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this~~
9 ~~title, to each person on an approved subdivision 6085(c)(1)(E) list, and to the~~
10 ~~Natural Resources Board.~~

11 ~~(2) Failure to appeal within the time required under subsection (a) of this~~
12 ~~section shall render the decision of the district coordinator under subsection~~
13 ~~6007(e) of this title the final determination regarding jurisdiction under chapter~~
14 ~~151 of this title unless the underlying jurisdictional opinion was not properly~~
15 ~~served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title~~
16 ~~and on persons on a subdivision 6085(c)(1)(E) list approved under subsection~~
17 ~~6007(e) of this title.~~

18 ~~(f)~~ Stays.

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

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

3 (B) the denial of interested person status by a board of adjustment,
4 planning commission, or development review board.

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

10 ~~(g)~~(f) Consolidated appeals. The Environmental Division may consolidate
11 or coordinate different appeals where those appeals all relate to the same
12 project.

13 ~~(h)~~(g) De novo hearing. The Environmental Division, applying the
14 substantive standards that were applicable before the tribunal appealed from,
15 shall hold a de novo hearing on those issues which have been appealed, except
16 in the case of:

17 (1) a decision being appealed on the record pursuant to 24 V.S.A.
18 chapter 117;

19 (2) a decision of the Commissioner of Forests, Parks and Recreation
20 under section 2625 of this title being appealed on the record, in which case the

1 court shall affirm the decision, unless it finds that the Commissioner did not
2 have reasonable grounds on which to base the decision.

3 ~~(i) Deference to Agency technical determinations. In the~~
4 ~~adjudication of appeals relating to land use permits under chapter 151 of this~~
5 ~~title, technical determinations of the Secretary shall be accorded the same~~
6 ~~deference as they are accorded by a District Commission under subsection~~
7 ~~6086(d) of this title.~~

8 ~~(j)(h)~~ Appeals of authorizations or coverage under a general permit. Any
9 appeal of an authorization or coverage under the terms of a general permit shall
10 be limited in scope to whether the permitted activity complies with the terms
11 and conditions of the general permit.

12 ~~(k)(i)~~ Limitations on appeals. Notwithstanding any other provision of this
13 section:

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

18 ~~(2)~~ a municipal decision regarding whether a particular application
19 qualifies for a recorded hearing under 24 V.S.A. § 4471(b) shall not be subject
20 to appeal;

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

4 ~~(j)~~ Representation. The Secretary may represent the Agency of Natural
5 Resources in all appeals under this section. ~~The Chair of the Natural~~
6 ~~Resources Board may represent the Board in any appeal under this section,~~
7 ~~unless the Board directs otherwise.~~ If more than one State agency, ~~other than~~
8 ~~the Board,~~ either appeals or seeks to intervene in an appeal under this section,
9 only the Attorney General may represent the interests of those agencies of the
10 State in the appeal.

11 ~~(k)~~ Precedent. Prior decisions of the Environmental Board, Water
12 Resources Board, and Waste Facilities Panel shall be given the same weight
13 and consideration as prior decisions of the Environmental Division.

14 ~~(l)~~ Intervention. Any person may intervene in a pending appeal if that
15 person:

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

18 (2) is a party by right;

19 (3) ~~is the Natural Resources Board;~~

20 ~~(4)~~ is a person aggrieved, as defined in this chapter;

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

1 (2) How the State should update the capability and development plan
2 authorized by 10 V.S.A. chapter 151, subchapter 3. If the recommendation is
3 to update the Capabilities and Development Plan, the report shall provide a
4 schedule and budget for the proposed update.

5 (3) How 10 V.S.A. chapter 151 should require the creation of capability
6 and development maps. If the recommendation is to require the creation of
7 capability and development maps, the report shall identify the resources and
8 land uses to be mapped and provide a schedule and budget for the proposed
9 update.

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

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

1 (c) On or before March 1, 2021, the Natural Resources Board shall provide
2 a final report to the House Committee on Natural Resources, Fish, and Wildlife
3 and the Senate Committee on Natural Resources and Energy. The final report
4 shall incorporate recommendations from the public engagement process under
5 subsection (b) of this section and shall contain a response to stakeholder
6 comments as a part of the final report.

7 * * * Revision Authority; Transition; Effective Dates * * *

8 Sec. 15. REFERENCES; REVISION AUTHORITY

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

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

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

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

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

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

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

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

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

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

3 Sec. 16. CRITERION 8(C) RULEMAKING

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

8 (1) How forest blocks and connecting habitat are further defined,
9 including their size, location, and function, which may include:

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

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

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

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

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

3 (A) appropriate ratios for compensation;

4 (B) appropriate forms of compensation such as conservation
5 easements, fee interests in land, and other forms of compensation; and

6 (C) appropriate uses of on-site and off-site mitigation.

7 (b) The Board shall convene a working group to provide input to the rule
8 prior to pre-filing with the Interagency Committee on Administrative Rules.

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

10 (c) The Board shall file a final proposed rule with the Secretary of State
11 and Legislative Committee on Administrative Rules on or before September 1,
12 2021.

13 Sec. 17. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

14 Notwithstanding the repeal of its jurisdictional authority to hear appeals
15 relative to Act 250 permits under Sec. 10 of this act, the Environmental
16 Division shall continue to have jurisdiction to complete its consideration of any
17 such appeal that is pending before it as of February 1, 2021 if, with respect to
18 such act or appeal, mediation or discovery has commenced, a dispositive
19 motion has been filed, or a trial has begun.

20 Sec. 18. NATURAL RESOURCES BOARD PERMIT REPORT

1 (a) On or before December 15, 2024, the Natural Resources Board shall
2 submit a report to the House Committee on Natural Resources, Fish, and
3 Wildlife and the Senate Committee on Natural Resources and Energy with its
4 assessment of how well the new permitting process established in this act is
5 working and any recommended changes. The report shall include the number
6 of permits of issued by the Board and District Commissions, the number of
7 properties that have been released from Act 250 jurisdiction, the number of
8 preapplication meetings held pursuant to 10 V.S.A. § 6084(a), the number of
9 people who have requested party status, how many were approved or denied,
10 and the reasons for denial.

11 Sec. 19. NATURAL RESOURCES BOARD POSITIONS;

12 APPROPRIATION

13 (a) The following new positions are created at the Natural Resources Board
14 for the purposes of carrying out this act:

15 (1) one Staff Attorney 1;

16 (2) one Staff Attorney 2;

17 (3) two Natural Resources Board members; and

18 (4) one Legal Technician.

19 (b) The sum of \$640,687.00 is appropriated to the Natural Resources Board
20 from the General Fund in fiscal year 2021 for the positions established in

1 subsection (a) of this section and for additional operating costs required to
2 implement the permitting process established in this act.

3 **Sec. 20. NATURAL RESOURCES BOARD TRANSITION**

4 (a) Appointments to the Natural Resources Board shall be made on or
5 before December 15, 2020.

6 (b) The terms of any Natural Resources Board member not appointed
7 consistent with the requirements of 10 V.S.A. § 6021(a)(1)(A) or (B) shall
8 expire on October 31, 2022.

9 (c) The Natural Resources Board shall adopt rules of procedure for its
10 permitting process pursuant to 10 V.S.A. § 6025(a) on or before November 1,
11 2022.

12 (d) The District Commissions shall continue to hear major permit
13 applications until November 1, 2022.

14 * * * Effective Dates * * *

15 **Sec. 21. EFFECTIVE DATES**

16 (a) This act shall take effect on passage, except:

17 (1) Secs. 5 (Designated Center Appeal), 6 (Regional and Municipal
18 Planning), 10 (Environmental Division), and 11 (Environmental Division)
19 shall take effect on November 1, 2022.

20 (2) In Sec. 3 the following provisions of Title 10 shall take effect on
21 November 1, 2022:

1 (A) § 6083 (Ethics).

2 (B) § 6084 (Notice of Application; Preapplication Process; Hearings;
3 Commencement of Review).

4 (C) § 6084a (Permit Hearings).

5 (D) § 6085 (Applications).

6 (E) § 6087 (Denial of Application).

7 (F) § 6089 (Appeals), and

8 (G) § 6090 (Recording; Duration of Permits).

9 (3) 10 V.S.A. § 6086(a)(8) (Ecosystem protection; scenic beauty;
10 historic sites) shall take effect on September 1, 2021.

11 (b) The authority for municipalities to request modifications to the area
12 established pursuant to 10 V.S.A. § 6003(3)(A)(xiii) shall take effect on
13 passage. Any appeal of a decision of a regional planning commission shall be
14 calculated as if the decision were made on November 1, 2022.