APPENDIX 10: DRAFT LEGISLATION

Bill AS INTRODUCED

H/S.

2018

Introduced by [name]

Referred to Committee on [date]

Date: [date]

Subject: Act 250; fees; master plan and partial findings; industrial parks

Statement of purpose of bill as introduced: The purpose of this bill is to respond to Act 194 of the 2017-2018 legislative session by clarifying what fees are assessed during the review of an Act 250 master plan application, when Act 250 permit fee reductions may be warranted, that an application for partial findings may be made after a portion of a project has been permitted and/or constructed.

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

Sec. 1. 10 V.S.A. § 6083a. Act 250 fees is hereby amended to read.

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

(1) For projects involving construction, $6.65 for each $1,000.00 of the first $15,000,000.00 of construction costs, and $3.12 for each $1,000.00 of construction

costs above $15,000,000.00. An additional $0.75 for each $1,000.00 of the first $15,000,000.00 of construction costs shall be paid to the Agency of National Resources to account for the Agency of Natural Resources' review of Act 250 applications.

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

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

(4) For projects involving the extraction of earth resources, including sand, gravel, peat, topsoil, crushed stone, or quarried material, the greater of: a fee as determined under subdivision (1) of this subsection; or a fee equivalent to the rate of $0.02 per cubic yard of the first million cubic yards of the total volume of earth resources to be extracted over the life of the permit, and $.01 per cubic yard of any such earth resource extraction above one million cubic yards. Extracted material that is not sold or does not otherwise enter the commercial marketplace shall not be subject to the fee. The fee assessed under this subdivision for an amendment to a permit shall be based solely upon any additional volume of earth resources to be extracted under the amendment.

(5) For projects involving the review of a master plan, the fee established in subdivision (1) shall be due for any portion of the proposed project for which construction approval is sought and a fee equivalent to $0.10 per $1,000.00 of total estimated construction costs in current dollars shall be due for all other portions of the proposed project. If construction approval is sought in future permit applications, the fee established in subdivision (1) shall be due, except to the extent that it is waived in accord with subparagraph (f), below.~~in addition to the fee~~

~~established in subdivision (1) of this subsection for any portion of the project seeking construction approval.~~

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

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

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

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

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

(1) In the event that an application is withdrawn prior to the convening of a hearing, the District Commission shall, upon request of the applicant, refund 50 percent of the fee paid between $100.00 and $5,000.00, and all of that portion of the fee paid in excess of $5,000.00 except that the District Commission may decrease the amount of the refund if the direct and indirect costs incurred by the State of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the District Commission.

(2) In the event that an application is withdrawn after a hearing, the District Commission shall, upon request of the applicant, refund 25 percent of the fee paid between $100.00 and $10,000.00 and all of that portion of the fee paid in excess

of $10,000.00 except that the District Commission may decrease the amount of the refund if the direct and indirect costs incurred by the State of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the District Commission.

(3) The District Commission shall, upon request of the applicant, increase the amount of the refund if the application of subdivisions (1) and (2) of this subsection clearly would result in a fee that unreasonably exceeds the direct and indirect costs incurred by the State of Vermont with respect to the administration of the Act 250 program.

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

(5) For the purposes of this section, a "hearing" is a duly warned meeting concerning an application convened by a quorum of the District Commission, at which parties may be present. However, a hearing does not include a prehearing conference.

(6) In no event may an application fee or a portion thereof be refunded after a District Commission has issued a final decision on the merits of an application.

(7) In no event may an application fee refund include the payment of interest on the application fee.

(f) ~~In the event that an application involves a project or project impacts that previously have been reviewed, the~~ An applicant may request in writing that a District Commission ~~petition the Chair of the District Commission to~~ waive all or part of ~~the~~ an application fee.

(1) In reviewing a request for a permit fee waiver, the District Commission shall consider the following factors:

(i) Whether a portion of the project's impacts have been reviewed by it, the Natural Resources Board, or the District Coordinator in a previous permit.

(ii) Whether the project is being reviewed as a major application, minor, application, or administrative amendment. Should the review of an application be changed from an administrative amendment or minor application to a major application, the Commission may require the applicant to pay the previously waived fee.

(iii) Whether the applicant intends on relying on any presumptions permitted under Section 6086(d) of this title and has, at the time of the permit application, already obtained the permits necessary to trigger such presumptions. Should a presumption be rebutted, the Commission may require the applicant to pay the previously waived fee.

(iv) Whether the applicant has engaged in any pre-application planning with the district coordinator that will result in a decrease in the amount of time the District Commission will have to consider the actual application.

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

(3) District Commission decisions regarding application fee waivers may be appealed to the Natural Resources Board in accordance with Board rules.

~~If an application fee was paid previously in accordance with subdivisions (a)(1) through (4) of this section, the Chair may waive all or part of the fee for a new or revised project if the Chair finds that the impacts of the project have been reviewed in an applicable master permit application, or that the project is not significantly altered from a project previously reviewed, or that there will be substantial savings in the review process due to the scope of review of the previous applications.~~

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

certification or to pay a supplemental fee shall be grounds for permit revocation. A written request for an application fee partial refund may be submitted to the District Commission to which the fee was paid within 90 days of the date an applicant files a certification pursuant to this section showing that the actual construction costs are less than the estimated construction costs upon which the original permit fee was calculated.

(h) The costs of republishing a notice due to a scheduling change requested by a party shall be borne by the party requesting the change.

Sec. 2. 10 V.S.A. § 8503(b)(1) is hereby amended to read.

(b) This chapter shall govern:

(1) all appeals from an act or decision of a District Commission under chapter 151 of this title, excluding appeals of application fee refund and waiver requests.

Sec. 3. Effective Date

This act shall take effect on passage.

ACT 250 RULE 21. Master Plan and Partial Review.

Purpose. This rule creates greater efficiency in the application review process, avoids unnecessary and unreasonable costs, and provides guidance and greater predictability to the applicant and all parties by providing for master plan decisions. Master plan decisions include partial findings of fact and conclusions of law for a phased development or subdivision and may also include a permit for the initial construction phase.

The comprehensive planning and specificity on which a master plan decision is based allows for greater certainty and expeditious processing of permit amendments for subsequent phases, with as many criteria as practicable having already been addressed by the master plan decision.

Master plan decisions expedite permitting of subsequent phases by addressing some criteria for the fully developed project. For example, a master plan decision for an industrial park could address the park's general impacts and these impacts would already be addressed for a manufacturer subsequently seeking to develop a lot in the park, thus saving time and money.

Additionally, partial review can continue independently of master plan review to determine whether a project complies with one or more Act 250 criteria. This allows cost-effective preliminary review that may determine whether a project is feasible in a particular location.

I. Master Plans

(A) *Applicability and effect*.

1) An applicant may seek review of a phased development or lot-by-lot build-out of a subdivision as a master plan decision.

2) Master plan applications shall be reviewed as a request for partial review under subdivision II of this rule.

3) An applicant may seek a master plan decision regarding future phases of a phased development even if some portion of the development has already been built, provided that the existing development complies with Act 250.

~~3~~4) The District Commission may require a master plan application that contains such information as the Commission requires for review if:

a) the applicant's proposed development or subdivision involves multiple phases; or

b) the master plan process would avoid or limit piecemeal review of development or subdivision planned by the applicant for the reasonably foreseeable future.

~~4~~5) Scope and Duration.

a) Master plan findings and conclusions may be sought on any issue under the criterion or criteria for which there is sufficient, reliable information to base findings and conclusions.

b) Master plan findings and conclusions shall be binding upon all parties pursuant to subdivision II (E) of this rule.

c) Master plan findings of fact and conclusions may be issued for a period of time that allows for reasonable investment certainty for a reasonable planning period for which potential impacts under a criterion can be ascertained. The District Commission shall consider the following factors in determining the period of time for which findings and conclusions shall be valid:

i. the quality and sufficiency of information provided to the Commission under each criterion for which the applicant has requested findings and conclusions; and

ii. the nature and context of the project.

d) Prior to expiration a master plan decision may be renewed and conditions updated, as appropriate. The District Commission may require information on which a master plan decision is based to be updated prior to granting any extension or renewal.

(B) *Applications*.

An applicant seeking a master plan decision shall, in addition to filing an application in accordance with all other applicable requirements, detail, to the extent known with reasonable certainty, all project phases for which the applicant is seeking a master plan decision, the fully completed project, and the project timeline, and the criteria under which the applicant seeks review.

Subsequent phases or the development of individual lots of a subdivision may be approved as amendments. The amendment process shall be conducted in conformance with the terms of Rule 34, all statutory requirements, and the following:

1) The District Commission may require persons other than the applicant to be co-applicants in pursuant to Board Rule 10; and

2) Amendments of master plan decisions shall detail the effect on all overall limits or any impact budget set by the master plan decision.

(C) *Master plan decisions*.

1) Development or subdivision associated with any aspect of a master plan project shall not commence until a permit specifically authorizing the development or subdivision has issued.

2) The District Commission may issue a master plan decision with partial findings of fact and conclusions addressing one or more criteria for subsequent phases of a project. Master plan decisions shall, to the greatest extent possible:

i. establish an impact budget addressing overall limits for the full project build-out (including but not limited to wastewater, water supply, vehicle trips, etc.) based upon findings of fact under the relevant criteria;

ii. establish a procedure for evaluating subsequent phases of the project against the impact budget;

iii. provide guidance to the applicant and identify information that may be required by the District Commission to issue affirmative findings and conclusions for subsequent phases.

3) If the District Commission has issued affirmative findings on all criteria set forth in 10 V.S.A. § 6086(a) and a permit amendment application is filed, the application shall be filed as an administrative amendment pursuant to Board Rule 34(D) provided:

i. the amendment application is filed within the period of time set by the Commission per Board Rule 21(I)(A)(5)(c);

ii. that the application only seeks construction approval for portions of the project that were already reviewed and approved as part of the master plan application; and

iii. all aspects of the construction will remain within the impact budget in the master plan approval.

The District Commission may review the application as a minor amendment under Board Rule 51 only if it determines that the project proposed in the application is reasonably likely to have an impact, but not a significant adverse impact, under the criteria of the Act or any finding, term, conclusion or condition of prior permits. Prior to reviewing the application as a minor amendment, the District Commission shall allow the applicant to present information in support of its request to process the application as an administrative amendment. If the District Commission decides to

process the application as a minor application, it shall issue a written decision detailing the potential impacts of the project and responding to the information presented by the applicant.

ll. Partial Review

[no changes to this section]

Bill AS INTRODUCED

H/S.

2018

Introduced by [name]

Referred to Committee on [date]

Date: [date]

Subject: Proposed new Title 10, Chapter 151, Subchapter 6: Permit Fee Rebates from Other Agencies

Upon completion of construction of any phase of a rural industrial park project that received a master plan permit under NRB Rule 21 and a fee reduction from the Natural Resources Board District Commission under 6083a(f), the permittee may request in writing that the respective Commissioner or Secretary authorize a rebate of permit fees paid to the Department of Public Safety and the Agency of Natural Resources for Department of Public Safety or Agency of Natural Resources permits associated with the master plan permitted project. The Agency of Natural Resources may only rebate fees for construction-related agency permits that have received affirmative findings under the Act 250 criteria as part of the initial approval of the master plan and have been constructed in accordance with the Act 250 master plan permit. The Agency of Natural Resources shall not rebate operational permits that require ongoing oversight.

As used in this section, "rural" means a county of the State designated as "rural" or "mostly rural" by the U.S. Census Bureau in its most recent decennial census.

Bill AS INTRODUCED

H/S.

018

Introduced by [name]

Referred to Committee on [date]

Date: [date]

Subject: Proposed changes to VEDA authorizing statute allowing developers and regional development corporations access to existing favorable financing programs to finance predevelopment costs of master permitted industrial parks

Sec. ___. 10 V.S.A. § 212 is amended to read:

§212. Definition

(8) "Industrial Park Planning and Development" means the basic architectural and engineering services needed to determine site and land use feasibility, and the planning and carrying out of land improvements necessary to make industrial land usable. When a developer seeking to create or expand an industrial park, as defined in 10 V.S.A. §6001, applies for a state land use permit through the master permitting process established by the Natural Resources Board under chapter 151 of Title 10, additional predevelopment services may also be included.

(29) “Qualified developer,” for the purposes of subchapters 3, 5 and 10 of this chapter, means a private corporation, partnership or person seeking to develop an industrial park, eligible facility or eligible project by applying for a state land use permit through the master permitting process established by the Natural Resources Board under chapter 151 of Title 10.

(30) “Predevelopment Services” means [to be defined but may include such things as design, engineering, legal, and permitting expenses].

Sec. ___. 10 V.S.A. § 231 is amended to read:

§231. Assistance to local development corporations

Upon application of a local development corporation or qualified developer, the Authority may loan money to that local development corporation or qualified developer, upon such terms and conditions as it may prescribe, for the purpose of industrial park planning and development, for constructing or improving a speculative building or small business incubator facility on land owned or held under lease by the local development corporation, for purchase or improvement of existing buildings suitable for or which can be made suitable for industrial or small business incubation facility purposes and for the purchase of land in connection with any of the foregoing. Before the local development corporation or qualified developer receives from the Authority such funds for such purposes ~~from the Authority~~, it shall give to the Authority security for the repayment of the funds. The security shall be in such form and amounts as the Authority may determine and shall, in each instance, include a first mortgage on the land, or the leasehold, building, and appurtenances financed by such funds, unless the loan is for predevelopment costs of not more than $200,000, in which case a first mortgage is not required. Loans by the Authority to local development corporations or qualified developers for the construction of speculative buildings or improvements to those buildings shall be repaid in full, including interest and other charges, within 90 days after the building is occupied if the building is being sold, or within five years after the property is occupied if the building is being leased, or within such period of time deemed reasonable by the Authority. Loans by the Authority to local development corporations for the construction, purchase, or improvement of small business incubator facilities shall be repaid in full, including interest and other charges, within ten years after the property is occupied.

Sec. ___. 10 V.S.A. § 234 is amended to read:

§234. The Vermont Jobs Fund

(1) Loans to local development corporations or qualified developers under this subchapter, provided that if the funds for any such loan are derived from the issue of notes to the State

Treasurer under section 235 of this chapter, the loan shall bear interest at a rate not less than the rate on the notes.

(g) Monies in the Fund may be loaned to a local development corporation or qualified developer for the costs of industrial park planning and development with terms and conditions allowing deferral of principal payments for predevelopment costs related to the master permitting process and repayment of such loans to be made upon sale of all or a portion of the industrial park.

Sec. ___. 10 V.S.A. § 237 is amended to read:

§237. Issuing of loans for industrial park planning and development projects

(1) The proposed industrial park is on adequate land owned or to be owned by the local development corporation or qualified developer or is leased by the local development corporation or qualified developer on terms satisfactory to the Authority.

(7) The local development corporation or qualified developer is responsible and has presented evidence to demonstrate its ability to carry out the park project as planned.

(9) The park project will be without unreasonable risk of loss to the Authority, and the local development corporation or qualified developer is unable to secure on reasonable terms the funds required for the project without the assistance of the Authority. Such findings when adopted by the Authority shall be conclusive.

Sec. ___. 10 V.S.A. § 237 is amended to read:

§280a. Eligible projects; authorized financing programs

(12) the loans to local development corporations or qualified developers for industrial park planning and development costs, administered under chapter 12, subchapter 3 of this title.