

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 House Bill No. 926 entitled “An act relating to changes to Act 250”
4 respectfully reports that it has considered the same and recommends that the
5 Senate propose to the House that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

7 * * * Act 250 Downtown Exemption * * *

8 Sec. 1. 10 V.S.A. § 6001 is amended to read:

9 * * *

10 (27) “Mixed income housing” means a housing project in which the
11 following apply:

12 (A) Owner-occupied housing. ~~At the option of the applicant, owner-~~
13 ~~occupied housing may be characterized by either of the following:~~

14 (i) ~~at least 15 percent of the housing units have a purchase price~~
15 ~~that at the time of first sale does not exceed 85 percent of the new construction,~~
16 ~~targeted area purchase price limits established and published annually by the~~
17 ~~Vermont Housing Finance Agency; or~~

18 (ii) ~~At the time of initial sale at least 20 percent of the housing~~
19 ~~units have a purchase price that at the time of first sale does not exceed 90~~
20 ~~percent of the new construction, targeted area purchase price limits established~~
21 ~~and published annually by the Vermont Housing Finance Agency meet the~~

1 requirements of affordable owner-occupied housing under subdivision (29)(A)
2 of this section, adjusted for the number of bedrooms, as established and
3 published annually by the Vermont Housing Finance Agency.

4 (B) Rental housing. ~~At least 20 percent of the housing units that are~~
5 ~~rented constitute affordable housing and have a duration of affordability of~~ For
6 not less than 15 years following the date that rental housing is initially placed
7 in service, at least 20 percent of the housing units meet the requirements of
8 affordable rental housing under subdivision (29)(B) of this section, adjusted for
9 the number of bedrooms, as established and published annually by the
10 Vermont Housing Finance Agency.

11 * * *

12 (35) “Priority housing project” means a discrete project located on a
13 single tract or multiple contiguous tracts of land that consists exclusively of:

14 (A) mixed income housing or mixed use, or any combination thereof,
15 and is located entirely within a ~~designated downtown development district,~~
16 ~~designated new town center, or~~ designated growth center, or designated village
17 ~~center that is also a designated neighborhood development area under~~
18 24 V.S.A. chapter 76A; ~~or~~

19 (B) ~~mixed income housing and is located entirely within a designated~~
20 ~~Vermont neighborhood or designated neighborhood development area under~~
21 ~~24 V.S.A. chapter 76A.~~

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Sec. 2. 10 V.S.A. § 6081 is amended to read:

§ 6081. PERMITS REQUIRED; EXEMPTIONS

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

(p)(1) No permit or permit amendment is required for any subdivision, development, or change to a project that is located entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, if the change consists exclusively of any combination of mixed use and mixed income housing, and the cumulative changes within any continuous period of five years, commencing on or after the effective date of this subsection, remain below any applicable jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title or a neighborhood development area designated pursuant to 24 V.S.A. § 2793e. Existing permits in these areas may seek to be released from jurisdiction pursuant to subsection 6090(c) of this title.

(2) No permit or permit amendment is required for a priority housing project in a designated center other than a downtown development district if

1 the project remains below any applicable jurisdictional threshold specified in
2 subdivision 6001(3)(A)(iv)(I) of this title and will comply with all conditions
3 of any existing permit or permit amendment issued under this chapter that
4 applies to the tract or tracts on which the project will be located. If such a
5 priority housing project will not comply with one or more of these conditions,
6 an application may be filed pursuant to section 6084 of this title.

7 * * *

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

18 * * *

19 Sec. 3. REPEALS

20 The following are repealed:

21 (1) 10 V.S.A. § 6083a(d) (neighborhood development area fees).

1 (2) 10 V.S.A. § 6086b (downtown development).

2 * * * Act 250 Release from Jurisdiction * * *

3 Sec. 4. 10 V.S.A. § 6090 is amended to read:

4 § 6090. RECORDING; DURATION AND REVOCATION OF PERMITS

5 * * *

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

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

11 (A) One of the following is true:

12 (i) the use of the land as of the date of the application is not the
13 same as the use of the land that caused the obligation to obtain a permit under
14 this chapter;

15 (ii) the municipality where the land is located has adopted
16 permanent zoning and subdivision bylaws, but had not when the permit was
17 issued; or

18 (iii) the land is located in a designated downtown or neighborhood
19 development area that is exempt from this chapter.

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

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

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

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

9 (3) An application for a decision under this subsection shall be made on
10 a form prescribed by the Board. The form shall require evidence
11 demonstrating that the application complies with subdivisions (1)(A)
12 through (C) of this subsection. The application shall be processed in the
13 manner described in section 6084 of this title and may be treated as a minor
14 application under that section. In addition to those required to be notified
15 under section 6084, the District Commission shall send notice at the same time
16 to all other parties to the permit and to all current adjacent landowners.

17 (4) The District Commission shall evaluate the conditions in the existing
18 permit and determine whether the permit conditions are still necessary to
19 mitigate impacts under the criteria of subsection 6086(a). If the District
20 Commission finds that the permit conditions are still necessary, it shall deny

1 the application or approve the application on the condition that the necessary
2 conditions are added to the land’s municipal permit.

3 * * * Downtowns and Neighborhood Development Areas * * *

4 Sec. 5. 24 V.S.A. § 2792(a) is amended to read:

5 (a) A “Vermont Downtown Development Board,” also referred to as the
6 “State Board,” is created to administer the provisions of this chapter. The State
7 Board shall be composed of the following members or their designees:

8 * * *

9 (12) The executive director of the Vermont Housing and Conservation
10 Board or designee.

11 Sec. 6. 24 V.S.A. § 2793 is amended to read:

12 § 2793. DESIGNATION OF DOWNTOWN DEVELOPMENT DISTRICTS

13 * * *

14 (b) Within 45 days of receipt of a completed application, the State Board
15 shall designate a downtown development district if the State Board finds in its
16 written decision that the municipality has:

17 (1) Demonstrated a commitment to protect and enhance the historic
18 character of the downtown through the adoption of a design review district,
19 through the adoption of an historic district, or through the adoption of
20 regulations that adequately regulate the physical form and scale of
21 development that the State Board determines substantially meet the historic

1 preservation requirements in subdivisions 4414(1)(E) and (F) of this title, ~~or~~
2 ~~through the creation of a development review board authorized to undertake~~
3 ~~local Act 250 reviews of municipal impacts pursuant to section 4420 of this~~
4 ~~title.~~

5 * * *

6 (4) A housing element in its plan in accordance with subdivision
7 4382(10) of this title that achieves the purposes of subdivision 4302(11) of this
8 title and that includes clear implementation steps for achieving mixed income
9 housing, including affordable housing, a timeline for implementation,
10 responsibility for each implementation step, and potential funding sources.

11 (5) Adopted one of the following to promote the availability of
12 affordable housing opportunities in the municipality:

13 (A) inclusionary zoning as provided in subdivision 4414(7) of this
14 title;

15 (B) a restricted housing trust fund with designated revenue streams;

16 (C) a housing commission as provided in section 4433 of this title; or

17 (D) impact fee exemptions or reductions for affordable housing as
18 provided in section 5205 of this title.

19 (c) A designation issued under this section shall be effective for eight years
20 and may be renewed on application by the municipality. The State Board also
21 shall review a community's designation four years after issuance or renewal

1 and may review compliance with the designation requirements at more
2 frequent intervals. Any community applying for renewal shall explain how the
3 designation under this section has furthered the goals of the town plan and
4 shall submit an approved town plan map that depicts the boundary of the
5 designated district. Beginning on July 1, 2022, any community under review
6 or seeking renewal shall comply with subdivisions (b)(4) and (5) of this
7 section. If at any time the State Board determines that the downtown
8 development district no longer meets the standards for designation established
9 in subsection (b) of this section, it may take any of the following actions:

10 (1) require corrective action;

11 (2) provide technical assistance through the Vermont Downtown
12 Program;

13 (3) limit eligibility for the benefits established in section 2794 of this
14 chapter without affecting any of the district’s previously awarded benefits; or

15 (4) remove the district’s designation without affecting any of the
16 district’s previously awarded benefits.

17 * * *

18 Sec. 7. 24 V.S.A. § 2793e is amended to read:

19 § 2793e. NEIGHBORHOOD PLANNING AREAS; DESIGNATION OF

20 NEIGHBORHOOD DEVELOPMENT AREAS

21 * * *

1 (c) Application for designation of a neighborhood development area. The
2 State Board shall approve a neighborhood development area if the application
3 demonstrates and includes all of the following elements:

4 * * *

5 (5) The proposed neighborhood development area consists of those
6 portions of the neighborhood planning area that are appropriate for new and
7 infill housing, excluding identified flood hazard and fluvial erosion areas,
8 except those areas containing preexisting development and areas suitable for
9 infill development as defined in section 29-201 of the Vermont Flood Hazard
10 Area and River Corridor Rule. In determining what areas are most suitable for
11 new and infill housing, the municipality shall balance local goals for future
12 land use, the availability of land for housing within the neighborhood planning
13 area, and the smart growth principles. Based on those considerations, the
14 municipality shall select an area for neighborhood development area
15 designation that:

16 (A) Avoids or that minimizes to the extent feasible the inclusion of
17 “important natural resources” as defined in subdivision 2791(14) of this title
18 and flood hazard areas and river corridors. If an “important natural resource”
19 is included within a proposed neighborhood development area, the applicant
20 shall identify the resource, explain why the resource was included, describe
21 any anticipated disturbance to such resource, and describe why the disturbance

1 cannot be avoided or minimized. If the neighborhood development area
2 includes flood hazard areas or river corridors, the local bylaws must contain
3 provisions consistent with the Agency of Natural Resources rules required
4 under 10 V.S.A. § 754(a) to ensure that new infill development within a
5 neighborhood development area occurs outside the floodway, new
6 development is elevated or floodproofed at least two feet above Base Flood
7 Elevation, or otherwise reasonably safe from flooding, and will not cause or
8 contribute to fluvial erosion hazards within the river corridor. If the
9 neighborhood development area includes flood hazard areas or river corridors,
10 local bylaws shall also contain provisions to protect river corridors outside of
11 the neighborhood development area consistent with the Agency of Natural
12 Resources model river corridor bylaws.

13 (B) Is served by planned or existing transportation infrastructure that
14 conforms with “complete streets” principles as described under 19 V.S.A.
15 § 309d and establishes pedestrian access directly to the downtown, village
16 center, or new town center.

17 (C) Is compatible with and will reinforce the character of adjacent
18 National Register Historic Districts, National or State Register Historic Sites,
19 and other significant cultural and natural resources identified by local or State
20 government.

21 (6) The neighborhood development area is served by:

1 (A) municipal sewer infrastructure; or

2 (B) a community or alternative wastewater system approved by the
3 Agency of Natural Resources.

4 (7) The municipal bylaws allow minimum net residential densities
5 within the neighborhood development area greater than or equal to four single-
6 family detached dwelling units per acre, exclusive of accessory dwelling units,
7 or no fewer than the average existing density of the surrounding neighborhood,
8 whichever is greater.

9 (A) The methodology for calculating density shall be established in
10 the guidelines developed by the Department pursuant to subsection 2792(d) of
11 this title.

12 (A)(B) Regulations that adequately regulate the physical form and
13 scale of development may be used to demonstrate compliance with this
14 requirement.

15 (B)(C) Development in the neighborhood development areas that is
16 lower than the minimum net residential density required by this subdivision (7)
17 shall not qualify for the benefits stated in subsections (f) and (g) of this section.
18 ~~The district coordinator shall determine whether development meets this~~
19 ~~minimum net residential density requirement in accordance with subsection (f)~~
20 ~~of this section.~~

1 (8) Local bylaws, regulations, and policies applicable to the
2 neighborhood development area substantially conform with neighborhood
3 design guidelines developed by the Department pursuant to section 2792 of
4 this title. These policies shall:

5 (A) ensure that all investments contribute to a built environment that
6 enhances the existing neighborhood character and supports pedestrian use;

7 (B) ensure sufficient residential density and building heights;

8 (C) minimize the required lot sizes, setbacks, and parking and street
9 widths; and

10 (D) require conformance with “complete streets” principles as
11 described under 19 V.S.A. § 309d, street and pedestrian connectivity, and
12 street trees.

13 * * *

14 (12) A housing element in its plan in accordance with subdivision
15 4382(10) of this title that achieves the purposes of subdivision 4302(11) of this
16 title and that includes clear implementation steps for achieving mixed income
17 housing, including affordable housing, a timeline for implementation,
18 responsibility for each implementation step, and potential funding sources.

19 (13) The application includes information in the proposed neighborhood
20 development area that the municipality has adopted one of the following to

1 promote the availability of affordable housing opportunities in the
2 municipality:

3 (A) inclusionary zoning as provided in subdivision 4414(7) of this
4 title;

5 (B) a restricted housing trust fund with designated revenue streams;

6 (C) a Housing Commission as provided in section 4433 of this title;

7 or

8 (D) impact fee exemptions or reductions for affordable housing as
9 provided in section 5205 of this title.

10 * * *

11 (e) Length of designation. Initial designation of a neighborhood
12 development area shall be reviewed concurrently with the next periodic review
13 conducted of the underlying designated downtown, village center, new town
14 center, or growth center.

15 * * *

16 (5) Beginning on July 1, 2022, any community under review or seeking
17 renewal shall comply with subdivisions (c)(12) and (13) of this section.

18 (f) Neighborhood development area incentives for developers. Once a
19 municipality has a designated neighborhood development area or has a
20 Vermont neighborhood designation pursuant to section 2793d of this title, ~~any~~
21 a proposed development within that area shall be eligible for each of the

1 benefits listed in this subsection. ~~These benefits shall accrue upon approval by~~
2 ~~the district coordinator, who shall review, provided that the project meets the~~
3 density requirements set forth in subdivision (c)(7) of this section ~~to determine~~
4 ~~benefit eligibility and issue a jurisdictional opinion under 10 V.S.A. chapter~~
5 ~~151 on whether the density requirements are met, as determined by the~~
6 ~~administrative officer, as defined in chapter 117 of this title. These benefits~~
7 are:

8 (1) ~~The the application fee limit for wastewater applications stated in~~
9 ~~3 V.S.A. § 2822(j)(4)(D); and~~

10 (2) ~~The application fee reduction for residential development stated in~~
11 ~~10 V.S.A. § 6083a(d).~~

12 (3) ~~The the exclusion from the land gains tax provided by 32 V.S.A.~~
13 ~~§ 10002(p).~~

14 (g) Neighborhood development area incentives for municipalities. Once a
15 municipality has a designated neighborhood development area, it may receive:

16 (1) priority consideration for municipal planning grant funds; and

17 (2) training and technical assistance from the Department to support an
18 application for benefits from the Department.

19 (h) Alternative designation. If a municipality has completed all of the
20 planning and assessment steps of this section but has not requested designation
21 of a neighborhood development area, an owner of land within a neighborhood

1 planning area may apply to the State Board for neighborhood development
2 area designation status for a portion of land within the neighborhood planning
3 area. The applicant shall have the responsibility to demonstrate that all of the
4 requirements for a neighborhood development area designation have been
5 satisfied and to notify the municipality that the applicant is seeking the
6 designation. The State Board shall provide the municipality with at least
7 14 days' prior written notice of the Board's meeting to consider the
8 application, and the municipality shall submit to the State Board the
9 municipality's response, if any, to the application before or during that
10 meeting. On approval of a neighborhood development area designation under
11 this subsection, the applicant ~~may proceed to obtain a jurisdictional opinion~~
12 ~~from the district coordinator under subsection (f) of this section in order to~~
13 ~~obtain~~ shall be eligible for the benefits granted to neighborhood development
14 areas, subject to approval by the administrative officer, as provided in
15 subsection (f) of this section.

16 * * * Designation Appeals * * *

17 Sec. 8. 24 V.S.A. § 2798 is amended to read:

18 § 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

19 (a) ~~The~~ A person aggrieved by a designation decisions decision of the State
20 Board under ~~this chapter are not subject to appeal~~ section 2793 or 2793e of this

1 title may appeal to the Natural Resources Board established under 10 V.S.A.
2 chapter 151 within 30 days of the decision.

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

10 Sec. 9. 10 V.S.A. § 6089 is amended to read:

11 § 6089. APPEALS

12 (a) Appeals of any act or decision of a District Commission under this
13 chapter or a district coordinator under subsection 6007(c) of this title shall be
14 made to the Environmental Division in accordance with chapter 220 of this
15 title. For the purpose of this section, a decision of the Chair of a District
16 Commission under section 6001e of this title on whether action has been taken
17 to circumvent the requirements of this chapter shall be considered an act or
18 decision of the District Commission.

19 (b)(1) A determination by the Downtown Development Board designating
20 a downtown development district or neighborhood development area pursuant
21 to 24 V.S.A. chapter 76A is appealable to the Natural Resources Board.

1 (2) Procedure.

2 (A) An appeal under this subsection may be brought by any person
3 aggrieved by the determination of the Downtown Development Board.

4 (B) A notice of appeal must be filed within 30 days of the
5 determination by the Downtown Development Board.

6 (C) The Natural Resources Board shall conduct all appeals under this
7 section as contested cases pursuant to 3 V.S.A. chapter 25 and procedural rules
8 adopted by the Natural Resources Board.

9 * * * Municipal Response to Act 250 Requests * * *

10 Sec. 10. 10 V.S.A. 6086(g) is added to read:

11 (g) If a municipality fails to respond to a request by the applicant within 90
12 days as to the impacts related to subdivision (a)(6) or (7) of this section, the
13 application will be presumed not to have an unreasonable burden on
14 educational, municipal, or governmental services.

15 * * * Wastewater Connection Permits * * *

16 Sec. 11. 10 V.S.A. § 1972 is amended to read:

17 § 1972. DEFINITIONS

18 ~~For the purposes of~~ As used in this chapter:

19 * * *

20 (11) “Change in use” means converting to a different type of use, such
21 as from a residence to a restaurant or office space or from a restaurant to a

1 residence; change from seasonal to year-round use; or scaling up a use, such as
2 increasing the number of employees or adding bedrooms. “Change of use”
3 does not include the addition of a home occupation to a living unit.

4 (12) “Municipality” means a city, town, fire district, school district,
5 consolidated water district, incorporated village, or unorganized town or gore.

6 (13) “Sanitary sewer service line” means piping and associated
7 components that conveys wastewater from a building or structure or
8 campground to a wastewater treatment facility, to an indirect discharge system,
9 or to the leachfield of a soil-based wastewater system of less than 6,500
10 gallons per day. Sanitary sewer service lines also include piping that conveys
11 wastewater from a building or structure or campground to a sanitary sewer
12 collection line.

13 (14) “Water main” means water piping, such as a transmission main or
14 distribution main, that is part of a public water system as defined in the Agency
15 of Natural Resources’ Water Supply Rule. A water main includes piping
16 leading to fire hydrants.

17 (15) “Water service line” means the piping that is not a water main and
18 extends from the water main to a building or structure or campground.

19 Sec. 12. 10 V.S.A. § 1974(9) is added to read:

20 § 1974. EXEMPTIONS

1 Notwithstanding any other requirements of this chapter, the following projects
2 and actions are exempt:

3 * * *

4 (9) A person who receives an authorization from a municipality that
5 administers a program registered with the Secretary pursuant to section 1983 of
6 this title.

7 Sec. 13. 10 V.S.A. § 1983 is added to read:

8 § 1983. REGISTRATION FOR MUNICIPAL WASTEWATER SYSTEM
9 AND POTABLE WATER SUPPLY CONNECTIONS

10 (a) Notwithstanding the requirement under section 1976 of this title that the
11 Secretary delegate to a municipality authority to approve a connection and
12 notwithstanding the requirement under section 1973 of this title, a municipality
13 may issue an approval for a connection or an existing connection with a change
14 in use to the municipal sanitary sewer collection line by a sanitary sewer
15 service line or a connection to a water main by a new water service line,
16 provided that the municipality documents the following information in a form
17 prescribed by the Secretary:

18 (1) The municipality owns or has legal control over connections to:

19 (A) a public community water system permitted pursuant to chapter
20 56 of this title; and

1 (B) a wastewater treatment facility permitted pursuant to chapter 47
2 of this title.

3 (2) The municipality shall only issue authorizations for:

4 (A) a sanitary sewer service line that connects to the sanitary sewer
5 collection line that serves a single connection; and

6 (B) a water service line that connects to the water main that serves a
7 single connection.

8 (3) The building or structure connects to both the sanitary sewer
9 collection line and public community water system.

10 (4) The municipality issues approvals that comply with the technical
11 standards for sanitary sewer service lines and water service lines adopted under
12 the Agency of Natural Resources' Wastewater System and Potable Water
13 Supply Rules.

14 (5) The municipality requires documentation in the land records of the
15 municipality from a professional engineer or a licensed designer that the
16 connection authorized by the municipality was installed in accordance with the
17 technical standards.

18 (6) The municipality retains plans that show the location and design of
19 authorized connections.

1 (b) The municipality shall notify the Secretary 30 days in advance of
2 terminating any registration. The municipality shall provide all approvals and
3 plans to the Secretary as a part of this termination notice.

4 (c) Upon request of the Secretary, a municipality approving a connection
5 under this section shall provide copies of approvals of connection, connection
6 plans, and any associated documentation.

7 Sec. 14. STUDY OF SUBDIVISION REGULATIONS IN AUTHORIZED
8 MUNICIPALITIES

9 The Agency of Natural Resources’ Wastewater and Potable Water Supply
10 Technical Advisory Committee shall report to the House Committee on
11 Natural Resources, Fish, and Wildlife and the Senate Committee on Natural
12 Resources and Energy on whether municipalities authorized under 10 V.S.A. §
13 1983 should also have jurisdiction to issue wastewater and potable water
14 supply permits instead of the Agency of Natural Resources for subdivisions
15 when the lot is served by municipal water and sewer.

16 * * * Act 250 Criterion 1(D) * * *

17 Sec. 15. 10 V.S.A. § 6001 is amended to read:

18 § 6001. DEFINITIONS

19 * * *

20 (6) ~~“Floodway” means the channel of a watercourse which is expected to~~
21 ~~flood on an average of at least once every 100 years and the adjacent land areas~~

1 ~~which are required to carry and discharge the flood of the watercourse, as~~
2 ~~determined by the Secretary of Natural Resources with full consideration given~~
3 ~~to upstream impoundments and flood control projects~~ “Flood hazard area” has
4 the same meaning as under section 752 of this title.

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

10 * * *

11 Sec. 16. 10 V.S.A. § 6086(a)(1)(D) is amended to read:

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

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

19 (ii) ~~the development or subdivision of lands within a floodway~~
20 fringe will not significantly increase the peak discharge of the river or stream

1 ~~within or downstream from the area of development and endanger the health,~~
2 ~~safety, or welfare of the public or riparian owners during flooding.~~

3 * * * Trails * * *

4 Sec. 17. 10 V.S.A. § 442(3) is amended to read:

5 (3) “Trails” means land used for hiking, walking, bicycling, cross-country
6 skiing, snowmobiling, all-terrain vehicle riding, horseback riding, and other
7 similar activities. Trails may be used for recreation, transportation, and other
8 compatible purposes, but the primary purpose shall not be the operation of a
9 motor vehicle. As used in this subdivision, “motor vehicle” shall not include
10 all-terrain vehicles or snowmobiles.

11 Sec. 18. 10 V.S.A. § 6001 is amended to read:

12 § 6001. DEFINITIONS

13 * * *

14 (38) “Recreational trail” has the same meaning as “trails” in subdivision
15 442(3) of this title.

16 (39) “Vermont trails system trail” means a recreational trail recognized
17 by the Agency of Natural Resources pursuant to chapter 20 of this title. For
18 purposes of this chapter, the construction, operation, and maintenance of a
19 Vermont trails system trail shall be for a municipal, county, or State purpose.

20 Sec. 19. 10 V.S.A. § 6001(3)(A) is amended to read:

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

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(xi) The construction of improvements for a Vermont trails system trail on a tract or tracts of land involving more than 10 acres.

(I) This subdivision (xi) shall be the exclusive mechanism for determining jurisdiction over a recreational trail that is a Vermont trails system trail and shall only apply to the construction of improvements made on or after July 1, 2020.

(II) For purposes of this subdivision (xi), involved land includes:

(aa) land that is physically altered, including any ground disturbance and clearing that will occur; and

(bb) infrastructure that is incidental to the operation of the trail, including restrooms, parking areas, shelters, picnic areas, kiosks, and interpretive and directional signage.

(III) For purposes of this subdivision (xi), involved land does not include land where no ground will be disturbed or cleared or any Vermont trails system trail constructed before July 1, 2020.

Sec. 20. 10 V.S.A. § 6001(3)(C) is amended to read:

(C) For the purposes of determining jurisdiction under subdivision (3)(A) of this section, the following shall apply:

* * *

1 (vi) Recreational trails. When jurisdiction over a trail has been
2 established pursuant to subdivision (A) of this subdivision (3), jurisdiction
3 shall extend only to the recreational trail and infrastructure that is incidental to
4 the operation of the trail. Jurisdiction shall not extend to the remainder of a
5 parcel or parcels where a recreational trail is located, unless otherwise
6 determined to be jurisdictional pursuant to another provision of this chapter.

7 Sec. 21. 10 V.S.A. § 6081 is amended to read:

8 § 6081. PERMITS REQUIRED; EXEMPTIONS

9 * * *

10 (y) No permit or permit amendment shall be required for the construction
11 of improvements on a tract of land that would provide access across a
12 recreational trail, provided that the access is not related to the use of the
13 permitted recreational trail and would not establish jurisdiction under this
14 chapter on its own.

15 (z) Notwithstanding 1 V.S.A. §213 and § 214, and until January 1, 2022,
16 no permit is required for a Vermont trails system trail recognized pursuant to
17 chapter 20 of this title if the trail was in existence prior to July 1, 2020.

18 Sec. 22. RECREATIONAL TRAILS RECOMMENDATIONS AND
19 REPORT

20 On or before December 15, 2020, the Agency of Natural Resources shall
21 report to the House Committee on Natural Resources, Fish, and Wildlife and to

1 the Senate Committee on Natural Resource and Energy with legislative
2 recommendations for a best management practices driven program for
3 Vermont trails system trails that is administered by the Agency of Natural
4 Resources. The report shall include recommendations for revisions to
5 10 V.S.A. chapter 20, including revisions to mapping, legislative authority to
6 administer the program, potential funding sources, staffing needs, and whether
7 to include other recreational trails. The Agency of Natural Resources shall
8 consult with stakeholders on the proposed program, including the Vermont
9 Trail Alliance, the Forest Partnership, and the Vermont Agency of
10 Transportation.

11 Sec. 23. PROSPECTIVE REPEAL

12 10 V.S.A. § 6001(3)(A)(xi) shall be repealed on January 1, 2022.

13 * * * Forest Blocks * * *

14 Sec. 24. 10 V.S.A. § 6001 is amended to read:

15 § 6001. DEFINITIONS

16 * * *

17 (40) “Connecting habitat” means land or water, or both, that links
18 patches of habitat within a landscape, allowing the movement, migration, and
19 dispersal of wildlife and plants and the functioning of ecological processes. A
20 connecting habitat may include recreational trails and improvements
21 constructed for farming, logging, or forestry purposes.

1 (41) “Forest block” means a contiguous area of forest in any stage of
2 succession and not currently developed for nonforest use. A forest block may
3 include recreational trails, wetlands, or other natural features that do not
4 themselves possess tree cover and improvements constructed for farming,
5 logging, or forestry purposes.

6 (42) “Fragmentation” means the division or conversion of a forest block
7 or connecting habitat by the separation of a parcel into two or more parcels; the
8 construction, conversion, relocation, or enlargement of any building or other
9 structure, or of any mining, excavation, or landfill; and any change in the use
10 of any building or other structure, or land, or extension of use of land.
11 However, fragmentation does not include the division or conversion of a forest
12 block or connecting habitat by a recreational trail or by improvements
13 constructed for farming, logging, or forestry purposes below the elevation of
14 2,500 feet.

15 (43) “Habitat” means the physical and biological environment in which
16 a particular species of plant or wildlife lives.

17 Sec. 25. 10 V.S.A. § 6086(a)(8) is amended to read:

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, 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 it is demonstrated by any party opposing the applicant
3 that a development or subdivision will destroy or significantly imperil
4 necessary wildlife habitat or any endangered species; and

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

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

12 (iii) a reasonably acceptable alternative site is owned or controlled
13 by the applicant ~~which~~ that would allow the development or subdivision to
14 fulfill its intended purpose.

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

19 Sec. 26. CRITERION 8(C) RULEMAKING

20 (a) The Natural Resources Board (Board), in consultation with the Agency
21 of Natural Resources shall adopt rules to implement the requirements for the

1 administration of 10 V.S.A. § 6086(a)(8)(C). Rules adopted by the Board shall
2 include:

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

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

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

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

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

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

18 (A) appropriate ratios for compensation;

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

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

1 (b) The Board shall convene a working group to provide input to the rule
2 prior to prefiling with the Interagency Committee on Administrative Rules.

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

4 (c) The Board shall file a final proposed rule with the Secretary of State
5 and Legislative Committee on Administrative Rules on or before September 1,
6 2021.

7 Sec. 27. 10 V.S.A. § 127 is amended to read:

8 § 127. RESOURCE MAPPING

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

17 (b) The Secretary ~~of Natural Resources~~ shall consider the ~~GIS-based~~
18 resource maps developed under subsection (a) of this section when providing
19 evidence and recommendations to the Public Utility Commission under
20 30 V.S.A. § 248(b)(5) and when commenting on or providing

1 recommendations under chapter 151 of this title to District Commissions on
2 other projects.

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

8 * * * The Road Rule * * *

9 Sec. 28. 10 V.S.A. 6001(3)(A) is amended to read:

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

11 * * *

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

1 municipality after their construction or improvement. For the purposes of this
2 subdivision, maintenance of a road shall not constitute “improvement.” For
3 the purpose of determining the length of any road and associated driveways,
4 the length of all other roads and driveways within the tract of land constructed
5 within any continuous period of 10 years commencing after July 1, 2020 shall
6 be included. This subdivision shall not apply to a State or municipal road, a
7 utility corridor of an electric transmission or distribution company, a road used
8 primarily for farming or forestry purposes, or a road in a designated downtown
9 or neighbor development area. The conversion of a road used for farming or
10 forestry purposes that also meets the requirements of this subdivision shall
11 constitute development.

12 * * * Wood Products Manufacturers * * *

13 Sec. 29. 10 V.S.A. § 6001 is amended to read:

14 § 6001. DEFINITIONS

15 * * *

16 (44) “Wood products manufacturer” means a manufacturer that
17 aggregates wood products from forestry operations and adds value through
18 processing or marketing in the wood products supply chain or directly to
19 consumers through retail sales. “Wood products manufacturer” includes
20 sawmills; veneer mills; pulp mills; pellet mills; producers of firewood,
21 woodchips, mulch, and fuel wood; and log and pulp concentration yards.

1 “Wood products manufacturer” does not include facilities that purchase,
2 market, and resell finished goods, such as wood furniture, wood pellets, and
3 milled lumber, without first receiving wood products from forestry operations.

4 (45) “Wood product” means logs, pulpwood, veneer wood, bolt wood,
5 wood chips, stud wood, poles, pilings, biomass, fuel wood, maple sap, and
6 bark.

7 Sec. 30. 10 V.S.A. § 6086(c) is amended to read:

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

16 (2) Permit conditions on a wood products manufacturer.

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

20 (B) If an adverse impact under subdivisions (a)(1), (5), or (8) of this
21 section would result, a permit with conditions shall allow the manufacturer to

1 operate while mitigating these impacts. A permit with conditions that mitigate
2 these impacts shall allow for deliveries of wood products from forestry
3 operations to the manufacturer outside of permitted hours of operation,
4 including nights, weekends, and holidays, for the number of days demonstrated
5 by the manufacturer as necessary to enable business operations, not to exceed
6 90 days per year.

7 (3) Permit with conditions on the delivery of wood heat fuels. A permit
8 with conditions issued to a wood products manufacturer that produces wood
9 chips, pellets, cord wood, or other fuel wood used for heat shall allow
10 shipment of that fuel wood from the manufacturer to the end user outside
11 permitted hours of operation, including nights, weekends, and holidays, from
12 October 1 through April 30 of each year. Permits with conditions shall
13 mitigate the undue adverse impacts while enabling the operations of the
14 manufacturer.

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

20 * * * Fish and Wildlife Billback Authority * * *

21 Sec. 31. 10 V.S.A. 6094 is added to read:

1 § 6094. ALLOCATION OF COSTS; DEPARTMENT OF FISH AND

2 WILDLIFE

3 (a) Notwithstanding any other provision of law, the Department of Fish and
4 Wildlife shall have the authority to bill the applicant for the costs of
5 participating in any major permit application before a District Commission,
6 including the costs of employee application review, submissions, comments,
7 and testimony before a District Commission related to impacts on natural
8 resources under subsection 6086(a) of this title, including on wildlife,
9 necessary wildlife habitat, or connecting habitat. The Department may recover
10 those costs from the applicant after notice to the applicant, including an
11 estimate of the costs of the personnel or services.

12 (b) From time to time, the Department shall provide the applicant with
13 detailed statements showing the amount of money contracted for or expended
14 on personnel and services. All funds for services under this section shall be
15 paid directly to the Department.

16 (c) An applicant to which costs are allocated under this section may
17 petition the District Commission to review the costs allocated. The District
18 Commission shall conduct a hearing to determine reasonableness of the costs.
19 The District Commission shall consider the size and complexity of the project
20 and may revise the cost allocations if determined unreasonable.

