1	H.120
2	Introduced by Representatives Sheldon of Middlebury, McCullough of
3	Williston, and Dolan of Waitsfield
4	Referred to Committee on
5	Date:
6	Subject: Conservation and development; land use; climate change; Act 250
7	Statement of purpose of bill as introduced: This bill proposes to make multiple
8	changes to the State land use laws, including Act 250, to incorporate strategies
9	to address and mitigate climate change.
10	An act relating to updates to Act 250
11	It is hereby enacted by the General Assembly of the State of Vermont:
12	* * * Revisions to Capability and Development Plan * * *
13	Sec. 1. 1973 Acts and Resolves No. 85, Sec. 7(a)(20) is added to read:
14	(20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE
15	Climate change poses serious risks to human health and safety, functioning
16	ecosystems that support a diversity of species and economic growth, and
17	Vermont's tourism, forestry, and agricultural industries. The primary driver of
18	climate change in Vermont and elsewhere is the increase of atmospheric
19	carbon dioxide from the burning of fossil fuels, which has a warming effect
20	that is amplified because atmospheric water vapor, another greenhouse gas,

1	increases as temperature rises. Vermont should minimize its emission of
2	greenhouse gases and, because the climate is changing, ensure that the design
3	and materials used in development enable projects to withstand an increase in
4	extreme weather events and adapt to other changes in the weather and
5	environment.
6	Sec. 2. 1973 Acts and Resolves No. 85, Sec. 7(a)(2) is amended to read:
7	(2) ECOSYSTEM PROTECTION AND UTILIZATION OF NATURAL
8	RESOURCES
9	(A) Healthy ecosystems clean water, purify air, maintain soil,
10	regulate the climate, recycle nutrients, and provide food. They provide raw
11	materials and resources for medicines and other purposes. They are at the
12	foundation of civilization and sustain the economy. These ecosystem services
13	are the State's natural capital.
14	(B) Biodiversity is the key indicator of an ecosystem's health. A
15	wide variety of species cope better with threats than a limited number of
16	species in large populations.
17	(C) Products of the land and the stone and minerals under the land, as
18	well as the beauty of our landscape are principal natural resources of the state
19	State.
20	(D) Preservation Protection of healthy ecosystems in Vermont,

preservation of the agricultural and forest productivity of the land, and the

1	economic viability of agricultural units, conservation of the recreational
2	opportunity afforded by the state's State's hills, forests, streams and lakes,
3	wise use of the state's State's non-renewable earth and mineral reserves, and
4	protection of the beauty of the landscape are matters of public good. Uses
5	which that threaten or significantly inhibit these healthy ecosystems and the
6	State's natural and scenic resources should be permitted only when the public
7	interest is clearly benefited thereby.
8	* * * Revisions to State Land Use Law * * *
9	Sec. 3. 10 V.S.A. chapter 151 is amended to read:
10	CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS
11	Subchapter 1. General Provisions
12	§ 6000. PURPOSE; CONSTRUCTION
13	The purposes of this chapter are to protect and conserve the environment of
14	the State and to support the achievement of the goals of the Capability and
15	Development Plan and of 24 V.S.A. § 4302(c). The chapter shall be construed
16	broadly to effect these purposes.
17	§ 6001. DEFINITIONS
18	In As used in this chapter:
19	(1) "Board" means the Natural Resources Board.

1	(2) "Capability and Development Plan" means the Plan prepared
2	pursuant to section 6042 of this title and adopted pursuant to 1973 Acts and
3	Resolves No. 85, Secs. 6 and 7, as amended by this act.
4	(3)(A) "Development" means each of the following:
5	* * *
6	(xi) The construction of improvements for commercial or
7	industrial use within 2,000 feet of a point of access to or exit from the
8	interstate highway system as measured from the midpoint of the
9	interconnecting roadways, unless it is in a designated center or unless a
10	regional planning commission has determined, at the request of the
11	municipality where the interchange is located or any municipality with land in
12	the 2,000-foot radius, that municipal ordinances or bylaws applicable to
13	properties around the interchange:
14	(I) Ensure that planned development patterns will maintain the
15	safety and function of the interchange area for all road users, including
16	nonmotorized users. This may include limiting curb cuts, by sharing parking
17	and access points, and connecting adjoining parcels wherever physically
18	possible.
19	(II) Ensure that development will be undertaken in a way that
20	preserves scenic characteristics both at and beyond the project site. This shall
21	include a determination that site and building design fit the context of the area.

1	(III) Ensure that development does not destroy or compromise
2	necessary wildlife habitat or endangered species habitat.
3	(IV) Ensure that uses allowed in the area will not impose a
4	burden on the financial capacity of a town or the State.
5	(V) Ensure that allowed uses are of a type, scale, and design
6	that complement rather than compete with uses that exist in designated
7	downtowns, village centers, growth centers, or other regional growth areas.
8	Principle retail should be discouraged or prohibited in highway interchange
9	areas.
10	(VI) Ensure that development in this area not establish or
11	contribute to a pattern of strip development. Where strip development already
12	exists, development in this area must be infill that minimizes the characteristics
13	of strip development.
14	(VII) Require site design to use space efficiently by siting
15	buildings close together; minimizing paved surfaces; locating parking to
16	consider aesthetics, neighborhoods, and view sheds; and minimizing the use of
17	one-story buildings.
18	(VIII) Require the permitted uses, patterns of development, and
19	aesthetics of development in these areas to conform with the regional plan and
20	be consistent with the goals of 24 V.S.A. § 4302.

1	(xii) The construction of improvements for commercial, industrial
2	or residential purposes within a river corridor.
3	* * *
4	(6) "Floodway" means the channel of a watercourse which is expected
5	to flood on an average of at least once every 100 years and the adjacent land
6	areas which are required to carry and discharge the flood of the watercourse, as
7	determined by the Secretary of Natural Resources with full consideration given
8	to upstream impoundments and flood control projects. "Flood hazard area"
9	has the same meaning as under section 752 of this title.
10	(7) "Floodway fringe" means an area which is outside a floodway and is
11	flooded with an average frequency of once or more in each 100 years as
12	determined by the Secretary of Natural Resources with full consideration given
13	to upstream impoundments and flood control projects. "River corridor" has
14	the same meaning as under section 752 of this title.
15	* * *
16	(38) "Connecting habitat" means land or water, or both, that links
17	patches of habitat within a landscape, allowing the movement, migration, and
18	dispersal of wildlife and plants and the functioning of ecological processes. A
19	connecting habitat may include recreational trails and improvements

constructed for farming, logging, or forestry purposes.

1	(39) "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	(40) "Fragmentation" means the division or conversion of a forest block
7	or connecting habitat; the construction, conversion, relocation, or enlargement
8	of any building or other structure, or of any mining, excavation, or landfill; and
9	any change in the use of any building or other structure, or land, or extension
10	of use of land. However, fragmentation does not include the division or
11	conversion of a forest block or connecting habitat by a recreational trail or by
12	improvements constructed for farming, logging, or forestry purposes below the
13	elevation of 2,500 feet.
14	(41) "Habitat" means the physical and biological environment in which
15	a particular species of plant or wildlife lives.
16	(42) As used in subdivisions (38), (39), and (40) of this section,
17	"recreational trail" means a corridor that is not paved and that is used for
18	recreational purposes, including hiking, walking, bicycling, cross-country
19	skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.
20	(43) "Wood products manufacturer" means a manufacturer that
21	aggregates wood products from forestry operations and adds value through

1	processing or marketing in the wood products supply chain or directly to
2	consumers through retail sales. "Wood products manufacturer" includes
3	sawmills; veneer mills; pulp mills; pellet mills; producers of firewood,
4	woodchips, mulch, and fuel wood; and log and pulp concentration yards.
5	"Wood products manufacturer" does not include facilities that purchase,
6	market, and resell finished goods, such as wood furniture, wood pellets, and
7	milled lumber, without first receiving wood products from forestry operations
8	(44) "Wood product" means logs, pulpwood, veneer wood, bolt wood,
9	wood chips, stud wood, poles, pilings, biomass, fuel wood, maple sap, and
10	<u>bark.</u>
11	(45) "Air contaminant" has the same meaning as under section 552 of
12	this title.
13	(46) "Greenhouse gas" has the same meaning as under section 552 of
14	this title.
15	(47) "Environmental justice" means that all people and communities
16	have the right to equal environmental protection under the law and the right to
17	live, work, and play in communities that are safe, healthy, and free of life-
18	threatening conditions.
19	Subchapter 2. Administration
20	§ 6021. BOARD; VACANCY, REMOVAL
21	(a) A Natural Resources Board is created.

1	(1) The Board shall consist of five members appointed by the Governor,
2	with the advice and consent of the Senate, so that one appointment expires in
3	each year. In making these appointments, the Governor and the Senate shall
4	give consideration to experience, expertise, or skills relating to the
5	environment or land use environmental science, natural resources law and
6	policy, land use planning, community planning, environmental justice, or racial
7	equity.
8	(A) The Governor shall appoint a chair of the Board, a position that
9	shall be a full-time position. The Governor shall ensure, to the extent possible,
10	that the Board membership reflects the racial, ethnic, gender, and geographic
11	diversity of the State.
12	* * *
13	§ 6022. PERSONNEL
14	(a) Regular personnel. The Board may appoint retain legal counsel,
15	scientists, engineers, experts, investigators, temporary employees, and
16	administrative personnel, as it finds necessary in carrying out its duties, unless
17	the Governor shall otherwise provide and may authorize the District
18	Commissions to retain personnel to assist on matters within its jurisdiction,
19	including oversight and monitoring of permit compliance. The Board shall

ensure that District Commissions and district coordinators have the resources

1	necessary to perform their duties, including access to legal resources and
2	training.
3	(b) Personnel for particular proceedings.
4	(1) The Board may authorize or retain legal counsel, official
5	stenographers, expert witnesses, advisors, temporary employees, and other
6	research services:
7	(A) to assist the Board in any proceeding before it under this
8	chapter; and
9	(B) to monitor compliance with any formal opinion of the Board
10	or a District Commission.
11	(2) The personnel authorized by this section shall be in addition to the
12	regular personnel of the Board. The Board shall fix the amount of
13	compensation and expenses to be paid to such additional personnel.
14	* * *
15	§ 6026. DISTRICT COMMISSIONERS
16	(a) For the purposes of the administration of this chapter, the State is
17	divided into nine districts.
18	* * *
19	(b) A District Environmental Commission is created for each district. Each
20	District Commission shall consist of three members from that district

appointed in the month of February by the Governor so that two appointments

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1	expire in each odd-numbered year. Two of the members shall be appointed for
2	a term of four years, and the Chair (third member) of each District shall be
3	appointed for a two-year four-year term. In any district, the Governor may
4	appoint not more than four up to two alternate members from that district
5	whose terms shall not exceed two years, who may hear any case when a
6	regular member is disqualified or otherwise unable to serve. The Governor
7	shall ensure, to the extent possible, that appointments are made in a timely
8	manner and that each District Commission reflects the racial, ethnic, gender,
9	and geographic diversity of the State.
10	(c) Members shall be removable for cause only, except the Chair, who shall
11	serve at the pleasure of the Governor.
12	(d) Any vacancy shall be filled by the Governor for the unexpired period of
13	the term.
14	§ 6027. POWERS
15	(a) The Board and District Commissions shall have supervisory authority in
16	environmental matters respecting projects within their jurisdiction and shall
17	apply their independent judgment in determining facts and interpreting law.
18	They each shall have the power, with respect to any matter within its
19	jurisdiction, to:

(1) administer oaths, take depositions, subpoena and compel the

attendance of witnesses, and require the production of evidence;

1	(2) allow parties to enter upon lands of other parties for the purposes of
2	inspecting and investigating conditions related to the matter before the Board
3	or Commission;
4	(3) enter upon lands for the purpose of conducting inspections,
5	investigations, examinations, tests, and site evaluations as it deems necessary
6	to verify information presented in any matter within its jurisdiction; and
7	(4) apply for and receive grants from the federal government and from
8	other sources.
9	(b) The powers granted under this chapter are additional to any other
10	powers which that may be granted by other legislation.
11	* * *
12	(n) The Board shall have the authority to:
13	(1) hear appeals of a determination by a regional planning commission
14	as to the sufficiency of municipal bylaws pursuant to subdivision
15	6001(3)(A)(xi) of this title; and
16	(2) approve regional plans pursuant to 24 V.S.A. § 4348.
17	* * *
18	§ 6031. ETHICAL STANDARDS
19	(a) The Chair and members of the Board and the Chair and members of
20	each District Commission shall comply with the following ethical standards:
21	(1) The provisions of 12 V.S.A. § 61 (disqualification for interest).

1	(2) The Chair and each member shall conduct the affairs of his or her
2	office in such a manner as to instill public trust and confidence and shall take
3	all reasonable steps to avoid any action or circumstance that might result in any
4	one of the following:
5	(A) undermining his or her independence or impartiality of action;
6	(B) taking official action on the basis of unfair considerations;
7	(C) giving preferential treatment to any private interest on the basis
8	of unfair considerations;
9	(D) giving preferential treatment to any family member or member of
10	his or her household;
11	(E) using his or her office for the advancement of personal interest or
12	to secure special privileges or exemptions; or
13	(F) adversely affecting the confidence of the public in the integrity of
14	the District Commission.
15	(3) The District Commission shall not initiate, permit, or consider ex
16	parte communications or consider other communications made to the District
17	Commission outside the presence of the parties concerning a pending or
18	impending proceeding, except that:
19	(A) Where circumstances require, ex parte communications for
20	scheduling, administrative purposes, or emergencies that do not deal with
21	substantive matters or issues on the merits are authorized, provided:

1	(i) the District Commission reasonably believes that no party will
2	gain a procedural or tactical advantage as a result of the ex parte
3	communication; and
4	(ii) the District Commission makes provision promptly to notify
5	all other parties of the substance of the ex parte communication and allows an
6	opportunity to respond.
7	(B) The District Commission may obtain the advice of a disinterested
8	expert on the law applicable to a proceeding if the District Commission gives
9	notice to the parties of the person consulted and the substance of the advice
10	and affords the parties reasonable opportunity to respond.
11	(C) The District Commission may consult with personnel whose
12	function is to aid the District Commission in carrying out its adjudicative
13	responsibilities.
14	(D) The District Commission may, with the consent of the parties,
15	confer separately with the parties and their lawyers in an effort to mediate or
16	settle matters pending before the District Commission.
17	(E) The District Commission may initiate or consider any ex parte
18	communications when expressly authorized by law to do so.
19	* * *

1	Subchapter 4. Permits
2	§ 6081. PERMITS REQUIRED; EXEMPTIONS
3	* * *
4	(l)(1) By no later than January 1, 1997, any owner of land or mineral rights
5	or any owner of slate quarry leasehold rights on a parcel of land on which a
6	slate quarry was located as of June 1, 1970, may register the existence of the
7	slate quarry with the District Commission and with the clerk of the
8	municipality in which the slate quarry is located, while also providing each
9	with a map which indicates the boundaries of the parcel which contains the
10	slate quarry.
11	* * *
12	(6) Registered slate quarries shall be added to the Agency of Natural
13	Resources' Natural Resource Atlas.
14	* * *
15	§ 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF
16	REVIEW
17	(a) On or before the date of Upon the filing of an application with the
18	District Commission, the applicant District Commission shall send, by
19	electronic means, notice and a copy of the initial application to the owner of
20	the land if the applicant is not the owner; the municipality in which the land is
21	located; the municipal and regional planning commissions for the municipality

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1 in which the land is located; the Vermont Agency of Natural Resources; and 2 any adjacent Vermont municipality and municipal and regional planning 3 commission if the land is located on a municipal or regional boundary. The 4 applicant shall furnish to the District Commission the names of those furnished 5 notice by affidavit, and shall post, send by electronic means a copy of the 6 notice in to the town clerk's office of the town or towns in which the project 7 lies. The town clerk shall post the notice in the town office. The applicant 8 shall also provide a list of adjoining landowners to the District Commission. 9 Upon request and for good cause, the District Commission may authorize the 10 applicant to provide a partial list of adjoining landowners in accordance with 11 Board rules. \* \* \* 12 13 (e) Any notice for a major or minor application, as required by this section, 14 shall also be published by the District Commission in a local newspaper 15 generally circulating in the area where the development or subdivision is 16 located and on the Board's website not more than ten days after receipt of a 17 complete application. \* \* \* 18 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA 19

(a) Criteria. Before granting a permit, the District Commission shall find

that the subdivision or development:

1	(1) <u>Air pollution.</u> Will not result in undue <del>water or</del> air pollution. <u>In</u>
2	making this determination, the District Commission shall at least consider: the
3	air contaminants, greenhouse gas emissions, and noise to be emitted by the
4	development or subdivision, if any; the proximity of the emission source to
5	residences, population centers, and other sensitive receptors; and emission
6	dispersion characteristics at or near the source.
7	(A) Air contaminants. A permit will be granted whenever it is
8	demonstrated by the applicant that, in addition to all other applicable criteria,
9	the emission, if any, of air contaminants by the development or subdivision
10	will meet any applicable requirement under the Clean Air Act, 42 U.S.C.
11	chapter 85, and the air pollution control regulations of the Department of
12	Environmental Conservation.
13	(B) Greenhouse gas emissions. A permit will be granted whenever it
14	is demonstrated by the applicant that, in addition to all other applicable criteria
15	the construction, use, operation, and maintenance of the development or
16	subdivision will:
17	(i) avoid the emission of greenhouse gases, including greenhouse
18	gases from the vehicular traffic to be generated by the development or
19	subdivision;
20	(ii) if it is not feasible to avoid such emissions, will minimize
21	them; or

(111) If it is not feasible to avoid or minimize such emissions, will
mitigate them in accordance with rules adopted by the Board. Any offsets
used shall be third-party verified and enforceable by the applicant and its
successors and assigns and by the State of Vermont. The rules shall be
adopted in consultation with the Secretary of Natural Resources and shall
comply with the greenhouse gas reduction goals of section 578 of this title.
(2) Water pollution. Will not result in undue water pollution. In making
this determination it, the District Commission shall at least consider: the
elevation of land above sea level; and in relation to the flood plains, the nature
of soils and subsoils and their ability to adequately support waste disposal; the
slope of the land and its effect on effluents; the availability of streams for
disposal of effluents; and the applicable Health and Environmental
Conservation Department regulations.
(A) Headwaters. A permit will be granted whenever it is
demonstrated by the applicant that, in addition to all other applicable criteria,
the development or subdivision will meet any applicable Health and
Environmental Conservation Department regulation regarding reduction of the
quality of the ground or surface waters flowing through or upon lands which
that are not devoted to intensive development, and which lands are:
(i) headwaters of watersheds characterized by steep slopes and
shallow soils; or

other applicable criteria:,

1	(ii) drainage areas of 20 square miles or less; or
2	(iii) above 1,500 feet elevation; or
3	(iv) watersheds of public water supplies designated by the Agency
4	of Natural Resources; or
5	(v) areas supplying significant amounts of recharge waters to
6	aquifers.
7	(B) Waste disposal. A permit will be granted whenever it is
8	demonstrated by the applicant that, in addition to all other applicable criteria,
9	the development or subdivision will meet any applicable Health and
10	Environmental Conservation Department regulations regarding the disposal of
11	wastes, and will not involve the injection of waste materials or any harmful or
12	toxic substances into ground water or wells.
13	(C) Water conservation. A permit will be granted whenever it is
14	demonstrated by the applicant that, in addition to all other applicable criteria,
15	the design has considered water conservation, incorporates multiple use or
16	recycling where technically and economically practical, utilizes the best
17	available technology for such applications, and provides for continued efficient
18	operation of these systems.
19	(D) Floodways Flood hazard areas; river corridors. A permit will be
20	granted whenever it is demonstrated by the applicant that, in addition to all

1	(i) the development or subdivision of lands within a floodway
2	flood hazard area or river corridor will not restrict or divert the flow of flood
3	waters, cause or contribute to fluvial erosion, and endanger the health, safety,
4	and welfare of the public or of riparian owners during flooding; and
5	(ii) the development or subdivision of lands within a floodway
6	fringe will not significantly increase the peak discharge of the river or stream
7	within or downstream from the area of development and endanger the health,
8	safety, or welfare of the public or riparian owners during flooding.
9	(E) Streams. A permit will be granted whenever it is demonstrated
10	by the applicant that, in addition to all other applicable criteria, the
11	development or subdivision of lands on or adjacent to the banks of a stream
12	will, whenever feasible, maintain the natural condition of the stream, and will
13	not endanger the health, safety, or welfare of the public or of adjoining
14	landowners.
15	(F) Shorelines. A permit will be granted whenever it is demonstrated
16	by the applicant that, in addition to all other criteria, the development or
17	subdivision of shorelines must of necessity be located on a shoreline in order to
18	fulfill the purpose of the development or subdivision, and the development or
19	subdivision will, insofar as possible and reasonable in light of its purpose:
20	(i) retain the shoreline and the waters in their natural condition;

1	(ii) allow continued access to the waters and the recreational
2	opportunities provided by the waters;
3	(iii) retain or provide vegetation which that screen the
4	development or subdivision from the waters; and
5	(iv) stabilize the bank from erosion, as necessary, with vegetation
6	cover.
7	(G) Wetlands. A permit will be granted whenever it is demonstrated
8	by the applicant, in addition to other criteria, that the development or
9	subdivision will not violate the rules of the Secretary of Natural Resources, as
10	adopted under chapter 37 of this title, relating to significant wetlands.
11	(2)(3) Water supply.
12	(A) Does have sufficient water available for the reasonably
13	foreseeable needs of the subdivision or development.
14	(3)(B) Will not cause an unreasonable burden on an existing water
15	supply, if one is to be utilized.
16	* * *
17	(5)(A) <u>Transportation</u> . Will not cause unreasonable congestion or
18	unsafe conditions with respect to use of the highways; waterways; railways;
19	airports and airways; bicycle, pedestrian, and other transit infrastructure; and

other means of transportation existing or proposed.

1 (B) As appropriate, will Will incorporate transportation demand 2 management strategies and provide safe use, access, and connections to 3 adjacent lands and facilities and to existing and planned pedestrian, bicycle, 4 and transit networks and services. In determining appropriateness under this 5 subdivision (B) However, the District Commission shall consider whether may 6 decline to require such a strategy, access, or connection constitutes a measure 7 if it finds that a reasonable person would take not undertake the measure given 8 the type, scale, and transportation impacts of the proposed development or 9 subdivision.

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- (8) Ecosystem protection; scenic beauty; historic sites. Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.
- (A) Necessary wildlife habitat and endangered species. A permit will not be granted if unless it is demonstrated by any party opposing the applicant that a development or subdivision will not destroy or significantly imperil necessary wildlife habitat or any endangered species; and or, if such destruction or imperilment will occur:
- (i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will <del>not</del> outweigh the

1	economic, environmental, or recreational loss to the public from the
2	destruction or imperilment of the habitat or species; or
3	(ii) all feasible and reasonable means of preventing or lessening
4	the destruction, diminution, or imperilment of the habitat or species have not
5	been or will not continue to be applied; or
6	(iii) a reasonably acceptable alternative site is <u>not</u> owned or
7	controlled by the applicant which that would allow the development or
8	subdivision to fulfill its intended purpose.
9	(B) Forest blocks.
10	(i) A permit will not be granted for a development or subdivision
11	within or partially within a forest block unless the applicant demonstrates that:
12	(I) the development or subdivision will avoid fragmentation of
13	the forest block through the design of the project or the location of project
14	improvements, or both;
15	(II) it is not feasible to avoid fragmentation of the forest block
16	and the design of the development or subdivision minimizes fragmentation of
17	the forest block; or
18	(III) it is not feasible to avoid or minimize fragmentation of the
19	forest block and the applicant will mitigate the fragmentation in accordance
20	with section 6094 of this title.

1	(ii) Methods for avoiding or minimizing the fragmentation of a
2	forest block may include:
3	(I) Locating buildings and other improvements and operating
4	the project in a manner that avoids or minimizes incursion into and disturbance
5	of the forest block, including clustering of buildings and associated
6	improvements.
7	(II) Designing roads, driveways, and utilities that serve the
8	development or subdivision to avoid or minimize fragmentation of the forest
9	block. Such design may be accomplished by following or sharing existing
10	features on the land such as roads, tree lines, stonewalls, and fence lines.
11	(C) Connecting habitat.
12	(i) A permit will not be granted for a development or subdivision
13	unless the applicant demonstrates that:
14	(I) the development or subdivision will avoid fragmentation of
15	connecting habitat through the design of the project or the location of project
16	improvements, or both;
17	(II) it is not feasible to avoid fragmentation of the connecting
18	habitat and the design of the development or subdivision minimizes
19	fragmentation of the connector; or

1	(III) it is not feasible to avoid or minimize fragmentation of the
2	connecting habitat and the applicant will mitigate the fragmentation in
3	accordance with section 6094 of this title.
4	(ii) Methods for avoiding or minimizing the fragmentation of
5	connecting habitat may include:
6	(I) locating buildings and other improvements at the farthest
7	feasible location from the center of the habitat;
8	(II) designing the location of buildings and other improvements
9	to leave the greatest contiguous portion of the area undisturbed in order to
10	facilitate wildlife travel through the habitat; or
11	(III) when there is no feasible site for construction of buildings
12	and other improvements outside the habitat, designing the buildings and
13	improvements to facilitate the continued viability of the habitat for use by
14	wildlife.
15	(9) Capability and development plan. Is in conformance with a duly
16	adopted capability and development plan, and land use plan when adopted.
17	However, the legislative findings of subdivisions 7(a)(1) through (19) of
18	Act 85 of 1973 shall not be used as criteria in the consideration of applications
19	by a District Commission.
20	* * *

(F) Energy conservation and efficiency. A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation and energy efficiency, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide evidence, by certification, that the subdivision or development complies with the applicable building energy standards and stretch codes under 30 V.S.A. § 51 or 53.

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(K) Development affecting public investments. A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and, forest and game lands, lands conserved under chapter 155 of this title, and facilities or lands protected in perpetuity and funded by the Vermont Housing and Conservation Board under chapter 15 of this title, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will

1	not unnecessarily or unreasonably endanger the public or quasi-public
2	investment in the facility, service, or lands, or materially jeopardize or interfere
3	with the function, efficiency, or safety of, or the public's use or enjoyment of
4	or access to the facility, service, or lands.
5	* * *
6	(M) Climate adaptation. A permit will be granted for the
7	development or subdivision when it has been demonstrated that, in addition to
8	all other applicable criteria, the development or subdivision will employ
9	building orientation, site and landscape design, and building design that are
10	sufficient to enable the improvements to be sited and constructed, including
11	buildings, roads, and other infrastructure, to withstand and adapt to the effects
12	of climate change, including extreme temperature events, wind, and
13	precipitation reasonably projected at the time of application.
14	(N) Environmental justice. A permit will be granted for the
15	development or subdivision when it has been demonstrated by the applicant
16	that, in addition to all other applicable criteria, no group of people or
17	community will bear a disproportionate share of the negative environmental
18	consequences of the development or subdivision.
19	(10) <u>Local and regional plans.</u> Is in conformance with any duly adopted

local or plan that has been approved under 24 V.S.A. § 4350, regional plan that

1	has been approved by the Board under 24 V.S.A. § 4348, or capital program
2	under 24 V.S.A. ehapter 117 § 4430. In making this finding, if:
3	(A) The District Commission shall require conformance with the
4	future land use maps contained in the local and regional plans and with the
5	written provisions of those plans.
6	(B) The District Commission shall decline to apply a provision of a
7	local or regional plan only if it is persuaded that the provision does not afford a
8	person of ordinary intelligence with a reasonable opportunity to understand
9	what the provision directs, requires, or proscribes.
10	(C) If the District Commission finds applicable provisions of the
11	town plan to be ambiguous, the District Commission, for interpretive purposes,
12	shall consider bylaws, but only to the extent that they implement and are
13	consistent with those provisions, and need not consider any other evidence.
14	* * *
15	(c) Permit Conditions. A permit may contain such requirements and
16	conditions as are allowable proper exercise of the police power and which that
17	are appropriate within the respect to subdivisions (a)(1) through (10) of this
18	section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2),
19	4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and
20	the filing of bonds to ensure compliance. The requirements and conditions

incorporated from Title 24 may be applied whether or not a local plan has been

adopted. General requirements and conditions may be established by rule of
the Natural Resources Board.

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

1	requirement for which it is accepted. Any determinations, positive or negative,
2	under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the
3	extent that the impacts under the criteria are limited to the municipality issuing
4	the decision. Such a rule may be revoked or amended pursuant to the
5	procedures set forth in 3 V.S.A, chapter 25, the Vermont Administrative
6	Procedure Act.
7	(1) The rules adopted by the Board shall not approve the acceptance of a
8	permit or approval of such an agency or a permit of a municipal government
9	unless it satisfies the appropriate requirements of subsection (a) of this section.
10	(2) A presumption created under this subsection may be rebutted by the
11	introduction of evidence contrary to the presumed fact.
12	(3) The District Commission, in accordance with rules adopted by the
13	Board, shall accept determinations issued by a development review board
14	under the provisions of 24 V.S.A. § 4420, with respect to local review of
15	municipal impacts under criteria of this section. The acceptance of such a
16	determination, if positive, shall create a presumption that the application is not
17	detrimental to the public health and welfare with respect to the specific
18	requirement for which it is accepted and, if negative, shall create a
19	presumption that the application is so detrimental. Any determinations,
20	positive or negative, under the provisions of 24 V.S.A. § 4420 shall create

presumptions only to the extent that the impacts under the criteria are limited

1	to the municipality issuing the decision. If a municipality fails to respond to a
2	request by the applicant within 90 days as to the impacts related to subdivision
3	(a)(6) or (7) of this section, the application will be presumed not to have an
4	unreasonable burden on educational, municipal, or governmental services.
5	* * *
6	§ 6087. DENIAL OF APPLICATION
7	(a) No application shall be denied by the District Commission unless it
8	finds the proposed subdivision or development detrimental to the public health
9	safety, or general welfare.
10	* * *
11	(d) The District Commission may deny an application without prejudice if
12	the applicant fails to respond to an incomplete determination or recess order
13	within six months of its issuance.
14	§ 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION
15	(a) The initial burden of production, to produce sufficient evidence for the
16	District Commission to make a factual determination, shall be on the applicant
17	with respect to subdivisions 6086(a)(1) through (10) of this title.
18	(b) The burden of persuasion, to show that the application meets the
19	relevant standard, shall be on the applicant with respect to subdivisions

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	* * *
6	§ 6090. RECORDING; DURATION AND REVOCATION OF PERMITS
7	(a) Recording. In order to afford adequate notice of the terms and
8	conditions of land use permits, permit amendments, and revocations of
9	permits, they shall be recorded in local land records. Recordings under this
10	chapter shall be indexed as though the permittee were the grantor of a deed.
11	(b) Permits for specified period.

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

1	(2) Expiration dates contained in permits issued before July 1, 1994
2	(involving developments that are not for extraction of mineral resources,
3	operation of solid waste disposal facilities, or logging above 2,500 feet) are
4	extended for an indefinite term, as long as provided there is compliance with
5	the conditions of the permits.
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 permit amendments, on finding each of
10	the following:
11	(A) The use of the land as of the date of the application is not the
12	same as the use of the land that caused the obligation to obtain a permit under
13	this chapter.
14	(B) The use of the land as of the date of the application does not
15	constitute development or subdivision as defined in section 6001 of this title
16	and would not require a permit or permit amendment but for the fact that the
17	land is already subject to a permit under this chapter.
18	(C) The permittee or permittees are in compliance with the permit
19	and their obligations under this chapter.
20	(2) It shall be a condition of each affirmative decision under this
21	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 wood product manufacturers.
15	Notwithstanding any provision of this chapter to the contrary, a conversion of
16	primary agricultural soils by a wood product manufacturer permitted under this
17	chapter shall be entitled to a ratio of 1:1 protected acres to acres of affected
18	primary agricultural soil.

1	§ 6094. MITIGATION OF FOREST BLOCKS AND CONNECTING
2	<u>HABITAT</u>
3	(a) A District Commission may consider a proposal to mitigate, through
4	compensation, the fragmentation of a forest block or connecting habitat if the
5	applicant demonstrates that it is not feasible to avoid or minimize
6	fragmentation of the block or habitat in accordance with the respective
7	requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District
8	Commission may approve the proposal only if it finds that the proposal will
9	meet the requirements of the rules adopted under this section and will preserve
10	a forest block or connecting habitat of similar quality and character to the
11	block or habitat affected by the development or subdivision.
12	(b) The Natural Resources Board, in consultation with the Secretary of
13	Natural Resources, shall adopt rules governing mitigation under this section.
14	(1) The rules shall state the acreage ratio of forest block or connecting
15	habitat to be preserved in relation to the block or habitat affected by the
16	development or subdivision.
17	(2) Compensation measures to be allowed under the rules shall be based
18	on the ratio of land developed pursuant to subdivision (1) of this subsection
19	and shall include:

1	(A) Preservation of a forest block or connecting habitat of similar
2	quality and character to the block or habitat that the development or
3	subdivision will affect.
4	(B) Deposit of an offsite mitigation fee into the Vermont Housing
5	and Conservation Trust Fund under section 312 of this title.
6	(i) This mitigation fee shall be derived as follows:
7	(I) Determine the number of acres of forest block or connecting
8	habitat, or both, affected by the proposed development or subdivision.
9	(II) Multiply this number of affected acres by the ratio set forth
10	in the rules.
11	(III) Multiply the resulting product by a "price-per-acre" value,
12	which shall be based on the amount that the Commissioner of Forests, Parks
13	and Recreation has determined to be the recent, per-acre cost to acquire
14	conservation easements for forest blocks and connecting habitat of similar
15	quality and character in the same geographic region as the proposed
16	development or subdivision.
17	(ii) The Vermont Housing Conservation Board shall use such a fee
18	to preserve a forest block or connecting habitat of similar quality and character
19	to the block or habitat affected by the development or subdivision.
20	(C) Such other compensation measures as the rules may authorize.

1	(c) All forest blocks and connecting habitats preserved pursuant to this
2	section shall be protected by permanent conservation easements that grant
3	development rights and include conservation restrictions and are conveyed to a
4	qualified holder, as defined in section 821 of this title, with the ability to
5	monitor and enforce easements in perpetuity.
6	* * * Resource Mapping * * *
7	Sec. 4. 10 V.S.A. § 127 is amended to read:
8	§ 127. RESOURCE MAPPING
9	(a) On or before January 15, 2013, the <u>The</u> 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

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shall be deemed rejected.

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	* * * Regional and Municipal Planning * * *
9	Sec. 5. 24 V.S.A. § 4348(f) is amended to read:
10	(f) A regional plan or amendment shall be adopted by not less than a
11	60 percent vote of the commissioners representing municipalities, in
12	accordance with the bylaws of the regional planning commission, and
13	immediately submitted to the legislative bodies of the municipalities that
14	comprise the region.
15	(1) The plan or amendment shall be considered duly adopted and shall
16	take effect 35 days after the date of adoption, unless, within 35 days of the date
17	of adoption, the regional planning commission receives certification from the
18	legislative bodies of a majority of the municipalities in the region vetoing the

proposed plan or amendment. In case of such a veto, the plan or amendment

1	(2) Upon adoption, the regional planning commission shall submit the
2	plan or amendment to the Natural Resources Board established under
3	10 V.S.A. chapter 151, which shall approve the plan or amendment if it
4	determines that the plan or amendment is consistent with the goals of section
5	4302 of this title. The Board shall issue its decision within 30 days after
6	receiving the plan or amendment. The plan or amendment shall take effect
7	upon the issuance of an approval.
8	Sec. 6. 24 V.S.A. § 4382 is amended to read:
9	§ 4382. THE PLAN FOR A MUNICIPALITY
10	(a) A plan for a municipality may shall be consistent with the goals
11	established in section 4302 of this title and compatible with approved plans of
12	other municipalities in the region and with the regional plan and shall include
13	the following:
14	* * *
15	* * * Racial Equity Review * * *
16	Sec. 7. IMPACTS ON RACIAL EQUITY AND DIVERSITY; REVIEW
17	(a) Pursuant to the duties and powers established under 3 V.S.A. chapter
18	68, the Executive Director of Racial Equity, in cooperation with the Racial
19	Equity Advisory Panel and the Human Rights Commission, shall conduct a
20	comprehensive review of the processes, procedures, and language of 10 V.S.A.
21	chapter 151 (Act 250) to assess the extent to which Act 250 has contributed to

1	adverse impacts on racial equity and diversity within the State. The review
2	<u>shall:</u>
3	(1) identify the impacts of acts or decisions made pursuant to Act 250 on
4	inequities in home ownership, land ownership, and land distribution within the
5	State;
6	(2) measure the extent to which minority populations in the State have
7	incurred disproportional environmental impacts due to acts or decisions of the
8	State pursuant to Act 250;
9	(3) assess the capability of the current public participation processes,
10	notice requirements, and appointment processes under Act 250 to fairly
11	represent the interests of minority populations within the State; and
12	(4) recommend legislative changes to Act 250 necessary to achieve the
13	goals of racial equity and diversity representation for minority populations.
14	(b) On or before October 15, 2022, the Executive Director of Racial Equity
15	shall report to the General Assembly with its findings and any
16	recommendations for legislative action.
17	* * * Planning Review * * *
18	Sec. 8. VERMONT REGIONAL AND MUNICIPAL PLANNING REVIEW
19	(a) On or before December 15, 2021, the Natural Resources Board, in
20	consultation with the Agency of Commerce and Community Development and

1	the Agency of Natural Resources, shall submit a draft report, with
2	recommendations, that addresses:
3	(1) How Sec. 7 of 1973 Acts and Resolves No. 85 (Capability and
4	Development Plan Findings) should be incorporated into 10 V.S.A. chapter
5	151 and what changes should be made, if any, to the Capability and
6	Development Plan Findings.
7	(2) Whether to update the Capability and Development Plan authorized
8	by 10 V.S.A. chapter 151, subchapter 3. If the recommendation is to update
9	the Capability and Development Plan, the report shall provide a schedule and
10	budget for the proposed update.
11	(3) Whether 10 V.S.A. chapter 151 should require the creation of
12	Capability and Development maps. If the recommendation is to require the
13	creation of Capability and Development maps, the report shall identify the
14	resources and land uses to be mapped and provide a schedule and budget for
15	the proposed update.
16	(4) How Capability and Development Plan Findings, the Capability and
17	Development Plan, and Capability and Development maps would be used in
18	the permitting process under 10 V.S.A. chapter 151 and how they would relate
19	to the criteria under 10 V.S.A. § 6086(a).

1	(5) Whether designations of downtowns, village centers, growth centers,
2	new town centers, and neighborhood development areas should be appealable
3	and, if the designations are appealable, which tribunal should hear the appeal.
4	(6) Potential new jurisdictional triggers under 10 V.S.A. § 6001 (3)(A)
5	to include jurisdiction based a project's location. For example, whether Act
6	250 jurisdiction is triggered when a project is located in close proximity to
7	significant resources like ridgelines, mountains, wetlands, prime agricultural
8	soils, forest blocks, and connecting habitat.
9	(b) The Natural Resources Board shall publish a draft report addressing
10	subdivisions (a)(1)–(5) of this section. The Board shall provide notice of the
11	draft report to affected State agencies, municipalities, regional planning
12	commissions, the Vermont Planners Association, the Vermont Planning and
13	Development Association, and other interested persons. There shall be a
14	public comment period of at least 30 days on the draft report, and the Board
15	shall hold at least one public informational meeting on it.
16	(c) On or before March 1, 2022, the Natural Resources Board shall provide
17	a final report to the House Committee on Natural Resources, Fish, and Wildlife
18	and the Senate Committee on Natural Resources and Energy. The final report
19	shall incorporate recommendations from the public engagement process under
20	subsection (b) of this section and shall contain a response to stakeholder
21	comments as a part of the final report.

1	* * * Permit Fee Review * * *
2	Sec. 9. ACT 250 PERMIT FEE REVIEW
3	On or before December 15, 2021, the Secretary of Administration shall
4	submit to the House Committees on Appropriations, on Natural Resources,
5	Fish, and Wildlife, and on Ways and Means and the Senate Committees on
6	Appropriations, on Natural Resources and Energy, and on Finance a review of
7	the Act 250 permit program and fees. The review shall include the following:
8	(1) the workload of the Natural Resources Board, including the District
9	Commissions,
10	(2) whether the Natural Resources Board, including the District
11	Commissions, has sufficient staff to administer the Act 250 program,
12	(3) the sufficiency of the current Act 250 permit fee structure to cover
13	agency work done on Act 250 permit applications;
14	(4) the possibility of allocating Act 250 permit fees to other State
15	agencies; and
16	(5) the possibility of State agencies directly charging applicants for
17	work done on Act 250 permit applications.
18	* * * Revision Authority; Rulemaking; Effective Dates * * *
19	Sec. 10. RULEMAKING
20	(a) On or before March 1, 2022, the Natural Resources Board (NRB), after
21	consultation with the Agency of Natural Resources, shall file proposed rules

1	with the Secretary of State to implement 10 V.S.A. § 6094 (mitigation of forest
2	blocks and connecting habitat) and 10 V.S.A. § 6086(a)(1)(B) (greenhouse gas
3	emissions).
4	(b) On or before September 1, 2022, the NRB shall adopt final rules unless
5	such deadline is extended by the Legislative Committee on Administrative
6	Rules pursuant to 3 V.S.A. § 843(c).
7	Sec. 11. REFERENCES; REVISION AUTHORITY
8	(a) In 10 V.S.A. § 6001, as amended by Sec. 3 of this act, the Office of
9	<u>Legislative Counsel shall:</u>
10	(1) in subdivision (2), replace the reference to "this act" with the
11	specific citation to this act as enacted; and
12	(2) reorganize and renumber the definitions so that they are in
13	alphabetical order and, in the Vermont Statutes Annotated, shall revise all
14	cross-references to those definitions accordingly.
15	(b) In 10 V.S.A. § 6086, the Office of Legislative Counsel shall insert the
16	following subsection and subdivision headings:
17	(1) in subdivision (a)(4): Soil erosion; capacity of land to hold water.
18	(2) in subdivision (a)(6): Educational services.
19	(3) in subdivision (a)(7): Local governmental services.
20	(4) in subsection (b): Partial findings.
21	(5) in subsection (e): Temporary improvements; film or TV.

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1	(6) in subsection (f): Stay of construction.
2	* * * Effective Dates * * *
3	Sec. 12. EFFECTIVE DATES
4	This act shall take effect on July 1, 2021, except that in Sec. 3, 10 V.S.A.
5	§ 6086(a)(1)(B) (greenhouse gas emissions) and (8)(B) and (C) (forest blocks
6	connecting habitat) shall take effect on September 15, 2022.