

1 S.234

2 Introduced by Senators Bray, Balint, Clarkson and Lyons

3 Referred to Committee on Natural Resources and Energy

4 Date: January 12, 2022

5 Subject: Conservation and development; land use; Act 250

6 Statement of purpose of bill as introduced: This bill proposes to make
7 multiple amendments to the State land use and development law, Act 250,
8 including: creating designated smart growth areas that will be exempt from
9 Act 250 and providing grants to municipalities to assist them in achieving this
10 new designation, requiring municipalities to respond to Act 250 requests
11 within 90 days, adding new criteria for forest blocks and connecting habitat,
12 adding a jurisdictional trigger for roads, clarifying permit conditions for wood
13 product manufacturers, clarifying Act 250 jurisdiction in one-acre towns, and
14 creating a committee to study the governance and administration of the Act
15 250 program.

16 An act relating to changes to Act 250

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

2 ~~*** Smart Growth Designation ***~~

3 Sec. 1. 10 V.S.A. § 6001(43) is added to read:

4 (43) “Smart growth designation” means the process by which a
5 designated center demonstrates that the center has satisfied the requirements of
6 24 V.S.A. § 2793f. The term shall also refer to the resulting status.

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

8 § 6081. PERMITS REQUIRED; EXEMPTIONS

9 * * *

10 (y) No permit or permit amendment is required for any subdivision or
11 development located in a smart growth designation area. If the smart growth
12 designation is terminated, a development or subdivision within the designated
13 center must receive a permit, if applicable.

14 Sec. 3. 24 V.S.A. § 2793f is added to read:

15 § 2793f. SMART GROWTH DESIGNATION

16 (a) Application and approval. A municipality, by resolution of its
17 legislative body, may apply to the Natural Resources Board for a smart growth
18 designation for any designated downtown development district or designated
19 neighborhood development area. The Natural Resources Board shall issue an
20 affirmative determination on finding that the municipality meets the
21 requirements of subsection (b) of this section.

1 ~~(b) Smart growth designation requirements.~~

2 ~~(1) To obtain a smart growth designation under this section, a~~

3 ~~municipality must demonstrate that it has each of the following:~~

4 ~~(A) an approved designated downtown development district or~~

5 ~~designated neighborhood development area;~~

6 ~~(B) a municipal plan that is approved in accordance with section~~

7 ~~4350 of this title;~~

8 ~~(C) a housing element in its town plan in accordance with~~

9 ~~subdivision 4382(10) of this title that achieves the purposes of subdivision~~

10 ~~4302(11) of this title and that includes clear implementation steps for~~

11 ~~achieving mixed income housing, including affordable housing, a timeline for~~

12 ~~implementation, responsibility for each implementation step, and potential~~

13 ~~funding sources;~~

14 ~~(D) adopted one of the following to promote the availability of~~

15 ~~affordable housing opportunities in the municipality:~~

16 ~~(i) inclusionary zoning as provided in subdivision 4414(7) of this~~

17 ~~title;~~

18 ~~(ii) a restricted housing trust fund with designated revenue~~

19 ~~streams;~~

20 ~~(iii) a housing commission as provided in section 4433 of this~~

21 ~~title, or~~

1 ~~(iv) impact fee exemptions or reductions for affordable housing as~~
2 provided in section 5205 of this title;

3 (E) municipal flood hazard planning, applicable to the entire
4 municipality, in accordance with subdivision 4382(12) of this title and the
5 guidelines issued by the Department pursuant to subsection 2792(d) of this
6 title;

7 (F) flood hazard and river corridor bylaws, applicable to the entire
8 municipality, that are consistent with the standards established pursuant to
9 10 V.S.A §§ 755(b) (flood hazard) and 1428(b) (river corridor);

10 (G) a capital budget and program pursuant to section 4430 of this
11 title that make substantial investments in the ongoing development of the
12 designated area, are consistent with the plan's implementation program, and
13 are consistent with the smart growth principles defined in subdivision
14 2791(13) of this title;

15 (H) municipal bylaws that do not include broad exemptions
16 excluding significant private or public land development from requiring a
17 municipal land use permit; and

18 (I) adequate municipal staff to support coordinated comprehensive
19 capital planning, development review, and zoning administration.

1 ~~(2) Designated downtown development districts seeking enhanced~~
2 ~~designation shall, in addition to the requirements of subdivisions (c)(1)–(6) of~~
3 ~~this section, also have:~~

4 ~~(A) urban form bylaws for the enhanced designated center that~~
5 ~~further the smart growth principles of this chapter and adequately regulate the~~
6 ~~physical form and scale of development and conform to the guidelines~~
7 ~~established by the Department; and~~

8 ~~(B) historic preservation bylaws for established design review~~
9 ~~districts, historic districts, or historic landmarks pursuant to subdivisions~~
10 ~~4414(1)(E) and (F) of this title for the enhanced designated center that meet~~
11 ~~State historic preservation guidelines issued by the Department pursuant to~~
12 ~~subsection 2792(d) of this title.~~

13 ~~(3) Designated neighborhood development areas seeking enhanced~~
14 ~~designation shall have, in addition to the requirements of this subsection,~~
15 ~~wildlife habitat planning bylaws for the enhanced designated center that~~
16 ~~comply with standards established by the Department of Fish and Wildlife.~~

17 ~~(4) If any party entitled to notice under subdivision (4)(A) of subsection~~
18 ~~(c) of this section or any resident of the municipality raises concern about the~~
19 ~~municipality's compliance with the requirements for the underlying~~
20 ~~designation, those concerns must be addressed as part of the municipality's~~
21 ~~application.~~

1 ~~(c) Process for issuing smart growth designation.~~

2 ~~(1) A preapplication meeting shall be held with Department staff to~~
3 ~~review the program requirements. The meeting shall be held in the~~
4 ~~municipality unless another location is agreed to by the municipality.~~

5 ~~(2) An application by the municipality must include the information and~~
6 ~~analysis required by the Department's guidelines established pursuant to~~
7 ~~section 2792 of this title on how to meet the requirements of subsection (b) of~~
8 ~~this section.~~

9 ~~(3) The Department shall establish a procedure for submission of a draft~~
10 ~~application that involves review and comment by all the parties to be noticed~~
11 ~~in subdivision (4)(A) of this subsection and shall issue a preapplication memo~~
12 ~~incorporating the comments to the applicant after receipt of a draft preliminary~~
13 ~~application.~~

14 ~~(4) After receipt of a complete final application, the Natural Resources~~
15 ~~Board shall convene a public hearing in the municipality to consider whether~~
16 ~~to issue a determination of smart growth designation under this section.~~

17 ~~(A) Notice.~~

18 ~~(i) At least 35 days in advance of the Board's meeting, the~~
19 ~~Department shall provide notice to the municipality and post it on the~~
20 ~~Agency's website.~~

1 ~~(ii) The municipality shall publish notice of the meeting of least~~
2 ~~30 days in advance of the Board's meeting in a newspaper of general~~
3 ~~circulation in the municipality, and deliver physically or electronically, with~~
4 ~~proof of receipt or by certified mail, return receipt requested to the Agency of~~
5 ~~Natural Resources; the State Downtown Board; the Division for Historic~~
6 ~~Preservation; the Agency of Agriculture, Food and Markets; the Agency of~~
7 ~~Transportation; the regional planning commission; the regional development~~
8 ~~corporations; and the entities providing educational, police, and fire services to~~
9 ~~the municipality.~~

10 ~~(iii) The notice shall also be posted by the municipality in or near~~
11 ~~the municipal clerk's office and in at least two other designated public places~~
12 ~~in the municipality and on the websites of the municipality and the Agency of~~
13 ~~Commerce and Community Development.~~

14 ~~(iv) The municipality shall also certify in writing that the notice~~
15 ~~required by this subdivision (c)(4)(A) has been published, delivered, and~~
16 ~~posted within the specified time.~~

17 ~~(B) No defect in the form or substance of any requirements of this~~
18 ~~subsection (c) shall invalidate the action of the Board where reasonable efforts~~
19 ~~are made to provide adequate posting and notice. However, the action shall be~~
20 ~~invalid when the defective posting or notice was materially misleading in~~
21 ~~content. If an action is ruled to be invalid by the Superior Court or by the~~

1 ~~Board itself, the Department shall provide and the municipality shall issue new~~
2 ~~posting and notice, and the Board shall hold a new hearing and take a new~~
3 ~~action.~~

4 (5) ~~The Board may recess the proceedings on any application pending~~
5 ~~submission of additional information. The Board shall close the proceedings~~
6 ~~promptly after all parties have submitted the requested information.~~

7 (6) ~~The Board shall issue its determination in writing. The~~
8 ~~determination shall include explicit findings on each of the requirements in~~
9 ~~subsection (b) of this section.~~

10 (d) ~~Review of smart growth designation status.~~

11 (1) ~~Length of designation. Initial determination of a smart growth~~
12 ~~designation may be made at any time. Thereafter, review of the smart growth~~
13 ~~designation shall be concurrent with the next periodic review of the underlying~~
14 ~~designated downtown or neighborhood development area.~~

15 (2) ~~The Board, on its motion, may review compliance with the smart~~
16 ~~growth designation requirements at more frequent intervals.~~

17 (3) ~~If at any time the Board determines that the designated smart growth~~
18 ~~area no longer meets the standards for the designation, it shall take one of the~~
19 ~~following actions:~~

20 (A) ~~require corrective action within a reasonable time frame; or~~

21 (B) ~~terminate the smart growth designation.~~

1 ~~(4) If the underlying designation is terminated, the smart growth~~
2 ~~designation also shall terminate.~~

3 ~~(e) Appeal.~~

4 ~~(1) An interested person may appeal any act or decision of the Board~~
5 ~~under this section to the Environmental Division of the Superior Court within~~
6 ~~30 days following the act or decision.~~

7 ~~(2) As used in this section, an "interested person" means any one of the~~
8 ~~following:~~

9 ~~(A) A person owning a title to or occupying property within or~~
10 ~~abutting the designated center.~~

11 ~~(B) The municipality making the application or a municipality that~~
12 ~~adjoins the municipality making the application.~~

13 ~~(C) The regional planning commission for the region that includes~~
14 ~~the designated center or a regional planning commission whose region adjoins~~
15 ~~the municipality in which the designated center is located.~~

16 ~~(D) Any 20 persons who, by signed petition, allege that the decision~~
17 ~~is not in accord with the requirements of this chapter and who own or occupy~~
18 ~~real property located within the municipality in which the designated center is~~
19 ~~located or an adjoining municipality. The petition must designate one person~~
20 ~~to serve as the representative of the petitioners regarding all matters related to~~

1 ~~the appeal. The designated representative must have participated in the public~~
2 hearing described in subdivision (c)(4) of this section.

3 Sec. 4. 24 V.S.A. § 2792 is amended to read:

4 § 2792. Vermont Downtown Development Board

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
7 State 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 * *

12 Sec. 5. 24 V.S.A. § 4306 is amended to read:

13 § 4306. MUNICIPAL AND REGIONAL PLANNING FUND

14 (a)(1) The Municipal and Regional Planning Fund for the purpose of
15 assisting municipal and regional planning commissions to carry out the intent
16 of this chapter is hereby created in the State Treasury.

17 (2) The Fund shall be composed of 17 percent of the revenue from the
18 property transfer tax under 32 V.S.A. chapter 231 and any monies from time to
19 time appropriated to the Fund by the General Assembly or received from any
20 ~~other source, private or public. All balances at the end of any fiscal year shall~~

1 ~~be carried forward and remain in the Fund. Interest earned by the Fund shall~~
2 ~~be deposited in the Fund.~~

3 (D) Of the revenues in the Fund, each year:

4 (A) 10 percent shall be disbursed to the Vermont Center for
5 Geographic Information;

6 (B) 70 percent shall be disbursed to the Secretary of Commerce and
7 Community Development for performance contracts with regional planning
8 commissions to provide regional planning services pursuant to section 4341a
9 of this title; and

10 (C) 20 percent shall be disbursed to municipalities.

11 * * *

12 (d) New funds allocated to municipalities under this section may take the
13 form of special purpose grants in accordance with section 4307 of this title.

14 Sec. 6. 24 V.S.A. § 4307 is added to read:

15 § 4307. MUNICIPAL SMART GROWTH DESIGNATION GRANTS

16 (a) There are created Municipal Bylaw Modernization Grants to assist
17 municipalities in updating their land use and development bylaws to achieve a
18 smart growth designation under section 2793f of this title. The Grants shall be
19 funded by monies allocated from the municipality allocation of the Municipal
20 and Regional Planning Fund established in subdivision 4306(a)(3)(C) of this
21 title and any other monies appropriated for this purpose.

1 ~~(b) A municipality that receives a grant shall use the funds for the adoption~~
2 ~~of bylaws that are required under section 2793f of this title to achieve the~~
3 ~~smart growth designation. Funding may be used for mapping, the cost of~~
4 ~~regional planning commission staff or consultant time, carrying out the~~
5 ~~provisions of subchapters 5–10 of this chapter, and any other purpose~~
6 ~~approved by the Department.~~

7 (c) Disbursement to municipalities shall be administered by the
8 Department of Housing and Community Development through a competitive
9 process, providing the opportunity for all regions and any eligible municipality
10 to compete regardless of size. The Department shall, to the extent reasonably
11 possible, ensure that grants are awarded with the intent of achieving
12 geographic distribution across the State.

13 (d) On or before September 1, 2022, the Department shall adopt guidelines
14 to assist municipalities applying for grants under this section.

15 * * * Municipal Response to Act 250 Requests * * *

16 Sec. 7. 10 V.S.A. 6086(g) is added to read:

17 (g) If a municipality fails to respond to a request by the applicant within
18 90 days as to the impacts related to subdivision (a)(6) or (7) of this section, the
19 application will be presumed not to have an unreasonable burden on
20 educational, municipal, or governmental services.

1 *** Forest Blocks ***

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

3 § 6001. DEFINITIONS

4 As used in this chapter:

5 * * *

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

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

16 (46) “Fragmentation” means the division or conversion of a forest block
17 or connecting habitat by the separation of a parcel into two or more parcels;
18 the construction, conversion, relocation, or enlargement of any building or
19 other structure or of any mining, excavation, or landfill; and any change in the
20 use of any building or other structure, or land, or extension of use of land.

21 However, “fragmentation” does not include the division or conversion of a

1 ~~forest block or connecting habitat by a recreational trail or by improvements~~
2 constructed for farming, logging, or forestry purposes below the elevation of
3 2,500 feet.

4 (47) "Habitat" means the physical and biological environment in which
5 a particular species of plant or wildlife lives.

6 Sec. 9. 10 V.S.A. § 6086(a)(8) is amended to read:

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

8 (A) Aesthetics. Will not have an undue adverse effect on the scenic
9 or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable
10 natural areas.

11 (A)(B) Necessary wildlife habitat and endangered species. A permit
12 will not be granted if it is demonstrated by any party opposing the applicant
13 that a development or subdivision will destroy or significantly imperil
14 necessary wildlife habitat or any endangered species; and:

15 (i) the economic, social, cultural, recreational, or other benefit to
16 the public from the development or subdivision will not outweigh the
17 economic, environmental, or recreational loss to the public from the
18 destruction or imperilment of the habitat or species; or

19 (ii) all feasible and reasonable means of preventing or lessening
20 the destruction, diminution, or imperilment of the habitat or species have not
21 been or will not continue to be applied, or

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

4 ~~(C) Forest blocks and connecting habitat. Will not result in an undue~~
5 ~~adverse impact on forest blocks and connecting habitat. If a project as~~
6 ~~proposed would result in an undue adverse impact, a permit may only be~~
7 ~~granted if effects are avoided, minimized, and mitigated in accordance with~~
8 ~~rules adopted by the Board.~~

9 Sec. 10. CRITERION 8(C) RULEMAKING

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

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

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

18 ~~(B) advisory mapping resources, how they will be made available,~~
19 ~~how they will be used, and how they will be updated.~~

20 ~~(2) Standards establishing how impacts can be avoided, minimized, or~~
21 ~~mitigated, including how fragmentation of forest blocks or connecting habitat~~

1 ~~is avoided or minimized, which may include steps to promote proactive site~~
2 design of buildings, roadways and driveways, utility location, and location
3 relative to existing features such as roads, tree lines, and fence lines.

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

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

8 (A) appropriate ratios for compensation;

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

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

12 (b) The Board shall convene a working group to provide input to the rule
13 prior to prefilng with the Interagency Committee on Administrative Rules.

14 The Board shall convene the working group on or before February 1, 2023.

15 (c) The Board shall file a final proposed rule with the Secretary of State
16 and Legislative Committee on Administrative Rules on or before June 15,

17 2023.

18 Sec. 11. 10 V.S.A. § 127 is amended to read:

19 § 127. RESOURCE MAPPING

20 ~~(a) On or before January 15, 2013, the~~ The Secretary of Natural Resources
21 ~~shall complete and maintain resource mapping based on the Geographic~~

1 ~~Information System (GIS) or other technology. The mapping shall identify~~
2 natural resources throughout the State, including forest blocks, that may be
3 relevant to the consideration of energy projects and projects subject to chapter
4 151 of this title. The Center for Geographic Information shall be available to
5 provide assistance to the Secretary in carrying out the ~~GIS-based~~ resource
6 mapping.

7 (b) The Secretary ~~of Natural Resources~~ shall consider the ~~GIS-based~~
8 resource maps developed under subsection (a) of this section when providing
9 evidence and recommendations to the Public Utility Commission under
10 30 V.S.A. § 248(b)(5) and when commenting on or providing
11 recommendations under chapter 151 of this title to District Commissions on
12 other projects.

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

18 * * * Roads * * *

19 Sec. 12. 10 V.S.A. § 6001 is amended to read:

20 § 6001. DEFINITIONS

21 ~~As used in this chapter.~~

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

(3)(A) "Development" means each of the following:

* * *

(xi) The construction of a road, roads, driveway, or driveways, which in combination is greater than 2,000 feet, to provide access to or within a tract or tracts of land of more than one acre owned or controlled by a person.

(I) For the purposes of determining jurisdiction under this subdivision (xi), any tract or tracts of land that will be provided access by the road or driveway is involved land.

(II) As used in this subdivision (xi), "road" shall include any new road or upgrade of a class 4 highway by a person other than a municipality, including a road that will be transferred to or maintained by a municipality after its construction or upgrade. For the purposes of this subdivision (II), routine maintenance of a class 4 highway or stormwater improvement required pursuant to section 1264 of this title shall not constitute an "upgrade."

(aa) Routine maintenance shall include replacing a culvert or ditch, applying new stone, grading, or making repairs after adverse weather.

(bb) Routine maintenance shall not include changing the size of the road, changing the location or layout of the road, or adding pavement.

1 ~~(III) For the purpose of determining the length under this~~
2 ~~subdivision (xi), the length of all roads and driveways within the tract or tracts~~
3 ~~of land constructed within any continuous period of 10 years after October 1,~~
4 ~~2020 shall be included.~~

5 ~~(IV) This subdivision (xi) shall not apply to:~~

6 ~~(a) a road constructed for a municipal, county, or State~~
7 ~~purpose; a utility corridor of an electric transmission or distribution company;~~
8 ~~or a road located entirely within a designated downtown or neighborhood~~
9 ~~development area; and~~

10 ~~(bb) a road used primarily for farming or forestry purposes~~
11 ~~unless used for a residential purpose.~~

12 * * *

13 * * * Wood Products Manufacturers * * *

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

15 § 6001. DEFINITIONS

16 * * *

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

1 ~~woodchips, mulch, and fuel wood; and log and pulp concentration yards.~~
2 “Wood products manufacturer” does not include facilities that purchase,
3 market, and resell finished goods, such as wood furniture, wood pellets, and
4 milled lumber, without first receiving wood products from forestry operations.

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

8 Sec. 14. 10 V.S.A. § 6086(c) is amended to read:

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

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

19 (A) A permit condition that sets hours of operation for a wood
20 products manufacturer shall only be imposed to mitigate an impact under
21 subdivision (a)(1), (3), or (8) of this section.

1 ~~(B) If an adverse impact under subdivision (a)(1), (5), or (8) of this~~
2 ~~section would result, a permit with conditions shall allow the manufacturer to~~
3 ~~operate while mitigating these impacts. A permit with conditions that mitigate~~
4 ~~these impacts shall allow for deliveries of wood products from forestry~~
5 ~~operations to the manufacturer outside permitted hours of operation, including~~
6 ~~nights, weekends, and holidays, for the number of days demonstrated by the~~
7 ~~manufacturer as necessary to enable business operations, not to exceed 90 days~~
8 ~~per year.~~

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

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

1 *** One acre towns ***

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

3 § 6001. DEFINITIONS

4 * * *

5 (3)(A) "Development" means each of the following:

6 (i) The construction of improvements on a tract or tracts of land,
7 owned or controlled by a person, involving more than 10 acres of land within a
8 radius of five miles of any point on any involved land, for commercial or
9 industrial purposes in a municipality that has adopted permanent zoning and
10 subdivision bylaws.

11 (ii) The construction of improvements on a tract or tracts of land,
12 owned or controlled by a person, involving more than one acre of land within
13 a radius of five miles of any point on any involved land, for commercial or
14 industrial purposes ~~on more than one acre of land~~ within a municipality that
15 has not adopted permanent zoning and subdivision bylaws.

16 * * *

17 * * * Study Committee; Effective Date * * *

18 Sec. 16. STUDY COMMITTEE; NATURAL RESOURCES BOARD

19 STRUCTURE

20 (a) There is created a study committee on the structure and function of the
21 Natural Resources Board. The group shall consist of eight members, four

1 ~~appointed by the Speaker of the House and four appointed by the Committee~~
2 ~~on Committees.~~

3 ~~(b) The group shall hear from various stakeholder groups on how to~~
4 ~~enhance the administration of the Act 250 program, including considerations~~
5 ~~of:~~

6 ~~(1) the membership of the Board;~~

7 ~~(2) the appointment process;~~

8 ~~(3) grounds for removing a member from the Board;~~

9 ~~(4) the responsibilities and authorities of the Board and District~~

10 ~~Commissions;~~

11 ~~(5) funding of the operation of the Board, District Commissions, and the~~

12 ~~Act 250 program; and~~

13 ~~(6) the handling of appeals issued by the District Commissions and the~~

14 ~~Board.~~

15 ~~(c) On or before December 31, 2022, the group shall report back to the~~

16 ~~General Assembly with any proposed changes to the structure and function of~~

17 ~~the Natural Resources Board.~~

18 * * * Effective Date * * *

19 Sec. 17. EFFECTIVE DATE

20 ~~This act shall take effect on July 1, 2022.~~

** * * Municipal Zoning * * **

Sec. 1. 24 V.S.A. § 2793e is amended to read:

§ 2793e. NEIGHBORHOOD PLANNING AREAS; DESIGNATION OF
NEIGHBORHOOD DEVELOPMENT AREAS

(a) *Purpose.* This section is intended to encourage a municipality to plan for new and infill housing in the area including and immediately encircling its designated downtown, village center, new town center, or within its designated growth center in order to provide needed housing and to further support the commercial establishments in the designated center. To support this goal, this section sets out a two-component process.

* * *

(b) *Definitions.*

(1) “Neighborhood planning area” means an automatically delineated area including and encircling a downtown, village center, or new town center designated under this chapter or within a growth center designated under this chapter. A neighborhood planning area is used for the purpose of identifying locations suitable for new and infill housing that will support a development pattern that is compact, oriented to pedestrians, and consistent with smart growth principles. To ensure a compact settlement pattern, the outer boundary of a neighborhood planning area shall be located entirely within the boundaries of the applicant municipality, unless a joint application is submitted by more than one municipality, and shall be determined:

* * *

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

* * *

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

(A) Avoids or ~~that~~ minimizes to the extent feasible the inclusion of “important natural resources” as defined in subdivision 2791(14) of this title.

If an “important natural resource” is included within a proposed neighborhood development area, the applicant shall identify the resource, explain why the resource was included, describe any anticipated disturbance to such resource, and describe why the disturbance cannot be avoided or minimized. If the neighborhood development area includes flood hazard areas or river corridors, the local bylaws shall contain provisions consistent with the Agency of Natural Resources’ rules required under 10 V.S.A. § 754(a) to ensure that new infill development within a neighborhood development area occurs outside the flood hazard area and will not cause or contribute to fluvial erosion hazards within the river corridor. If the neighborhood development area includes flood hazard areas or river corridors, local bylaws shall also contain provisions to protect river corridors outside the neighborhood development area consistent with the Agency of Natural Resources’ rules required under 10 V.S.A. § 754(a).

* * *

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

~~(A) municipal sewer infrastructure; or~~

~~(B) a community or alternative wastewater system approved by the Agency of Natural Resources. [Repealed.]~~

(7) ~~The municipal bylaws allow minimum net residential densities within the neighborhood development area greater than or equal to four single-family detached dwelling units per acre for all identified residential uses or residential building types, exclusive of accessory dwelling units, or not fewer than the average existing density of the surrounding neighborhood, whichever is greater. The methodology for calculating density shall be established in the guidelines developed by the Department pursuant to subsection 2792(d) of this title.~~

* * *

Sec. 2. 24 V.S.A. § 2793b is amended to read:

§ 2793b. DESIGNATION OF NEW TOWN CENTER DEVELOPMENT DISTRICTS

* * *

(b) Within 45 days of receipt of a completed application, the State Board shall designate a new town center development district if the State Board finds, with respect to that district, the municipality has:

* * *

(2) Provided a community investment agreement that has been executed

by authorized representatives of the municipal government, businesses and property owners within the district, and community groups with an articulated purpose of supporting downtown interests, and contains the following:

* * *

(B) Regulations enabling high densities that are ~~greater~~ not less than four dwelling units, including all identified residential uses or residential building types, per acre and not less than those allowed in any other part of the municipality not within an area designated under this chapter.

* * *

Sec. 3. 24 V.S.A. § 4449 is amended to read:

*§ 4449. ZONING PERMIT, CERTIFICATE OF OCCUPANCY, AND
MUNICIPAL LAND USE PERMIT*

(a) Within any municipality in which any bylaws have been adopted:

* * *

(4) No municipal land use permit issued by an appropriate municipal panel or administrative officer, as applicable, for a site plan or conditional use shall be considered abandoned or expired unless more than two years has passed since the permit approval was issued.

* * * Act 250 * * *

Sec. 4. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

As used in this chapter:

* * *

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

* * *

(iv) The construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or mobile home parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land and within any continuous period of five years. However:

(I) A priority housing project shall constitute a development under this subdivision (iv) only if the number of housing units in the project is:

(aa) [Repealed.]

(bb) [Repealed.]

(cc) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000.

(dd) 50 or more, in a municipality with a population of 3,000 or more but less than 6,000.

(ee) 25 or more, in a municipality with a population of less than 3,000. [Repealed.]

(ff) Notwithstanding subdivisions (cc) through (ee) of this subdivision (3)(A)(iv)(I), 10 or more if the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision (ff) if the Division for Historic Preservation has determined that the proposed demolition will have no adverse effect, will have no adverse effect if specified conditions are met, or will have an adverse effect that will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

** * **

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

** * **

~~*(IV) Notwithstanding any other provision of this chapter to the contrary, the construction of a priority housing project funded primarily by the American Rescue Plan Act of 2021 only if the mixed income housing project to be constructed contains at least 60 percent of the housing units with a duration of affordability of not less than 30 years.*~~

~~** * **~~

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

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

* * *

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

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

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

~~(ii) at least 20 percent of the housing units have a purchase price that at the time of first sale does not exceed 90 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency meet the requirements of affordable owner-occupied housing under subdivision (29)(A) of this section, adjusted for the number of bedrooms, as established and published annually by the Vermont Housing Finance Agency.~~

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

* * *

Sec. 5. 10 V.S.A. § 6086 is amended to read:

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

* * *

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

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

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

* * *

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

Sec. 6. 10 V.S.A. 6086(g) is added to read:

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

* * * *Forest Blocks* * * *

Sec. 7. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

As used in this chapter:

* * *

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

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

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

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

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

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

(A)(B) Necessary wildlife habitat and endangered species. A permit will not be granted if it is demonstrated by any party opposing the applicant

that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species; and:

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

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

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

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

Sec. 9. CRITERION 8(C) RULEMAKING

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

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

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

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

(2) Standards establishing how impacts can be avoided, minimized, or mitigated, including how fragmentation of forest blocks or connecting habitat is avoided or minimized, which may include steps to promote proactive site design of buildings, roadways and driveways, utility location, and location relative to existing features such as roads, tree lines, and fence lines.

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

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

(A) appropriate ratios for compensation;

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

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

(b) The Board shall convene a working group to provide input to the rule prior to prefiling with the Interagency Committee on Administrative Rules. The Board shall convene the working group on or before June 1, 2023.

(c) The Board shall file a final proposed rule with the Secretary of State and Legislative Committee on Administrative Rules on or before June 15, 2024.

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

§ 127. RESOURCE MAPPING

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

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

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

* * * Roads * * *

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

§ 6001. DEFINITIONS

As used in this chapter:

* * *

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

* * *

(xi) The construction of a road, roads, driveway, or driveways, which as a single road or driveway is greater than 800 feet, or which in combination is greater than 2,000 feet, to provide access to or within a tract or tracts of land of more than one acre owned or controlled by a person.

(I) For the purposes of determining jurisdiction under this subdivision (xi), any tract or tracts of land that will be provided access by the road or driveway is involved land.

(II) As used in this subdivision (xi), "road" shall include any new road or upgrade of a class 4 highway by a person other than a municipality, including a road that will be transferred to or maintained by a municipality after its construction or upgrade. For the purposes of this subdivision (II), routine maintenance of a class 4 highway or stormwater improvement required pursuant to section 1264 of this title shall not constitute an "upgrade."

(aa) Routine maintenance shall include replacing a culvert or ditch, increasing the size or configuration of an existing drainage structure to improve resiliency, applying new stone, grading, or making repairs after adverse weather.

(bb) Routine maintenance shall not include changing the size of the road, changing the location or layout of the road, or adding pavement unless undertaken to improve the function of an existing drainage structure.

(III) For the purpose of determining the length under this subdivision (xi), the length of all roads and driveways within the tract or tracts of land constructed within any continuous period of 10 years after October 1, 2020 shall be included.

(IV) This subdivision (xi) shall not apply to:

(aa) a road constructed for a municipal, county, or State purpose; a utility corridor of an electric transmission or distribution company; or a road located entirely within a designated downtown or neighborhood development area; and

(bb) a road used primarily for farming or forestry purposes unless used for a residential purpose.

* * *

* * * Wood Products Manufacturers * * *

Sec. 12. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

* * *

(47) “Wood products manufacturer” means a manufacturer that aggregates wood products from forestry operations and adds value through processing or marketing in the wood products supply chain or directly to consumers through retail sales. “Wood products manufacturer” includes sawmills; veneer mills; pulp mills; pellet mills; producers of firewood, woodchips, mulch, and fuel wood; and log and pulp concentration yards. “Wood products manufacturer” does not include facilities that purchase, market, and resell finished goods, such as wood furniture, wood pellets, and milled lumber, without first receiving wood products from forestry operations.

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

Sec. 13. 10 V.S.A. § 6086(c) is amended to read:

(c)(1) Permit conditions. A permit may contain such requirements and conditions as are allowable proper exercise of the police power and which that are appropriate within the respect to subdivisions (a)(1) through (10) of this section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and 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.

(2) Permit conditions on a wood products manufacturer:

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

(B) If an adverse impact under subdivision (a)(1), (5), or (8) of this section would result, a permit with conditions shall allow the manufacturer to operate while mitigating these impacts. A permit with conditions that mitigate these impacts shall allow for deliveries of wood products from forestry operations to the manufacturer outside permitted hours of operation, including nights, weekends, and holidays, for the number of days demonstrated by the manufacturer as necessary to enable business operations, not to exceed 90 days per year.

(3) Permit with conditions on the delivery of wood heat fuels. A permit with conditions issued to a wood products manufacturer that produces wood

chips, pellets, cord wood, or other fuel wood used for heat shall allow shipment of that fuel wood from the manufacturer to the end user outside permitted hours of operation, including nights, weekends, and holidays, from October 1 through April 30 of each year. Permits with conditions shall mitigate the undue adverse impacts while enabling the operations of the manufacturer.

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

* * * One-acre towns * * *

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

§ 6001. DEFINITIONS

* * *

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

(i) The construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes in a municipality that has adopted permanent zoning and subdivision bylaws.

(ii) The construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes ~~on more than one acre of land within~~ in a municipality that has not adopted permanent zoning and subdivision bylaws.

* * *

* * * Reports * * *

Sec. 15. REPORT; ACT 250 JURISDICTION OVER AGRICULTURAL
BUSINESSES

On or before January 15, 2023, the Natural Resources Board shall submit to the General Assembly a report with recommendations on how Act 250 jurisdiction should be applied to agricultural businesses, including those located on properties already operating as farms. The report shall address the current land use planning requirements for farms and farms with accessory on-farm businesses and whether different types of businesses associated with farms and farming require different levels of review. The report may consider

whether or not the location of such businesses is relevant and may consider the designation or adoption of agricultural business innovation zones with different levels of review.

** * * Study Committee; Effective Date * * **

*Sec. 16. STUDY COMMITTEE; NATURAL RESOURCES BOARD
STRUCTURE*

(a) There is created a study committee on the structure and function of the Natural Resources Board. The group shall consist of eight Legislative members, four appointed by the Speaker of the House and four appointed by the Committee on Committees.

(b) The group shall hear from various stakeholder groups on how to enhance the administration of the Act 250 program, including considerations of:

(1) the membership of the Board;

(2) the appointment process;

(3) grounds for removing a member from the Board;

(4) the responsibilities and authorities of the Board and District Commissions;

(5) funding of the operation of the Board, District Commissions, and the Act 250 program; and

(6) the handling of appeals issued by the District Commissions and the Board.

(c) On or before December 31, 2022, the group shall report back to the General Assembly with any proposed changes to the structure and function of the Natural Resources Board.

** * * Effective Dates * * **

Sec. 17. EFFECTIVE DATES

This act shall take effect on July 1, 2022, except that Sec. 8 (10 V.S.A. § 6086(a)(8)) shall take effect on September 1, 2024.