

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish, and Wildlife to which was
3 referred Senate Bill No. 234 entitled “An act relating to changes to Act 250”
4 respectfully reports that it has considered the same and recommends that the
5 House propose to the Senate that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

7 * * * Municipal Zoning * * *

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

9 § 2793e. NEIGHBORHOOD PLANNING AREAS; DESIGNATION OF
10 NEIGHBORHOOD DEVELOPMENT AREAS

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

17 * * *

18 (b) Definitions.

19 (1) “Neighborhood planning area” means an automatically delineated
20 area including and encircling a downtown, village center, or new town center
21 designated under this chapter or within a growth center designated under this

1 chapter. A neighborhood planning area is used for the purpose of identifying
2 locations suitable for new and infill housing that will support a development
3 pattern that is compact, oriented to pedestrians, and consistent with smart
4 growth principles. To ensure a compact settlement pattern, the outer boundary
5 of a neighborhood planning area shall be located entirely within the boundaries
6 of the applicant municipality, unless a joint application is submitted by more
7 than one municipality, and shall be determined:

8 * * *

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

12 * * *

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

1 municipality shall select an area for neighborhood development area
2 designation that:

3 (A) Avoids or ~~that~~ minimizes to the extent feasible the inclusion of
4 “important natural resources” as defined in subdivision 2791(14) of this title.
5 If an “important natural resource” is included within a proposed neighborhood
6 development area, the applicant shall identify the resource, explain why the
7 resource was included, describe any anticipated disturbance to such resource,
8 and describe why the disturbance cannot be avoided or minimized. If the
9 neighborhood development area includes flood hazard areas or river corridors,
10 the local bylaws shall contain provisions consistent with the Agency of Natural
11 Resources’ rules required under 10 V.S.A. § 754(a) to ensure that new infill
12 development within a neighborhood development area occurs outside the
13 floodway and will not cause or contribute to fluvial erosion hazards within the
14 river corridor. If the neighborhood development area includes flood hazard
15 areas or river corridors, local bylaws shall also contain provisions to protect
16 river corridors outside the neighborhood development area consistent with the
17 Agency of Natural Resources’ rules required under 10 V.S.A. § 754(a).

18 * * *

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

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

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

3 (7) The municipal bylaws allow minimum net residential densities
4 within the neighborhood development area greater than or equal to four ~~single-~~
5 ~~family detached~~ dwelling units per acre for all identified residential uses or
6 residential building types, exclusive of accessory dwelling units, or ~~no~~ not
7 fewer than the average existing density of the surrounding neighborhood,
8 whichever is greater. The methodology for calculating density shall be
9 established in the guidelines developed by the Department pursuant to
10 subsection 2792(d) of this title.

11 * * *

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

13 § 2793b. DESIGNATION OF NEW TOWN CENTER DEVELOPMENT

14 DISTRICTS

15 * * *

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

19 * * *

20 (2) Provided a community investment agreement that has been executed
21 by authorized representatives of the municipal government, businesses and

1 property owners within the district, and community groups with an articulated
2 purpose of supporting downtown interests, and contains the following:

3 * * *

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

8 * * *

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

10 § 4449. ZONING PERMIT, CERTIFICATE OF OCCUPANCY, AND
11 MUNICIPAL LAND USE PERMIT

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

13 * * *

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

18 * * * Act 250 * * *

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

20 § 6001. DEFINITIONS

21 As used in this chapter:

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

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(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

1 demolition of one or more buildings that are listed on or eligible to be listed on
2 the State or National Register of Historic Places. However, demolition shall
3 not be considered to create jurisdiction under this subdivision (ff) if the
4 Division for Historic Preservation has determined that the proposed demolition
5 will have no adverse effect, will have no adverse effect if specified conditions
6 are met, or will have an adverse effect that will be adequately mitigated. Any
7 imposed conditions shall be enforceable through a grant condition, deed
8 covenant, or other legally binding document.

9 * * *

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

11 * * *

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

18 (7) ~~“Floodway fringe” means an area that is outside a floodway and is~~
19 ~~flooded with an average frequency of once or more in each 100 years, as~~
20 ~~determined by the Secretary of Natural Resources with full consideration given~~

1 ~~to upstream impoundments and flood control projects~~ “River corridor” has the
2 same meaning as under section 752 of this title.

3 * * *

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

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

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

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

19 (B) Rental housing. ~~At least 20 percent of the housing units that are~~
20 ~~rented constitute affordable housing and have a duration of affordability of~~ For
21 not less than 15 years following the date that rental housing is initially placed

1 in service, at least 20 percent of the housing units meet the requirements of
2 affordable rental housing under subdivision (29)(B) of this section, adjusted for
3 the number of bedrooms, as established and published annually by the
4 Vermont Housing Finance Agency.

5 * * *

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

7 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

10 * * *

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

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

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

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

3 * * *

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

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

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

10 * * * Forest Blocks * * *

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

12 § 6001. DEFINITIONS

13 As used in this chapter:

14 * * *

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

20 (44) “Forest block” means a contiguous area of forest in any stage of
21 succession and not currently developed for nonforest use. A forest block may

1 include features including recreational trails, wetlands, or other natural features
2 that do not themselves possess tree cover and improvements constructed for
3 farming, logging, or forestry purposes.

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

6 Sec. 8. 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, or historic sites ~~or rare and~~
10 ~~irreplaceable 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, connecting habitat, or rare and irreplaceable
6 natural areas. If a project as proposed would result in an undue adverse
7 impact, a permit may only be granted if effects are avoided, or minimized and
8 mitigated in accordance with rules adopted by the Board.

9 Sec. 9. 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, and
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 pre-filing with the Interagency Committee on Administrative Rules.

14 The Board shall convene the working group on or before June 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 2024.

18 Sec. 10. 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 and connecting
3 habitat, that may be relevant to the consideration of energy projects and
4 projects subject to chapter 151 of this title. The Center for Geographic
5 Information shall be available to provide assistance to the Secretary in carrying
6 out the ~~GIS-based~~ resource 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. 11. 10 V.S.A. § 6001 is amended to read:

20 § 6001. DEFINITIONS

21 As used in this chapter:

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

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(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.

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

5 (III) For the purpose of determining the length under this
6 subdivision (xi), the length of all roads and driveways within the tract or tracts
7 of land constructed within any continuous period of 10 years after October 1,
8 2022 shall be included.

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

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

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

16 * * *

17 * * * Wood Products Manufacturers * * *

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

19 § 6001. DEFINITIONS

20 * * *

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

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

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

14 (c)(1) Permit conditions. A permit may contain such requirements and
15 conditions as are allowable proper exercise of the police power and ~~which~~ that
16 are appropriate within the respect to subdivisions (a)(1) through (10) of this
17 section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2),
18 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and
19 the filing of bonds to ensure compliance. The requirements and conditions
20 incorporated from Title 24 may be applied whether or not a local plan has been

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

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

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

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

15 (3) Permit with conditions on the delivery of wood heat fuels. A permit
16 with conditions issued to a wood products manufacturer that produces wood
17 chips, pellets, cord wood, or other fuel wood used for heat shall allow
18 shipment of that fuel wood from the manufacturer to the end user outside
19 permitted hours of operation, including nights, weekends, and holidays, from
20 October 1 through April 30 of each year. Permits with conditions shall

1 mitigate the undue adverse impacts while enabling the operations of the
2 manufacturer.

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

8 * * * One-acre towns * * *

9 Sec. XX. INTENT; AMENDMENT OF 10 V.S.A. § 6001(3)(A)(ii)

10 The General Assembly's intent in the amendments to 10 V.S.A. §
11 6001(3)(A)(ii) set forth in Sec. 14 of this act is to clarify the text in order to
12 reflect the way commercial and industrial development in 1-acre towns has
13 been determined since the passage of Act 250 in 1970. The General Assembly
14 does not intend any provision of this act to be interpreted as a substantive
15 change to determining jurisdiction under 10 V.S.A. § 6001(3)(A)(ii).

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

17 § 6001. DEFINITIONS

18 * * *

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

20 (i) The construction of improvements on a tract or tracts of land,
21 owned or controlled by a person, involving more than 10 acres of land within a

1 radius of five miles of any point on any involved land, for commercial or
2 industrial purposes in a municipality that has adopted permanent zoning and
3 subdivision bylaws.

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

9 * * *

10 * * * Report * * *

11 **Sec. 16. LAND USE REPORT**

12 (a) The sum of \$150,000.00 is appropriated from the General Fund to the
13 Department of Housing and Community Development in fiscal year 2023
14 for the purpose of hiring a consultant to evaluate the land use regulation in
15 Vermont.

16 (b) The report shall include:

17 (1) how to transition to a system in which Act 250 jurisdiction is based
18 on location, which shall encourage development in appropriate locations and
19 protect natural resources of statewide significance, including biodiversity;

20 (2) how to use the Capability and Development Plan to meet the
21 statewide planning goals;

1 (3) a review and assessment of the State designation programs and
2 incentives established in 24 V.S.A. chapter 76A ;

3 (4) whether different types of businesses associated with farms and
4 farming require different levels of Act 250 review, whether or not the location
5 of such businesses is relevant, and whether agricultural business innovation
6 zones with different levels of review

7 (5) an assessment of the current level of staffing of the **Board** and
8 District Commissions, including whether there should be a district coordinator
9 located in every district;

10 (6) whether the permit fees are sufficient to cover the costs of the Act
11 250 program and, if not, a recommendation for a source of revenue to
12 supplement the fees;

13 (7) whether the Act 250 permit fees are effective in providing
14 appropriate incentives; and

15 (8) whether the Board should be able to assess their costs on applicants.

16 * * * Effective Dates * * *

17 Sec. 17. EFFECTIVE DATES

18 This act shall take effect on July 1, 2022, except that Sec. 8 (10 V.S.A.
19 § 6086(a)(8)) shall take effect on September 1, 2024.

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1 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE

DRAFT