

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred  
3 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 bill be amended by striking out all after the enacting clause and inserting in  
6 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 flood

13 hazard area and will not cause or contribute to fluvial erosion hazards within

14 the 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 \* \* \*





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\* \* \* 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.



1 ~~determined by the Secretary of Natural Resources with full consideration given~~  
2 ~~to upstream impoundments and flood control projects “River corridor” has the~~  
3 ~~same meaning as under section 752 of this title.~~

4 \* \* \*

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

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

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

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

20 (B) Rental housing. At least 20 percent of the housing units that are  
21 rented constitute affordable housing and have a duration of affordability of For

1 not less than 15 years following the date that rental housing is initially placed  
2 in service, at least 20 percent of the housing units meet the requirements of  
3 affordable rental housing under subdivision (29)(B) of this section, adjusted for  
4 the number of bedrooms, as established and published annually by the  
5 Vermont Housing Finance Agency.

6 \* \* \*

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

8 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

11 \* \* \*

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

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

20 (ii) the development or subdivision of lands within a floodway  
21 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 (44) “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 (45) “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 (46) “Fragmentation” means the division or conversion of a forest block  
5 or connecting habitat by the separation of a parcel into two or more parcels; the  
6 construction, conversion, relocation, or enlargement of any building or other  
7 structure or of any mining, excavation, or landfill; and any change in the use of  
8 any building or other structure, or land, or extension of use of land. However,  
9 “fragmentation” does not include the division or conversion of a forest block  
10 or connecting habitat by a recreational trail or by improvements constructed for  
11 farming, logging, or forestry purposes below the elevation of 2,500 feet.

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

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

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

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

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

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

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

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

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

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

18 Sec. 9. CRITERION 8(C) RULEMAKING

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

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

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

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

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

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

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

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

18 (A) appropriate ratios for compensation;

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

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

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

4        (c) The Board shall file a final proposed rule with the Secretary of State  
5        and Legislative Committee on Administrative Rules on or before June 15,  
6        2023.

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

8        § 127. RESOURCE MAPPING

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

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

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

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

8 \* \* \* Roads \* \* \*

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

10 § 6001. DEFINITIONS

11 As used in this chapter:

12 \* \* \*

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

14 \* \* \*

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

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

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

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

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

13                   (III) For the purpose of determining the length under this  
14                   subdivision (xi), the length of all roads and driveways within the tract or tracts  
15                   of land constructed within any continuous period of 10 years after October 1,  
16                   2020 shall be included.

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

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



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

2 (c)(1) Permit conditions. A permit may contain such requirements and  
3 conditions as are allowable proper exercise of the police power and ~~which~~ that  
4 are appropriate within the respect to subdivisions (a)(1) through (10) of this  
5 section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2),  
6 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and  
7 the filing of bonds to ensure compliance. The requirements and conditions  
8 incorporated from Title 24 may be applied whether or not a local plan has been  
9 adopted. General requirements and conditions may be established by rule of  
10 the Natural Resources Board.

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

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

15 (B) If an adverse impact under subdivision (a)(1), (5), or (8) of this  
16 section would result, a permit with conditions shall allow the manufacturer to  
17 operate while mitigating these impacts. A permit with conditions that mitigate  
18 these impacts shall allow for deliveries of wood products from forestry  
19 operations to the manufacturer outside permitted hours of operation, including  
20 nights, weekends, and holidays, for the number of days demonstrated by the

1 manufacturer as necessary to enable business operations, not to exceed 90 days  
2 per year.

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

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

16 \* \* \* One-acre towns \* \* \*

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

18 § 6001. DEFINITIONS

19 \* \* \*

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

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

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

11 \* \* \*

12 \* \* \* Prime Ag Soils \* \* \*

13 Sec. 15. 10 V.S.A. § 6093 is amended to read:

14 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

15 (a) Mitigation for loss of primary agricultural soils. Suitable mitigation for  
16 the conversion of primary agricultural soils necessary to satisfy subdivision  
17 6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located.

18 \* \* \*

19 (5) State-owned airports. Notwithstanding 1 V.S.A. § 214 or any  
20 provision of this chapter to the contrary, the conversion of primary agricultural

1 soils by a development or subdivision by a State-owned airport shall not be  
2 required to conduct mitigation or pay a mitigation fee under this section if:

3 (A)(i) the development or subdivision is the result of land  
4 acquisition, improvement, or maintenance authorized under 5 V.S.A. chapter  
5 15, subchapter 6; or

6 (ii) the development or subdivision was authorized under the  
7 Federal Aviation Administration airport master plan for the State-owned  
8 airport; and

9 (B) the State-owned airport obtains any permit or permit amendment  
10 that may be required under this chapter for the development or subdivision.

11 \* \* \*

12 \* \* \* Environmental Court \* \* \*

13 Sec. 16. ENVIRONMENTAL DIVISION OF SUPERIOR COURT;  
14 POSITIONS; APPROPRIATION

15 (a) Establishment of the following limited-service positions is authorized in  
16 the Environmental Division of the Superior Court in fiscal year 2023:

17 (1) one Environmental Division judge; and

18 (2) one law clerk.

19 (b) There is appropriated the sum of \$300,000.00 to the Environmental  
20 Division of the Superior Court in fiscal year 2023 from the American Rescue

1 Plan Act of 2021 - Coronavirus State Fiscal Recovery Fund for the positions  
2 established in subsection (a) of this section.

3 \* \* \* Reports \* \* \*

4 Sec. 17. REPORT; ACT 250 JURISDICTION OVER AGRICULTURAL  
5 BUSINESSES

6 On or before January 15, 2023, the Natural Resources Board shall submit to  
7 the General Assembly a report with recommendations on how Act 250  
8 jurisdiction should be applied to agricultural businesses, including those  
9 located on properties already operating as farms. The report shall address the  
10 current land use planning requirements for farms and farms with accessory on-  
11 farm businesses and whether different types of businesses associated with  
12 farms and farming require different levels of review. The report may consider  
13 whether or not the location of such businesses is relevant and may consider the  
14 designation or adoption of agricultural business innovation zones with different  
15 levels of review.

16 Sec. 18. DESIGNATED AREA REPORT; APPROPRIATION

17 (a) The sum of \$150,000.00 is appropriated from the General Fund to the  
18 Department of Housing and Community Development in fiscal year 2023 for

1 the purpose of hiring a consultant to evaluate the State designation programs  
2 established in 24 V.S.A. chapter 76A pursuant to subsection (b) of this section.

3 (b)(1) The Department of Housing and Community Development shall hire  
4 an independent consultant to:

5 (A) review and assess the State designation programs and incentives  
6 established in 24 V.S.A. chapter 76A that recognize and invest in the vitality of  
7 Vermont's compact settlement areas; and

8 (B) conduct statewide stakeholder outreach to support the evaluation  
9 of and future improvements to the programs, including participation by State,  
10 regional, municipal, and advocacy and non-governmental organizations.

11 (2) The consultant shall make recommendations on how to:

12 (A) objectively define and map existing compact settlements as a  
13 basis for broader recognition;

14 (B) improve the consistency between and among regional plans and  
15 future land use maps;

16 (C) modernize these programs, including consideration of program  
17 reform or consolidation;

18 (D) make the designation programs and associated benefits more  
19 accessible to municipalities;

20 (E) apply regulatory and non-regulatory benefits;

1           (F) strengthen designation and incentives as a platform for place-  
2           based economic development, climate-action, complete streets, and equity and  
3           efficiency of public investment and service delivery;

4           (G) implement the smart growth principles established by 24 V.S.A.  
5           § 2791; and

6           (H) achieve the goals established in 24 V.S.A. § 4302.

7           (3) On or before July 15, 2023, the consultant shall submit a written  
8           report to the General Assembly with its findings and any recommendations for  
9           legislative action.

10                           \* \* \* Study Committee; Effective Date \* \* \*

11           Sec. 19. STUDY COMMITTEE; NATURAL RESOURCES BOARD

12                           STRUCTURE

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

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

20                           (1) the membership of the Board;

21                           (2) the appointment process;

