

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 * * *

1 (2) Provided a community investment agreement that has been executed
2 by authorized representatives of the municipal government, businesses and
3 property owners within the district, and community groups with an articulated
4 purpose of supporting downtown interests, and contains the following:

5 * * *

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

10 * * *

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

12 § 4449. ZONING PERMIT, CERTIFICATE OF OCCUPANCY, AND
13 MUNICIPAL LAND USE PERMIT

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

15 * * *

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

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2 ~~than 3,000.~~ [Repealed.]

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

13 * * *

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

15 * * *

16 (IV) Notwithstanding any other provision of this chapter to
17 the contrary, the construction of a priority housing project funded primarily by
18 the American Rescue Plan Act of 2021 only if the mixed income housing
19 project to be constructed contains at least 80 percent of the housing units with
20 a duration of affordability of not less than 30 years.

21 * * *

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

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

12 * * *

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

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

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

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

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

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

13 * * *

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

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

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

1 * * * Forest Blocks * * *

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

3 § 6001. DEFINITIONS

4 As used in this chapter:

5 * * *

6 (43) “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 (44) “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 features
14 that do not themselves possess tree cover and improvements constructed for
15 farming, logging, or forestry purposes.

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

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

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

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

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

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

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

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

18 (C) Forest blocks and connecting habitat. Will not result in an undue
19 adverse impact on forest blocks, connecting habitat, or rare and irreplaceable
20 natural areas. If a project as proposed would result in an undue adverse

1 impact, a permit may only be granted if effects are avoided, minimized, and
2 mitigated in accordance with rules adopted by the Board.

3 Sec. 9. CRITERION 8(C) RULEMAKING

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

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

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

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

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

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

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

3 (A) appropriate ratios for compensation;

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

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

7 (b) The Board shall convene a working group to provide input to the rule
8 prior to pre-filing with the Interagency Committee on Administrative Rules.

9 The Board shall convene the working group on or before June 1, 2023.

10 (c) The Board shall file a final proposed rule with the Secretary of State
11 and Legislative Committee on Administrative Rules on or before June 15,
12 2024.

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

14 § 127. RESOURCE MAPPING

15 (a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources
16 shall complete and maintain resource mapping based on the Geographic
17 Information System (GIS) or other technology. The mapping shall identify
18 natural resources throughout the State, including forest blocks, that may be
19 relevant to the consideration of energy projects and projects subject to chapter
20 151 of this title. The Center for Geographic Information shall be available to

1 provide assistance to the Secretary in carrying out the ~~GIS-based~~ resource
2 mapping.

3 (b) The Secretary ~~of Natural Resources~~ shall consider the ~~GIS-based~~
4 resource maps developed under subsection (a) of this section when providing
5 evidence and recommendations to the Public Utility Commission under
6 30 V.S.A. § 248(b)(5) and when commenting on or providing
7 recommendations under chapter 151 of this title to District Commissions on
8 other projects.

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

14 * * * Roads * * *

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

16 § 6001. DEFINITIONS

17 As used in this chapter:

18 * * *

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

20 * * *

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

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

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

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

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

1 pavement unless undertaken to improve the function of an existing drainage
2 structure.

3 (III) For the purpose of determining the length under this
4 subdivision (xi), the length of all roads and driveways within the tract or tracts
5 of land constructed within any continuous period of 10 years after October 1,
6 2020 shall be included.

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

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

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

14 * * *

15 * * * Wood Products Manufacturers * * *

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

17 § 6001. DEFINITIONS

18 * * *

19 (47) “Wood products manufacturer” means a manufacturer that
20 aggregates wood products from forestry operations and adds value through
21 processing or marketing in the wood products supply chain or directly to

1 consumers through retail sales. “Wood products manufacturer” includes
2 sawmills; veneer mills; pulp mills; pellet mills; producers of firewood,
3 woodchips, mulch, and fuel wood; and log and pulp concentration yards.
4 “Wood products manufacturer” does not include facilities that purchase,
5 market, and resell finished goods, such as wood furniture, wood pellets, and
6 milled lumber, without first receiving wood products from forestry operations.

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

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

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

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

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

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

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

20 (4) Permit amendments. A wood products manufacturer holding a
21 permit may request an amendment to existing permit conditions related to

1 hours of operation and seasonal restrictions to be consistent with subdivisions
2 (2) and (3) of this subsection. Requests for condition amendments under this
3 subsection shall not be subject to Act 250 Rule 34(E).

4 * * * One-acre towns * * *

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

6 § 6001. DEFINITIONS

7 * * *

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

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

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

19 * * *

*** Reports ***

1
2 Sec. 15. REPORT; ACT 250 JURISDICTION OVER AGRICULTURAL
3 BUSINESSES

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

14 Sec. 16. DESIGNATED AREA REPORT; APPROPRIATION

15 (a) The sum of \$150,000.00 is appropriated from the General Fund to the
16 Department of Housing and Community Development in fiscal year 2023 for
17 the purpose of hiring a consultant to evaluate the State designation programs
18 established in 24 V.S.A. chapter 76A pursuant to subsection (b) of this section.

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

1 (A) review and assess the State designation programs and incentives
2 established in 24 V.S.A. chapter 76A that recognize and invest in the vitality of
3 Vermont’s compact settlement areas; and

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

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

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

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

12 (C) modernize these programs, including consideration of program
13 reform or consolidation;

14 (D) make the designation programs and associated benefits more
15 accessible to municipalities;

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

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

20 (G) implement the smart growth principles established by 24 V.S.A.
21 § 2791; and

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

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

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

6 Sec. 17. STUDY COMMITTEE; NATURAL RESOURCES BOARD

7 STRUCTURE

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

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

15 (1) the membership of the Board;

16 (2) the appointment process;

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

18 (4) the responsibilities and authorities of the Board and District

19 Commissions;

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

