

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Environment and Energy to which was referred House
3 Bill No. 687 entitled “An act relating to community resilience and biodiversity
4 protection through land use” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 * * * Act 250 * * *

8 Sec. 1. PURPOSE

9 The purpose of this act is to further assist the State in achieving the
10 conservation vision and goals for the State established in 10 V.S.A. § 2802. It
11 provides a regulatory framework that supports the vision for Vermont of
12 human and natural community resilience and biodiversity protection in the face
13 of climate change, as described in 2023 Acts and Resolves No. 59. It would
14 strengthen the administration of the Act 250 program by changing the
15 structure, function, and name of the Natural Resources Board. It requires that
16 appeals of Act 250 permit decisions be heard by a five-member board called
17 the Environmental Review Board. The Environmental Division of the
18 Superior Court would continue to hear the other types of cases within its
19 jurisdiction. The Environmental Review Board would retain the current duties
20 of the Natural Resources Board in addition to hearing appeals, reviewing
21 applications for the planned growth area designation, review the future land

1 use maps of regional plans, and review the maps that establish the rural and
2 working lands areas. The Board would provide oversight, management, and
3 training to the Act 250 program staff and District Commissions and develop
4 Act 250 program policy through permit decisions and rulemaking. This
5 change would allow the Act 250 program to be a more citizen-friendly process.
6 The structure established under this act would be used to guide State financial
7 investment in infrastructure.

8 Sec. 2. 10 V.S.A. § 6000 is added to read:

9 § 6000. PURPOSE; CONSTRUCTION

10 The purposes of this chapter are to protect and conserve the environment of
11 the State and to support the achievement of the goals of the Capability and
12 Development Plan, of 24 V.S.A. § 4302(c), and of the conservation vision and
13 goals for the State established in section 2802 of this title.

14 Sec. 3. 10 V.S.A. § 6021 is amended to read:

15 § 6021. BOARD; VACANCY; REMOVAL

16 (a) ~~A Natural Resources~~ Board established. The Environmental Review
17 Board is created to administer the Act 250 program and hear appeals.

18 (1) The Board shall consist of five members appointed by the Governor,
19 after review and approval by the Environmental Review Board Nominating
20 Committee in accordance with subdivision (2) of this subsection and
21 confirmed with the advice and consent of the Senate, so that one appointment

1 expires in each year. The Chair shall be a full-time position, and the other four
2 members shall be half-time positions. In making these appointments, the
3 Governor and the Senate shall give consideration to candidates who have
4 experience, expertise, or skills relating to ~~the environment or land use~~ one or
5 more of the following areas: environmental science, natural resources law and
6 policy, land use planning, community planning, or environmental justice.

7 (A) The Governor shall appoint a chair of the Board, a position that
8 shall be a full-time position. The Governor shall ensure Board membership
9 reflects, to the extent possible, the racial, ethnic, gender, and geographic
10 diversity of the State. The Board shall not contain two members who reside in
11 the same county.

12 (B) Following initial appointments, the members, ~~except for the~~
13 ~~Chair,~~ shall be appointed for terms of ~~four~~ five years. All terms shall begin on
14 July 1 and expire on June 30. A member may continue serving until a
15 successor is appointed. The initial appointments shall be for staggered terms
16 of one year, two years, three years, four years, and five years.

17 (2) ~~The Governor shall appoint up to five persons, with preference given~~
18 ~~to former Environmental Board, Natural Resources Board, or District~~
19 ~~Commission members, with the advice and consent of the Senate, to serve as~~
20 ~~alternates for Board members.~~

1 (A) ~~Alternates shall be appointed for terms of four years, with initial~~
2 ~~appointments being staggered~~ The Environmental Review Board Nominating
3 Committee shall advertise the position when a vacancy will occur on the
4 Environmental Review Board.

5 (B) ~~The Chair of the Board may assign alternates to sit on specific~~
6 ~~matters before the Board in situations where fewer than five members are~~
7 ~~available to serve~~ The Nominating Committee shall review the applicants to
8 determine which are well qualified for appointment to the Board and shall
9 recommend those candidates to the Governor. The names of candidates shall
10 be confidential.

11 (C) The Governor shall appoint, with the advice and consent of the
12 Senate, a chair and four members of the Board from the list of well-qualified
13 candidates sent to the Governor by the Committee.

14 (b) ~~Any vacancy occurring in the membership of the Board shall be filled~~
15 ~~by the Governor for the unexpired portion of the term~~ Terms; vacancy;
16 succession. The term of each appointment subsequent to the initial
17 appointments described in subsection (a) of this section shall be five years.
18 Any appointment to fill a vacancy shall be for the unexpired portion of the
19 term vacated. A member may seek reappointment by informing the Governor.
20 If the Governor decides not to reappoint the member, the Nominating
21 Committee shall advertise the vacancy.

1 (c) Removal. Notwithstanding the provisions of 3 V.S.A. § 2004, members
2 shall only be removable for cause ~~only, except the Chair, who shall serve at the~~
3 ~~pleasure of the Governor~~ by the remaining members of the Board in
4 accordance with the Vermont Administrative Procedures Act. The Board shall
5 adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for
6 removal.

7 (d) Disqualified members. The Chair of the Board, upon request of the
8 Chair of a District Commission, may appoint and assign former Commission
9 members to sit on specific Commission cases when some or all of the regular
10 members and alternates of the District Commission are disqualified or
11 otherwise unable to serve.

12 (e) Retirement from office. When a Board member who hears all or a
13 substantial part of a case retires from office before the case is completed, the
14 member may remain a member of the Board, at the member's discretion, for
15 the purpose of concluding and deciding that case and signing the findings and
16 judgments involved. A retiring chair shall also remain a member for the
17 purpose of certifying questions of law if a party appeals to the Supreme Court.
18 For the service, the member shall receive a reasonable compensation to be
19 fixed by the remaining members of the Board and necessary expenses while on
20 official business.

21 Sec. 4. 10 V.S.A. § 6032 is added to read:

1 § 6032. ENVIRONMENTAL REVIEW BOARD NOMINATING
2 COMMITTEE

3 (a) Creation. The Environmental Review Board Nominating Committee is
4 created for the purpose of assessing the qualifications of applicants for
5 appointment to the Environmental Review Board in accordance with section
6 6021 of this title.

7 (b) Members. The Committee shall consist of six members who shall be
8 appointed as follows:

9 (1) The Governor shall appoint two members from the Executive
10 Branch, with at least one being an employee of the Department of Human
11 Resources.

12 (2) The Speaker of the House of Representatives shall appoint two
13 members from the House of Representatives.

14 (3) The Senate Committee on Committees shall appoint two members
15 from the Senate.

16 (c) Terms. The members of the Committee shall serve for terms of two
17 years. Members shall serve until their successors are appointed. Members
18 shall serve not more than three consecutive terms. A legislative member who
19 is appointed as a member of the Committee shall retain the position for the
20 term appointed to the Committee even if the member is subsequently not

1 reelected to the General Assembly during the member's term on the
2 Committee.

3 (d) Chair. The members shall elect their own chair.

4 (e) Quorum. A quorum of the Committee shall consist of four members.

5 (f) Staff and services. The Committee is authorized to use the staff and
6 services of appropriate State Agencies and Departments as necessary to
7 conduct investigations of applicants.

8 (g) Confidentiality. Except as provided in subsection (h) of this section,
9 proceedings of the Committee, including the names of candidates considered
10 by the Committee and information about any candidate submitted to the
11 Governor, shall be confidential. The provisions of 1 V.S.A. § 317(e)
12 (expiration of Public Records Act exemptions) shall not apply to the
13 exemptions or confidentiality provisions in this subsection.

14 (h) Public information. The following shall be public:

15 (1) operating procedures of the Committee;

16 (2) standard application forms and any other forms used by the
17 Committee, provided they do not contain personal information about a
18 candidate or confidential proceedings;

19 (3) all proceedings of the Committee prior to the receipt of the first
20 candidate's completed application; and

1 (4) at the time the Committee sends the names of the candidates to the
2 Governor, the total number of applicants for the vacancies and the total number
3 of candidates sent to the Governor.

4 (i) Reimbursement. Legislative members of the Committee shall be
5 entitled to per diem compensation and reimbursement for expenses in
6 accordance with 2 V.S.A. § 23. Compensation and reimbursement shall be
7 paid from the legislative appropriation.

8 (j) Duties.

9 (1) When a vacancy occurs, the Committee shall review applicants to
10 determine which are well qualified for the Board and submit those names to
11 the Governor. The Committee shall submit to the Governor a summary of the
12 qualifications and experience of each candidate whose name is submitted to the
13 Governor together with any further information relevant to the matter.

14 (2) An applicant for the position of member of the Environmental
15 Review Board shall not be required to be an attorney. If the candidate is
16 admitted to practice law in Vermont or practices a profession requiring
17 licensure, certification, or other professional regulation by the State, the
18 Committee shall submit the candidate's name to the Court Administrator or the
19 applicable State professional regulatory entity, and that entity shall disclose to
20 the Committee any professional disciplinary action taken or pending
21 concerning the candidate.

1 (3) Candidates shall be sought who have experience, expertise, or skills
2 relating to one or more of the following areas: environmental science, natural
3 resources law and policy, land use planning, community planning, or
4 environmental justice.

5 (4) The Committee shall ensure a candidate possesses the following
6 attributes:

7 (A) Integrity. A candidate shall possess a record and reputation for
8 excellent character and integrity.

9 (B) Impartiality. A candidate shall exhibit an ability to make judicial
10 determinations in a manner free of bias.

11 (C) Work ethic. A candidate shall demonstrate diligence.

12 (D) Availability. A candidate shall have adequate time to dedicate to
13 the position.

14 Sec. 5. 10 V.S.A. § 6025 is amended to read:

15 § 6025. RULES

16 (a) The Board may adopt rules of procedure for itself and the District
17 Commissions. The Board shall adopt rules of procedure that govern appeals
18 and other contested cases before it that are consistent with this chapter. The
19 Board’s rules of procedure for approving regional plans and regional plan
20 maps shall ensure that the maps are consistent with legislative intent.

21 * * *

1 Sec. 6. 10 V.S.A. § 6027 is amended to read:

2 § 6027. POWERS

3 (a) The Board and District Commissions ~~each~~ shall have supervisory
4 authority in environmental matters respecting projects within their jurisdiction
5 and shall apply their independent judgment in determining facts and
6 interpreting law. Each shall have the power, with respect to any matter within
7 its jurisdiction, to:

8 (1) administer oaths, take depositions, subpoena and compel the
9 attendance of witnesses, and require the production of evidence;

10 (2) allow parties to enter upon lands of other parties for the purposes of
11 inspecting and investigating conditions related to the matter before the Board
12 or Commission;

13 (3) enter upon lands for the purpose of conducting inspections,
14 investigations, examinations, tests, and site evaluations as it deems necessary
15 to verify information presented in any matter within its jurisdiction; and

16 (4) apply for and receive grants from the federal government and from
17 other sources.

18 (b) The powers granted under this chapter are additional to any other
19 powers ~~which~~ that may be granted by other legislation.

20 (c) The ~~Natural Resources~~ Board may designate or establish ~~such~~ regional
21 offices as it deems necessary to implement the provisions of this chapter and

1 the rules adopted hereunder. The ~~Natural Resources~~ Board may designate or
2 require a regional planning commission to receive applications, provide
3 administrative assistance, perform investigations, and make recommendations.

4 (d) At the request of a District Commission, if the Board Chair determines
5 that the workload in the requesting district is likely to result in unreasonable
6 delays or that the requesting District Commission is disqualified to hear a case,
7 the Chair may authorize the District Commission of another district to sit in the
8 requesting district to consider one or more applications.

9 (e) The ~~Natural Resources~~ Board may by rule allow joint hearings to be
10 conducted with specified State agencies or specified municipalities.

11 (f) The Board shall publish its decisions online. The Board may publish
12 online or contract to publish annotations and indices of its decisions, the
13 decisions of the Environmental Division of the Superior Court and the
14 Supreme Court, and the text of those decisions. The published product shall be
15 available at a reasonable rate to the general public and at a reduced rate to
16 libraries and governmental bodies within the State.

17 (g) The ~~Natural Resources~~ Board shall manage the process by which land
18 use permits are issued under section 6086 of this title, may initiate enforcement
19 on related matters under the provisions of chapters 201 and 211 of this title,
20 and may ~~petition the Environmental Division~~ initiate and hear petitions for

1 revocation of land use permits issued under this chapter. Grounds for
2 revocation are:

3 (1) noncompliance with this chapter, rules adopted under this chapter, or
4 an order that is issued that relates to this chapter;

5 (2) noncompliance with any permit or permit condition;

6 (3) failure to disclose all relevant and material facts in the application or
7 during the permitting process;

8 (4) misrepresentation of any relevant and material fact at any time;

9 (5) failure to pay a penalty or other sums owed pursuant to, or other
10 failure to comply with, court order, stipulation agreement, schedule of
11 compliance, or other order issued under Vermont statutes and related to the
12 permit; or

13 (6) failure to provide certification of construction costs, as required
14 under subsection 6083a(a) of this title, or failure to pay supplemental fees as
15 required under that section.

16 (h) The ~~Natural Resources~~ Board may hear appeals of fee refund requests
17 under section 6083a of this title. The Board shall hear appeals of decisions
18 made by District Commissions and district coordinators.

19 (i) The Chair, subject to the direction of the Board, shall have general
20 charge of the offices and employees of the Board and the offices and
21 employees of the District Commissions.

1 State classified system, and shall serve at the pleasure of the Board. The

2 Director shall be responsible for:

3 (1) supervising and administering the operation and implementation of
4 this chapter and the rules adopted by the Board as directed by the Board;

5 (2) assisting the Board in its duties and administering the requirements
6 of this chapter;

7 (3) employing any staff as may be required to carry out the functions of
8 the Board; and

9 (4) preparing an annual budget for submission to the Board.

10 Sec. 8. 10 V.S.A. § 6084 is amended to read:

11 § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF
12 REVIEW

13 (a) ~~On or before the date of~~ Upon the filing of an application with the
14 District Commission, the ~~applicant~~ District Commission shall send, by
15 electronic means, notice ~~and a copy~~ of the ~~initial~~ application to the owner of
16 the land if the applicant is not the owner; the municipality in which the land is
17 located; the municipal and regional planning commissions for the municipality
18 in which the land is located; the Vermont Agency of Natural Resources; and
19 any adjacent Vermont municipality and municipal and regional planning
20 commission if the land is located on a municipal or regional boundary. The
21 ~~applicant shall furnish to the District Commission the names of those furnished~~

1 ~~notice by affidavit, and shall post~~ send by electronic means a copy of the notice
2 ~~in~~ to the town clerk's office of the town or towns in which the project lies. The
3 town clerk shall post the notice in the town office. The applicant shall also
4 provide a list of adjoining landowners to the District Commission. Upon
5 request and for good cause, the District Commission may authorize the
6 applicant to provide a partial list of adjoining landowners in accordance with
7 Board rules.

8 * * *

9 (e) Any notice for a major or minor application, as required by this section,
10 shall also be published by the District Commission in a local newspaper
11 generally circulating in the area where the development or subdivision is
12 located and on the Board's website not more than ~~ten~~ 10 days after receipt of a
13 complete application.

14 * * *

15 Sec. 9. 10 V.S.A. § 6086(f) is amended to read:

16 (f) Prior to any appeal of a permit issued by a District Commission, any
17 aggrieved party may file a request for a stay of construction with the District
18 Commission together with a declaration of intent to appeal the permit. The
19 stay request shall be automatically granted for seven days upon receipt and
20 notice to all parties and pending a ruling on the merits of the stay request
21 pursuant to Board rules. The automatic stay shall not extend beyond the 30-

1 day appeal period unless a valid appeal has been filed with the ~~Environmental~~
2 ~~Division~~ Board. The automatic stay may be granted only once under this
3 subsection during the 30-day appeal period. Following appeal of the District
4 Commission decision, any stay request must be filed with the ~~Environmental~~
5 ~~Division pursuant to the provisions of chapter 220 of this title~~ Board. A
6 District Commission shall not stay construction authorized by a permit
7 processed under the Board's minor application procedures.

8 Sec. 10. 10 V.S.A. § 6089 is amended to read:

9 § 6089. APPEALS

10 ~~Appeals of any act or decision of a District Commission under this chapter~~
11 ~~or a district coordinator under subsection 6007(c) of this title shall be made to~~
12 ~~the Environmental Division in accordance with chapter 220 of this title. For~~
13 ~~the purpose of this section, a decision of the Chair of a District Commission~~
14 ~~under section 6001e of this title on whether action has been taken to~~
15 ~~circumvent the requirements of this chapter shall be considered an act or~~
16 ~~decision of the District Commission.~~

17 (a)(1) Appeals to the Board. An appeal of any act or decision of a District
18 Commission shall be to the Board and shall be accompanied by a fee
19 prescribed by section 6083a of this title.

20 (2) Participation before District Commission. A person shall not appeal
21 an act or decision that was made by a District Commission unless the person

1 was granted party status by the District Commission pursuant to subdivision
2 6085(c)(1)(E) of this title, participated in the proceedings before the District
3 Commission, and retained party status at the end of the District Commission
4 proceedings. In addition, the person may only appeal those issues under the
5 criteria with respect to which the person was granted party status. However,
6 notwithstanding these limitations, a person may appeal an act or decision of the
7 District Commission if the Board determines that:

8 (A) there was a procedural defect that prevented the person from
9 obtaining party status or participating in the proceeding;

10 (B) the decision being appealed is the grant or denial of party status;
11 or

12 (C) some other condition exists that would result in manifest injustice
13 if the person’s right to appeal was disallowed.

14 (3) Filing the appeal. An appellant to the Board, under this section,
15 shall file with the notice of appeal a statement of the issues to be addressed in
16 the appeal, a summary of the evidence that will be presented, and a preliminary
17 list of witnesses who will testify on behalf of the appellant.

18 (4) De novo hearing. The Board shall hold a de novo hearing on all
19 findings requested by any party that files an appeal or cross appeal, according
20 to the rules of the Board. The hearing shall be held in the municipality where
21 the project subject to the appeal is located, if possible, or as close as possible.

1 (5) Notice of appeal. Notice of appeal shall be filed with the Board
2 within 30 days following the act or decision by the District Commission. The
3 Board shall notify the parties who had party status before the District
4 Commission of the filing of any appeal.

5 (6) Prehearing discovery.

6 (A) A party may obtain discovery of expert witnesses who may
7 provide testimony relevant to the appeal. Expert witness prefiled testimony
8 shall be in accordance with the Vermont Rules of Evidence. The use of
9 discovery for experts shall comply with the requirements in the Vermont Rules
10 of Civil Procedure 26–37.

11 (B) Interrogatories served on nonexpert witnesses shall be limited to
12 discovery of the identity of witnesses and a summary of each witness'
13 testimony, except by order of the Board for cause shown. Interrogatories
14 served on expert witnesses shall be in accordance with the Vermont Rules of
15 Civil Procedure.

16 (C) Parties may submit requests to produce and requests to enter
17 upon land pursuant to the Vermont Rule of Civil Procedure 34.

18 (D) Parties may not take depositions of witnesses, except by order of
19 the Board for cause shown.

20 (E) The Board may require a party to supplement, as necessary, any
21 prehearing testimony that is provided.

1 (b) Prior decisions. Prior decisions of the former Environmental Board, the
2 Water Resources Board, the Waste Facilities Panel, and the Environmental
3 Division of the Superior Court shall be given the same weight and
4 consideration as prior decisions of the Environmental Review Board.

5 (c) Appeals to Supreme Court. An appeal from a decision of the Board
6 under subsection (a) of this section shall be to the Supreme Court by a party as
7 set forth in subsection 6085(c) of this title.

8 (d) Objections. No objection that has not been raised before the Board may
9 be considered by the Supreme Court, unless the failure or neglect to urge such
10 objection shall be excused because of extraordinary circumstances.

11 (e) Appeals of decisions. An appeal of a decision by the Board shall be
12 allowed pursuant to 3 V.S.A. § 815, including the unreasonableness or
13 insufficiency of the conditions attached to a permit. An appeal from the
14 District Commission shall be allowed for any reason, except no appeal shall be
15 allowed when an application has been granted and no hearing was requested.

16 (f) Precedent. Precedent from the former Environmental Board and of the
17 Environmental Review Board that interpret this chapter shall be provided the
18 same deference by the Supreme Court as precedents accorded to other
19 Executive Branch agencies charged with administering their enabling act. On
20 appeal to the Supreme Court from the Environmental Review Board, decisions

1 of the Environmental Review Board interpreting this act also shall be accorded
2 that deference.

3 (g) Clearly erroneous. Upon appeal to the Supreme Court, the Board’s
4 findings of fact shall be accepted unless clearly erroneous.

5 (h) Completion of case. A case shall be deemed completed when the Board
6 enters a final decision even though that decision is appealed to the Supreme
7 Court and remanded by that Court.

8 (i) Court of record; jurisdiction. The Board shall have the powers of a
9 court of record in the determination and adjudication of all matters within its
10 jurisdiction. It may initiate proceedings on any matter within its jurisdiction.
11 It may render judgments and enforce the same by any suitable process issuable
12 by courts in this State. An order issued by the Board on any matter within its
13 jurisdiction shall have the effect of a judicial order. The Board’s jurisdiction
14 shall include:

15 (1) the issuance of declaratory rulings on the applicability of this chapter
16 and rules or orders issued under this chapter, pursuant to 3 V.S.A. § 808; and

17 (2) the issuance of decisions on appeals pursuant to sections 6007 and
18 6089 of this title.

1 Sec. 11. 10 V.S.A. § 6007 is amended to read:

2 § 6007. ACT 250 DISCLOSURE STATEMENT; JURISDICTIONAL
3 DETERMINATION

4 * * *

5 (c) With respect to the partition or division of land, or with respect to an
6 activity that might or might not constitute development, any person may
7 submit to the district coordinator an “Act 250 Disclosure Statement” and other
8 information required by the rules of the Board and may request a jurisdictional
9 opinion from the district coordinator concerning the applicability of this
10 chapter. If a requestor wishes a final determination to be rendered on the
11 question, the district coordinator, at the expense of the requestor and in
12 accordance with rules of the Board, shall publish notice of the issuance of the
13 opinion in a local newspaper generally circulating in the area where the land
14 that is the subject of the opinion is located and shall serve the opinion on all
15 persons listed in subdivisions 6085(c)(1)(A) through (D) of this title. In
16 addition, the requestor who is seeking a final determination shall consult with
17 the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list
18 of persons who shall be notified by the district coordinator because they are
19 adjoining property owners or other persons who would be likely to be able to
20 demonstrate a particularized interest protected by this chapter that may be
21 affected by an act or decision by a District Commission.

1 (k) Any regional planning commission filing a regional plan or future land
2 use map to be reviewed by the Board shall pay a fee of \$250.00.

3 * * * Appeals * * *

4 Sec. 13. 10 V.S.A. chapter 220 is amended to read:

5 CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

6 § 8501. PURPOSE

7 It is the purpose of this chapter to:

8 (1) consolidate existing appeal routes for municipal zoning and
9 subdivision decisions and acts or decisions of the Secretary of Natural
10 Resources, ~~district environmental coordinators, and District Commissions,~~
11 excluding enforcement actions brought pursuant to chapters 201 and 211 of
12 this title and the adoption of rules under 3 V.S.A. chapter 25;

13 (2) standardize the appeal periods, the parties who may appeal these acts
14 or decisions, and the ability to stay any act or decision upon appeal, taking into
15 account the nature of the different programs affected;

16 (3) ~~encourage people to get involved in the Act 250 permitting process~~
17 ~~at the initial stages of review by a District Commission by requiring~~
18 ~~participation as a prerequisite for an appeal of a District Commission decision~~
19 ~~to the Environmental Division;~~

20 (4) ~~assure~~ ensure that clear appeal routes exist for acts and decisions of
21 the Secretary of Natural Resources; and

1 ~~(5)~~(4) consolidate appeals of decisions related to renewable energy
2 generation plants and telecommunications facilities with review under,
3 respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of
4 proceedings pertaining to telecommunications facilities occurring only while
5 30 V.S.A. § 248a remains in effect.

6 § 8502. DEFINITIONS

7 As used in this chapter:

8 (1) ~~“District Commission” means a District Environmental Commission~~
9 ~~established under chapter 151 of this title. [Repealed.]~~

10 (2) ~~“District coordinator” means a district environmental coordinator~~
11 ~~attached to a District Commission established under chapter 151 of this title.~~
12 ~~[Repealed.]~~

13 (3) “Environmental Court” or “Environmental Division” means the
14 Environmental Division of the Superior Court established by 4 V.S.A. § 30.

15 (4) ~~“Natural Resources~~ Environmental Review Board” or “Board”
16 means the Board established under chapter 151 of this title.

17 (5) “Party by right” means the following:

18 (A) the applicant;

19 (B) the landowner, if the applicant is not the landowner;

20 (C) the municipality in which the project site is located and the
21 municipal and regional planning commissions for that municipality;

1 (D) if the project site is located on a boundary, any Vermont
2 municipality adjacent to that border and the municipal and regional planning
3 commissions for that municipality;

4 (E) the solid waste management district in which the land is located,
5 if the development or subdivision constitutes a facility pursuant to subdivision
6 6602(10) of this title; and

7 (F) any State agency affected by the proposed project.

8 (6) “Person” means any individual; partnership; company; corporation;
9 association; joint venture; trust; municipality; the State of Vermont or any
10 agency, department, or subdivision of the State; any federal agency; or any
11 other legal or commercial entity.

12 (7) “Person aggrieved” means a person who alleges an injury to a
13 particularized interest protected by the provisions of law listed in section 8503
14 of this title; attributable to an act or decision by ~~a district coordinator, District~~
15 ~~Commissioner~~, the Secretary; or the Environmental Division that can be
16 redressed by the Environmental Division or the Supreme Court.

17 (8) “Secretary” means the Secretary of Natural Resources or the
18 Secretary’s duly authorized representative. As used in this chapter,
19 “Secretary” ~~shall also mean~~ means the Commissioner of Environmental
20 Conservation; the Commissioner of Forests, Parks and Recreation; and the

1 Commissioner of Fish and Wildlife; with respect to those statutes that refer to
2 the authority of that commissioner or department.

3 § 8503. APPLICABILITY

4 (a) This chapter shall govern all appeals of an act or decision of the
5 Secretary, excluding enforcement actions under chapters 201 and 211 of this
6 title and rulemaking, under the following authorities and under the rules
7 adopted under those authorities:

8 * * *

9 (b) ~~This chapter shall govern:~~

10 ~~(1) all appeals from an act or decision of a District Commission under~~
11 ~~chapter 151 of this title, excluding appeals of application fee refund requests;~~

12 ~~(2) appeals from an act or decision of a district coordinator under~~
13 ~~subsection 6007(c) of this title;~~

14 ~~(3) appeals from findings of fact and conclusions of law issued by the~~
15 ~~Natural Resources Board in its review of a designated growth center for~~
16 ~~conformance with the criteria of subsection 6086(a) of this title, pursuant to~~
17 ~~authority granted at 24 V.S.A. § 2793e(f). [Repealed.]~~

18 (c) This chapter shall govern all appeals arising under 24 V.S.A.
19 chapter 117, the planning and zoning chapter.

20 (d) This chapter shall govern all appeals from an act or decision of the
21 Environmental Division under this chapter.

1 (e) This chapter shall not govern appeals from rulemaking decisions by the
2 ~~Natural Resources~~ Environmental Review Board under chapter 151 of this title
3 or enforcement actions under chapters 201 and 211 of this title.

4 (f) This chapter shall govern all appeals of acts or decisions of the
5 legislative body of a municipality arising under 24 V.S.A. chapter 61,
6 subchapter 10, relating to the municipal certificate of approved location for
7 salvage yards.

8 (g) This chapter shall govern all appeals of an act or decision of the
9 Secretary of Natural Resources that a solid waste implementation plan for a
10 municipality proposed under 24 V.S.A. § 2202a conforms with the State Solid
11 Waste Implementation Plan adopted pursuant to section 6604 of this title.

12 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

13 (a) ~~Act 250 and Agency~~ appeals. Within 30 days of the date of following
14 the act or decision, any person aggrieved by an act or decision of the Secretary,
15 ~~a District Commission, or a district coordinator~~ under the provisions of law
16 listed in section 8503 of this title, or any party by right, may appeal to the
17 Environmental Division, except for an act or decision of the Secretary under
18 subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

19 * * *

20 (c) Notice of the filing of an appeal.

1 ~~(1) Upon filing an appeal from an act or decision of the District~~
2 ~~Commission, the appellant shall notify all parties who had party status as of the~~
3 ~~end of the District Commission proceeding, all friends of the Commission, and~~
4 ~~the Natural Resources Board that an appeal is being filed. In addition, the~~
5 ~~appellant shall publish notice not more than 10 days after providing notice as~~
6 ~~required under this subsection, at the appellant’s expense, in a newspaper of~~
7 ~~general circulation in the area of the project that is the subject of the decision.~~

8 [Repealed.]

9 * * *

10 ~~(d) Requirement to participate before the District Commission or the~~
11 ~~Secretary.~~

12 ~~(1) Participation before District Commission. An aggrieved person shall~~
13 ~~not appeal an act or decision that was made by a District Commission unless~~
14 ~~the person was granted party status by the District Commission pursuant to~~
15 ~~subdivision 6085(c)(1)(E) of this title, participated in the proceedings before~~
16 ~~the District Commission, and retained party status at the end of the District~~
17 ~~Commission proceedings. In addition, the person may only appeal those issues~~
18 ~~under the criteria with respect to which the person was granted party status.~~
19 ~~However, notwithstanding these limitations, an aggrieved person may appeal~~
20 ~~an act or decision of the District Commission if the Environmental judge~~
21 ~~determines that:~~

1 ~~(A) there was a procedural defect that prevented the person from~~
2 ~~obtaining party status or participating in the proceeding;~~

3 ~~(B) the decision being appealed is the grant or denial of party status;~~
4 ~~or~~

5 ~~(C) some other condition exists that would result in manifest injustice~~
6 ~~if the person's right to appeal was disallowed. [Repealed.]~~

7 (2) Participation before the Secretary.

8 * * *

9 ~~(e) Act 250 jurisdictional determinations by a district coordinator.~~

10 ~~(1) The appellant shall provide notice of the filing of an appeal to each~~
11 ~~person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this~~
12 ~~title, to each person on an approved subdivision 6085(c)(1)(E) list, and to the~~
13 ~~Natural Resources Board.~~

14 ~~(2) Failure to appeal within the time required under subsection (a) of~~
15 ~~this section shall render the decision of the district coordinator under~~
16 ~~subsection 6007(c) of this title the final determination regarding jurisdiction~~
17 ~~under chapter 151 of this title unless the underlying jurisdictional opinion was~~
18 ~~not properly served on persons listed in subdivisions 6085(c)(1)(A) through~~
19 ~~(D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved~~
20 ~~under subsection 6007(c) of this title. [Repealed.]~~

21 * * *

1 (g) Consolidated appeals. The Environmental Division may consolidate or
2 coordinate different appeals where those appeals all relate to the same project.

3 * * *

4 (i) ~~Deference to Agency technical determinations. In the adjudication of~~
5 ~~appeals relating to land use permits under chapter 151 of this title, technical~~
6 ~~determinations of the Secretary shall be accorded the same deference as they~~
7 ~~are accorded by a District Commission under subsection 6086(d) of this title.~~
8 [Repealed.]

9 * * *

10 (k) Limitations on appeals. Notwithstanding any other provision of this
11 section;

12 ~~(1) there shall be no appeal from a District Commission decision when~~
13 ~~the Commission has issued a permit and no hearing was requested or held, or~~
14 ~~no motion to alter was filed following the issuance of an administrative~~
15 ~~amendment;~~

16 ~~(2) a municipal decision regarding whether a particular application~~
17 ~~qualifies for a recorded hearing under 24 V.S.A. § 4471(b) shall not be subject~~
18 ~~to appeal;~~

19 ~~(3) if a District Commission issues a partial decision under subsection~~
20 ~~6086(b) of this title, any appeal of that decision must be taken within 30 days~~
21 ~~of the date of that decision.~~

1 (l) Representation. The Secretary may represent the Agency of Natural
2 Resources in all appeals under this section. ~~The Chair of the Natural~~
3 ~~Resources Board may represent the Board in any appeal under this section,~~
4 ~~unless the Board directs otherwise.~~ If more than one State agency, ~~other than~~
5 ~~the Board,~~ either appeals or seeks to intervene in an appeal under this section,
6 only the Attorney General may represent the interests of those agencies of the
7 State in the appeal.

8 (m) Precedent. Prior decisions of the Environmental Board, Water
9 Resources Board, and Waste Facilities Panel shall be given the same weight
10 and consideration as prior decisions of the Environmental Division.

11 (n) Intervention. Any person may intervene in a pending appeal if that
12 person:

13 (1) appeared as a party in the action appealed from and retained party
14 status;

15 (2) is a party by right;

16 (3) ~~is the Natural Resources Board;~~ [Repealed.]

17 (4) is a person aggrieved, as defined in this chapter;

18 (5) qualifies as an “interested person,” as established in 24 V.S.A.

19 § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

20 (6) meets the standard for intervention established in the Vermont Rules
21 of Civil Procedure.

1 (o) With respect to review of an act or decision of the Secretary pursuant to
2 3 V.S.A. § 2809, the Division may reverse the act or decision or amend an
3 allocation of costs to an applicant only if the Division determines that the act,
4 decision, or allocation was arbitrary, capricious, or an abuse of discretion. In
5 the absence of such a determination, the Division shall require the applicant to
6 pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

7 (p) Administrative record. The Secretary shall certify the administrative
8 record as defined in chapter 170 of this title and shall transfer a certified copy
9 of that record to the Environmental Division when:

10 ~~(1) there is an appeal of an act or decision of the Secretary that is based~~
11 ~~on that record; or~~

12 ~~(2) there is an appeal of a decision of a District Commission, and the~~
13 ~~applicant used a decision of the Secretary based on that record to create a~~
14 ~~presumption under a criterion of subsection 6086(a) of this title that is at issue~~
15 ~~in the appeal.~~

16 § 8505. APPEALS TO THE SUPREME COURT

17 (a) Any person aggrieved by a decision of the Environmental Division
18 pursuant to this subchapter, any party by right, or any person aggrieved by a
19 decision of the Environmental Review Board may appeal to the Supreme Court
20 within 30 days ~~of~~ following the date of the entry of the order or judgment
21 appealed from, provided that:

1 (1) the person was a party to the proceeding before the Environmental
2 Division; ~~or~~

3 (2) the decision being appealed is the denial of party status; or

4 (3) the Supreme Court determines that:

5 (A) there was a procedural defect that prevented the person from
6 participating in the proceeding; or

7 (B) some other condition exists that would result in manifest injustice
8 if the person’s right to appeal were disallowed.

9 * * *

10 * * * Environmental Division * * *

11 Sec. 14. 4 V.S.A. § 34 is amended to read:

12 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

13 The Environmental Division shall have:

14 (1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220;
15 and

16 (2) jurisdiction of matters arising under 24 V.S.A. chapter 61,
17 subchapter 12 and 24 V.S.A. chapter 117; ~~and~~

18 ~~(3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.~~

1 * * * Transition; Revision Authority; Effective Dates * * *

2 Sec. 15. ENVIRONMENTAL REVIEW BOARD POSITIONS;

3 APPROPRIATION

4 (a) The following new positions are created at the Environmental Review
5 Board for the purposes of carrying out this act:

6 (1) one Staff Attorney 1; and

7 (2) four half-time Environmental Review Board members.

8 (b) The sum of \$384,000.00 is appropriated to the Environmental Review
9 Board from the General Fund in fiscal year 2025 for the positions established
10 in subsection (a) of this section and for additional operating costs required to
11 implement the appeals process established in this act.

12 Sec. 16. NATURAL RESOURCES BOARD TRANSITION

13 (a) The Governor shall appoint the members of Environmental Review
14 Board on or before July 1, 2025, and the terms of any Natural Resources Board
15 member not appointed consistent with the requirements of 10 V.S.A.
16 § 6021(a)(1)(A) or (B) shall expire on that day.

17 (b) As of July 1, 2025, all appropriations and employee positions of the
18 Natural Resources Board are transferred to the Environmental Review Board.

19 (c) The Environmental Review Board shall adopt rules of procedure for its
20 hearing process pursuant to 10 V.S.A. § 6025(a) on or before July 1, 2026.

1 Sec. 17. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

2 Notwithstanding the repeal of its jurisdictional authority to hear appeals
3 relative to land use permits under Sec. 13 of this act, the Environmental
4 Division of the Superior Court shall continue to have jurisdiction to complete
5 its consideration of any appeal that is pending before it as of July 1, 2026 if the
6 act or appeal has been filed. The Environmental Review Board shall have
7 authority to be a party in any appeals pending under this section until July 1,
8 2026.

9 Sec. 18. REVISION AUTHORITY

10 In preparing the Vermont Statutes Annotated for publication in 2024, the
11 Office of Legislative Counsel shall replace all references to the “Natural
12 Resources Board” with the “Environmental Review Board” in Title 3, Title 10,
13 Title 24, Title 29, Title 30, and Title 32.

14 * * * Forest Blocks * * *

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

16 § 6001. DEFINITIONS

17 As used in this chapter:

18 * * *

19 (45) “Connecting habitat” means land or water, or both, that links
20 patches of habitat within a landscape, allowing the movement, migration, and
21 dispersal of wildlife and plants and the functioning of ecological processes. A

1 connecting habitat may include features including recreational trails and
2 improvements constructed for farming, logging, or forestry purposes.

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

8 (47) “Fragmentation” means the division or conversion of a forest block
9 or connecting habitat by the separation of a parcel into two or more parcels; the
10 construction, conversion, relocation, or enlargement of any building or other
11 structure, or of any mining, excavation, or landfill; and any change in the use
12 of any building or other structure, or land, or extension of use of land.

13 However, fragmentation does not include the division or conversion of a forest
14 block or connecting habitat by a recreational trail or by improvements
15 constructed for farming, logging, or forestry purposes below the elevation of
16 2,500 feet.

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

19 (49) As used in subdivisions (45), (46), and (47) of this section,
20 “recreational trail” means a corridor that is not paved and that is used for

1 recreational purposes, including hiking, walking, bicycling, cross-country
2 skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.

3 Sec. 20. 10 V.S.A. § 6086(a)(8) is amended to read:

4 (8) Ecosystem protection; scenic beauty; historic sites. Will not have an
5 undue adverse effect on the scenic or natural beauty of the area, aesthetics,
6 historic sites, or rare and irreplaceable natural areas.

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

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

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

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

21 (B) Forest blocks.

1 (i) A permit will not be granted for a development or subdivision
2 within or partially within a forest block unless the applicant demonstrates that:

3 (I) the development or subdivision will avoid fragmentation of
4 the forest block through the design of the project or the location of project
5 improvements, or both;

6 (II) it is not feasible to avoid fragmentation of the forest block
7 and the design of the development or subdivision minimizes fragmentation of
8 the forest block; or

9 (III) it is not feasible to avoid or minimize fragmentation of the
10 forest block and the applicant will mitigate the fragmentation in accordance
11 with section 6094 of this title.

12 (ii) Methods for avoiding or minimizing the fragmentation of a
13 forest block may include:

14 (I) Locating buildings and other improvements and operating
15 the project in a manner that avoids or minimizes incursion into and disturbance
16 of the forest block, including clustering of buildings and associated
17 improvements.

18 (II) Designing roads, driveways, and utilities that serve the
19 development or subdivision to avoid or minimize fragmentation of the forest
20 block. Such design may be accomplished by following or sharing existing
21 features on the land such as roads, tree lines, stonewalls, and fence lines.

1 (C) Connecting habitat.

2 (i) A permit will not be granted for a development or subdivision
3 unless the applicant demonstrates that:

4 (I) the development or subdivision will avoid fragmentation of
5 connecting habitat through the design of the project or the location of project
6 improvements, or both; or

7 (II) it is not feasible to avoid fragmentation of the connecting
8 habitat and the design of the development or subdivision minimizes
9 fragmentation of the connector;

10 (III) it is not feasible to avoid or minimize fragmentation of the
11 habitat connector and the applicant will mitigate the fragmentation in
12 accordance with section 6094 of this title.

13 (ii) Methods for avoiding or minimizing the fragmentation of a
14 connecting habitat may include:

15 (I) locating buildings and other improvements at the farthest
16 feasible location from the center of the connector;

17 (II) designing the location of buildings and other improvements
18 to leave the greatest contiguous portion of the area undisturbed in order to
19 facilitate wildlife travel through the connector; or

20 (III) when there is no feasible site for construction of buildings
21 and other improvements outside the connector, designing the buildings and

1 improvements to facilitate the continued viability of the connector for use by
2 wildlife.

3 Sec. 21. CRITERION 8(B) AND (C) RULEMAKING

4 On or before June 15, 2025, the Natural Resources Board shall file a final
5 proposed rule with the Secretary of State and Legislative Committee on
6 Administrative Rules to implement the requirements for the administration of
7 10 V.S.A. § 6086(a)(8)(B) and (C).

8 **Sec. 22. 10 V.S.A. § 6094 is added to read:**

9 **§ 6094. MITIGATION OF FOREST BLOCKS**

10 **(a) A District Commission may consider a proposal to mitigate, through**
11 **compensation, the fragmentation of a forest block if the applicant demonstrates**
12 **that it is not feasible to avoid or minimize fragmentation of the block in**
13 **accordance with the respective requirements of subdivision 6086(a)(8)(B) of**
14 **this chapter. A District Commission may approve the proposal only if it finds**
15 **that the proposal will meet the requirements of the rules adopted under this**
16 **section and will preserve a forest block of similar quality and character to the**
17 **block affected by the development or subdivision.**

18 **(b) The Natural Resources Board, in consultation with the Secretary of**
19 **Natural Resources, shall adopt rules governing mitigation under this section.**

1 (1) The rules shall state the acreage ratio of forest block to be preserved
2 in relation to the block or connector affected by the development or
3 subdivision.

4 (2) Compensation measures to be allowed under the rules shall be based
5 on the ratio of land developed pursuant to subdivision (1) of this subsection
6 and shall include:

7 (A) Preservation of a forest block of similar quality and character to
8 the block that the development or subdivision will affect.

9 (B) Deposit of an off-site mitigation fee into the Vermont Housing
10 and Conservation Trust Fund under section 312 of this title.

11 (i) This mitigation fee shall be derived as follows:

12 (I) Determine the number of acres of forest block affected by
13 the proposed development or subdivision.

14 (II) Multiply this number of affected acres by the ratio set forth
15 in the rules.

16 (III) Multiply the resulting product by a “price-per-acre” value,
17 which shall be based on the amount that the Commissioner of Forests, Parks
18 and Recreation determines to be the recent, per-acre cost to acquire
19 conservation easements for forest blocks of similar quality and character in the
20 same geographic region as the proposed development or subdivision.

1 (ii) The Vermont Housing Conservation Board shall use such a fee
2 to preserve a forest block of similar quality and character to the affected by the
3 development or subdivision.

4 (C) Any other compensation measures as the rules may authorize.

5 (c) The mitigation of impact on a forest block shall be structured also to
6 mitigate the impacts, under the criteria of subsection 6086(a) of this title other
7 than subdivisions (8)(B) to land or resources within the block.

8 (d) All forest blocks preserved pursuant to this section shall be protected by
9 permanent conservation easements that grant development rights and include
10 conservation restrictions and are conveyed to a qualified holder, as defined in
11 section 821 of this title, with the ability to monitor and enforce easements in
12 perpetuity.

13 Sec. 22. 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 and connecting
19 habitat, that may be relevant to the consideration of energy projects and
20 projects subject to chapter 151 of this title. The Center for Geographic

1 Information shall be available to provide assistance to the Secretary in carrying
2 out the ~~GIS-based~~ resource 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 * * * Location-Based Jurisdiction * * *

15 Sec. 23. 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 (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 in a municipality that:

8 (I) has not adopted permanent zoning and subdivision bylaws;
9 or

10 (II) has adopted permanent zoning and subdivision bylaws, if
11 the municipality in which the proposed project is located has elected by
12 ordinance, adopted under 24 V.S.A. chapter 59, to have this jurisdiction apply.

13 ~~(iii) The construction of improvements for commercial or~~
14 ~~industrial purposes on a tract or tracts of land within a radius of five miles of~~
15 ~~any point on any involved land within five years, owned or controlled by a~~
16 ~~person, involving more than one acre of land within a municipality that has~~
17 ~~adopted permanent zoning and subdivision bylaws, if the municipality in~~
18 ~~which the proposed project is located has elected by ordinance, adopted under~~
19 ~~24 V.S.A. chapter 59, to have this jurisdiction apply four or more units of~~
20 ~~housing located in a rural and working lands area.~~

21 * * *

1 lots, within a continuous period of five years, in a municipality that does not
2 have duly adopted permanent zoning and subdivision bylaws.

3 (iii) A tract or tracts of land, owned or controlled by a person, that
4 have been partitioned or divided for the purpose of resale into five or more
5 separate parcels of any size within a radius of five miles of any point on any
6 such parcel, and within any period of ~~ten~~ 10 years, by public auction.

7 (I) ~~In~~ As used in this subdivision (iii), “public auction” means
8 any auction advertised or publicized in any manner or to which more than ~~ten~~
9 10 persons have been invited.

10 (II) If sales described under this subdivision (iii) are of interests
11 that, when sold by means other than public auction, are exempt from the
12 provisions of this chapter under the provisions of subsection 6081(b) of this
13 title, the fact that these interests are sold by means of a public auction shall not,
14 in itself, create a requirement for a permit under this chapter.

15 * * *

16 (50) “Critical resource area” means a river corridor, a significant
17 wetland as defined under section 902 of this title, land at or above 2,000 feet,
18 land characterized by slopes greater than 15 percent and shallow depth to
19 bedrock, an area with any amount of prime agricultural soil, and a parcel
20 containing all or part of a **connecting habitat**.

1 (51) “Rural and working lands area” means an area that is not a
2 designated planned growth area or a critical resource area.

3 * * * Planned Growth Area Designation * * *

4 Sec. 24. 10 V.S.A. § 6032 is added to read:

5 § 6032. PLANNED GROWTH AREA DESIGNATION

6 (a) Application and approval.

7 (1) Beginning on January 1, 2027, a municipality, by resolution of its
8 legislative body, may apply to the Environmental Review Board for
9 designation of a planned growth area for the core area of the municipality that
10 is suitable for dense development and meets the requirements of subsection (b)
11 of this section.

12 (2) A municipality may apply for designation as a Tier 1A or Tier 1B
13 planned growth area.

14 (3) The Board shall issue an affirmative determination on finding that
15 the municipality meets the requirements of subsection (b) of this section within
16 45 days after the application is received.

17 (b) Planned growth area designation requirements.

18 (1) To obtain a Tier 1A planned growth area designation under this
19 section, a municipality must demonstrate to the Board that it has each of the
20 following:

1 (A) A municipal plan that is approved in accordance with 24 V.S.A.
2 § 4350.

3 (B) Municipal flood hazard planning, applicable to the entire
4 municipality, in accordance with 24 V.S.A. V.S.A. § 4382(12) and the
5 guidelines issued by the Department pursuant to 24 V.S.A. § 2792(d).

6 (C) Flood hazard and river corridor bylaws, applicable to the entire
7 municipality, that are consistent with the standards established pursuant to
8 subsection 755(b) of this title (flood hazard) and subsection 1428(b) of this
9 title (river corridor).

10 (D) A capital budget and program pursuant to 24 V.S.A. § 4430 that
11 make substantial investments in the ongoing development of the planned
12 growth area, are consistent with the plan’s implementation program, and are
13 consistent with the smart growth principles defined in 24 V.S.A. § 2791(13).

14 (E) Permanent zoning and subdivision bylaws that do not include
15 broad exemptions that exclude significant private or public land development
16 from requiring a municipal land use permit.

17 (F) Urban form bylaws for the planned growth area that further the
18 smart growth principles of 24 V.S.A. chapter 117, adequately regulate the
19 physical form and scale of development, make reasonable provision for
20 buildings in areas with sewer and water to have at least six stories, and
21 conform to the guidelines established by the Board.

1 (G) Historic preservation bylaws for established design review
2 districts, historic districts, or historic landmarks pursuant to 24 V.S.A.
3 § 4414(1)(E) and (F) for the planned growth area that meet State historic
4 preservation guidelines issued by the Department pursuant to subsection
5 2792(d) of this title.

6 (H) Wildlife habitat planning bylaws for the planned growth area that
7 comply with standards established by the Board in consultation with the
8 Department of Fish and Wildlife.

9 (I) Permitted water and wastewater systems with the capacity to
10 support additional development within the planned growth area. The
11 municipality shall have adopted consistent policies, by municipal plan and
12 ordinance, on the allocation, connection, and extension of water and
13 wastewater lines that include a defined service area to support the planned
14 growth area.

15 (J) Municipal staff adequate to support coordinated comprehensive
16 and capital planning, development review, and zoning administration in the
17 planned growth area.

18 (K) The applicable regional plan has been approved by the Board.

19 (2) To obtain a Tier 1B planned growth area designation under this
20 section, a municipality must demonstrate to the Board that it has the following

1 requirements described in subdivisions (A), (E), (I), (J), and (K) of this
2 subsection (b).

3 (3) If any party entitled to notice under subdivision (c)(4)(A) of this
4 section or any resident of the municipality raises concerns about the
5 municipality's compliance with the requirements for the underlying
6 designation, those concerns must be addressed as part of the municipality's
7 application.

8 (c) Process for issuing determinations of planned growth area designation.

9 (1) A preapplication meeting shall be held with staff of the relevant
10 regional planning commission to review the requirements of subsection (b) of
11 this section. The meeting shall be held in the municipality unless another
12 location is agreed to by the municipality.

13 (2) An application by the municipality shall include the information and
14 analysis required by the Board's guidelines on how to meet the requirements of
15 subsection (b) of this section.

16 (3) The relevant regional planning commission shall establish a
17 procedure for submission of a draft application that involves review and
18 comment by all the parties to be noticed in subdivision (4)(A) of this
19 subsection and shall issue a preapplication memorandum incorporating the
20 comments to the applicant after receipt of a draft preliminary application.

1 (4) After receipt of a complete final application, the Environmental
2 Review Board shall convene a public hearing in the municipality to consider
3 whether to issue a determination of planned growth area designation under this
4 section.

5 (A) Notice.

6 (i) At least 35 days in advance of the Board’s meeting, the
7 regional planning commission shall provide notice to the municipality and post
8 it on its website.

9 (ii) The municipality shall publish notice of the meeting at least 30
10 days in advance of the Board’s meeting in a newspaper of general circulation
11 in the municipality, and deliver physically or electronically, with proof of
12 receipt or by certified mail, return receipt requested to the Agency of Natural
13 Resources, the Division for Historic Preservation, the Agency of Agriculture,
14 Food and Markets, the Agency of Transportation, the regional planning
15 commission, the regional development corporations, and the entities providing
16 educational, police, and fire services to the municipality.

17 (iii) The notice shall also be posted by the municipality in or near
18 the municipal clerk’s office and in at least two other designated public places
19 in the municipality, and on the websites of the municipality and the regional
20 planning commission.

1 (iv) The municipality shall also certify in writing that the notice
2 required by this subsection (c) has been published, delivered, and posted within
3 the specified time.

4 (B) No defect in the form or substance of any requirements of this
5 subsection (c) shall invalidate the action of the Board where reasonable efforts
6 are made to provide adequate posting and notice. However, the action shall be
7 invalid when the defective posting or notice was materially misleading in
8 content. If an action is ruled to be invalid by the Superior Court or by the
9 Board itself, the regional planning commission shall provide and the
10 municipality shall issue new posting and notice, and the Board shall hold a
11 new hearing and take a new action.

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

15 (6) The Board shall issue its determination in writing. The
16 determination shall include explicit findings on each of the requirements in
17 subsection (b) of this section.

18 (d) Review of designation status.

19 (1) Length of designation. Initial determination of designation status
20 may be made at any time. Thereafter, review of a designation shall occur
21 every eight years with a check-in after four years.

1 (2) The Board, on its motion, may review compliance with the planned
2 growth area requirements at more frequent intervals.

3 (3) If at any time the Board determines that the planned growth area no
4 longer meets the standards for the designation, it shall take one of the
5 following actions:

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

7 (B) terminate the designation.

8 (4) If the underlying designation is terminated, the planned growth area
9 designation also shall terminate.

10 (e) Appeal.

11 (1) An interested person may appeal any act or decision of the Board
12 under this section to the Supreme Court within 30 days following the act or
13 decision.

14 (2) As used in this section, an “interested person” means any one of the
15 following:

16 (A) A person owning title to or occupying property within or abutting
17 the designated area.

18 (B) The municipality making the application or a municipality that
19 adjoins the municipality making the application.

1 (2) A land use plan, which shall consist of a map and statement of
2 present and prospective land uses, that:

3 * * *

4 (C) Identifies those areas, if any, proposed for designation under
5 chapter 76A of this title or 10 V.S.A. § 6032, together with, for each area
6 proposed for designation, an explanation of how the designation would further
7 the plan’s goals and the goals of section 4302 of this title; and how the area
8 meets the requirements for the type of designation to be sought.

9 * * *

10 Sec. 27. 10 V.S.A. § 6081 is amended to read:

11 § 6081. PERMITS REQUIRED; EXEMPTIONS

12 * * *

13 (z) Notwithstanding any other provision of this chapter to the contrary, no
14 permit or permit amendment is required for any subdivision, development, or
15 change to an existing project that is located entirely within a Tier 1A planned
16 growth area designated under section 6032 of this chapter. Notwithstanding
17 any other provision of this chapter to the contrary, no permit or permit
18 amendment is required for 50 units or fewer of housing located entirely within
19 a Tier 1B 1A planned growth area designated under section 6032 of this
20 chapter. Upon receiving notice and a copy of the permit issued by an
21 appropriate municipal panel pursuant to 24 V.S.A. § 4460(f), a previously

1 issued permit for a development or subdivision located in a planned growth
2 area shall remain attached to the property. However, neither the Board nor the
3 Agency of Natural Resources shall enforce the permit or assert amendment
4 jurisdiction on the tract or tracts of land unless the designation is revoked or
5 the municipality has not taken any action to enforce the conditions of the
6 permit.

7 Sec. 28. 24 V.S.A. § 4460 is amended to read:

8 § 4460. APPROPRIATE MUNICIPAL PANELS

9 * * *

10 (g)(1) This subsection shall apply to a subdivision or development that:

11 (A) was previously permitted pursuant to 10 V.S.A. chapter 151;

12 (B) is located in a planned growth area designated pursuant to 10

13 V.S.A. § 6032; and

14 (C) has applied for a permit or permit amendment required by zoning
15 regulations or bylaws adopted pursuant to this subchapter.

16 (2) The appropriate municipal panel reviewing a municipal permit or
17 permit amendment pursuant to this subsection shall include conditions
18 contained within a permit previously issued pursuant to 10 V.S.A. chapter 151
19 unless the panel determines that the permit condition pertains to any of the
20 following:

1 (A) the construction phase of the project that has already been
2 constructed;

3 (B) compliance with another State permit that has independent
4 jurisdiction;

5 (C) federal or State law that is no longer in effect or applicable;

6 (D) an issue that is addressed by municipal regulation and the project
7 will meet the municipal standards; or

8 (E) a physical or use condition that is no longer in effect or
9 applicable or that will no longer be in effect or applicable once the new project
10 is approved.

11 (3) After issuing or amending a permit containing conditions pursuant to
12 this subsection, the appropriate municipal panel shall provide notice and a
13 copy of the permit to the Environmental Review Board.

14 (4) The appropriate municipal panel shall comply with the notice and
15 hearing requirements provided in subdivision 4464(a)(1) of this title. In
16 addition, notice shall be provided to those persons requiring notice under
17 10 V.S.A. § 6084(b) and shall explicitly reference the existing Act 250 permit.

18 (5) The appropriate municipal panel’s decision shall be issued in
19 accordance with subsection 4464(b) of this title and shall include specific
20 findings with respect to its determinations pursuant to subdivision (2) of this
21 subsection.

1 determines that the plan or amendment is consistent with the goals of section
2 4302 of this title. The plan or amendment shall take effect on the issuance of
3 the approval. The Board shall issue its decision within 30 days after receiving
4 the plan or amendment.

5 Sec. 30. 24 V.S.A. § 4348a is amended to read:

6 § 4348a. ELEMENTS OF A REGIONAL PLAN

7 (a) A regional plan shall be consistent with the goals established in section
8 4302 of this title and shall include the following:

9 (1) A statement of basic policies of the region to guide the future growth
10 and development of land and of public services and facilities, and to protect the
11 environment.

12 (2) A land use element, which shall consist of a map and statement of
13 present and prospective land uses, based on ecosystem function, consistent
14 with Vermont Conservation Design, supports compact centers surrounded by
15 rural and working lands, and that:

16 (A) Indicates those areas proposed for forests, recreation, agriculture
17 (using the agricultural lands identification process established in 6 V.S.A. § 8),
18 residence, commerce, industry, public, and semi-public uses, open spaces,
19 areas reserved for flood plain, and areas identified by the State, regional
20 planning commissions, or municipalities that require special consideration for

1 aquifer protection; for wetland protection; for the maintenance of forest blocks,
2 wildlife habitat, and habitat connectors; or for other conservation purposes.

3 (B) Indicates those areas within the region that are likely candidates
4 for designation under sections 2793 (downtown development districts), 2793a
5 (village centers), 2793b (new town centers), and 2793c (growth centers) of this
6 title or under 10 V.S.A. § 6032 (planned growth areas).

7 (C) Indicates locations proposed for developments with a potential
8 for regional impact, as determined by the regional planning commission,
9 including flood control projects, surface water supply projects, industrial parks,
10 office parks, shopping centers and shopping malls, airports, tourist attractions,
11 recreational facilities, private schools, public or private colleges, and
12 residential developments or subdivisions.

13 (D) Sets forth the present and prospective location, amount, intensity,
14 and character of such land uses and the appropriate timing or sequence of land
15 development activities in relation to the provision of necessary community
16 facilities and services.

17 (E) Indicates those areas that have the potential to sustain agriculture
18 and recommendations for maintaining them which may include transfer of
19 development rights, acquisition of development rights, or farmer assistance
20 programs.

1 (F) Indicates those areas that are important as forest blocks and
2 habitat connectors and plans for land development in those areas to minimize
3 forest fragmentation and promote the health, viability, and ecological function
4 of forests. A plan may include specific policies to encourage the active
5 management of those areas for wildlife habitat, water quality, timber
6 production, recreation, or other values or functions identified by the regional
7 planning commission.

8 (G) Indicates those areas that fall into or may prospectively fall into
9 the following categories: downtown/village centers, planned growth areas,
10 village areas, transition areas, resource-based recreation areas, enterprise areas,
11 hamlets, rural and working lands areas, and critical resource areas.

12 * * *

13 (b) The various elements and statements shall be correlated with the land
14 use element and with each other. The maps called for by this section may be
15 incorporated on one or more maps, and may be referred to in each separate
16 statement called for by this section.

17 (c) The maps called for by this section shall be submitted to the
18 Environmental Review Board for review with compliance with this section and
19 consistency with legislative intent. The regional planning commission shall
20 make any updates to the map as required by the Environmental Review Board.

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* * * H.568 * * *

Sec. 31. 24 V.S.A. § 4306 is amended to read:

§ 4306. MUNICIPAL AND REGIONAL PLANNING AND RESILIENCE

FUND

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

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

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

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

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

(C) 20 percent shall be disbursed to municipalities.

1 (b)(1) Allocations for performance contract funding to regional planning
2 commissions shall be determined according to a formula to be adopted by rule
3 under 3 V.S.A. chapter 25 by the Department for the assistance of the regional
4 planning commissions. Disbursement of funding to regional planning
5 commissions shall be predicated upon meeting performance goals and targets
6 pursuant to the terms of the performance contract.

7 (2) Disbursement to municipalities shall be awarded annually on or
8 before December 31 through a competitive program administered by the
9 Department providing the opportunity for any eligible municipality or
10 municipalities to compete regardless of size, provided that to receive funds, a
11 municipality:

12 (A) shall be confirmed under section 4350 of this title; or

13 (B)(i) shall use the funds for the purpose of developing a municipal
14 plan to be submitted for approval by the regional planning commission, as
15 required for municipal confirmation under section 4350 of this title; and

16 (ii) shall have voted at an annual or special meeting to provide
17 local funds for municipal planning and resilience purposes and regional
18 planning purposes.

19 (3) Of the annual disbursement to municipalities, an amount not to
20 exceed 20 percent of the total may be disbursed to the Department to
21 administer a program providing direct technical consulting assistance under

1 retainer on a rolling basis to any eligible municipality to meet the requirements
2 for designated neighborhood development area under chapter 76A of this title,
3 provided that the municipality is eligible for funding under subdivision (2) of
4 this subsection and meets funding guidelines established by the Department to
5 ensure accessibility for lower capacity communities, municipal readiness, and
6 statewide coverage.

7 (4) Of the annual disbursement to municipalities, the Department may
8 allocate funding as bylaw modernization grants under section 4307 of this title.

9 (c) Funds allocated to municipalities shall be used for the purposes of:

10 (1) funding the regional planning commission in undertaking capacity
11 studies;

12 (2) carrying out the provisions of subchapters 5 through 10 of this
13 chapter;

14 (3) acquiring development rights, conservation easements, or title to
15 those lands, areas, and strictures identified in either regional or municipal plans
16 as requiring special consideration for provision of needed housing, aquifer
17 protection, flood protection, climate resilience, open space, farmland
18 preservation, or other conservation purposes; and

19 (4) reasonable and necessary costs of administering the Fund by the
20 Department of Housing and Community Development, not to exceed six
21 percent of the municipality allocation.

1 Sec. 32. MUNICIPAL PLANNING AND RESILIENCE GRANT
2 PROGRAM

3 (a) The Agency of Commerce and Community Development shall rename
4 the Municipal Planning Grant Program that the Agency administers under
5 24 V.S.A. § 4306(b)(2) as the Municipal Planning and Resilience Grant
6 Program.

7 (b) In addition to other funds appropriated to the Agency of Commerce and
8 Community Development for grants under 24 V.S.A. § 4306, \$1,500,000.00 is
9 appropriated from the General Fund to the Municipal and Regional Planning
10 and Resilience Fund for the grants from the Fund for the following purposes:

11 (1) assistance to municipalities to support resiliency planning and
12 identify and plan for resiliency projects to reduce damages from flooding and
13 other climate change-related hazards; and

14 (2) funding for regional planning commissions to increase staff in order
15 to support municipalities in conducting climate resiliency planning; project
16 development and implementation; and hazard mitigation locally, regionally,
17 and on a watershed scale.

18 Sec. 33. CLIMATE RESILIENCY PLANNING POSITIONS

19 (a) In addition to other funds appropriated to the Agency of Commerce and
20 Community Development in fiscal year 2025, \$125,000.00 is appropriated
21 from the General Fund to the Agency for the purpose of creating a new

1 permanent full-time position to staff the climate resiliency grants from the
2 Municipal Planning and Resilience Grant Program.

3 (b) In addition to other funds appropriated to the Agency of Natural
4 Resources in fiscal year 2025, \$125,000.00 is appropriated from the General
5 Fund to the Agency for the purposes of funding a new permanent full-time
6 position in the Water Investment Division of the Department of Environmental
7 Conservation for the purposes of assisting in the financing of climate resilience
8 projects from the Special Environmental Revolving Funds under 24 V.S.A.
9 chapter 120.

10 * * * Effective Dates * * *

11 Sec. 34. EFFECTIVE DATES

12 This act shall take effect on passage, except that Secs. 13 and 14 (10 V.S.A.
13 chapter 220; 4 V.S.A. § 34) shall take effect on July 1, 2026.

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(Committee vote: _____)

Representative _____
FOR THE COMMITTEE