

1 H.120

2 Introduced by Representatives Sheldon of Middlebury, McCullough of
3 Williston, and Dolan of Waitsfield

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; land use; climate change; Act 250

7 Statement of purpose of bill as introduced: This bill proposes to make multiple
8 changes to the State land use laws, including Act 250, to incorporate strategies
9 to address and mitigate climate change.

10 An act relating to updates to Act 250

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

12 * * * Revisions to Capability and Development Plan * * *

13 Sec. 1. 1973 Acts and Resolves No. 85, Sec. 7(a)(20) is added to read:

14 (20) GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

15 Climate change poses serious risks to human health and safety, functioning

16 ecosystems that support a diversity of species and economic growth, and

17 Vermont's tourism, forestry, and agricultural industries. The primary driver of

18 climate change in Vermont and elsewhere is the increase of atmospheric

19 carbon dioxide from the burning of fossil fuels, which has a warming effect

20 that is amplified because atmospheric water vapor, another greenhouse gas,

1 increases as temperature rises. Vermont should minimize its emission of
2 greenhouse gases and, because the climate is changing, ensure that the design
3 and materials used in development enable projects to withstand an increase in
4 extreme weather events and adapt to other changes in the weather and
5 environment.

6 Sec. 2. 1973 Acts and Resolves No. 85, Sec. 7(a)(2) is amended to read:

7 (2) ECOSYSTEM PROTECTION AND UTILIZATION OF NATURAL
8 RESOURCES

9 (A) Healthy ecosystems clean water, purify air, maintain soil,
10 regulate the climate, recycle nutrients, and provide food. They provide raw
11 materials and resources for medicines and other purposes. They are at the
12 foundation of civilization and sustain the economy. These ecosystem services
13 are the State's natural capital.

14 (B) Biodiversity is the key indicator of an ecosystem's health. A
15 wide variety of species cope better with threats than a limited number of
16 species in large populations.

17 (C) Products of the land and the stone and minerals under the land, as
18 well as the beauty of our landscape are principal natural resources of the state
19 State.

20 (D) Preservation Protection of healthy ecosystems in Vermont,
21 preservation of the agricultural and forest productivity of the land; and the

1 economic viability of agricultural units, conservation of the recreational
2 opportunity afforded by the ~~state's~~ State's hills, forests, streams and lakes,
3 wise use of the ~~state's~~ State's non-renewable earth and mineral reserves, and
4 protection of the beauty of the landscape are matters of public good. Uses
5 ~~which that~~ threaten or significantly inhibit ~~these~~ healthy ecosystems and the
6 State's natural and scenic resources should be permitted only when the public
7 interest is clearly benefited thereby.

8 * * * Revisions to State Land Use Law * * *

9 Sec. 3. 10 V.S.A. chapter 151 is amended to read:

10 CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS

11 Subchapter 1. General Provisions

12 § 6000. PURPOSE; CONSTRUCTION

13 The purposes of this chapter are to protect and conserve the environment of
14 the State and to support the achievement of the goals of the Capability and
15 Development Plan and of 24 V.S.A. § 4302(c). The chapter shall be construed
16 broadly to effect these purposes.

17 § 6001. DEFINITIONS

18 ~~As~~ As used in this chapter:

19 (1) "Board" means the Natural Resources Board.

1 (III) Ensure that development does not destroy or compromise
2 necessary wildlife habitat or endangered species habitat.

3 (IV) Ensure that uses allowed in the area will not impose a
4 burden on the financial capacity of a town or the State.

5 (V) Ensure that allowed uses are of a type, scale, and design
6 that complement rather than compete with uses that exist in designated
7 downtowns, village centers, growth centers, or other regional growth areas.
8 Principle retail should be discouraged or prohibited in highway interchange
9 areas.

10 (VI) Ensure that development in this area not establish or
11 contribute to a pattern of strip development. Where strip development already
12 exists, development in this area must be infill that minimizes the characteristics
13 of strip development.

14 (VII) Require site design to use space efficiently by siting
15 buildings close together; minimizing paved surfaces; locating parking to
16 consider aesthetics, neighborhoods, and view sheds; and minimizing the use of
17 one-story buildings.

18 (VIII) Require the permitted uses, patterns of development, and
19 aesthetics of development in these areas to conform with the regional plan and
20 be consistent with the goals of 24 V.S.A. § 4302.

1 (xii) The construction of improvements for commercial, industrial,
2 or residential purposes within a river corridor.

3 * * *

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

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

15 * * *

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

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

6 (40) “Fragmentation” means the division or conversion of a forest block
7 or connecting habitat; the construction, conversion, relocation, or enlargement
8 of any building or other structure, or of any mining, excavation, or landfill; and
9 any change in the use of any building or other structure, or land, or extension
10 of use of land. However, fragmentation does not include the division or
11 conversion of a forest block or connecting habitat by a recreational trail or by
12 improvements constructed for farming, logging, or forestry purposes below the
13 elevation of 2,500 feet.

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

16 (42) As used in subdivisions (38), (39), and (40) of this section,
17 “recreational trail” means a corridor that is not paved and that is used for
18 recreational purposes, including hiking, walking, bicycling, cross-country
19 skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.

20 (43) “Wood products manufacturer” means a manufacturer that
21 aggregates wood products from forestry operations and adds value through

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

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

11 (45) “Air contaminant” has the same meaning as under section 552 of
12 this title.

13 (46) “Greenhouse gas” has the same meaning as under section 552 of
14 this title.

15 (47) “Environmental justice” means that all people and communities
16 have the right to equal environmental protection under the law and the right to
17 live, work, and play in communities that are safe, healthy, and free of life-
18 threatening conditions.

19 Subchapter 2. Administration

20 § 6021. BOARD; VACANCY, REMOVAL

21 (a) A Natural Resources Board is created.

1 necessary to perform their duties, including access to legal resources and
2 training.

3 (b) Personnel for particular proceedings.

4 (1) The Board may authorize or retain legal counsel, official
5 stenographers, expert witnesses, advisors, temporary employees, and other
6 research services:

7 (A) to assist the Board in any proceeding before it under this
8 chapter; and

9 (B) to monitor compliance with any formal opinion of the Board
10 or a District Commission.

11 (2) The personnel authorized by this section shall be in addition to the
12 regular personnel of the Board. The Board shall fix the amount of
13 compensation and expenses to be paid to such additional personnel.

14 * * *

15 § 6026. DISTRICT COMMISSIONERS

16 (a) For the purposes of the administration of this chapter, the State is
17 divided into nine districts.

18 * * *

19 (b) A District Environmental Commission is created for each district. Each
20 District Commission shall consist of three members from that district
21 appointed in the month of February by the Governor so that two appointments

1 expire in each odd-numbered year. Two of the members shall be appointed for
2 a term of four years, and the Chair (third member) of each District shall be
3 appointed for a ~~two-year~~ four-year term. In any district, the Governor may
4 appoint ~~not more than four~~ up to two alternate members from that district
5 whose terms shall not exceed two years, who may hear any case when a
6 regular member is disqualified or otherwise unable to serve. The Governor
7 shall ensure, to the extent possible, that appointments are made in a timely
8 manner and that each District Commission reflects the racial, ethnic, gender,
9 and geographic diversity of the State.

10 (c) Members shall be removable for cause only, except the Chair, who shall
11 serve at the pleasure of the Governor.

12 (d) Any vacancy shall be filled by the Governor for the unexpired period of
13 the term.

14 § 6027. POWERS

15 (a) The Board and District Commissions shall have supervisory authority in
16 environmental matters respecting projects within their jurisdiction and shall
17 apply their independent judgment in determining facts and interpreting law.

18 They each shall have the power, with respect to any matter within its
19 jurisdiction, to:

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

1 (2) The Chair and each member shall conduct the affairs of his or her
2 office in such a manner as to instill public trust and confidence and shall take
3 all reasonable steps to avoid any action or circumstance that might result in any
4 one of the following:

5 (A) undermining his or her independence or impartiality of action;

6 (B) taking official action on the basis of unfair considerations;

7 (C) giving preferential treatment to any private interest on the basis
8 of unfair considerations;

9 (D) giving preferential treatment to any family member or member of
10 his or her household;

11 (E) using his or her office for the advancement of personal interest or
12 to secure special privileges or exemptions; or

13 (F) adversely affecting the confidence of the public in the integrity of
14 the District Commission.

15 (3) The District Commission shall not initiate, permit, or consider ex
16 parte communications or consider other communications made to the District
17 Commission outside the presence of the parties concerning a pending or
18 impending proceeding, except that:

19 (A) Where circumstances require, ex parte communications for
20 scheduling, administrative purposes, or emergencies that do not deal with
21 substantive matters or issues on the merits are authorized, provided:

1 Subchapter 4. Permits

2 § 6081. PERMITS REQUIRED; EXEMPTIONS

3 * * *

4 (l)(1) By no later than January 1, 1997, any owner of land or mineral rights
5 or any owner of slate quarry leasehold rights on a parcel of land on which a
6 slate quarry was located as of June 1, 1970, may register the existence of the
7 slate quarry with the District Commission and with the clerk of the
8 municipality in which the slate quarry is located, while also providing each
9 with a map which indicates the boundaries of the parcel which contains the
10 slate quarry.

11 * * *

12 (6) Registered slate quarries shall be added to the Agency of Natural
13 Resources' Natural Resource Atlas.

14 * * *

15 § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF
16 REVIEW

17 (a) ~~On or before the date of~~ Upon the filing of an application with the
18 District Commission, the ~~applicant~~ District Commission shall send, by
19 electronic means, notice ~~and a copy~~ of the ~~initial~~ application to the owner of
20 the land if the applicant is not the owner; the municipality in which the land is
21 located; the municipal and regional planning commissions for the municipality

1 in which the land is located; the Vermont Agency of Natural Resources; and
2 any adjacent Vermont municipality and municipal and regional planning
3 commission if the land is located on a municipal or regional boundary. The
4 ~~applicant shall furnish to the District Commission the names of those furnished~~
5 ~~notice by affidavit, and shall post,~~ send by electronic means a copy of the
6 notice ~~in~~ to the town clerk's office of the town or towns in which the project
7 lies. The town clerk shall post the notice in the town office. The applicant
8 shall also provide a list of adjoining landowners to the District Commission.
9 Upon request and for good cause, the District Commission may authorize the
10 applicant to provide a partial list of adjoining landowners in accordance with
11 Board rules.

12 * * *

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

18 * * *

19 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

1 (1) Air pollution. Will not result in undue ~~water or~~ air pollution. In
2 making this determination, the District Commission shall at least consider: the
3 air contaminants, greenhouse gas emissions, and noise to be emitted by the
4 development or subdivision, if any; the proximity of the emission source to
5 residences, population centers, and other sensitive receptors; and emission
6 dispersion characteristics at or near the source.

7 (A) Air contaminants. A permit will be granted whenever it is
8 demonstrated by the applicant that, in addition to all other applicable criteria,
9 the emission, if any, of air contaminants by the development or subdivision
10 will meet any applicable requirement under the Clean Air Act, 42 U.S.C.
11 chapter 85, and the air pollution control regulations of the Department of
12 Environmental Conservation.

13 (B) Greenhouse gas emissions. A permit will be granted whenever it
14 is demonstrated by the applicant that, in addition to all other applicable criteria,
15 the construction, use, operation, and maintenance of the development or
16 subdivision will:

17 (i) avoid the emission of greenhouse gases, including greenhouse
18 gases from the vehicular traffic to be generated by the development or
19 subdivision;

20 (ii) if it is not feasible to avoid such emissions, will minimize
21 them; or

1 (iii) if it is not feasible to avoid or minimize such emissions, will
2 mitigate them in accordance with rules adopted by the Board. Any offsets
3 used shall be third-party verified and enforceable by the applicant and its
4 successors and assigns and by the State of Vermont. The rules shall be
5 adopted in consultation with the Secretary of Natural Resources and shall
6 comply with the greenhouse gas reduction goals of section 578 of this title.

7 (2) Water pollution. Will not result in undue water pollution. In making
8 this determination ~~#,~~ the District Commission shall at least consider: the
9 elevation of land above sea level; and in relation to the flood plains, the nature
10 of soils and subsoils and their ability to adequately support waste disposal; the
11 slope of the land and its effect on effluents; the availability of streams for
12 disposal of effluents; and the applicable Health and Environmental
13 Conservation Department regulations.

14 (A) Headwaters. A permit will be granted whenever it is
15 demonstrated by the applicant that, in addition to all other applicable criteria,
16 the development or subdivision will meet any applicable Health and
17 Environmental Conservation Department regulation regarding reduction of the
18 quality of the ground or surface waters flowing through or upon lands ~~which~~
19 that are not devoted to intensive development, and which lands are:

20 (i) headwaters of watersheds characterized by steep slopes and
21 shallow soils; or

- 1 (ii) drainage areas of 20 square miles or less; or
2 (iii) above 1,500 feet elevation; or
3 (iv) watersheds of public water supplies designated by the Agency
4 of Natural Resources; or
5 (v) areas supplying significant amounts of recharge waters to
6 aquifers.

7 (B) Waste disposal. A permit will be granted whenever it is
8 demonstrated by the applicant that, in addition to all other applicable criteria,
9 the development or subdivision will meet any applicable Health and
10 Environmental Conservation Department regulations regarding the disposal of
11 wastes, and will not involve the injection of waste materials or any harmful or
12 toxic substances into ground water or wells.

13 (C) Water conservation. A permit will be granted whenever it is
14 demonstrated by the applicant that, in addition to all other applicable criteria,
15 the design has considered water conservation, incorporates multiple use or
16 recycling where technically and economically practical, utilizes the best
17 available technology for such applications, and provides for continued efficient
18 operation of these systems.

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

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

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

9 (E) Streams. A permit will be granted whenever it is demonstrated
10 by the applicant that, in addition to all other applicable criteria, the
11 development or subdivision of lands on or adjacent to the banks of a stream
12 will, whenever feasible, maintain the natural condition of the stream; and will
13 not endanger the health, safety, or welfare of the public or of adjoining
14 landowners.

15 (F) Shorelines. A permit will be granted whenever it is demonstrated
16 by the applicant that, in addition to all other criteria, the development or
17 subdivision of shorelines must of necessity be located on a shoreline in order to
18 fulfill the purpose of the development or subdivision, and the development or
19 subdivision will, insofar as possible and reasonable in light of its purpose:

20 (i) retain the shoreline and the waters in their natural condition;

1 economic, environmental, or recreational loss to the public from the
2 destruction or imperilment of the habitat or species; ~~or~~

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

6 (iii) a reasonably acceptable alternative site is not owned or
7 controlled by the applicant ~~which~~ that would allow the development or
8 subdivision to fulfill its intended purpose.

9 (B) Forest blocks.

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

12 (I) the development or subdivision will avoid fragmentation of
13 the forest block through the design of the project or the location of project
14 improvements, or both;

15 (II) it is not feasible to avoid fragmentation of the forest block
16 and the design of the development or subdivision minimizes fragmentation of
17 the forest block; or

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

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

3 (I) Locating buildings and other improvements and operating
4 the project in a manner that avoids or minimizes incursion into and disturbance
5 of the forest block, including clustering of buildings and associated
6 improvements.

7 (II) Designing roads, driveways, and utilities that serve the
8 development or subdivision to avoid or minimize fragmentation of the forest
9 block. Such design may be accomplished by following or sharing existing
10 features on the land such as roads, tree lines, stone walls, and fence lines.

11 (C) Connecting habitat.

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

14 (I) the development or subdivision will avoid fragmentation of
15 connecting habitat through the design of the project or the location of project
16 improvements, or both;

17 (II) it is not feasible to avoid fragmentation of the connecting
18 habitat and the design of the development or subdivision minimizes
19 fragmentation of the connector; or

1 (F) Energy conservation and efficiency. A permit will be granted
2 when it has been demonstrated by the applicant that, in addition to all other
3 applicable criteria, the planning and design of the subdivision or development
4 reflect the principles of energy conservation and energy efficiency, including
5 reduction of greenhouse gas emissions from the use of energy, and incorporate
6 the best available technology for efficient use or recovery of energy. An
7 applicant seeking an affirmative finding under this criterion shall provide
8 evidence, by certification, that the subdivision or development complies with
9 the applicable building energy standards and stretch codes under 30 V.S.A.
10 § 51 or 53.

11 * * *

12 (K) Development affecting public investments. A permit will be
13 granted for the development or subdivision of lands adjacent to governmental
14 and public utility facilities, services, and lands, including highways, airports,
15 waste disposal facilities, office and maintenance buildings, fire and police
16 stations, universities, schools, hospitals, prisons, jails, electric generating and
17 transmission facilities, oil and gas pipe lines, parks, hiking trails ~~and~~, forest
18 and game lands, lands conserved under chapter 155 of this title, and facilities
19 or lands protected in perpetuity and funded by the Vermont Housing and
20 Conservation Board under chapter 15 of this title, when it is demonstrated that,
21 in addition to all other applicable criteria, the development or subdivision will

1 not unnecessarily or unreasonably endanger the public or quasi-public
2 investment in the facility, service, or lands, or materially jeopardize or interfere
3 with the function, efficiency, or safety of, or the public's use or enjoyment of
4 or access to the facility, service, or lands.

5 * * *

6 (M) Climate adaptation. A permit will be granted for the
7 development or subdivision when it has been demonstrated that, in addition to
8 all other applicable criteria, the development or subdivision will employ
9 building orientation, site and landscape design, and building design that are
10 sufficient to enable the improvements to be sited and constructed, including
11 buildings, roads, and other infrastructure, to withstand and adapt to the effects
12 of climate change, including extreme temperature events, wind, and
13 precipitation reasonably projected at the time of application.

14 (N) Environmental justice. A permit will be granted for the
15 development or subdivision when it has been demonstrated by the applicant
16 that, in addition to all other applicable criteria, no group of people or
17 community will bear a disproportionate share of the negative environmental
18 consequences of the development or subdivision.

19 (10) Local and regional plans. Is in conformance with any duly adopted
20 local ~~or~~ plan that has been approved under 24 V.S.A. § 4350, regional plan that

1 has been approved by the Board under 24 V.S.A. § 4348, or capital program
2 under 24 V.S.A. ~~chapter 117~~ § 4430. In making this finding, if:

3 (A) The District Commission shall require conformance with the
4 future land use maps contained in the local and regional plans and with the
5 written provisions of those plans.

6 (B) The District Commission shall decline to apply a provision of a
7 local or regional plan only if it is persuaded that the provision does not afford a
8 person of ordinary intelligence with a reasonable opportunity to understand
9 what the provision directs, requires, or proscribes.

10 (C) If the District Commission finds applicable provisions of the
11 town plan to be ambiguous, the District Commission, for interpretive purposes,
12 shall consider bylaws, but only to the extent that they implement and are
13 consistent with those provisions, and need not consider any other evidence.

14 * * *

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

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

3 (d) Other permits and approvals; presumptions. The Natural Resources
4 Board ~~may by rule~~ shall allow the acceptance of a permit or permits or
5 approval of any State agency with respect to subdivisions (a)(1) through (5) of
6 this section or a permit or permits of a specified municipal government with
7 respect to subdivisions (a)(1) through (7) and (9) and (10) of this section, or a
8 combination of such permits or approvals, in lieu of evidence by the applicant.
9 ~~A District Commission, in accordance with rules adopted by the Board, shall~~
10 ~~accept determinations issued by a development review board under the~~
11 ~~provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of~~
12 ~~municipal impacts. The acceptance of such approval, positive determinations,~~
13 ~~permit, or permits shall create a presumption that the application is not~~
14 ~~detrimental to the public health and welfare with respect to the specific~~
15 ~~requirement for which it is accepted. In the case of approvals and permits~~
16 ~~issued by the Agency of Natural Resources, technical determinations of the~~
17 ~~Agency shall be accorded substantial deference by the Commissions. The~~
18 ~~acceptance of negative determinations issued by a development review board~~
19 ~~under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review~~
20 ~~of municipal impacts shall create a presumption that the application is~~
21 ~~detrimental to the public health and welfare with respect to the specific~~

1 ~~requirement for which it is accepted. Any determinations, positive or negative,~~
2 ~~under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the~~
3 ~~extent that the impacts under the criteria are limited to the municipality issuing~~
4 ~~the decision.~~ Such a rule may be revoked or amended pursuant to the
5 procedures set forth in ~~3 V.S.A., chapter 25,~~ the Vermont Administrative
6 Procedure Act.

7 (1) The rules adopted by the Board shall not approve the acceptance of a
8 permit or approval of such an agency or a permit of a municipal government
9 unless it satisfies the appropriate requirements of subsection (a) of this section.

10 (2) A presumption created under this subsection may be rebutted by the
11 introduction of evidence contrary to the presumed fact.

12 (3) The District Commission, in accordance with rules adopted by the
13 Board, shall accept determinations issued by a development review board
14 under the provisions of 24 V.S.A. § 4420, with respect to local review of
15 municipal impacts under criteria of this section. The acceptance of such a
16 determination, if positive, shall create a presumption that the application is not
17 detrimental to the public health and welfare with respect to the specific
18 requirement for which it is accepted and, if negative, shall create a
19 presumption that the application is so detrimental. Any determinations,
20 positive or negative, under the provisions of 24 V.S.A. § 4420 shall create
21 presumptions only to the extent that the impacts under the criteria are limited

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

5 * * *

6 § 6087. DENIAL OF APPLICATION

7 (a) No application shall be denied by the District Commission unless it
8 finds the proposed subdivision or development detrimental to the public health,
9 safety, or general welfare.

10 * * *

11 (d) The District Commission may deny an application without prejudice if
12 the applicant fails to respond to an incomplete determination or recess order
13 within six months of its issuance.

14 § 6088. BURDEN OF PROOF; PRODUCTION AND PERSUASION

15 (a) The initial burden of production, to produce sufficient evidence for the
16 District Commission to make a factual determination, shall be on the applicant
17 with respect to subdivisions 6086(a)(1) through (10) of this title.

18 (b) The burden of persuasion, to show that the application meets the
19 relevant standard, shall be on the applicant with respect to subdivisions
20 6086(a)(1), (2), (3), (4), (8)(A) through (C), (9), and (10) of this title.

1 (2) Expiration dates contained in permits issued before July 1, 1994
2 (involving developments that are not for extraction of mineral resources,
3 operation of solid waste disposal facilities, or logging above 2,500 feet) are
4 extended for an indefinite term, ~~as long as~~ provided there is compliance with
5 the conditions of the permits.

6 (c) Change to nonjurisdictional use; release from permit.

7 (1) On an application signed by each permittee, the District Commission
8 may release land subject to a permit under this chapter from the obligations of
9 that permit and the obligation to obtain permit amendments, on finding each of
10 the following:

11 (A) The use of the land as of the date of the application is not the
12 same as the use of the land that caused the obligation to obtain a permit under
13 this chapter.

14 (B) The use of the land as of the date of the application does not
15 constitute development or subdivision as defined in section 6001 of this title
16 and would not require a permit or permit amendment but for the fact that the
17 land is already subject to a permit under this chapter.

18 (C) The permittee or permittees are in compliance with the permit
19 and their obligations under this chapter.

20 (2) It shall be a condition of each affirmative decision under this
21 subsection that a subsequent proposal of a development or subdivision on the

1 land to which the decision applies shall be subject to this chapter as if the land
2 had never previously received a permit under the chapter.

3 (3) An application for a decision under this subsection shall be made on
4 a form prescribed by the Board. The form shall require evidence
5 demonstrating that the application complies with subdivisions (1)(A)
6 through (C) of this subsection. The application shall be processed in the
7 manner described in section 6084 of this title and may be treated as a minor
8 application under that section. In determining whether to treat as minor an
9 application under this subsection, the District Commission shall apply the
10 criteria of this subsection and not of subsection 6086(a) of this title.

11 * * *

12 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

13 * * *

14 (c) Mitigation and offsets for wood product manufacturers.
15 Notwithstanding any provision of this chapter to the contrary, a conversion of
16 primary agricultural soils by a wood product manufacturer permitted under this
17 chapter shall be entitled to a ratio of 1:1 protected acres to acres of affected
18 primary agricultural soil.

1 § 6094. MITIGATION OF FOREST BLOCKS AND CONNECTING

2 HABITAT

3 (a) A District Commission may consider a proposal to mitigate, through
4 compensation, the fragmentation of a forest block or connecting habitat if the
5 applicant demonstrates that it is not feasible to avoid or minimize
6 fragmentation of the block or habitat in accordance with the respective
7 requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District
8 Commission may approve the proposal only if it finds that the proposal will
9 meet the requirements of the rules adopted under this section and will preserve
10 a forest block or connecting habitat of similar quality and character to the
11 block or habitat affected by the development or subdivision.

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

14 (1) The rules shall state the acreage ratio of forest block or connecting
15 habitat to be preserved in relation to the block or habitat affected by the
16 development or subdivision.

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

1 (A) Preservation of a forest block or connecting habitat of similar
2 quality and character to the block or habitat that the development or
3 subdivision will affect.

4 (B) Deposit of an offsite mitigation fee into the Vermont Housing
5 and Conservation Trust Fund under section 312 of this title.

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

7 (I) Determine the number of acres of forest block or connecting
8 habitat, or both, affected by the proposed development or subdivision.

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

11 (III) Multiply the resulting product by a “price-per-acre” value,
12 which shall be based on the amount that the Commissioner of Forests, Parks
13 and Recreation has determined to be the recent, per-acre cost to acquire
14 conservation easements for forest blocks and connecting habitat of similar
15 quality and character in the same geographic region as the proposed
16 development or subdivision.

17 (ii) The Vermont Housing Conservation Board shall use such a fee
18 to preserve a forest block or connecting habitat of similar quality and character
19 to the block or habitat affected by the development or subdivision.

20 (C) Such other compensation measures as the rules may authorize.

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

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

8 * * * Regional and Municipal Planning * * *

9 Sec. 5. 24 V.S.A. § 4348(f) is amended to read:

10 (f) A regional plan or amendment shall be adopted by not less than a
11 60 percent vote of the commissioners representing municipalities, in
12 accordance with the bylaws of the regional planning commission, and
13 immediately submitted to the legislative bodies of the municipalities that
14 comprise the region.

15 (1) The plan or amendment shall be considered duly adopted and shall
16 take effect 35 days after the date of adoption, unless, within 35 days of the date
17 of adoption, the regional planning commission receives certification from the
18 legislative bodies of a majority of the municipalities in the region vetoing the
19 proposed plan or amendment. In case of such a veto, the plan or amendment
20 shall be deemed rejected.

1 adverse impacts on racial equity and diversity within the State. The review
2 shall:

3 (1) identify the impacts of acts or decisions made pursuant to Act 250 on
4 inequities in home ownership, land ownership, and land distribution within the
5 State;

6 (2) measure the extent to which minority populations in the State have
7 incurred disproportional environmental impacts due to acts or decisions of the
8 State pursuant to Act 250;

9 (3) assess the capability of the current public participation processes,
10 notice requirements, and appointment processes under Act 250 to fairly
11 represent the interests of minority populations within the State; and

12 (4) recommend legislative changes to Act 250 necessary to achieve the
13 goals of racial equity and diversity representation for minority populations.

14 (b) On or before October 15, 2022, the Executive Director of Racial Equity
15 shall report to the General Assembly with its findings and any
16 recommendations for legislative action.

17 * * * Planning Review * * *

18 Sec. 8. VERMONT REGIONAL AND MUNICIPAL PLANNING REVIEW

19 (a) On or before December 15, 2021, the Natural Resources Board, in
20 consultation with the Agency of Commerce and Community Development and

1 the Agency of Natural Resources, shall submit a draft report, with
2 recommendations, that addresses:

3 (1) How Sec. 7 of 1973 Acts and Resolves No. 85 (Capability and
4 Development Plan Findings) should be incorporated into 10 V.S.A. chapter
5 151 and what changes should be made, if any, to the Capability and
6 Development Plan Findings.

7 (2) Whether to update the Capability and Development Plan authorized
8 by 10 V.S.A. chapter 151, subchapter 3. If the recommendation is to update
9 the Capability and Development Plan, the report shall provide a schedule and
10 budget for the proposed update.

11 (3) Whether 10 V.S.A. chapter 151 should require the creation of
12 Capability and Development maps. If the recommendation is to require the
13 creation of Capability and Development maps, the report shall identify the
14 resources and land uses to be mapped and provide a schedule and budget for
15 the proposed update.

16 (4) How Capability and Development Plan Findings, the Capability and
17 Development Plan, and Capability and Development maps would be used in
18 the permitting process under 10 V.S.A. chapter 151 and how they would relate
19 to the criteria under 10 V.S.A. § 6086(a).

1 (5) Whether designations of downtowns, village centers, growth centers,
2 new town centers, and neighborhood development areas should be appealable
3 and, if the designations are appealable, which tribunal should hear the appeal.

4 (6) Potential new jurisdictional triggers under 10 V.S.A. § 6001 (3)(A)
5 to include jurisdiction based a project’s location. For example, whether Act
6 250 jurisdiction is triggered when a project is located in close proximity to
7 significant resources like ridgelines, mountains, wetlands, prime agricultural
8 soils, forest blocks, and connecting habitat.

9 (b) The Natural Resources Board shall publish a draft report addressing
10 subdivisions (a)(1)–(5) of this section. The Board shall provide notice of the
11 draft report to affected State agencies, municipalities, regional planning
12 commissions, the Vermont Planners Association, the Vermont Planning and
13 Development Association, and other interested persons. There shall be a
14 public comment period of at least 30 days on the draft report, and the Board
15 shall hold at least one public informational meeting on it.

16 (c) On or before March 1, 2022, the Natural Resources Board shall provide
17 a final report to the House Committee on Natural Resources, Fish, and Wildlife
18 and the Senate Committee on Natural Resources and Energy. The final report
19 shall incorporate recommendations from the public engagement process under
20 subsection (b) of this section and shall contain a response to stakeholder
21 comments as a part of the final report.

1 with the Secretary of State to implement 10 V.S.A. § 6094 (mitigation of forest
2 blocks and connecting habitat) and 10 V.S.A. § 6086(a)(1)(B) (greenhouse gas
3 emissions).

4 (b) On or before September 1, 2022, the NRB shall adopt final rules unless
5 such deadline is extended by the Legislative Committee on Administrative
6 Rules pursuant to 3 V.S.A. § 843(c).

7 Sec. 11. REFERENCES; REVISION AUTHORITY

8 (a) In 10 V.S.A. § 6001, as amended by Sec. 3 of this act, the Office of
9 Legislative Counsel shall:

10 (1) in subdivision (2), replace the reference to “this act” with the
11 specific citation to this act as enacted; and

12 (2) reorganize and renumber the definitions so that they are in
13 alphabetical order and, in the Vermont Statutes Annotated, shall revise all
14 cross-references to those definitions accordingly.

15 (b) In 10 V.S.A. § 6086, the Office of Legislative Counsel shall insert the
16 following subsection and subdivision headings:

17 (1) in subdivision (a)(4): Soil erosion; capacity of land to hold water.

18 (2) in subdivision (a)(6): Educational services.

19 (3) in subdivision (a)(7): Local governmental services.

20 (4) in subsection (b): Partial findings.

21 (5) in subsection (e): Temporary improvements; film or TV.

