

1 H.400

2 Introduced by Representative Sibia of Dover

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; land use; natural resources; Act 250

6 Statement of purpose of bill as introduced: This bill proposes to make
7 revisions to the State land use law known as Act 250, including:

- 8 • Changing the Natural Resources Board (NRB) to a professional board
9 with three full-time members who will hear major permit applications.
10 The NRB will have authority to revoke Act 250 permits and may
11 delegate authority to the District Commissions over determining the
12 type of application and the ability to issue minors and amendments.
- 13 • Adding ethical standards for the NRB and District Commissions that bar
14 ex parte communications.
- 15 • Changing the path of permit appeals by removing jurisdiction of the
16 Environmental Division of the Superior Court, with appeals of the
17 permit decisions going straight to the Supreme Court.
- 18 • Adding a preapplication scoping process for large projects.
- 19 • Creating an enhanced designation process for village centers.
- 20 • Exempting development and subdivisions located within designated
21 downtowns, enhanced village centers, and neighborhood development

- 1 areas from Act 250. Municipal panels will transfer Act 250 permit
2 conditions to municipal land use permits.
- 3 • Allowing the NRB to release projects from Act 250 jurisdiction if the
4 property would no longer trigger Act 250 jurisdiction.
 - 5 • Excluding previously disturbed areas from the definition of development
6 if they are transportation facilities.
 - 7 • Updating the water, transportation, and energy conservation criteria.
 - 8 • Adding a new criterion for climate adaptation and requiring rules to
9 address how to meet the new criterion.
 - 10 • Creating a new permit to address impacts on fish and wildlife habitat.
11 The new permit would be required for applicants of an Act 250 permit.
12 The permit would be issued by the Commissioner of Fish and Wildlife.
13 The permit fee would be \$150.00 plus the cost of any Department
14 resources spent on the permit.
 - 15 • Specifying when permit conditions may be added to permits for forest-
16 based enterprises.
 - 17 • Exempting from the definition of development accessory on-farm
18 businesses constructed on less than 1 acre.
 - 19 • Requiring a municipality to respond to a request for information within
20 90 days.

1 An act relating to changes to the Natural Resources Board and Act 250

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

3 * * * Professional Natural Resources Board * * *

4 Sec. 1. 10 V.S.A. § 6021 is redesignated and amended to read:

5 § 6021. BOARD; VACANCY, REMOVAL; RETIREMENT

6 (a) A Natural Resources Board is created.

7 (~~4~~) The Board shall consist of ~~five~~ three members appointed by the
8 Governor, with the advice and consent of the Senate, so that ~~one~~ each
9 appointment expires in ~~each~~ a different year. The Board members shall be
10 full-time employees. In making these appointments, ~~the Governor and the~~
11 ~~Senate shall give consideration to~~ candidates shall be sought with experience,
12 expertise, or skills relating to ~~the environment or land use~~ environmental
13 science, natural resources law and policy, land use planning, community
14 planning, environmental justice, or racial equity.

15 (~~A~~) The Governor shall ~~appoint a chair of the Board, a position that~~
16 ~~shall be a full-time position~~ ensure, to the extent possible, that the Board
17 membership reflects the racial, ethnic, gender, and geographic diversity of the
18 State.

19 (~~B~~) Following initial appointments, the members, ~~except for the~~
20 ~~Chair~~, shall be appointed for terms of four years.

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

5 ~~(A) Alternates shall be appointed for terms of four years, with initial~~
6 ~~appointments being staggered.~~

7 ~~(B) The Chair of the Board may assign alternates an additional~~
8 ~~District Commissioner to sit on specific matters before the Board in situations~~
9 ~~where fewer than five three members are available to serve.~~

10 ~~(b) Any vacancy occurring in the membership of the Board shall be filled~~
11 ~~by the Governor for the unexpired portion of the term. Terms; vacancy;~~
12 ~~succession. The term of each member subsequent to the initial appointments~~
13 ~~shall be four years. Any appointment to fill a vacancy shall be for the~~
14 ~~unexpired portion of the term vacated. A member may seek reappointment~~
15 ~~under the terms of this section.~~

16 ~~(c) Notwithstanding the provisions of 3 V.S.A. § 2004, members shall be~~
17 ~~removable for cause only, except the Chair, who shall serve at the pleasure of~~
18 ~~the Governor.~~

19 ~~(d) The Chair of the Board, upon request of the Chair of a District~~
20 ~~Commission, may appoint and assign former Commission members to sit on~~
21 ~~specific Commission cases when some or all of the regular members and~~

1 ~~alternates of the District Commission are disqualified or otherwise unable to~~
2 ~~serve.~~ Retirement from office. When a Board member who hears all or a
3 substantial part of a case retires from office before the case is completed, he or
4 she shall remain a member of the Board for the purpose of concluding and
5 deciding that case and signing the findings and judgments involved. A retiring
6 Chair shall also remain a member for the purpose of certifying questions of law
7 if a party appeals to the Supreme Court.

8 Sec. 2. 10 V.S.A. § 6022 is amended to read:

9 § 6022. PERSONNEL

10 (a) Regular personnel. The Board may ~~appoint~~ retain legal counsel,
11 scientists, engineers, experts, investigators, temporary employees, and
12 administrative personnel as it finds necessary in carrying out its duties,~~unless~~
13 ~~the Governor shall otherwise provide~~ and may authorize the District
14 Commissions to retain personnel to assist on matters within its jurisdiction.
15 The Board shall ensure that District Commissions and district coordinators
16 have the resources necessary to perform their duties, including access to legal
17 resources and training.

18 (b) Personnel for particular proceedings.

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

1 (A) to assist the Board in any proceeding before it under this chapter;
2 and
3 (B) to monitor compliance with any formal opinion of the Board or a
4 District Commission.

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

8 Sec. 3. 10 V.S.A. § 6026 is amended to read:

9 § 6026. DISTRICT COMMISSIONERS

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

12 * * *

13 (b) A District Environmental Commission is created for each district. Each
14 District Commission shall consist of three members from that district
15 appointed in the month of February by the Governor so that two appointments
16 expire in each odd-numbered year. Two of the members shall be appointed for
17 a term of four years, and the Chair (third member) of each District shall be
18 appointed for a ~~two-year~~ four-year term. In any district, the Governor may
19 appoint ~~not more than four~~ up to two alternate members from that district
20 whose terms shall not exceed ~~two~~ four years, who may hear any case when a
21 regular member is disqualified or otherwise unable to serve. The Governor

1 shall ensure, to the extent possible, that appointments are made in a timely
2 manner and that each District Commission reflects the racial, ethnic, gender,
3 and geographic diversity of the State.

4 (c) ~~Members shall be removable for cause only, except the Chair who shall~~
5 ~~serve at the pleasure of the Governor.~~ [Repealed.]

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

8 (e) Pursuant to section 6021 of this title, the Chair of the Board may
9 appoint District Commissioners to sit on specific cases when some or all of the
10 regular members of the Board are disqualified or otherwise unable to serve.

11 Sec. 4. 10 V.S.A. § 6027 is amended to read:

12 § 6027. POWERS

13 * * *

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

19 (g) The Natural Resources Board shall manage the process by which land
20 use permits are issued under section 6086 of this title, may initiate enforcement
21 on related matters under the provisions of chapters 201 and 211 of this title,

1 and may ~~petition the Environmental Division~~ hear petitions for revocation of
2 land use permits issued under this chapter. Grounds for 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.

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

1 (j) ~~The Natural Resources Board may participate as a party in all matters~~
2 ~~before the Environmental Division that relate to land use permits issued under~~
3 ~~this chapter. [Repealed.]~~

4 * * *

5 (n)(1) The Board may delegate to District Commissions authority:

6 (A) to determine whether an application is a major or minor
7 application; and

8 (B) to issue permits or permit amendments for minor applications and
9 administrative amendments.

10 (2) The Board may delegate to District Commissions or district
11 coordinators any additional authority necessary for the effective administration
12 of this chapter.

13 Sec. 5. 10 V.S.A. § 6031 is amended to read:

14 § 6031. ETHICAL STANDARDS

15 (a) The Chair and members of the Board and the Chair and members of
16 each District Commission shall comply with the following ethical standards:

17 (1) The provisions of 12 V.S.A. § 61 (disqualification for interest).

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

- 1 (A) undermining his or her independence or impartiality of action;
- 2 (B) taking official action on the basis of unfair considerations;
- 3 (C) giving preferential treatment to any private interest on the basis
4 of unfair considerations;
- 5 (D) giving preferential treatment to any family member or member of
6 his or her household;
- 7 (E) using his or her office for the advancement of personal interest or
8 to secure special privileges or exemptions;
- 9 (F) adversely affecting the confidence of the public in the integrity of
10 the District Commission.

11 * * *

12 (d) The Board shall not initiate, permit, or consider ex parte
13 communications or consider other communications made to the Board outside
14 the presence of the parties concerning a pending or impending proceeding
15 when the Board is operating in a quasi-judicial capacity, except that:

16 (1) Where circumstances require, ex parte communications for
17 scheduling, administrative purposes, or emergencies that do not deal with
18 substantive matters or issues on the merits are authorized, provided:

19 (A) the Board reasonably believes that no party will gain a
20 procedural or tactical advantage as a result of the ex parte communication; and

1 (B) the Board makes provision promptly to notify all other parties of
2 the substance of the ex parte communication and allows an opportunity to
3 respond.

4 (2) The Board may obtain the advice of a disinterested expert on the law
5 applicable to a proceeding if the Board gives notice to the parties of the person
6 consulted and the substance of the advice and affords the parties reasonable
7 opportunity to respond.

8 (3) The Board may consult with personnel whose function is to aid the
9 Board in carrying out its adjudicative responsibilities.

10 (4) The Board may, with the consent of the parties, confer separately
11 with the parties and their lawyers in an effort to mediate or settle matters
12 pending before the Board.

13 (5) The Board may initiate or consider any ex parte communications
14 when expressly authorized by law to do so.

15 Sec. 6. 10 V.S.A. § 6083 is amended to read:

16 § 6083. APPLICATIONS

17 * * *

18 (e) The Board and District Commissions shall give priority to municipal
19 projects that have been mandated by the State through a permit, enforcement
20 order, court order, enforcement settlement agreement, statute, rule, or policy.

21 * * *

1 (g)(1) ~~A District Commission~~ The Board, pending resolution of
2 noncompliance, may stay the issuance of a permit or amendment if it finds, by
3 clear and convincing evidence, that a person who is an applicant:

4 (A) is not in compliance with a court order, an administrative order,
5 or an assurance of discontinuance with respect to a violation that is directly
6 related to the activity ~~which~~ that is the subject of the application; or

7 (B) has one or more current violations of this chapter, or any rules,
8 permits, assurances of discontinuance, court order, or administrative orders
9 related to this chapter, ~~which~~ that, when viewed together, constitute substantial
10 noncompliance.

11 (2) Any decision under this subsection to issue a stay may be subject to
12 review by the ~~Environmental Division, as provided by rule of the~~ Supreme
13 Court.

14 (3) If the same violation is the subject of an enforcement action under
15 chapter 201 of this title, then jurisdiction over the issuance of a stay shall
16 remain with the Environmental Division and shall not reside with the ~~District~~
17 ~~Commission~~ Board.

18 Sec. 7. 10 V.S.A. § 6084 is redesignated and amended to read:

19 § 6084. PREAPPLICATION PROCESS; NOTICE OF APPLICATION;

20 HEARINGS; COMMENCEMENT OF REVIEW

1 (a) Preapplication process. Not less than 30 days prior to filing an
2 application under this chapter, an applicant shall submit the plans for the
3 construction of any development or subdivision subject to the permitting
4 requirements of this chapter to the Board, municipal and regional planning
5 commissions, affected State agencies, and adjoining landowners, unless the
6 development or subdivision is subject to an exception in subdivision (4) of this
7 subsection or the Board determines that there is good cause to waive the notice
8 requirement.

9 (1) The Board shall require that the applicant hold a meeting on the
10 proposed plans within 30 days of preapplication notice under this subsection if
11 any person receiving notice under this subsection requests a hearing.

12 (2) Any person receiving notice may make comments or
13 recommendations to the applicant within 30 days of receiving preapplication
14 notice under this subsection.

15 (3) The applicant shall respond to the substantive written comments and
16 recommendations made related to the criteria of subsection 6086(a) of this title
17 received by the applicant and the substantive oral comments related to those
18 criteria made at a public hearing under subdivision (1) of this subsection.

19 (4) This subsection (a) shall not apply to a project that has been
20 designated as using simplified procedures pursuant to subdivision 6025(b)(1)
21 of this title or deemed to be an administrative amendment.

1 ~~(b) On or before the date of~~ Upon the filing of an application ~~with the~~
2 ~~District Commission, the applicant~~ Board shall send notice ~~and a copy~~ of the
3 ~~initial~~ application to the owner of the land if the applicant is not the owner; ~~the~~
4 municipality in which the land is located; ~~the~~ municipal and regional planning
5 commissions for the municipality in which the land is located; ~~the~~ Vermont
6 Agency of Natural Resources; ~~and any adjacent Vermont municipality and~~
7 municipal and regional planning commission if the land is located on a
8 municipal or regional boundary. ~~The applicant shall furnish to the District~~
9 ~~Commission the names of those furnished notice by affidavit, and~~ Board shall
10 ~~post~~ send by electronic means a copy of the notice ~~in~~ to the town clerk's office
11 of the town or towns in which the project lies. The town clerk shall post the
12 notice in the town office. The applicant shall also provide a list of adjoining
13 landowners to the ~~District Commission~~ Board. Upon request and for good
14 cause, the ~~District Commission~~ Board may authorize the applicant to provide a
15 partial list of adjoining landowners in accordance with Board rules.

16 ~~(b)(c)~~ (c) Upon an application being ruled complete, the ~~District Commission~~
17 Board shall determine whether to process the application as a major application
18 with a required public hearing or process the application as a minor application
19 with the potential for a public hearing in accordance with Board rules.

20 (1) For major applications, the ~~District Commission~~ Board shall provide
21 notice not less than 10 days prior to any scheduled hearing or prehearing

1 conference to: the applicant; the owner of the land if the applicant is not the
2 owner; the municipality in which the land is located; the municipal and
3 regional planning commissions for the municipality in which the land is
4 located; any adjacent Vermont municipality and municipal and regional
5 planning commission if the land is located on a municipal or regional
6 boundary; adjoining landowners as deemed appropriate by the ~~District~~
7 ~~Commission~~ Board pursuant to the rules of the Board, and any other person the
8 ~~District Commission~~ Board deems appropriate.

9 * * *

10 ~~(e)~~(d) Anyone required to receive notice of commencement of minor
11 application review pursuant to subsection ~~(b)~~(c) of this section may request a
12 ~~hearing~~ that an application be treated as a major by filing a request within the
13 public comment period specified in the notice pursuant to Board rules. The
14 ~~District Commission Board~~, on its own motion, may order a ~~hearing~~ that an
15 application be treated as a major within 20 days of notice of commencement of
16 minor application review. For any applicant who appeals a fish, wildlife, and
17 habitat permit decision to the Board, the land use permit application under this
18 section shall be treated as a major.

19 ~~(d)~~(e) Any hearing or prehearing conference for a major application shall
20 be held within 40 days of receipt of a complete application; or within 20 days
21 of the end of the public comment period specified in the notice of minor

1 application review if ~~the District Commission determines that it is appropriate~~
2 ~~to hold a hearing for a minor application~~ it is determined that the application
3 should be treated as a major application. Any hearing required shall be held in
4 the municipality where the project is located unless the parties agree to an
5 alternative location. When conducting hearings and prehearing conferences,
6 the Board shall exercise reasonable flexibility with its rules of procedure and
7 of evidence to maximize pro se participation while ensuring the fairness of the
8 proceeding.

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

14 * * *

15 (f)(g) This subsection concerns an application for a new permit amendment
16 to change the conditions of an existing permit or existing permit amendment in
17 order to authorize the construction of a priority housing project described in
18 subdivision 6081(p)(2) of this title.

19 * * *

1 to be treated as confidential pursuant to a protective order duly adopted by the
2 Board.

3 (2) The Board shall make all reasonable efforts to ensure that the
4 location of each hearing is sufficient to accommodate all members of the
5 public seeking to attend.

6 (3) The Board shall ensure that the public may safely attend the hearing,
7 including obtaining such resources as may be necessary to fulfill this
8 obligation.

9 (e) Completion of case. A case shall be deemed completed when the Board
10 and District Commissioners enter a final decision even if that decision is
11 appealed to the Supreme Court and remanded by that Court.

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

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

1 (2) the issuance of decisions on appeals pursuant to section 6089 of this
2 title.

3 Sec. 9. 10 V.S.A. § 6085 is amended to read:

4 § 6085. HEARINGS; PARTY STATUS

5 * * *

6 (c)(1) Party status. In proceedings before the ~~District Commissions~~ Board,
7 the following persons shall be entitled to party status:

8 * * *

9 (E) any adjoining property owner or other person who has a
10 particularized interest protected by this chapter that may be affected by an act
11 or decision by a ~~District Commission~~ Board.

12 (2) Content of petitions. All persons seeking to participate in
13 proceedings before the ~~District Commission~~ Board as parties pursuant to
14 subdivision (c)(1)(E) of this section must petition for party status. Any
15 petition for party status may be made orally or in writing to the ~~District~~
16 ~~Commission~~ Board. All petitions must include:

17 * * *

18 (C) A statement of the reasons the petitioner believes the ~~District~~
19 ~~Commission~~ Board should allow the petitioner party status in the pending
20 proceeding.

21 * * *

1 (3) Timeliness. A petition for party status pursuant to subdivision
2 (c)(1)(E) of this section must be made at or prior to an initial prehearing
3 conference held pursuant to Board rule or at the commencement of the hearing,
4 whichever shall occur first, unless the ~~District Commission~~ Board directs
5 otherwise. The ~~District Commission~~ Board may grant an untimely petition if it
6 finds that the petitioner has demonstrated good cause for failure to request
7 party status in a timely fashion, and that the late appearance will not unfairly
8 delay the proceedings or place an unfair burden on the parties.

9 (4) Conditions. Where a person has been granted party status pursuant
10 to subdivision (c)(1)(E) of this section, the ~~District Commission~~ Board shall
11 restrict the person's participation to only those issues in which the person has
12 demonstrated an interest, and may encourage the person to join with other
13 persons with respect to representation, presentation of evidence, or other
14 matters in the interest of promoting judicial efficiency.

15 (5) Friends of the ~~Commission~~ Board. The ~~District Commission~~ Board,
16 on its own motion or by petition, may allow nonparties to participate in any of
17 its proceedings, without being accorded party status. Participation may be
18 limited to the filing of memoranda, proposed findings of fact and conclusions
19 of law, and argument on legal issues. However, if approved by the ~~District~~
20 ~~Commission~~ Board, participation may be expanded to include the provision of
21 testimony, the filing of evidence, or the cross examination of witnesses. A

1 petition for leave to participate as a friend of the ~~Commission~~ Board shall
2 identify the interest of the petitioner and the desired scope of participation and
3 shall state the reasons why the participation of the petitioner will be beneficial
4 to the ~~District-Commission~~ Board. Except where all parties consent or as
5 otherwise ordered by the ~~District-Commission~~ or by the Chair of the ~~District~~
6 ~~Commission~~ Board, all friends of the ~~Commission~~ Board shall file their
7 memoranda, testimony, or evidence within the times allowed the parties.

8 (6) Reexamination of party status. ~~A District-Commission~~ The Board
9 shall reexamine party status determinations before the close of hearings and
10 state the results of that reexamination in the ~~District-Commission~~ Board
11 decision. In the reexamination of party status coming before the close of
12 ~~District-Commission~~ Board hearings, persons having attained party status up to
13 that point in the proceedings shall be presumed to retain party status.

14 However, on motion of a party, or on its own motion, ~~a-Commission~~ the Board
15 shall consider the extent to which parties continue to qualify for party status.

16 Determinations made before the close of ~~District-Commission~~ hearings shall
17 supersede any preliminary determinations of party status.

18 (d) If no hearing has been requested or ordered within the prescribed
19 period, no hearing need be held by the ~~District-Commission~~ Board. In such an
20 event, a permit shall be granted or denied within 60 days of receipt; otherwise,
21 it shall be deemed approved and a permit shall be issued.

1 (e) The Natural Resources Board and any District Commission, acting
2 through one or more duly authorized representatives at any prehearing
3 conference or at any other times deemed appropriate by the Natural Resources
4 Board or by the District Commission, shall promote expeditious, informal, and
5 nonadversarial resolution of issues; require the timely exchange of
6 information concerning the application; and encourage participants to settle
7 differences. No ~~District Commissioner~~ person who is participating as a
8 ~~decisionmaker~~ decision maker in a particular case may act as a duly authorized
9 representative for the purposes of this subsection. These efforts at dispute
10 resolution shall not affect the burden of proof on issues before a Commission
11 or the ~~Environmental Division~~ Board, nor shall they affect the requirement that
12 a permit may be issued only after the issuance of affirmative findings under the
13 criteria established in section 6086 of this title.

14 (f) A hearing shall not be closed until ~~a Commission~~ the Board provides an
15 opportunity to all parties to respond to the last permit or evidence submitted.
16 Once a hearing has been closed, ~~a Commission~~ the Board shall conclude
17 deliberations as soon as is reasonably practicable. A decision of ~~a Commission~~
18 the Board shall be issued within 20 days of the completion of deliberations.

19 Sec. 10. 10 V.S.A. § 6087 is amended to read:

20 § 6087. DENIAL OF APPLICATION

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

4 (b) A permit may not be denied solely for the reasons set forth in
5 subdivisions 6086(a)(5), (6), and (7) of this title. However, reasonable
6 conditions and requirements allowable in subsection 6086(c) of this title may
7 be attached to alleviate the burdens created.

8 (c) A denial of a permit shall contain the specific reasons for denial. A
9 person may, within six months, apply for reconsideration of his or her permit
10 which application shall include an affidavit to the ~~District Commission~~ Board
11 and all parties of record that the deficiencies have been corrected. The ~~District~~
12 ~~Commission~~ Board shall hold a new hearing upon 25 days' notice to the
13 parties. The hearing shall be held within 40 days of receipt of the request for
14 reconsideration.

15 (d) The Board or Commission may deny an application without prejudice if
16 the applicant fails to respond to an incomplete determination or recess order
17 within six months of its issuance.

18 Sec. 11. 10 V.S.A. § 6089 is amended to read:

19 § 6089. APPEALS

20 (a) Appeals of any act or decision of a District Commission under this
21 chapter or a district coordinator under subsection 6007(c) of this title shall be

1 ~~made to the Environmental Division in accordance with chapter 220 of this~~
2 ~~title. For the purpose of this section, a decision of the Chair of a District~~
3 ~~Commission under section 6001e of this title on whether action has been taken~~
4 ~~to circumvent the requirements of this chapter shall be considered an act or~~
5 ~~decision of the District Commission~~ certain actions to the Natural Resources
6 Board.

7 (1) Applicability. The following acts or decisions are appealable de
8 novo to the Board:

9 (A) A jurisdictional opinion issued by a district coordinator.

10 (B) A fish, wildlife, and habitat permit issued by the Commissioner
11 of Fish and Wildlife pursuant to section 4154 of this title. The Board shall
12 coordinate any appeal under this subdivision with the initial review of a permit
13 under section 6085 of this title.

14 (C) The assessment of costs for processing a fish, wildlife, and
15 habitat permit pursuant to section 4155 of this title.

16 (D) A determination by the Downtown Development Board
17 designating a downtown development district, enhanced village center or
18 neighborhood development area pursuant to 24 V.S.A. chapter 76A.

19 (2) Procedure.

20 (A) An appeal under this section may be brought by any person
21 aggrieved. As used in this subdivision, “person aggrieved” means a person

1 who alleges an injury to a particularized interest protected by this chapter,
2 attributable to an act or decision by a district coordinator, District Commission,
3 or the Downtown Development Board that can be redressed by the Board.

4 (B) A notice of appeal must be filed within 30 days of the act or
5 decision.

6 (C) The Board shall conduct all appeals under this section as
7 contested cases pursuant to 3 V.S.A. chapter 25 using the procedural rules
8 adopted by the Board.

9 (D) Prior decisions of the Environmental Board, Water Resources
10 Board, Waste Facilities Panel, and the Environmental Division of the Superior
11 Court shall be given the same weight and consideration as prior decisions of
12 the Natural Resources Board.

13 (b) Appeals of decisions of the Board. A party aggrieved by the final
14 order, judgment, or decree of the Board may appeal to the Supreme Court.
15 However, the Board, in its discretion and before final judgment, may permit an
16 appeal to be taken by any party to the Supreme Court for determination of
17 questions of law in such manner as the Supreme Court may by rule provide for
18 appeals before final.

19 * * * Enhanced Village Centers and Designation Appeals * * *

20 Sec. 12. 24 V.S.A. § 2793a is amended to read:

21 § 2793a. DESIGNATION OF VILLAGE CENTERS BY STATE BOARD

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* * *

(e)(1) A village center designated by the State Board pursuant to subsection (a) of this section is eligible to apply to the State Board to receive an enhanced designation. This enhanced designation shall allow projects located within the village center to be exempt from 10 V.S.A. chapter 151.

(2) To receive enhanced designation under this subdivision, the village center shall have:

(A) a duly adopted and approved municipal plan;

(B) a municipal wastewater treatment facility and public community drinking water system that serves the designated center; and

(C) duly adopted permanent zoning and subdivision bylaws that include flood hazard and river corridor bylaws.

Sec. 13. 24 V.S.A. § 2798 is amended to read:

§ 2798. DESIGNATION DECISIONS; ~~NONAPPEAL~~ APPEAL

~~The~~ A person aggrieved by a designation decision of the State Board under ~~this chapter are not subject to appeal~~ section 2793, 2793a(e), or 2793e of this title may appeal to the Natural Resources Board pursuant to 10 V.S.A. § 6089.

* * * Designated Center Exemption * * *

Sec. 14. 10 V.S.A. § 6081 is amended to read:

§ 6081. PERMITS REQUIRED; EXEMPTIONS

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(o) If a designation pursuant to 24 V.S.A. chapter 76A is removed, subsection (a) of this section shall apply to any subsequent substantial change to a ~~priority housing project~~ development or subdivision that was originally exempt pursuant to subdivision 6001(3)(A)(iv)(I) of this title or subsection (p) of this section on the basis of that designation.

(p)(1) No permit or permit amendment is required for any subdivision, development, or change to a project that is located entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, if the change consists exclusively of any combination of mixed use and mixed income housing, and the cumulative changes within any continuous period of five years, commencing on or after the effective date of this subsection, remain below any applicable jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title a village center that has received enhanced designation under 24 V.S.A. § 2793a(e), or a neighborhood development area designated pursuant to 24 V.S.A. § 2793e. Upon receiving notice and a copy of the permit issued by an appropriate municipal panel pursuant to 24 V.S.A. § 4460(f), a previously issued permit for a development or subdivision located in a downtown development area or a neighborhood development area is extinguished and jurisdiction shall be extinguished on the tract or tracts of land.

1 ~~center that is also a designated neighborhood development area under~~
2 ~~24 V.S.A. chapter 76A; or~~

3 ~~(B) mixed income housing and is located entirely within a designated~~
4 ~~Vermont neighborhood or designated neighborhood development area under~~
5 ~~24 V.S.A. chapter 76A.~~

6 * * *

7 Sec. 16. 24 V.S.A. § 4460 is amended to read:

8 § 4460. APPROPRIATE MUNICIPAL PANELS

9 * * *

10 (f)(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 downtown development district, enhanced village
13 center, or neighborhood development area designated pursuant to chapter 76A
14 of this title; and

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

17 (2) The appropriate municipal panel reviewing a municipal permit or
18 permit amendment pursuant to this subsection shall include conditions
19 contained within a permit previously issued pursuant to 10 V.S.A. chapter 151
20 unless the panel determines that the permit condition pertains to any of the
21 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 Natural Resources 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 (6) Any final action by the appropriate municipal panel affecting a
2 condition of a permit previously issued pursuant to 10 V.S.A. chapter 151 shall
3 be recorded in the municipal land records.

4 * * * Release from Jurisdiction for Nonjurisdictional Uses * * *

5 Sec. 17. 10 V.S.A. § 6090 is amended to read:

6 § 6090. RECORDING; DURATION AND REVOCATION OF PERMITS

7 * * *

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

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

13 (A) One of the following is true:

14 (i) the use of the land as of the date of the application is not the
15 same as the use of the land that caused the obligation to obtain a permit under
16 this chapter; or

17 (ii) the municipality where the land is located has adopted
18 permanent zoning and subdivision bylaws but had not when the permit was
19 issued.

20 (B) The use of the land as of the date of the application does not
21 constitute development or subdivision as defined in section 6001 of this title

1 and would not require a permit or permit amendment but for the fact that the
2 land is already subject to a permit under this chapter.

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

5 (2) It shall be a condition of each affirmative decision under this
6 subsection that a subsequent proposal of a development or subdivision on the
7 land to which the decision applies shall be subject to this chapter as if the land
8 had never previously received a permit under the chapter.

9 (3) An application for a decision under this subsection shall be made on
10 a form prescribed by the Board. The form shall require evidence
11 demonstrating that the application complies with subdivisions (1)(A) through
12 (C) of this subsection. The application shall be processed in the manner
13 described in section 6084 of this title and may be treated as a minor application
14 under that section. In addition to those required to be notified under section
15 6084, the District Commission shall send notice at the same time to all other
16 parties to the permit and to all current adjacent landowners.

17 * * * Transportation Projects * * *

18 Sec. 18. 10 V.S.A. § 6001(3)(A) is amended to read:

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

20 * * *

1 (v) The construction of improvements on a tract of land involving
2 more than 10 acres that is to be used for municipal, county, or State purposes.

3 In computing the amount of land involved,:

4 (I) land shall be included that is incident to the use, such as
5 lawns, parking areas, roadways, leaching fields, and accessory buildings; and

6 (II) land that was previously disturbed as the result of
7 construction of a transportation facility shall be excluded, provided that:

8 (aa) it is a transportation facility;

9 (bb) the project is funded in whole or in part by federal aid;

10 (cc) the project complies with the terms of the memorandum
11 of understanding required by 19 V.S.A. § 7(1); and

12 (dd) it shall not apply to the creation of new or additional
13 points of access to, or exit from, the Dwight D. Eisenhower National System of
14 Interstate and Defense Highways. For purposes of this subdivision (II),
15 “previously disturbed” means land that has been changed by previous
16 installation of transportation facilities, including roads, railroads, runways,
17 trails, sidewalks, ditching, drainage features, ledge removal, utility work, clear
18 zones, or other similar features associated with such facilities.

19 * * *

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

21 § 6001. DEFINITIONS

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(40) “Transportation facility” means highways, sidewalks, and bicycle paths, as defined under 19 V.S.A. § 2301; State-owned railroad or railbanked lines; and runways at State- and municipally owned airports.

* * * Criterion 1(D) * * *

Sec. 20. 10 V.S.A. § 6001(6) and (7) are amended to read:

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

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

Sec. 21. 10 V.S.A. § 6086(a)(1)(D) is amended to read:

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

1 networks and services. ~~In determining appropriateness under this subdivision~~
2 ~~(B), the District Commission shall consider whether~~ However, such a strategy,
3 access, or connection ~~constitutes a measure~~ may be declined upon a finding
4 that a reasonable person would ~~take~~ not undertake the measure given the type,
5 scale, and transportation impacts of the proposed development or subdivision.

6 * * *

7 (9) Is in conformance with a duly adopted capability and development
8 plan, and land use plan when adopted. However, the legislative findings of
9 subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria
10 in the consideration of applications by a District Commission.

11 * * *

12 (F) Energy conservation and efficiency. A permit will be granted
13 when it has been demonstrated by the applicant that, in addition to all other
14 applicable criteria, the planning and design of the subdivision or development
15 reflect the principles of energy conservation and energy efficiency, including
16 reduction of greenhouse gas emissions from the use of energy, and incorporate
17 the best available technology for efficient use or recovery of energy. An
18 applicant seeking an affirmative finding under this criterion shall provide
19 evidence, by certification and established through inspection, that the
20 subdivision or development complies with the applicable building energy
21 standards and stretch codes under 30 V.S.A. § 51 or 53.

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

* * *

Sec. 23. CLIMATE ADAPTATION CRITERION RULEMAKING

The Natural Resources Board, in consultation with the Secretary of Natural Resources, shall adopt rules that provide guidance to applicants on the steps that can be taken to satisfy the requirements of 10 V.S.A. § 6086(a)(9)(M), including best management practices and design criteria that can be used to satisfy the requirements of this section.

* * * Fish, Wildlife, and Habitat Permit * * *

Sec. 24. 10 V.S.A. § 4154 is added to read:

§ 4154. FISH, WILDLIFE, AND HABITAT PERMIT

(a) Findings and intent.

1 (1) Findings. The General Assembly finds that the protection and
2 conservation of fish and wildlife, habitat, threatened and endangered species,
3 the natural condition of streams, significant forest blocks, significant
4 ecological connectivity, and rare and irreplaceable natural areas is necessary to
5 protect ecological integrity in Vermont and mitigate the effects of development
6 and climate change.

7 (2) Intent. It is the intent of the General Assembly, by enactment of this
8 section, to:

9 (A) Avoid, minimize, and mitigate any adverse effects of projects
10 approved in accordance with 10 V.S.A. chapter 151 on fish and wildlife,
11 habitat, threatened and endangered species, the natural condition of streams,
12 significant forest blocks, significant ecological connectivity, and rare and
13 irreplaceable natural areas.

14 (B) Direct the Department of Fish and Wildlife to develop a permit
15 program that ensures that there are no undue adverse impacts associated with
16 development permitted under chapter 151 of this title, requires avoidance and
17 minimization of undue adverse impacts, provides for appropriate mitigation for
18 impacts, allows public input, and establishes and maintains accountability.
19 based on science and the experience of professional Department staff. In
20 furtherance of these purposes, the Commissioner shall implement a fish,
21 wildlife, and habitat permitting program that shall be used to address the

1 criteria under subsection 6086(a) of this title. The program developed by the
2 Commissioner shall recognize that impacts to fish and wildlife, necessary
3 habitat, critical habitat, threatened and endangered species, the natural
4 condition of streams, significant forest blocks, significant ecological
5 connectivity, and rare and irreplaceable natural areas are subject to the
6 variations in the characteristics of the resource and the site of development.

7 (b) Definitions. As used in this section:

8 (1) "Critical habitat" has the same meaning as in subsection 5401(4) of
9 this title.

10 (2) "Development" has the same meaning as in subdivision 6001(3) of
11 this title.

12 (3) "Endangered species" has the same meaning as in subdivision
13 5401(6) of this title.

14 (4) "Forest block" means a contiguous area of forest in any stage of
15 succession that is not currently developed for non-forest use. A forest block
16 may include recreational trails; improvements constructed for farming,
17 logging, or forestry purposes; wetlands; or other natural features that do not
18 contain continuous tree cover, provided that these features do not significantly
19 undermine the functions and values of the forest block.

20 (5) "Necessary habitat" has the same meaning as in subdivision
21 6001(12) of this title.

1 (6) “Significant ecological connectivity” means land or water, or both,
2 that links habitat within a local or regional landscape, allowing the movement,
3 migration, and dispersal of wildlife and plants and the functioning of
4 ecological processes. An area of significant ecological connectivity may
5 include recreational trails; improvements constructed for farming, logging, or
6 forestry purposes; wetlands; or other natural features, provided that such
7 features do not significantly undermine the functions and values of
8 connectivity and ecological processes.

9 (7) “Threatened species” has the same meaning as in subdivision
10 5401(19) of this title.

11 (8) “Wildlife” has the same meaning as in subdivision 4001(15) of this
12 title.

13 (c) Applicability. A person subject to a permit or permit amendment under
14 chapter 151 of this title shall apply for a permit under this section unless the
15 Commissioner has adopted an exemption for that type of development or
16 subdivision by rule.

17 (d) Prohibitions. A person shall not commence site preparation or
18 construction subject to this section without first obtaining a permit from the
19 Commissioner. The Commissioner shall not grant a person a permit unless the
20 Commissioner determines that the applicant has demonstrated:

1 (1) that the development or subdivision of lands on or adjacent to the
2 banks of a stream will, whenever feasible, maintain the natural condition of the
3 stream and will not endanger the health, safety, or welfare of the public or of
4 adjoining landowners;

5 (2) the development or subdivision will not have an undue adverse
6 effect on rare and irreplaceable natural areas;

7 (3) the development or subdivision will not destroy or significantly
8 imperil necessary wildlife habitat or any threatened or endangered species or
9 their habitat; and

10 (i) the economic, social, cultural, recreational, or other benefit to
11 the public from the development or subdivision will outweigh the economic,
12 environmental, or recreational loss to the public from the destruction or
13 imperilment of the habitat or species; or

14 (ii) all feasible and reasonable means of preventing or lessening
15 the destruction, diminution, or imperilment of the habitat or species have been
16 or will continue to be applied; or

17 (iii) a reasonably acceptable alternative site is not owned or
18 controlled by the applicant that would allow the development or subdivision to
19 fulfill its intended purpose; and

20 (4) the development or subdivision will not have an undue adverse
21 impact on critical habitat, threatened and endangered species, significant forest

1 blocks, significant ecological connectivity, and rare and irreplaceable natural
2 areas.

3 (e) The Commissioner may impose terms and conditions as necessary to
4 carry out the purposes of this section, including avoidance and minimization of
5 adverse impacts; location and seasonal restrictions; specific mitigation
6 measures, including mitigation funding and land conservation; and appropriate
7 studies, surveying, monitoring, and reporting.

8 (f) General permits. The Commissioner may establish general permits
9 under this section for developments and activities that can be permitted with a
10 standard set of permit conditions or best management practices, or a
11 combination of conditions and best management practices.

12 (g) Nothing in this subsection shall be interpreted to exempt a development
13 or an applicant from the requirements of chapter 123 of this title.

14 (h) Preexisting violations. The Commissioner may, as necessary to ensure
15 achievement of the goals of the program and compliance with State law, deny
16 an application for a wildlife permit under this section if review of the
17 applicant's compliance history indicates that the applicant is in violation of a
18 permit issued under this subchapter or a permit condition on a permit issued
19 under chapter 151 of this title relating to fish, wildlife, or habitat.

20 (i) Procedure. When an application is filed under this section, the
21 Commissioner shall proceed under section 7715 (Type 4) of this title.

1 (j) Rulemaking. On or before July 1, 2023, the Commissioner shall adopt
2 rules to implement this subsection. At a minimum, the rules shall:

3 (1) establish the primary goals of the rules as:

4 (A) ensuring that development and subdivisions meet the criteria
5 established in subsection (d) of this section and ensure the protection of
6 necessary habitat, critical habitat, threatened and endangered species, the
7 natural condition of streams, significant forest blocks, significant ecological
8 connectivity, and rare and irreplaceable natural area; and

9 (B) providing that the review, requirements for avoidance,
10 minimization and mitigation, and the permit terms and conditions are guided
11 by science and are flexible enough to account for developing science and
12 technology;

13 (2) establish criteria and standards for identifying and defining
14 necessary habitat, critical habitat, significant forest blocks, the natural
15 condition of streams, significant ecological connectivity, and rare and
16 irreplaceable natural areas;

17 (3) establish criteria and standards for the avoidance, minimization, and
18 mitigation of adverse impacts on fish and wildlife, necessary habitat, critical
19 habitat, threatened and endangered species, the natural condition of streams,
20 significant forest blocks, significant ecological connectivity, and rare and
21 irreplaceable natural areas;

1 (4) include appropriate technical standards and best management
2 practices to avoid, minimize, and mitigate any adverse impacts on fish and
3 wildlife, necessary habitat, critical habitat, threatened and endangered species,
4 the natural condition of streams, significant forest blocks, significant
5 ecological connectivity, and rare and irreplaceable natural areas; and

6 (5) to the extent appropriate, authorize in the permitting process use of
7 certifications of compliance by licensed professional biologists practicing
8 within the scope of their professional specialty.

9 Sec. 25. 10 V.S.A. § 4155 is added to read:

10 § 4155. FISH, WILDLIFE, AND HABITAT PERMIT FEES

11 (a) Individual permits.

12 (1) Administrative processing fee. There shall be an administrative
13 processing fee on any application, amendment, or modification to a permit
14 application of \$150.00.

15 (2) Permit application fee. The Department of Fish and Wildlife shall
16 have the authority to bill the applicant for the costs of processing any permit
17 required under section 4154 of this title, including the costs of employee
18 application review, submissions, comments, participation in the appeal of any
19 permit issued under this section, and any necessary costs of notice or recording
20 the final permit. The Department may require payment of these costs,
21 provided:

1 (A) The Department provides notice to the applicant that it is billing
2 back its costs, including an estimate of the costs of the personnel or services.
3 The Department shall provide an update of this estimate at reasonable intervals
4 upon the request of the applicant.

5 (B) The Department provides the applicant with statements showing
6 the amount of money contracted for or expended on personnel and services.
7 All funds for services under this section shall be paid directly to the
8 Department.

9 (C) An applicant to which costs are allocated under this section may
10 appeal costs assessed by the Commissioner to the Natural Resources Board
11 pursuant to section 6089 of this title.

12 (b) General permit. The fee for applications under a general permit shall be
13 \$100.00.

14 (c) Fees shall not be required from projects undertaken by municipalities
15 and State governmental agencies.

16 Sec. 26. 10 V.S.A. § 6086(d) is amended to read:

17 (d) The Natural Resources Board may by rule allow the acceptance of a
18 permit or permits or approval of any State agency with respect to subdivisions
19 (a)(1) through (5) and (8) of this section or a permit or permits of a specified
20 municipal government with respect to subdivisions (a)(1) through (7) and (9)
21 and (10) of this section, or a combination of such permits or approvals, in lieu

1 of evidence by the applicant. A District Commission, in accordance with rules
2 adopted by the Board, shall accept determinations issued by a development
3 review board under the provisions of 24 V.S.A. § 4420, with respect to local
4 Act 250 review of municipal impacts. The acceptance of such approval,
5 positive determinations, permit, or permits shall create a presumption that the
6 application is not detrimental to the public health and welfare with respect to
7 the specific requirement for which it is accepted. In the case of approvals and
8 permits issued by the Agency of Natural Resources, technical determinations
9 of the Agency shall be accorded substantial deference by the Commissions.
10 The acceptance of negative determinations issued by a development review
11 board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250
12 review of municipal impacts, shall create a presumption that the application is
13 detrimental to the public health and welfare with respect to the specific
14 requirement for which it is accepted. Any determinations, positive or negative,
15 under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the
16 extent that the impacts under the criteria are limited to the municipality issuing
17 the decision. Such a rule may be revoked or amended pursuant to the
18 procedures set forth in 3 V.S.A. chapter 25, the Vermont Administrative
19 Procedure Act. The rules adopted by the Board shall not approve the
20 acceptance of a permit or approval of such an agency or a permit of a

1 municipal government unless it satisfies the appropriate requirements of
2 subsection (a) of this section.

3 Sec. 27. ACT 250 PRESUMPTIONS; RULEMAKING

4 In accordance with 10 V.S.A. § 6086(d), not later than July 1, 2023, the
5 Natural Resources Board shall adopt a rule that provides that the fish, wildlife,
6 and habitat permit established in 10 V.S.A. § 4154 shall be entitled to a
7 presumption of compliance under 10 V.S.A chapter 151.

8 Sec. 28. 10 V.S.A. § 8003 is amended to read:

9 § 8003. APPLICABILITY

10 (a) The Secretary may take action under this chapter to enforce the
11 following statutes and rules, permits, assurances, or orders implementing the
12 following statutes, and the Board may take such action with respect to
13 subdivision (10) of this subsection:

14 * * *

15 (32) 10 V.S.A. § 4154, relating to fish, wildlife, and habitat permits.

16 * * *

17 * * * Rural Economic Development * * *

18 Sec. 29. 10 V.S.A. § 6001(38) and (39) are added to read:

19 (38) “Forest-based enterprise” means an enterprise that aggregates forest
20 products from forestry operations and adds value through processing or
21 marketing in the forest products supply chain or directly to consumers through

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

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

10 Sec. 30. 10 V.S.A. § 6086(c) is amended to read:

11 (c) Permit conditions.

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

21 (2) Permit conditions on a forest-based enterprise.

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

4 (B) Unless an impact under subdivision (a)(1), (5), or (8) of this
5 section would result, a permit issued to a forest-based enterprise shall allow the
6 enterprise to ship and receive forest products outside regular hours of
7 operation. These permits shall allow for deliveries of forest products from
8 forestry operations to the enterprise outside of permitted hours of operation,
9 including nights, weekends, and holidays, for a minimum of 60 days per year.

10 (C) In making a determination under this subdivision (2) as to
11 whether an impact exists, the District Commission shall consider the
12 enterprise's role in sustaining forestland use and the impact of the permit
13 condition on the forest-based enterprise. Conditions shall impose the
14 minimum restriction necessary to address the undue adverse impact.

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

21 Sec. 31. 10 V.S.A. § 6093 is amended to read:

1 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

2 * * *

3 (c) Mitigation and offsets for forest-based enterprises. Notwithstanding
4 any provisions of this chapter to the contrary, a conversion of primary
5 agricultural soils by a forest-based enterprise permitted under this chapter shall
6 be entitled to a ratio of 1:1 protected acres to acres of affected primary
7 agricultural soils.

8 * * * Accessory on-farm businesses * * *

9 Sec. 32. 10 V.S.A. § 6001(3)(D) is amended to read:

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

11 * * *

12 (ix) The construction of improvements for an accessory on-farm
13 business located on a tract of land primarily devoted to farming, provided that:

14 (I) the proposed improvements are for an accessory on-farm
15 business as defined by 24 V.S.A. § 4412(11);

16 (II) the farming operation is subject to the Required
17 Agricultural Practices; and

18 (III) the total area of improvements associated with the
19 accessory on-farm business does not exceed one acre.

20 * * *

21 * * * Municipal Response to Act 250 Requests * * *

1 Sec. 33. 10 V.S.A. 6086(g) is added to read:

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

6 * * * Conforming Changes to the Environmental Division * * *

7 Sec. 34. 10 V.S.A. chapter 220 is amended to read:

8 CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

9 § 8501. PURPOSE

10 It is the purpose of this chapter to:

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

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

19 (3) ~~encourage people to get involved in the Act 250 permitting process at~~
20 ~~the initial stages of review by a District Commission by requiring participation~~

1 as a prerequisite for an appeal of a District Commission decision to the
2 Environmental Division;

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

5 ~~(5)~~(4) consolidate appeals of decisions related to renewable energy
6 generation plants and telecommunications facilities with review under,
7 respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of
8 proceedings pertaining to telecommunications facilities occurring only while
9 30 V.S.A. § 248a remains in effect.

10 * * *

11 § 8503. APPLICABILITY

12 (a) This chapter shall govern all appeals of an act or decision of the
13 Secretary, excluding appeals of enforcement actions under chapters 201 and
14 211 of this title and rulemaking, under the following authorities and under the
15 rules adopted under those authorities:

16 * * *

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

18 ~~(1) appeals from an act or decision of a District Commission under~~
19 ~~chapter 151 of this title;~~

20 ~~(2) appeals from a district coordinator jurisdictional opinion under~~
21 ~~§ 6007(c) of this title;~~

1 ~~general circulation in the area of the project which is the subject of the~~
2 ~~decision.~~

3 (2) Upon the filing of an appeal from the act or decision of the Secretary
4 under the provisions of law listed in section 8503 of this title, the appellant
5 shall provide notice of the filing of an appeal to the following persons: the
6 applicant before the Agency of Natural Resources, if other than the appellant;
7 the owner of the land where the project is located if the applicant is not the
8 owner; the municipality in which the project is located; the municipal and
9 regional planning commissions for the municipality in which the project is
10 located; if the project site is located on a boundary, any adjacent Vermont
11 municipality and the municipal and regional planning commissions for that
12 municipality; any State agency affected; the solid waste management district in
13 which the project is located, if the project constitutes a facility pursuant to
14 subdivision 6602(10) of this title; all persons required to receive notice of
15 receipt of an application or notice of the issuance of a draft permit; and all
16 persons on any mailing list for the decision involved. In addition, the appellant
17 shall publish notice not more than 10 days after providing notice as required
18 under this subsection, at the appellant's expense, in a newspaper of general
19 circulation in the area of the project ~~which~~ that is the subject of the decision.

20 (3)(2) In the case of appeals under 24 V.S.A. chapter 117, notice shall
21 be as required under 24 V.S.A. § 4471.

1 (d) Requirement to participate before ~~the District Commission or the~~
2 Secretary.

3 (1) ~~Participation before District Commission. An aggrieved person shall~~
4 ~~not appeal an act or decision that was made by a District Commission unless~~
5 ~~the person was granted party status by the District Commission pursuant to~~
6 ~~subdivision 6085(c)(1)(E) of this title, participated in the proceedings before~~
7 ~~the District Commission, and retained party status at the end of the District~~
8 ~~Commission proceedings. In addition, the person may only appeal those issues~~
9 ~~under the criteria with respect to which the person was granted party status.~~
10 ~~However, notwithstanding these limitations, an aggrieved person may appeal~~
11 ~~an act or decision of the District Commission if the Environmental judge~~
12 ~~determines that:~~

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

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

16 or

17 (C) ~~some other condition exists which would result in manifest~~
18 ~~injustice if the person's right to appeal was disallowed.~~

19 (2) ~~Participation before the Secretary.~~

20 (A) ~~An aggrieved person shall not appeal an act or decision of the~~
21 ~~Secretary unless the person submitted to the Secretary a written comment~~

1 during the comment period or an oral comment at the public meeting
2 conducted by the Secretary. In addition, the person may only appeal issues
3 related to the person's comment to the Secretary.

4 ~~(i)~~(A) To be sufficient for the purpose of appeal, a comment to the
5 Secretary shall identify each reasonably ascertainable issue with enough
6 particularity so that a meaningful response can be provided.

7 ~~(ii)~~(B) The appellant shall identify each comment that the
8 appellant submitted to the Secretary that identifies or relates to an issue raised
9 in his or her appeal.

10 ~~(iii)~~(C) A person moving to dismiss an appeal or an issue raised
11 by an appeal pursuant to this subdivision ~~(A)~~(1) shall have the burden to prove
12 that the requirements of this subdivision ~~(A)~~(1) are not satisfied.

13 ~~(B)~~(2) Notwithstanding the limitations of subdivision ~~(2)~~~~(A)~~ (1) of
14 this subsection, an aggrieved person may appeal an act or decision of the
15 Secretary if the Environmental judge determines that:

16 ~~(i)~~(A) there was a procedural defect that prevented the person
17 from commenting during the comment period or at the public meeting or
18 otherwise participating in the proceeding;

19 ~~(ii)~~(B) the Secretary did not conduct a comment period and did not
20 hold a public meeting;

1 ~~(iii)~~(C) the person demonstrates that an issue was not reasonably
2 ascertainable during the review of an application or other request that led to the
3 Secretary's act or decision; or

4 ~~(iv)~~(D) some other condition exists ~~which~~ that would result in
5 manifest injustice if the person's right to appeal was disallowed.

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

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

11 ~~(2) Failure to appeal within the time required under subsection (a) of this~~
12 ~~section shall render the decision of the district coordinator under subsection~~
13 ~~6007(e) of this title the final determination regarding jurisdiction under chapter~~
14 ~~151 of this title unless the underlying jurisdictional opinion was not properly~~
15 ~~served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title~~
16 ~~and on persons on a subdivision 6085(c)(1)(E) list approved under subsection 2~~
17 ~~6007(e) of this title.~~

18 ~~(f)~~ Stays.

19 (1) The filing of an appeal shall automatically stay the act or decision in
20 the following situations:

1 (A) acts or decisions involving stream alteration permits or shoreline
2 encroachment permits issued by the Secretary;

3 (B) the denial of interested person status by a board of adjustment,
4 planning commission, or development review board.

5 (2) Upon petition by a party or upon its own motion for a stay of an act
6 or decision, the Environmental Division shall perform the initial review of the
7 request and may grant a stay. Any decision under this subsection to issue a
8 stay shall be subject to appeal to the Supreme Court according to the Rules of
9 Appellate Procedure.

10 ~~(g)~~(f) Consolidated appeals. The Environmental Division may consolidate
11 or coordinate different appeals where those appeals all relate to the same
12 project.

13 ~~(h)~~(g) De novo hearing. The Environmental Division, applying the
14 substantive standards that were applicable before the tribunal appealed from,
15 shall hold a de novo hearing on those issues ~~which~~ that have been appealed,
16 except in the case of:

17 (1) a decision being appealed on the record pursuant to 24 V.S.A.
18 chapter 117; or

19 (2) a decision of the Commissioner of Forests, Parks and Recreation
20 under section 2625 of this title being appealed on the record, in which case the

1 court shall affirm the decision, unless it finds that the Commissioner did not
2 have reasonable grounds on which to base the decision.

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

7 ~~(j)~~(h) Appeals of authorizations or coverage under a general permit. Any
8 appeal of an authorization or coverage under the terms of a general permit shall
9 be limited in scope to whether the permitted activity complies with the terms
10 and conditions of the general permit.

11 ~~(k)~~(i) Limitations on appeals. Notwithstanding any other provision of this
12 section:

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

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

1 ~~(3) if a District Commission issues a partial decision under subsection~~
2 ~~6086(b) of this title, any appeal of that decision must be taken within 30 days 6~~
3 ~~of the date of that decision.~~

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

11 ~~(m)(k) Precedent. Prior decisions of the Environmental Board, Water~~
12 ~~Resources Board, and Waste Facilities Panel shall be given the same weight~~
13 ~~and consideration as prior decisions of the Environmental Division.~~

14 ~~(n)(l) Intervention. Any person may intervene in a pending appeal if that~~
15 ~~person:~~

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

18 (2) is a party by right;

19 (3) ~~is the Natural Resources Board;~~

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

1 * * * Jurisdiction of the Environmental Division * * *

2 Sec. 35. 4 V.S.A. § 34 is amended to read:

3 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

4 The Environmental Division shall have:

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

6 and

7 (2) jurisdiction of matters arising under 24 V.S.A. chapter 61,

8 subchapter 12 and chapter 117; ~~and~~

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

10 * * * Effective Dates * * *

11 Sec. 36. EFFECTIVE DATES

12 This act shall take effect on July 1, 2021, except that:

13 (1) Sec. 23 (climate adaption rulemaking) shall take effect on passage;

14 and

15 (2) Secs. 22 (climate mitigation criteria), 24 (fish, wildlife, and habitat

16 permit), 25 (fish, wildlife, and habitat permit fees), 26 (10 V.S.A. § 6086(d)),

17 27 (Act 250 presumptions; rulemaking), and 28 (applicability) shall take effect

18 on July 15, 2023.