ACT 250

Vermont's
Land Use and Development Law

Title 10, Chapter 151

Including all Legislative Amendments

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LAND USE AND DEVELOPMENT

10 V.S.A. Chapter 151.

State Land Use and Development Plans

Findings and Declaration of Intent

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Act 250

Title 10: Conservation and Development

Chapter 151: STATE LAND USE AND DEVELOPMENT PLANS

§ 6001. Definitions

When used in this chapter:

(1) "Board" means the natural resources board.

(2) "Capability and development plan" means the plan prepared pursuant to section 6042 of this title.

(3)(A) "Development" means:

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

(ii) The construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality that has not adopted permanent zoning and subdivision bylaws.

(iii) The construction of improvements for commercial or industrial purposes on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a municipality that has adopted permanent zoning and subdivision bylaws, if the municipality in which the proposed project is located has elected by ordinance, adopted under chapter 59 of Title 24, to have this jurisdiction apply.

(iv) The construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or trailer parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land, and within any continuous period of five years.

(v) The construction of improvements on a tract of land involving more than 10 acres that is to be used for municipal, county or state purposes. In computing the amount of land involved, land shall be included that is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings.

(vi) The construction of improvements for commercial, industrial or residential use above the elevation of 2,500 feet.

(vii) Exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material.

(viii) The drilling of an oil and gas well.

(B) Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of any combination of mixed income housing or mixed use and is located entirely within a growth center designated pursuant to 24 V.S.A. § 2793c or within a downtown development district designated pursuant to 24 V.S.A. § 2793, "development" means:

(i) Construction of mixed income housing with 100 or more housing units or a mixed use project with 100 or more housing units, in a municipality with a population of 20,000 or more.

(ii) Construction of mixed income housing with 50 or more housing units or a mixed use project with 50 or more housing units, in a municipality with a population of 10,000 or more but less than 20,000.

(iii) Construction of mixed income housing with 30 or more housing units or a mixed use project with 30 or more housing units, in a municipality with a population of 5,000 or more and less than 10,000.

(iv) Construction of mixed income housing with 25 or more housing units or a mixed use project with 25 or more housing units, in a municipality of less than 5,000.

(v) Construction of 10 or more units of mixed income housing or a mixed use project with 10 or more housing units where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the state or national register of historic places.

(C) For the purposes of determining jurisdiction under subdivisions (3)(A) and (3)(B) of this section:

(i) Housing units constructed by a person partially or completely outside a designated downtown development district or designated growth center shall not be counted to determine jurisdiction over housing units constructed by a person entirely within a designated downtown development district or designated growth center.

(ii) Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district or designated growth center shall be counted together with housing units constructed by a person partially or completely

outside a designated downtown development district or designated growth center to determine jurisdiction over the housing units constructed by a person partially or completely outside the designated downtown development district or designated growth center and within a five-mile radius.

(iii) All housing units constructed by a person within a designated downtown development district or designated growth center within any continuous period of five years, commencing on or after the effective date of this subdivision, shall be counted together.

(iv) In the case of a project undertaken by a railroad, no portion of a railroad line or railroad right-of-way that will not be physically altered as part of the project shall be included in computing the amount of land involved. In the case of a project undertaken by a person to construct a rail line or rail siding to connect to a railroad's line or right-of-way, only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved.

(v) Notwithstanding subdivision (3)(C)(iii) of this section, any affordable housing units, as defined by this section, that are subject to housing subsidy covenants as defined in 27 V.S.A. § 610 that preserve their affordability for a period of 99 years or longer, and that are constructed by a person within a designated downtown development district, designated village center, or designated growth center, shall count toward the total number of housing units used to determine jurisdiction only if they were constructed within the previous 12-month period, commencing on or after the effective date of this subdivision.

(D) The word "development" does not include:

(i) The construction of improvements for farming, logging or forestry purposes below the elevation of 2,500 feet.

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under section 30 V.S.A. § 248 or a natural gas facility as defined in subdivision 30 V.S.A. § 248(a)(3).

(iii) The construction of improvements for agricultural fairs that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(iv) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision 6001(22) of this section, only those portions of

the parcel or the tract that support the development shall be subject to regulation under this chapter. Permits issued under this chapter shall not impose conditions on other portions of the parcel or tract of land which do not support the development and that restrict or conflict with accepted agricultural practices adopted by the secretary of agriculture, food and markets.

(4) "District commission" means the district environmental commission.

(5) "Endangered species" means those species the taking of which is prohibited under rules adopted under chapter 123 of this title.

(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.

(7) "Floodway fringe" means an area which 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.

(8) "Productive forest soils" means those soils which are not primary agricultural soils but which have a reasonable potential for commercial forestry and which have not been developed. In order to qualify as productive forest soils, the land containing such soils shall be of a size and location, relative to adjoining land uses, natural condition, and ownership patterns so that those soils will be capable of supporting or contributing to a commercial forestry operation. Land use on those soils may include commercial timber harvesting and specialized forest uses, such as maple sugar or Christmas tree production.

(9) "Historic site" means any site, structure, district or archeological landmark which has been officially included in the National Register of Historic Places and/or the state register of historic places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant.

(10) "Land use plan" means the plan prepared pursuant to section 6043 of this title.

(11) "Lot" means any undivided interest in land, whether freehold or leasehold, including but not limited to interests created by trusts, partnerships, corporations, cotenancies and contracts.

(12) "Necessary wildlife habitat" means concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods.

(13) "Plat" means a map or chart of a subdivision with surveyed lot lines and dimensions.

(14)(A) "Person":

(i) shall mean an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership;

(ii) means a municipality or state agency;

(iii) includes individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the partition or division of land;

(iv) includes an individual's parents and children, natural and adoptive, and spouse, unless the individual establishes that he or she will derive no profit or consideration, or acquire any other beneficial interest from the partition or division of land by the parent, child or spouse;

(B) The following individuals and entities shall be presumed not to be affiliated for the purpose of profit, consideration, or other beneficial interest within the meaning of this chapter, unless there is substantial evidence of an inntent to evade the purposes of this chapter:

(i) a stockholder in a corporation shall be presumed not to be affiliated with others, solely on the basis of being a stockholder, if the stockholder and the stockholder's spouse, and natural or adoptive parents, children, and siblings own, control or have a beneficial interest in less than five percent of the outstanding shares in the corporation;

(ii) an individual shall be presumed not to be affiliated with others, solely for actions taken as an agent of another within the normal scope of duties of a court appointed guardian, a licensed attorney, real estate broker or salesperson, engineer or land surveyor, unless the compensation received or beneficial interest obtained as a result of these duties indicates more than an agency relationship;

(iii) a seller or chartered lending institution shall be presumed not to be affiliated with others, solely for financing all or a portion of the purchase price at rates not substantially higher than prevailing lending rates in the community, and subsequently granting a partial release of the security when the buyer partitions or divides the land.

(15) “Primary agricultural soils” means soil map units with the best combination of physical and chemical characteristics that have a potential for growing food, feed, and forage crops, have sufficient moisture and drainage, plant nutrients or responsiveness to fertilizers, few limitations for cultivation or limitations which may be easily overcome and an average slope that does not exceed 15 percent. Present uses may be cropland, pasture, regenerating forests, forestland, or other agricultural or silvicultural uses.

However, the soils must be of a size and location, relative to adjoining land uses, so that those soils will be capable, following removal of any identified limitations, of supporting or contributing to an economic or commercial agricultural operation. Unless contradicted by the qualifications stated in this subdivision, primary agricultural soils shall include important farmland soils map units with a rating of prime, statewide, or local importance as defined by the Natural Resources Conservation Service (N.R.C.S.) of the United States Department of Agriculture (U.S.D.A.).

(16) "Rural growth areas" means lands which are not natural resources referred to in section 6086(a)(1)(A) through (F), section 6086(a)(8)(A) and section 6086(a)(9)(B), (C), (D), (E) and (K) of this title.

(17) "Shoreline" means the land adjacent to the waters of lakes, ponds, reservoirs and rivers. Shorelines shall include the land between the mean high water mark and the mean low water mark of such surface waters.

(18) "Stream" means a current of water which is above an elevation of 1,500 feet above sea level or which flows at any time at a rate of less than 1.5 cubic feet per second.

(19) "Subdivision" means a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same district commission, within any continuous period of five years. In determining the number of lots, a lot shall be counted if any portion is within five miles or within the jurisdictional area of the same district commission. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a qualified organization, as defined under section 6301a of this title, if the land to be transferred includes and will preserve a segment of the Long Trail. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a "qualified holder" of "conservation rights and interest," as those terms are defined in section 821 of this title. "Subdivision" shall also mean a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into six or more lots, within a continuous period of five years, in a municipality which does not have duly adopted permanent zoning and subdivision bylaws.

(20) "Fissionable source material" means mineral ore which

(A) is extracted or processed with the intention of permitting the product to become or to be further processed into fuel for nuclear fission reactors or weapons; or

(B) contains uranium or thorium in concentrations which might reasonably be expected to permit economically profitable conversion or processing into fuel for nuclear reactors or weapons.

(21) "Reconnaissance" means:

(A) a geologic and mineral resource appraisal of a region by searching and analyzing published literature, aerial photography and geologic maps; or

(B) use of geophysical, geochemical, and remote sensing techniques that do not involve road building, land clearing, the use of explosives, or the introduction of chemicals to a land or water area; or

(C) surface geologic, topographic or other mapping and property surveying; or

(D) sample collections which do not involve excavation or drilling equipment, the use of explosives or the introduction of chemicals to the land or water area.

(22) "Farming" means:

(A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or

(B) the raising, feeding, or management of livestock, poultry, fish, or bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or

(F) the on-site production of fuel or power from agricultural products or wastes produced on the farm; or

(G) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.

(23) "Adjoining property owner" means a person who owns land in fee simple, if that land:

(A) shares a property boundary with a tract of land where a proposed or actual development or subdivision is located; or

(B) is adjacent to a tract of land where a proposed or actual development or subdivision is located and the two properties are separated only by a river, stream, or public highway.

(24) "Solid waste management district" means a solid waste management district formed pursuant to section 2202a and chapter 121 of Title 24, or by charter adopted by the general assembly.

(25) "Slate quarry" means a quarry pit or hole from which slate has been extracted or removed for the purpose of commercial production of building material, roofing, tile, or other dimensional stone products. "Dimensional stone" refers to slate that is processed into regularly shaped blocks, according to specifications. The words "slate quarry" shall not include pits or holes from which slate is extracted primarily for purposes of crushed stone products, unless, as of June 1, 1970, slate had been extracted from those pits or holes primarily for those purposes.

(26) "Telecommunications facility" means a support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, above the highest point of an attached existing structure or 50 feet, or more, above ground level in the case of a proposed new support structure, in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes.

(27) "Mixed income housing" means a housing project in which at least 15 percent of the total housing units are affordable housing units.

(28) "Mixed use" means construction of both mixed income housing and construction of space for any combination of retail, office, services, artisan, and recreational and community facilities, provided at least 40 percent of the gross floor area of the buildings involved is mixed income housing. "Mixed use" does not include industrial use.

(29) “Affordable housing” means either of the following:
(A) Housing that is owned by its occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees, is not more than 30 percent of the gross annual household income.
(B) Housing that is rented by the occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities and condominium association fees, is not more than 30 percent of the gross annual household income.

(30) “Designated growth center” means a growth center designated by the Vermont downtown development board under the provisions of 24 V.S.A. chapter 76A. (Added

1969, No. 250 (Adj. Sess.), § 2, eff. April 4, 1970; amended 1973, No. 85, § 8; 1979, No. 123 (Adj. Sess.), §§ 1-3, eff. April 14, 1980; 1981, No. 240 (Adj. Sess.), § 6, eff. April 28, 1982; 1983, No. 114 (Adj. Sess.), § 1; 1985, No. 64; 1987, No. 64, § 2; 1987, No. 273 (Adj. Sess.), § 2, eff. June 21, 1988; 1989, No. 154 (Adj. Sess.); No. 231 (Adj. Sess.), § 1, eff. July 1, 1991; No. 234 (Adj. Sess.), § 4; 1993, No. 200 (Adj. Sess.), § 1; No. 232 (Adj. Sess.), § 24, eff. March 15, 1995; 1995, No. 10, § 1; No. 30, § 1, eff. April 13, 1995; 1997, No. 48, § 1; 1997, No. 94 (Adj. Sess.), § 5, eff. April 15, 1998; 2001, No. 40, § 1; 2001, No. 114 (Adj. Sess.), §§ 6, 7, eff. May 28, 2002; 2003, No. 66, § 217c; 2003, No. 115 (Adj. Sess.), § 46, eff. Jan. 31, 2005; 2003, No. 121 (Adj. Sess.), §§ 75, 76, eff. June 8, 2004, and amended 2007, No. 79, § 13, eff. June 9, 2007.)

§ 6001a. Public auctions

As used in this chapter "development" shall also mean the sale of any interest in a tract or tracts of land, owned or controlled by a person, which have been partitioned or divided for the purpose of resale into five or more separate parcels of any size within a radius of five miles of any point on any such parcel, and within any period of ten years, by public auction; and "public auction" means any auction advertised or publicized in any manner, or to which more than ten persons have been invited. However, if the sales described under this section are of interests that, when sold by means other than public auction, are exempt from the provisions of this chapter under the provisions of subsection 6081(b) of this title, the fact that these interests are sold by means of a public auction shall not, in itself, create a requirement for a permit under this chapter. (Added 1973, No. 256 (Adj. Sess.), eff. April 11, 1974; amended 1991, No. 111, § 4, eff. June 28, 1991.)

§ 6001b. Low-level radioactive waste disposal facility

Any low-level radioactive waste disposal facility proposed for construction under chapter 161 of this title shall be a development, for purposes of this chapter, independent of the acreage involved. Any construction of improvements which is likely to generate low-level radioactive waste is a development, for purposes of this chapter, independent of the acreage involved. The criteria and procedures for obtaining a permit shall be the same as for any other development. (Added 1989, No. 296 (Adj. Sess.), § 6, eff. June 29, 1990.)

§ 6001c. Jurisdiction over broadcast and communication support structures and related improvements

In addition to other applicable law, any support structure proposed for construction, which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, above the highest point of an attached existing structure or 50 feet, or more, above ground level in the case of a proposed new support structure, in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes, shall be a development under this chapter, independent of the acreage involved. If jurisdiction is triggered for such a support structure, then jurisdiction will also extend to the construction of improvements ancillary to the support structure,

including buildings, broadcast or communication equipment, foundation pads, cables, wires, antennas or hardware, and all means of ingress and egress to the support structure. To the extent that future improvements are not ancillary to the support structure and do not involve an additional support structure, those improvements shall not be considered a development, unless they would be considered a development under this chapter in the absence of this section. The criteria and procedures for obtaining a permit under this section shall be the same as for any other development. (Added 1997, No. 48, § 2 and amended 2007, No. 79, § 12, eff. June 9, 2007.)

§ 6002. Procedures

The provisions of chapter 25 of Title 3 shall apply unless otherwise specifically stated. (1969, No. 250 (Adj. Sess.), § 26, eff. April 4, 1970.)

§ 6003. Penalties

A violation of any provision of this chapter or the rules promulgated hereunder is punishable by a fine of not more than $500.00 for each day of the violation or imprisonment for not more than two years, or both. A person who completely transfers ownership and control of property that is the subject of a permit under this chapter shall not be liable for later violations of that permit by another person. (1969, No. 250 (Adj. Sess.), § 28, eff. April 4, 1970; amended 2001, No. 40, § 2.)

§ 6007. Act 250 disclosure statement; jurisdictional determination

(a) Prior to the division or partition of land, the seller or other person dividing or partitioning the land shall prepare an "Act 250 Disclosure Statement." A person who is dividing or partitioning land, but is not selling it, shall file a copy of the statement with the town clerk, who shall record it in the land records. The seller who is dividing or partitioning land as part of the sale shall provide the buyer with the statement within 10 days of entering into a purchase and sale agreement for the sale or exchange of land, or at the time of transfer of title, if no purchase and sales agreement was executed, and shall file a copy of the statement with the town clerk, who shall record it in the land records. Failure to provide the statement as required shall, at the buyer's option, render the purchase and sales agreement unenforceable. If the disclosure statement establishes that the transfer is or may be subject to 10 V.S.A. chapter 151, and that information had not been disclosed previously, then at the buyer's option the contract may be rendered unenforceable. The statement shall include the following, on forms determined jointly by the board and the commissioner of the department of taxes:

(1) the name and tax identification number of the seller's or divider's or partitioner's spouse, and parents and children, natural or adoptive, and whether or not any of the individuals named will derive profit or consideration, or acquire any other beneficial interest from the partition or division of the land in question. However, this information will be required only to the extent that:

(A) the individuals in question have been sellers or buyers of record with respect to the partition or division of other land within the previous five years, and

(B) that other land is located within five miles of any part of the land currently being divided or partitioned, or is located within the jurisdictional area of the same district environmental commission;

(2) the name and tax identification number of all individuals and entities affiliated with the seller or divider or partitioner for the purpose of deriving profit or consideration, or acquiring any other beneficial interest from the partition or division of the land, as that affiliation is conditioned and limited according to the definition of "person" in section 6001(14) of this title;

(3) a statement identifying any partition or division of land which has been completed:

(A) within the preceding five years;

(B) by any of the entities or individuals identified under subdivisions (a)(1) or (2) of this section as deriving profit or consideration or acquiring any other beneficial interest from the partition or division of the land;

(C) within five miles of any part of the land being divided or partitioned, or within the jurisdictional area of the district environmental commission in which the land is located;

(4) notice that a permit may be required under this chapter.

(b) If, before the transfer of title, facts contained in the disclosure statement change, the seller shall provide the buyer with an amended statement in a timely manner.

(c) With respect to the partition or division of land, or with respect to an activity which might or might not constitute development, any person may submit to the district coordinator an "Act 250 Disclosure Statement" and other information required by the rules of the board, and may request a jurisdictional opinion from the district coordinator concerning the applicability of this chapter. If a requestor wishes a final determination to be rendered on the question, the district coordinator, at the expense of the requestor and in accordance with rules of the board shall publish notice of the issuance of the opinion in a local newspaper generally circulating in the area where the land which is the subject of the opinion is located, and shall serve the opinion on all persons listed in subdivision 6085(c)(1)(A) through (D) of this title. In addition, the requestor who is seeking a final determination shall consult with the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be notified by the district coordinator because they are adjoining property owners or other persons who would be likely to be able to demonstrate a particularized interest protected by this chapter that may be affected by an act or decision by a district commission. A jurisdictional opinion of a district coordinator shall be subject to a request for reconsideration in accordance with rules of

the board and may be appealed to the environmental court pursuant to chapter 220 of this title. (Added 1987, No. 64, § 3; amended 1991, No. 111, § 3, eff. June 28, 1991; No. 111, § 7, eff. Oct. 1, 1991; 1993, No. 232 (Adj. Sess.), § 25, eff. March 15, 1995; 1999, No. 49, § 155; 2003, No. 115 (Adj. Sess.), § 47, eff. Jan. 31, 2005.)

§ 6021. Board; vacancy, removal

(a) A natural resources board is created with a land use panel and a water resources panel. The board shall consist of nine members appointed by the governor, with the advice and consent of the senate, so that one appointment on each panel expires in each odd numbered year. In making appointments, the governor and the senate shall give consideration to experience, expertise, or skills relating to the environment or land use. The governor shall appoint a chair of the board, a position that shall be a full-time position. The other eight members shall be appointed by the governor, four to the water resources panel of the board and four others to the land use panel of the board. The chair shall serve as chair on each panel of the board. Following initial appointments, the members, except for the chair, shall be appointed for terms of four years. The governor shall appoint up to five persons, with preference given to former environmental board, water resources board, natural resources board or district commission members, with the advice and consent of the senate, to serve as alternates for board members. Alternates shall be appointed for terms of four years, with initial appointments being staggered. The board chair may assign alternates to sit on specific matters before the panels of the board, in situations where fewer than five panel members are available to serve. No person who receives or, during the previous two years, has received a significant portion of the person's income directly or indirectly from permit holders or applicants for one or more permits under chapter 47 of this title may be a member of the water resources panel.

(b) Any vacancy occurring in the membership of the board shall be filled by the governor for the unexpired portion of the term.

(c) Notwithstanding the provisions of 3 V.S.A. § 2004, members shall be removable for cause only, except the chair, who shall serve at the pleasure of the governor.

(d) The chair, upon request of the chair of a district commission, may appoint and assign former commission members to sit on specific commission cases when some or all of the regular members and alternates are disqualified or otherwise unable to serve. (1969, No. 250 (Adj. Sess.), § 3, eff. April 4, 1970; amended 1989, No. 234 (Adj. Sess.), § 2; 1991. No. 111, § 1, eff. June 28, 1991; 1993, No. 82, § 1; amended 1993, No. 232 (Adj. Sess.), § 26, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 48, eff. Jan. 31, 2005.)

§ 6022. Personnel

The board may appoint legal counsel and administrative personnel, as it finds necessary in carrying out its duties, unless the governor shall otherwise provide. (1969, No. 250 (Adj. Sess.), § 4, eff. April 4, 1970; amended 1993, No. 82, § 2.)

§ 6023. Grants

The board may apply for and receive grants from the federal government and from other sources. (1969, No. 250 (Adj. Sess.), § 4, eff. April 4, 1970.)

§ 6024. Intragovernmental cooperation

Other departments and agencies of state government shall cooperate with the board and make available to it data, facilities and personnel as may be needed to assist the board in carrying out its duties and functions. There shall be established a regular schedule of project review that shall assure that all affected departments and agencies recognize and pursue their respective responsibilities. State employees whose job is to assist applicants in the permitting process established under this chapter, shall endeavor to assist all applicants regardless of the size and value of the projects involved. (1969, No. 250 (Adj. Sess.), § 4, eff. April 4, 1970; amended 2001, No. 40, § 3.)

§ 6025. Rules

(a) The board may adopt rules of procedure for the panels, the district commissions, and the board itself.

(b) The land use panel may adopt substantive rules, in accordance with the provisions of chapter 25 of Title 3, that interpret and carry out the provisions of this chapter that pertain to land use regulated under section 6086 of this title. These rules shall include provisions that establish criteria under which applications for permits under this chapter may be classified in terms of complexity and significance of impact under the standards of subsection 6086(a) of this chapter. In accordance with that classification the rules may:

(1) provide for simplified or less stringent procedures than are otherwise required under sections 6083, 6084 and 6085 of this chapter; and

(2) provide for the filing of notices instead of applications for the permits that would otherwise be required under section 6081 of this chapter; and

(3) provide a procedure by which a district commission may authorize a district coordinator to issue a permit that the district commission has determined under land use panel rules is a minor application with no undue adverse impact.

(c)(1) This subsection shall apply to lots within a subdivision:

(A) that were created as part of a subdivision owned or controlled by a person who may have been required to obtain a permit under this chapter; and

(B) with respect to which a determination has been made that a permit was needed under this chapter; and

(C) that were sold to a purchaser prior to January 1, 1991 without a required permit.

(2) The rules shall provide for a modified process by which the sole purchaser, or the group of purchasers, of one or more lots to which this subsection applies may apply for and obtain a permit under this chapter that shall be issued in light of the existing improvements, facts, and circumstances that pertain to the lots; provided, however, that the requirements of this chapter shall be modified only to the extent needed to issue those permits. For purposes of these rules, a purchaser eligible for relief under this subsection must not have been involved in creating the lots, must not be a person who owned or controlled the land when it was divided or partitioned, as a person is defined in this chapter, and must not have known at the time of purchase that the transfer was subject to a permit requirement that had not been met.

(3) [Deleted.]

(d) The water resources panel may adopt rules, in accordance with the provisions of chapter 25 of Title 3, in the following areas:

(1) Rules governing surface levels of lakes, ponds, and reservoirs that are public waters of Vermont.

(2) Rules regarding classification of the waters of the state, in accordance with chapter 47 of this title.

(3) Rules regarding the establishment of water quality standards, in accordance with chapter 47 of this title.

(4) Rules regulating the surface use of public waters, and rules pertaining to the designation of outstanding resource waters, in accordance with chapter 49 of this title.

(5) Rules regarding the identification of wetlands which are so significant that they merit protection. Any determination that a particular wetland is significant will result from an evaluation of at least the following functions which a wetland serves:

(A) provides temporary water storage for flood water and storm runoff;

(B) contributes to the quality of surface and groundwater through chemical action;

(C) naturally controls the effects of erosion and runoff, filtering silt and organic matter;

(D) contributes to the viability of fisheries by providing spawning, feeding, and general habitat for freshwater fish;

(E) provides habitat for breeding, feeding, resting, and shelter to both game and nongame species of wildlife;

(F) provides stopover habitat for migratory birds;

(G) provides for hydrophytic vegetation habitat;

(H) provides for threatened and endangered species habitat;

(I) provides valuable resources for education and research in natural sciences;

(J) provides direct and indirect recreational value and substantial economic benefits; and

(K) contributes to the open-space character and overall beauty of the landscape.

(6) Rules regarding the ability to reclassify wetlands, in general, or on a case-by-case basis.

(7) Rules protecting wetlands that have been determined under subdivision (5) or (6) of this subsection to be significant, including rules that provide for the issuance or denial of conditional use determinations by the department of environmental conservation; provided, however, that the rules may only protect the values and functions sought to be preserved by the designation. The panel shall not adopt rules that restrain agricultural activities without the consent of the secretary of the agency of agriculture, food and markets and shall not adopt rules that restrain silvicultural activities without the consent of the commissioner of the department of forests, parks and recreation.

(8) Rules implementing 29 V.S.A. chapter 11, relating to management of lakes and ponds.

(e) Except for subsection (a) of this section, references to rules adopted by the board shall be construed to mean rules adopted by the appropriate panel of the board, as established by this section. (1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 2; 1979, No. 123 (Adj. Sess.), § 4, eff. April 14, 1980; 1985, No. 52, § 3, eff. May 15, 1985; 1987, No. 186 (Adj. Sess.), eff. May 5, 1988; 1991, No. 111, § 5, eff. June 28, 1991; 2003, No. 115 (Adj. Sess.), § 49, eff. Jan. 31, 2005.)

§ 6026. District commissioners

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

(1) District No. 1, comprising administrative district 1 as provided in section 4001 of Title 3.

(2) District No. 2, comprising administrative district 2 as provided in section 4001 of Title 3.

(3) District No. 3, comprising administrative district 3 as provided in section 4001 of Title 3.

(4) District No. 4, comprising administrative district 4 as provided in section 4001 of Title 3, excluding the towns of Addison, Bridport, Bristol, Cornwall, Ferrisburg, Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge and Whiting.

(5) District No. 5, comprising administrative district 5 as provided in section 4001 of Title 3.

(6) District No. 6, comprising administrative district 6 as provided in section 4001 of Title 3.

(7) District No. 7, comprising administrative district 7 as provided in section 4001 of Title 3.

(8) District No. 8, comprising administrative district 8 as provided in section 4001 of Title 3.

(9) District No. 9, comprising the towns of Addison, Bridport, Bristol, Cornwall, Ferrisburg, Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge, and Whiting.

(b) A district environmental commission is created for each district. Each district commission shall consist of three members from that district appointed in the month of February by the governor so that two appointments expire in each odd numbered year. Two of the members shall be appointed for a term of four years, and the chair (third member) of each district shall be appointed for a two-year term. In any district, the governor may appoint not more than four alternate members from that district whose terms shall not exceed two years, who may hear any case when a regular member is disqualified or otherwise unable to serve.

(c) Members shall be removable for cause only, except the chairman who shall serve at the pleasure of the governor.

(d) Any vacancy shall be filled by the governor for the unexpired period of the term. (1969, No. 250 (Adj. Sess.), § 5, eff. April 4, 1970; amended 1971, No. 74, § 1; 1973, No. 54; 1985, No. 107 (Adj. Sess.), eff. March 14, 1986; 1993, No. 232 (Adj. Sess.), § 27, eff. March 15, 1995.)

§ 6027. Powers

(a) The panels of the board and district commissions each shall have the power, with respect to any matter within its jurisdiction, to:

(1) Administer oaths, take depositions, subpoena and compel the attendance of witnesses, and require the production of evidence.

(2) Allow parties to enter upon lands of other parties for the purposes of inspecting and investigating conditions related to the matter before the panel or commission.

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

(4) Apply for and receive grants from the federal government and from other sources.

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

(c) The land use panel may designate or establish such regional offices as it deems necessary to implement the provisions of this chapter and the rules adopted hereunder. The land use panel may designate or require a regional planning commission to receive applications, provide administrative assistance, perform investigations, and make recommendations.

(d) At the request of a district commission, if the board chair determines that the workload in the requesting district is likely to result in unreasonable delays or that the requesting district commission is disqualified to hear a case, the chair may authorize the district commission of another district to sit in the requesting district to consider one or more applications.

(e) The land use panel may by rule allow joint hearings to be conducted with specified state agencies or specified municipalities.

(f) The board may publish or contract to publish annotations and indices of the decisions of the environmental court, and the text of those decisions. The published product shall be available at a reasonable rate to the general public and at a reduced rate to libraries and governmental bodies within the state.

(g) The land use panel shall manage the process by which land use permits are issued under section 6086 of this title, may initiate enforcement on related matters, under the provisions of chapter 201 and 211 of this title, and may petition the environmental court for revocation of land use permits issued under this chapter. Grounds for revocation are:

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

(2) noncompliance with any permit or permit condition;

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

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

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

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

(h) The land use panel may hear appeals of fee refund requests under section 6083a of this title.

(i) The chair, subject to the direction of the board, shall have general charge of the offices and employees of the board and the offices and employees of the district commissions.

(j) The land use panel may participate as a party in all matters before the environmental court that relate to land use permits issued under this chapter.

(k) The water resources panel may participate as a party in all matters before the environmental court that relate to rules adopted by the panel under the authority of section 6025 of this title. (1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 3; 1979, No. 123 (Adj. Sess.), § 8, eff. April 14, 1980; 1991, No. 111, § 6 eff. June 28, 1991; 1993, No. 232 (Adj. Sess.), § 28, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 50, eff. Jan. 31, 2005.)

§ 6028. Compensation

Members of the board and district commissions shall receive per diem pay and all necessary and actual expenses in accordance with 32 V.S.A. § 1010. (1969, No. 250 (Adj. Sess.), § 31, eff. April 4, 1970; amended 1993, No. 82, § 3.)

§ 6029. Act 250 permit fund

There is hereby established a special fund to be known as the Act 250 permit fund for the purposes of implementing the provisions of this chapter. Revenues to the fund shall be those fees collected in accordance with section 6083a of this title, gifts, appropriations, and copying and distribution fees. The board shall be responsible for the fund and shall

account for revenues and expenditures of the board. At the commissioner's discretion, the commissioner of finance and management may anticipate amounts to be collected and may issue warrants based thereon for the purposes of this section. Disbursements from the fund shall be made through the annual appropriations process to the board, and to the agency of natural resources to support those programs within the agency that directly or indirectly assist in the review of Act 250 applications. This fund shall be administered as provided in subchapter 5 of chapter 7 of Title 32. (Added 1989, No. 279 (Adj. Sess.), § 2, eff. June 30, 1990; amended 1993, No. 70, § 1; 1997, No. 59, § 41, eff. June 30, 1997; 2003, No. 115 (Adj. Sess.), § 51; No. 163 (Adj. Sess.), § 25.)

§ 6030. Map of wireless telecommunications facilities

The board shall maintain a map that shows the location of all wireless telecommunications facilities in the state. (Added 1997, No. 94 (Adj. Sess.), § 1, eff. April 15, 1998.)

§ 6041. Omitted.

§ 6042. Capability and development plan

The board shall adopt a capability and development plan consistent with the interim land capability plan which shall be made with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the state, which will, in accordance with present and future needs and resources, best promote the health, safety, order, convenience, prosperity and welfare of the inhabitants, as well as efficiency and economy in the process of development, including but not limited to, such distribution of population and of the uses of the land for urbanization, trade, industry habitation, recreation, agriculture, forestry and other uses as will tend to create conditions favorable to transportation, health, safety, civic activities and educational and cultural opportunities, reduce the wastes of financial and human resources which result from either excessive congestion or excessive scattering of population and tend toward an efficient and economic utilization of drainage, sanitary and other facilities and resources and the conservation and production of the supply of food, water and minerals. In addition, the plan may accomplish the purposes set forth in section 4302 of Title 24. (1969, No. 250 (Adj. Sess.), § 19, eff. April 4, 1970.)

§ 6043. Repealed. 1983, No. 114 (Adj. Sess.), § 5.

§ 6044. Public hearings

(a) The board shall hold public hearings for the purpose of collecting information to be used in establishing the capability and development plan, and interim land capability plan. The public hearings may be held in an appropriate area or areas of the state and shall be conducted according to rules to be established and published by the board.

(b) The board may, on its own motion or on petition of an interested agency of the state or any regional or local planning commission, hold such other hearings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules and regulations.

(c) At least one public hearing shall be held in each district prior to adoption of a plan pursuant to section 6042 of this title. Notice of a hearing shall be furnished each municipality, and municipal and regional planning commission in the district where the hearing is to be held not less than fifteen days prior to the hearing.

(d) The provisions of chapter 25 of Title 3 shall not apply to the hearings under this section. (1969, No. 250 (Adj. Sess.), § 21, eff. April 4, 1970; amended 1983, No. 114 (Adj. Sess.), § 2.)

§ 6045. Repealed. 1983, No. 114 (Adj. Sess.), § 5.

§ 6046. Approval of governor and legislature

(a) Upon approval of a capability and development or interim land capability plan by the board, it shall submit the plan to the governor for approval. The governor shall approve the plan, or disapprove the plan or any portion of a plan, within 30 days of receipt. If the governor fails to act, the plan shall be deemed approved by the governor. This section shall also apply to any amendment of a plan.

(b) After approval by the governor, plans pursuant to section 6042 of this title shall be submitted to the general assembly when next in session for approval. A plan shall be considered adopted for the purposes of section 6086(a)(9) of this title when adopted by the act of the general assembly. No permit shall be issued or denied by a district commission or environmental board which is contrary to or inconsistent with a local plan, capital program or municipal bylaw governing land use unless it is shown and specifically found that the proposed use will have a substantial impact or effect on surrounding towns, the region or an overriding interest of the state and the health, safety and welfare of the citizens and residents thereof requires otherwise. (1969, No. 250 (Adj. Sess.), § 23, eff. April 4, 1970; amended 1973, No. 85, § 5; 1983, No. 114 (Adj. Sess.), § 3.)

§ 6047. Changes in the capability and development plan

(a) After final adoption, any department or agency of the state or a municipality, or any property owner or lessee may petition the board for a change in the capability and development plan.

(b) Within 10 days of receipt, the board shall forward a copy of the petition to the district commission and regional planning agency for comments and recommendations. If no

regional planning commission exists, the copy shall be sent to the affected municipal planning commissions and municipalities.

(c) After 60 days but within 120 days of the original receipt of a petition, the board shall advertise a public hearing to be held in the appropriate county. The board shall notify the persons and agencies that have an interest in the change of the time and place of the hearing and the procedures established for initial adoption of a plan shall apply.

(d)-(f) [Repealed.] (1969, No. 250 (Adj. Sess.), § 24, eff. April 4, 1970; amended 1983, No. 114 (Adj. Sess.), § 4.)

§ 6081. Permits required; exemptions

(a) No person shall sell or offer for sale any interest in any subdivision located in this state, or commence construction on a subdivision or development, or commence development without a permit. This section shall not prohibit the sale, mortgage or transfer of all, or an undivided interest in all, of a subdivision unless the sale, mortgage or transfer is accomplished to circumvent the purposes of this chapter.

(b) Subsection (a) of this section shall not apply to a subdivision exempt under the regulations of the department of health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the board of health regulations, or has pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plats on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Subsection (a) of this section shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971. Subsection (a) of this section shall not apply to a state highway on which a hearing pursuant to section 222 of Title 19 has been held prior to June 1, 1970. Subsection (a) of this section shall not apply to any telecommunications facility in existence prior to July 1, 1997, unless that facility is a "development" as defined in subdivision 6001(3) of this title. Subsection (a) of this section shall apply to any substantial change in such excepted subdivision or development.

(c) No permit or permit amendment is required for activities at a solid waste management facility authorized by a provisional certification issued under 10 V.S.A. § 6605d; however, development at such a facility that is beyond the scope of that provisional certification is not exempt from the provisions of this chapter.

(d) For purposes of this section, the following municipal projects shall not be considered to be substantial changes, regardless of the acreage involved, and shall not require a permit as provided under subsection (a) of this section:

(1) essential municipal wastewater treatment facility enhancements that do not expand the capacity of the facility by more than 10 percent.

(2) essential municipal waterworks enhancements that do not expand the capacity of the facility by more than 10 percent.

(3) essential public school reconstruction or expansion that does not expand the student capacity of the school by more than 10 percent.

(4) essential municipal building reconstruction or expansion that does not expand the floor space of the building by more than 10 percent.

(e) For purposes of this section, the replacement of water and sewer lines, as part of a municipality's regular maintenance or replacement of existing facilities, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the capacity of the relevant facility by more than 10 percent.

(f) A permit application for a development for which a certificate of need pursuant to section 6606a of this title is required shall be accompanied by such certificate.

(g) The owners or operators of earth removal sites associated with a landfill closing, other than the landfill site itself, shall obtain a municipal zoning permit in lieu of a permit under this chapter, unless the municipality chooses to refer the matter to the district environmental commission having jurisdiction. At the district commission level, the matter will be treated as a minor application. If municipal zoning bylaws do not exist, the excavation application shall be subject to the provisions of this chapter as a minor application.

(h) No permit or permit amendment is required for closure operations at an unlined landfill which began disposal operations prior to July 1, 1992 and which has been ordered closed under section 6610a or chapter 201 of this title. Closure and post-closure operations covered by this provision are limited to the following on-site operations: final landfill cover system construction and related maintenance operations, water quality monitoring, landfill gas control systems installation and maintenance, erosion control measures, site remediation and general maintenance. Prior to issuing a final order for closure for landfills qualifying for this exemption, a public informational meeting shall be noticed and held by the secretary with public comment accepted on the draft order. The public comment period shall extend no less than seven days before the public meeting and 14 days after the meeting. Public comment related to the public health, water pollution, air pollution, traffic, noise, litter, erosion and visual conditions shall be considered. Landfills with permits in effect under this chapter as of July 1, 1994, shall not qualify for an exemption as described under this section.

(i) The repair or replacement of railroad facilities used for transportation purposes, as part of a railroad's maintenance, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement or repair does not result in the physical expansion of the railroad's facilities.

(j) With respect to the extraction of slate from a slate quarry that is included in final slate quarry registration documents, if it were removed from a site prior to June 1, 1970, the site from which slate was actually removed, if lying unused at any time after those operations commenced, shall be deemed to be held in reserve, and shall not be deemed to be abandoned.

(k)(1) With respect to the commercial extraction of slate from a slate quarry, activities that are not ancillary to slate mining operations may constitute substantial changes, and be subject to permitting requirements under this chapter. "Ancillary activities" include the following activities that pertain to slate and that take place within a registered parcel that contains a slate quarry: drilling, crushing, grinding, sizing, washing, drying, sawing and cutting stone, blasting, trimming, punching, splitting and gauging, and use of buildings and use and construction of equipment exclusively to carry out the above activities. Buildings that existed on April 1, 1995, or any replacements to those buildings, shall be considered ancillary.

(2) Activities that are ancillary activities that involve crushing, may constitute substantial changes if they may result in significant impact with respect to any of the criteria specified in subdivisions 6086(a)(1) through (10) of this title.

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

(2) Slate quarry registration shall state the name and address of the owner of the land, mineral rights or leasehold rights; whether that person holds mineral rights, or leasehold rights or is the owner in fee simple; the physical location of the same; the physical location and size of ancillary buildings; and the book and page of the recorded deed or other instrument by which the owner holds title to the land or rights.

(3) Slate quarry registration documents shall be submitted to the district commission together with a request, under the provisions of subsection 6007(c) of this title, for a final determination regarding the applicability of this chapter.

(4) The final determination regarding a slate quarry registration under subsection 6007(c) of this title shall be recorded in the municipal land records at the expense of the registrant along with an accurate site plan of the parcel depicting the site specific information contained in the registration documents.

(5) With respect to a slate quarry located on a particular registered parcel of land, ancillary activities on the parcel related to the extraction and processing of slate into products that are primarily other than crushed stone products shall not be deemed to be

substantial changes, as long as the activities do not involve the creation of one or more new slate quarry holes that are not related to an existing slate quarry hole.

(m) No permit is required for the replacement of a preexisting telecommunications facility, in existence prior to July 1, 1997, provided the facility is not a development as defined in subdivision 6001(3) of this title, unless the replacement would constitute a substantial change to the telecommunications facility being replaced, or to improvements ancillary to the telecommunications facility, or both. No permit is required for repair or routine maintenance of a preexisting telecommunications facility or of those ancillary improvements associated with the telecommunications facility.

(n) No permit amendment is required for the replacement of a permitted telecommunications facility unless the replacement would constitute a material or substantial change to the permitted telecommunications facility to be replaced, or to improvements ancillary to the telecommunications facility, or both. No permit is required for repair or routine maintenance of a permitted telecommunications facility or of those ancillary improvements associated with the telecommunications facility.

(o) If a downtown development district designation pursuant to 24 V.S.A. § 2793 is removed, subsection (a) of this section shall apply to any subsequent substantial change to a project that was originally exempt pursuant to subdivision 6001(3)(B) of this title.

(p) No permit or permit amendment is required for any 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 the jurisdictional threshold specified in subdivision 6001(3)(B) of this title.

(q) For the purposes of reviewing any combination of electrical distribution and communications lines and subsidiary facilities that, standing alone, constitutes a development for purposes of this chapter, the actual and potential impacts considered by the board or district commission under subsection 6086(a) of this title shall not include actual or potential impacts of the construction of other improvements to be served by those lines and subsidiary facilities.

(r) In situations in which the construction of improvements for any combination of electrical distribution and communications lines and subsidiary facilities, standing alone, constitutes a development subject to the jurisdiction of the board or district commission under this chapter, subsequent construction of improvements for any combination of electrical distribution and communications lines and subsidiary facilities not identified or reasonably identifiable at the time construction commences, standing alone, shall be considered new construction of improvements and shall not be considered a material or substantial change to that previously permitted development. (Added 1969, No. 250 (Adj. Sess.), §§ 6, 7, subsec. (a), eff. June 1, 1970, subsec. (b), eff. April 4, 1970; amended

1989, No. 218 (Adj. Sess.), § 2; No. 276 (Adj. Sess.), §§ 17a, 17b, eff. June 20, 1990; No. 282 (Adj. Sess.), § 7, eff. June 22, 1990; 1991, No. 256 (Adj. Sess.), § 30, eff. June 9, 1992; 1993, No. 200 (Adj. Sess.), § 2; No. 208 (Adj. Sess.), § 4; 1995, No. 30, § 2, eff. April 13, 1995; 1999, No. 93 (Adj. Sess.), §§ 1, 2; 2001, No. 114 (Adj. Sess.), § 7c, eff. May 28, 2002; No. 133 (Adj. Sess.), § 1.)

§ 6082. Approval by local governments and state agencies

The permit required under section 6081 of this title shall not supersede or replace the requirements for a permit of any other state agency or municipal government. (1969, No. 250 (Adj. Sess.), § 27, eff. April 4, 1970.)

§ 6083. Applications

(a) An application for a permit shall be filed with the district commissioner as prescribed by the rules of the board and shall contain at least the following documents and information:

(1) The applicant's name, address, and the address of each of the applicant's offices in this state, and, where the applicant is not an individual, municipality or state agency, the form, date and place of formation of the applicant.

(2) Five copies of a plan of the proposed development or subdivision showing the intended use of the land, the proposed improvements, the details of the project, and any other information required by this chapter, or the rules adopted under this chapter.

(3) The fee prescribed by section 6083a of this title.

(4) Certification of filing of notice as set forth in 6084 of this title.

(b) An applicant or petitioner shall grant the appropriate panel of the board or district commission, or their agents, permission to enter upon the applicant's or petitioner's land for these purposes.

(c) Where an application concerns the extraction or processing of fissionable source material, before the application is considered the district commission shall obtain the express approval of the general assembly by act of legislation stating that extraction or processing of fissionable source material will promote the general welfare. The district commission shall advise the general assembly of any application for extraction or processing of fissionable source material by delivering written notice to the speaker of the house of representatives and to the president of the senate, and shall make available all relevant material. The procedural requirements and deadlines applicable to permit applications under this chapter shall be suspended until the approval is granted. Approval by the general assembly under this subsection shall not be construed as approval of any particular application or proposal for development.

(d) The panels of the board and commissions shall make all practical efforts to process matters before the board and permits in a prompt manner. The land use panel shall establish time limits for the processing of land use permits issued under section 6086 of this title as well as procedures and time periods within which to notify applicants whether an application is complete. The land use panel shall report annually by February 15 to the house and senate committees on natural resources and energy and government operations. The annual report shall assess the performance of the board and commissions in meeting the limits; identify areas which hinder effective performance; list fees collected for each permit; summarize changes made to improve performance; and describe staffing needs for the coming year.

(e) The district commissions shall give priority to municipal projects that have been mandated by the state through a permit, enforcement order, court order, enforcement settlement agreement, statute, rule or policy.

(f) In situations where the party seeking to file an application is a state agency, municipality, solid waste management district empowered to condemn the involved land or an interest in it, the application need only be signed by that party.

(g)(1) A district commission, pending resolution of noncompliance, may stay the issuance of a permit or amendment if it finds, by clear and convincing evidence, that a person who is an applicant:

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

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

(2) Any decision under this subsection to issue a stay may be subject to review by the environmental court, as provided by rule of the supreme court.

(3) If the same violation is the subject of an enforcement action under chapter 201 of this title, then jurisdiction over the issuance of a stay shall remain with the environmental court and shall not reside with the district commission. (1969, No. 250 (Adj. Sess.), §§ 8, 15, eff. April 4, 1970; amended 1979, No. 123 (Adj. Sess.), § 6, eff. April 14, 1980; 1987, No. 76, § 10; 1989, No. 276 (Adj. Sess.), § 17, eff. June 20, 1990; No. 279 (Adj. Sess.), § 3; 1991, No. 109, § 7, eff. June 28, 1991; 1995, No. 186 (Adj. Sess.), § 35, eff. May 22, 1996; 1997, No. 155 (Adj. Sess.), § 26; 2001, No. 40, § 4; 2003, No. 151 (Adj. Sess.), § 1; No. 115 (Adj. Sess.), § 52, eff. Jan. 31, 2005.)

§ 6083a. Act 250 fees

(a) All applicants for a land use permit under section 6086 of this title shall be directly responsible for the costs involved in the publication of notice in a newspaper of general circulation in the area of the proposed development or subdivision and the costs incurred in recording any permit or permit amendment in the land records. In addition, applicants shall be subject to the following fees for the purpose of compensating the state of Vermont for the direct and indirect costs incurred with respect to the administration of the Act 250 program:

(1) For projects involving construction, $4.75 for each $1,000.00 of the first $15,000,000.00 of construction costs, and $2.25 for each $1,000.00 of construction costs above $15,000,000.00.

(2) For projects involving the creation of lots, $100.00 for each lot.

(3) For projects involving exploration for or removal of oil, gas and fissionable source materials, a fee as determined under subdivision (1) of this subsection or $1,000.00 for each day of commission hearings required for such projects, whichever is greater.

(4) For projects involving the extraction of earth resources, including but not limited to sand, gravel, peat, topsoil, crushed stone or quarried material, a fee as determined under subdivision (1) of this subsection or a fee equivalent to the rate of $0.10 per cubic yard of maximum estimated annual extraction, whichever is greater.

(5) For projects involving the review of a master plan, a fee equivalent to $0.10 per $1,000.00 of total estimated construction costs in current dollars in addition to the fee established in subdivision (1) of this subsection for any portion of the project seeking construction approval.

(6) In no event shall a permit application fee exceed $135,000.00.

(b) Notwithstanding the provisions of subsection (a) of this section, there shall be a minimum fee of $150.00 for original applications and $50.00 for amendment applications, in addition to publication and recording costs. These costs shall be in addition to any other fee established by statute, unless otherwise expressly stated.

(c) Fees shall not be required for projects undertaken by municipal agencies or by state governmental agencies, except for publication and recording costs.

(d) [Deleted.]

(e) A written request for an application fee refund shall be submitted to the district commission to which the fee was paid within 90 days of the withdrawal of the application.

(1) In the event that an application is withdrawn prior to the convening of a hearing, the district commission shall, upon request of the applicant, refund 50 percent of the fee paid between $100.00 and $5,000.00, and all of that portion of the fee paid in excess of $5,000.00 except that the district commission may decrease the amount of the refund if the direct and indirect costs incurred by the state of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the district commission.

(2) In the event that an application is withdrawn after a hearing, the district commission shall, upon request of the applicant, refund 25 percent of the fee paid between $100.00 and $10,000.00 and all of that portion of the fee paid in excess of $10,000.00 except that the district commission may decrease the amount of the refund if the direct and indirect costs incurred by the state of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the district commission.

(3) The district commission shall, upon request of the applicant, increase the amount of the refund if the application of subdivisions (1) and (2) of this subsection clearly would result in a fee that unreasonably exceeds the direct and indirect costs incurred by the state of Vermont with respect to the administration of the Act 250 program.

(4) District commission decisions regarding application fee refunds may be appealed to the land use panel in accordance with board rules.

(5) For the purposes of this section, a "hearing" is a duly warned meeting concerning an application convened by a quorum of the district commission, at which parties may be present. However, a hearing does not include a prehearing conference.

(6) In no event may an application fee or a portion thereof be refunded after a district commission has issued a final decision on the merits of an application.

(7) In no event may an application fee refund include the payment of interest on the application fee.

(f) In the event that an application involves a project or project impacts that previously have been reviewed, the applicant may petition the chair of the district commission to waive all or part of the application fee. If an application fee was paid previously in accordance with subdivisions (a)(1) through (4) of this section, the chair may waive all or part of the fee for a new or revised project if the chair finds that the impacts of the project have been reviewed in an applicable master permit application, or that the project is not significantly altered from a project previously reviewed, or that there will be substantial savings in the review process due to the scope of review of the previous applications.

(g) A commission or the land use panel may require any permittee to file a certification of actual construction costs and may direct the payment of a supplemental fee in the event

that an application understated a project's construction costs. Failure to file a certification or to pay a supplemental fee shall be grounds for permit revocation.

(h) The costs of republishing a notice due to a scheduling change requested by a party shall be borne by the party requesting the change. (Added 1997, No. 155 (Adj. Sess.), § 27; amended 2003, No. 163 (Adj. Sess.), § 26; No. 115 (Adj. Sess.), § 53, eff. Jan. 31, 2005.)

§ 6084. Notice of application; hearings, commencement of review

(a) On or before the date of filing of an application with the district commission, the applicant shall send notice and a copy of the initial application to the owner of the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a municipal or regional boundary. The applicant shall furnish to the district commission the names of those furnished notice by affidavit, and shall post a copy of the notice in the town clerk's office of the town or towns wherein the project lies. The applicant shall also provide a list of adjoining landowners to the district commission. Upon request and for good cause, the district commission may authorize the applicant to provide a partial list of adjoining landowners in accordance with board rules.

(b) Upon an application being ruled complete, the district commission shall determine whether to process the application as a major application with a required public hearing or process the application as a minor application with the potential for a public hearing in accordance with board rules.

(1) For major applications, the district commission shall provide notice not less than ten days prior to any scheduled hearing or prehearing conference to: the applicant; the owner of the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a municipal or regional boundary; adjoining landowners as deemed appropriate by the district commission pursuant to the rules of the board, and any other person the district commission deems appropriate.

(2) For minor applications, the district commission shall provide notice of the commencement of application review to the persons listed in subdivision (1) of this subsection.

(3) For both major and minor applications, the district commission shall also provide such notice and a copy of the application to: the board and any affected state agency ; the solid waste management district in which the land is located, if the development or

subdivision constitutes a facility pursuant to subdivision 6602(10) of this title; and any other municipality, state agency, or person the district commission deems appropriate.

(c) Anyone required to receive notice of commencement of minor application review pursuant to subsection (b) of this section may request a hearing by filing a request within the public comment period specified in the notice pursuant to board rules. The district commission, on its own motion, may order a hearing within 20 days of notice of commencement of minor application review.

(d) Any hearing or prehearing conference for a major application shall be held within 40 days of receipt of a complete application; or within 20 days of the end of the public comment period specified in the notice of minor application review if the district commission determines that it is appropriate to hold a hearing for a minor application.

(e) Any notice for a major or minor application, as required by this section, shall also be published by the district commission in a local newspaper generally circulating in the area where the development or subdivision is located not more than ten days after receipt of a complete application.

(1) Notice of any hearing for a major application shall be published, as required by this section, not less than ten days before the hearing or prehearing conference.

(2) If the district commission determines that it is appropriate to hold a hearing for an application that was originally noticed as a minor application, then the application shall be renoticed as a major application in accordance with the requirements of this section and board rules, except that there shall be no requirement to publish the second notice in a local newspaper. Direct notice of the hearing to all persons listed in subdivisions (b)(1) and (3) of this section shall be deemed sufficient. (1969, No. 250 (Adj. Sess.), § 9, eff. April 4, 1970; amended 1991, No. 109, § 2 eff. June 28, 1991; 1993, No. 232 (Adj. Sess.), § 29, eff. March 15, 1995; 1995, No. 189 (Adj. Sess.), § 10, eff. May 22, 1996; 2003, No. 115 (Adj. Sess.), § 54.)

§ 6085. Hearings; party status

(a), (b) [Deleted.]

(c)(1) Party status. In proceedings before the district commissions, the following persons shall be entitled to party status:

(A) The applicant;

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

(C) The municipality in which the project site is located, and the municipal and regional planning commissions for that municipality; if the project site is located on a boundary,

any Vermont municipality adjacent to that border and the municipal and regional planning commissions for that municipality; and the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title;

(D) Any state agency affected by the proposed project;

(E) Any adjoining property owner or other person who has a particularized interest protected by this chapter that may be affected by an act or decision by a district commission.

(2) Content of Petitions. All persons seeking to participate in proceedings before the district commission as parties pursuant to subdivision (c)(1)(E) of this section must petition for party status. Any petition for party status may be made orally or in writing to the district commission. All petitions must include:

(A) A detailed statement of the petitioner's interest under the relevant criteria of the proceeding, including, if known, whether the petitioner's position is in support of or in opposition to the relief sought by the permit applicant, or petitioner.

(B) In the case of an organization, a description of the organization, its purposes, and the nature of its membership.

(C) A statement of the reasons the petitioner believes the district commission should allow the petitioner party status in the pending proceeding.

(D) In the case of a person seeking party status under subdivision (c)(1)(E) of this section:

(i) If applicable, a description of the location of the petitioner's property in relation to the proposed project, including a map, if available;

(ii) A description of the potential effect of the proposed project upon the petitioner's interest with respect to each of the relevant criteria or subcriteria under which party status is being requested.

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

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

(5) Friends of the commission. The district commission, on its own motion or by petition, may allow nonparties to participate in any of its proceedings, without being accorded party status. Participation may be limited to the filing of memoranda, proposed findings of fact and conclusions of law, and argument on legal issues. However, if approved by the district commission, participation may be expanded to include the provision of testimony, the filing of evidence, or the cross examination of witnesses. A petition for leave to participate as a friend of the commission shall identify the interest of the petitioner and the desired scope of participation and shall state the reasons why the participation of the petitioner will be beneficial to the district commission. Except where all parties consent or as otherwise ordered by the district commission or by the chair of the district commission, all friends of the commission shall file their memoranda, testimony, or evidence within the times allowed the parties.

(6) Re-examination of party status. A district commission shall re-examine party status determinations before the close of hearings and state the results of that re-examination in the district commission decision. In the re-examination of party status coming before the close of district commission hearings, persons having attained party status up to that point in the proceedings shall be presumed to retain party status. However, on motion of a party, or on its own motion, a commission shall consider the extent to which parties continue to qualify for party status. Determinations made before the close of district commission hearings shall supersede any preliminary determinations of party status.

(d) If no hearing has been requested or ordered within the prescribed period no hearing need be held by the district commission. In such an event a permit shall be granted or denied within 60 days of receipt; otherwise, it shall be deemed approved and a permit shall be issued.

(e) The land use panel and any district commission, acting through one or more duly authorized representatives at any prehearing conference or at any other times deemed appropriate by the land use panel or by the district commission, shall promote expeditious, informal, and nonadversarial resolution of issues, require the timely exchange of information concerning the application, and encourage participants to settle differences. No district commissioner who is participating as a decisionmaker in a particular case may act as a duly authorized representative for the purposes of this subsection. These efforts at dispute resolution shall not affect the burden of proof on issues before a commission or the environmental court, nor shall they affect the requirement that a permit may be issued only after the issuance of affirmative findings under the criteria established in section 6086 of this title.

(f) A hearing shall not be closed until a commission provides an opportunity to all parties to respond to the last permit or evidence submitted. Once a hearing has been closed, a commission shall conclude deliberations as soon as is reasonably practicable. A decision of a commission shall be issued within 20 days of the completion of deliberations. (1969, No. 250 (Adj. Sess.), §§ 10, 11, eff. April 4, 1970; amended 1973, No. 85, § 9; 1989, No. 234 (Adj. Sess.), § 3; 1993, No. 82, § 4; 1993, No. 232 (Adj. Sess.), §§ 30, 31, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 55, eff. Jan. 31, 2005.)

§ 6086. Issuance of permit; conditions and criteria

(a) Before granting a permit, the district commission shall find that the subdivision or development:

(1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable health and environmental conservation department regulations.

(A) Headwaters. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development, and which lands are:

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

(ii) drainage areas of 20 square miles or less; or

(iii) above 1,500 feet elevation; or

(iv) watersheds of public water supplies designated by the agency of natural resources; or

(v) areas supplying significant amounts of recharge waters to aquifers.

(B) Waste disposal. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.

(C) Water conservation. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically

practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.

(D) Floodways. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria:

(i) the development or subdivision of lands within a floodway will not restrict or divert the flow of flood waters, and endanger the health, safety and welfare of the public or of riparian owners during flooding; and

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

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

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

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

(ii) allow continued access to the waters and the recreational opportunities provided by the waters,

(iii) retain or provide vegetation which will screen the development or subdivision from the waters, and

(iv) stabilize the bank from erosion, as necessary, with vegetation cover.

(G) Wetlands. A permit will be granted whenever it is demonstrated by the applicant, in addition to other criteria, that the development or subdivision will not violate the rules of the board, as adopted under this chapter, relating to significant wetlands.

(2) Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.

(3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

(4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

(5) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

(6) Will not cause an unreasonable burden on the ability of a municipality to provide educational services.

(7) Will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.

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

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

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

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

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

(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of sections 7(a)(1) through 7(a)(19) of this act shall not be used as criteria in the consideration of applications by a district commission.

(A) Impact of growth. In considering an application, the district commission shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth

and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the district commission or the board shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.

(B) Primary agricultural soils. A permit will be granted for the development or subdivision of primary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the agricultural potential of the primary agricultural soils; or:
(i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; and
(ii) except in the case of an application for a project located in a designated growth center, there are no lands other than primary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; and
(iii) except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation; and
(iv) suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with section 6093 of this title and rules adopted by the land use panel.

(C) Productive forest soils. A permit will be granted for the development or subdivision of productive forest soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the potential of those soils for commercial forestry; or:
(i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; and
(ii) except in the case of an application for a project located in a designated growth center, there are no lands other than productive forest soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; and

(iii) except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of the potential of those productive forest soils through innovative land use design resulting in compact development patterns, so that the remaining forest soils on the project tract may contribute to a commercial forestry operation.

(D) Earth resources. A permit will be granted whenever it is demonstrated by the applicant, in addition to all other applicable criteria, that the development or subdivision of lands with high potential for extraction of mineral or earth resources, will not prevent or significantly interfere with the subsequent extraction or processing of the mineral or earth resources.

(E) Extraction of earth resources. A permit will be granted for the extraction or processing of mineral and earth resources, including fissionable source material:

(i) when it is demonstrated by the applicant that, in addition to all other applicable criteria, the extraction or processing operation and the disposal of waste will not have an unduly harmful impact upon the environment or surrounding land uses and development; and

(ii) upon approval by the district commission of a site rehabilitation plan which insures that upon completion of the extracting or processing operation the site will be left by the applicant in a condition suited for an approved alternative use or development. A permit will not be granted for the recovery or extraction of mineral or earth resources from beneath natural water bodies or impoundments within the state, except that gravel, silt and sediment may be removed pursuant to the rules of the agency of natural resources, and natural gas and oil may be removed pursuant to the rules of the natural gas and oil resources board.

(F) Energy conservation. A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation and incorporate the best available technology for efficient use or recovery of energy.

(G) Private utility services. A permit will be granted for a development or subdivision which relies on privately-owned utility services or facilities, including central sewage or water facilities and roads, whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the privately-owned utility services or facilities are in conformity with a capital program or plan of the municipality involved, or adequate surety is provided to the municipality and conditioned to protect the municipality in the event that the municipality is required to assume the responsibility for the services or facilities.

(H) Costs of scattered development. The district commission will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement

whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.

(J) Public utility services. A permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

(K) Development affecting public investments. A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including, but not limited to, highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service, or lands.

(L) Rural growth areas. A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.

(10) Is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24. In making this finding, if the district commission finds applicable provisions of the town plan to be ambiguous, the district commission, for interpretive purposes, shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence.

(b) At the request of an applicant, or upon its own motion, the district commission shall consider whether to review any criterion or group of criteria of subsection (a) of this section before proceeding to or continuing to review other criteria. This request or motion may be made at any time prior to or during the proceedings. The district commission, in

its sole discretion, shall, within 20 days of the completion of deliberations on the criteria that are the subject of the request or motion, either issue its findings and decision thereon, or proceed to a consideration of the remaining criteria.

(c) A permit may contain such requirements and conditions as are allowable proper exercise of the police power and which are appropriate within the respect to (1) through (10) of subsection (a), including but not limited to those set forth in sections 4414(4), 4424(2), 4414(1)(D)(i), 4463(b), and 4464 of Title 24, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule of the land use panel.

(d) The land use panel may by rule allow the acceptance of a permit or permits or approval of any state agency with respect to (1) through (5) of subsection (a) or a permit or permits of a specified municipal government with respect to (1) through (7) and (9) and (10) of subsection (a), or a combination of such permits or approvals, in lieu of evidence by the applicant. A district commission, in accordance with rules adopted by the land use panel, shall accept determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts. The acceptance of such approval, positive determinations, permit, or permits shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. In the case of approvals and permits issued by the agency of natural resources, technical determinations of the agency shall be accorded substantial deference by the commissions. The acceptance of negative determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts shall create a presumption that the application is detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. Any determinations, positive or negative, under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the extent that the impacts under the criteria are limited to the municipality issuing the decision. Such a rule may be revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act. The rules adopted by the land use panel shall not approve the acceptance of a permit or approval of such an agency or a permit of a municipal government unless it satisfies the appropriate requirements of subsection (a) of this section.

(e) This subsection shall apply with respect to a development that consists of the construction of temporary physical improvements for the purpose of producing films, television programs, or advertisements. These improvements shall be considered "temporary improvements" if they remain in place for less than one year, unless otherwise extended by the permit or a permit amendment, and will not cause a long-term adverse impact under any of the 10 criteria after completion of the project. In situations where this subsection applies, jurisdiction under this chapter shall not continue after the improvements are no longer in place and the conditions in the permit have been met, provided there is not a long-term adverse impact under any of the 10 criteria after

completion of the project; except, however, if jurisdiction is otherwise established under this chapter, this subsection shall not remove jurisdiction. This termination of jurisdiction in these situations does not represent legislative intent with respect to continuing jurisdiction over other types of development not specified in this subsection.

(f) Prior to any appeal of a permit issued by a district commission, any aggrieved party may file a request for a stay of construction with the district commission together with a declaration of intent to appeal the permit. The stay request shall be automatically granted for seven days upon receipt and notice to all parties and pending a ruling on the merits of the stay request pursuant to board rules. The automatic stay shall not extend beyond the 30-day appeal period unless a valid appeal has been filed with the environmental court. The automatic stay may be granted only once under this subsection during the 30-day appeal period. Following appeal of the district commission decision, any stay request must be filed with the environmental court pursuant to the provisions of chapter 220 of this title. A district commission shall not stay construction authorized by a permit processed under the land use panel's minor application procedures. (1969, No. 250 (Adj. Sess.), § 12, eff. April 4, 1970; amended 1973, No. 85, § 10; 1973, No. 195 (Adj. Sess.), § 3, eff. April 2, 1974; 1979, No. 123 (Adj. Sess.), § 5, eff. April 14, 1980; 1981, No. 240 (Adj. Sess.), § 7, eff. April 28, 1982; 1985, No. 52, § 4, eff. May 15, 1985; 1985, No. 188 (Adj. Sess.), § 5; 1987, No. 76, § 18; 1989, No. 234 (Adj. Sess.), § 1; No. 280 (Adj. Sess.), § 13; 1993, No. 232 (Adj. Sess.), § 32, eff. March 15, 1995, 2001, No. 40, §§ 6-9; 2003, No. 115 (Adj. Sess.), § 56, eff. Jan. 31, 2005.)

§ 6086a. Generators of radioactive waste

No land use permit will be issued for a development which generates low-level radioactive waste unless it shows that it will have access to a low-level radioactive waste disposal facility and that the facility is expected to have sufficient capacity for the waste. (Added 1989, No. 296 (Adj. Sess.), § 7, eff. June 29, 1990.)

§ 6087. Denial of application

(a) No application shall be denied by the district commission unless it finds the proposed subdivision or development detrimental to the public health, safety or general welfare.

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

(c) A denial of a permit shall contain the specific reasons for denial. A person may, within 6 months, apply for reconsideration of his permit which application shall include an affidavit to the district commission and all parties of record that the deficiencies have been corrected. The district commission shall hold a new hearing upon 25 days notice to the parties. The hearing shall be held within 40 days of receipt of the request for

reconsideration. (1969, No. 250 (Adj. Sess.), § 12, eff. April 4, 1970; amended 2003, No. 115 (Adj. Sess.), § 57, eff. Jan. 31, 2005.)

§ 6088. Burden of proof

(a) The burden shall be on the applicant with respect to subdivisions (1), (2), (3), (4), (9) and (10) of section 6086(a) of this title.

(b) The burden shall be on any party opposing the applicant with respect to subdivisions (5) through (8) of section 6086(a) of this title to show an unreasonable or adverse effect. (1969, No. 250 (Adj. Sess.), § 13, eff. April 4, 1970.)

§ 6089. Appeals

Appeals of any act or decision of a district coordinator or a district commission under this chapter shall be made to the environmental court in accordance with chapter 220 of this title. (1969, No. 250 (Adj. Sess.), § 14, eff. April 4, 1970; amended 1973, No. 85, § 12; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1985, No. 52, § 1, eff. May 15, 1985; 1987, No. 76, § 10a; 1993, No. 232 (Adj. Sess.), § 34, eff. March 15, 1995; 1997, No. 155 (Adj. Sess.), § 28; 2003, No. 115 (Adj. Sess.), § 58, eff. Jan. 31, 2005.)

§ 6090. Recording; duration and revocation of permits

(a) In order to afford adequate notice of the terms and conditions of land use permits, permit amendments and revocations of permits, they shall be recorded in local land records. Recordings under this chapter shall be indexed as though the permittee were the grantor of a deed.

(b)(1) Any permit granted under this chapter for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet, shall be for a specified period determined by the board in accordance with the rules adopted under this chapter as a reasonable projection of the time during which the land will remain suitable for use if developed or subdivided as contemplated in the application, and with due regard for the economic considerations attending the proposed development or subdivision. Other permits issued under this chapter shall be for an indefinite term, as long as there is compliance with the conditions of the permit.

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

(1969, No. 250 (Adj. Sess.), § 16, eff. April 4, 1970; amended 1985, No. 32; 1993, No. 232 (Adj. Sess.), § 35, eff. June 21, 1994.)

§ 6091. Renewals and nonuse

(a) Renewal. At the expiration of each permit, it may be renewed under the same procedure herein specified for an original application.

(b) Nonuse of permit. Nonuse of a permit for a period of three years following the date of issuance shall constitute an abandonment of the development or subdivision and the permit shall be considered expired. For purposes of this section, for a permit to be considered "used," construction must have commenced and substantial progress toward completion must have occurred within the three-year period, unless construction is delayed by litigation or proceedings to secure other permits or to secure title through foreclosure, or unless, at the time the permit is issued or in a subsequent proceeding, the district commission provides that substantial construction may be commenced more than three years from the date the permit is issued.

(c) Extensions. If the application is made for an extension prior to expiration the district commission may grant an extension and may waive the necessity of a hearing.

(d) Completion dates for developments and subdivisions. Permits shall include dates by which there shall be full or phased completion. The land use panel, by rule, shall establish requirements for review of those portions of developments and subdivisions that fail to meet their completion dates, giving due consideration to fairness to the parties involved, competing land use demands, and cumulative impacts on the resources involved. If completion has been delayed by litigation, proceedings to secure other permits, proceedings to secure title through foreclosure, or because of market conditions, the district commission shall provide that the completion dates be extended for a reasonable period of time. (1969, No. 250 (Adj. Sess.), § 17, eff. April 4, 1970; amended 1991, No. 111, § 2 eff. June 28, 1991; 1993, No. 232 (Adj. Sess.), § 36, eff. June 21, 1994; 2003, No. 115 (Adj. Sess.), § 59, eff. January 31, 2005.)

§ 6092. Construction

In the event that the federal government preempts part of the activity regulated by this chapter, this chapter shall be construed to regulate activity that has not been preempted. (Added 1979, No. 123 (Adj. Sess.), § 7, eff. April 14, 1980.)

§ 6093. Mitigation of primary agricultural soils

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

(1) Project located in growth center. If the project tract is located in a designated growth center, an applicant who complies with subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the Vermont housing and conservation trust fund established under section 312 of this title for the purpose of preserving primary agricultural soils of equal or greater value with the highest priority given to preserving prime agricultural soils as defined by the U.S. Department of Agriculture. Any required offsite mitigation fee shall be derived by:

(A) determining the number of acres of primary agricultural soils affected by the proposed development or subdivision;

(B) multiplying the number of affected acres of primary agricultural soils by a factor resulting in a ratio established as follows:

(i) for development or subdivision within a designated growth center, the ratio shall be 1:1;

(ii) for residential construction that has a density of at least eight units of housing per acre, of which at least eight units per acre or at least 40 percent of the units, on average, in the entire development or subdivision, whichever is greater, meets the definition of affordable housing established in this chapter, no mitigation shall be required. However, all affordable housing units shall be subject to housing subsidy covenants, as defined in 27 V.S.A. § 610, that preserve their affordability for a period of 99 years or longer. For purposes of this section, housing that is rented shall be considered affordable housing when its inhabitants have a gross annual household income that does not exceed 60 percent of the county median income or 60 percent of the standard metropolitan statistical area income if the municipality is located in such an area.

(C) multiplying the resulting product by a "price-per-acre" value, which shall be based on the amount that the secretary of agriculture, food and markets has determined to be the recent, per-acre cost to acquire conservation easements for primary agricultural soils in the same geographic region as the proposed development or subdivision.

(2) Project located outside designated growth center. If the project tract is not located in a designated growth center, mitigation shall be provided on site in order to preserve primary agricultural soils for present and future agricultural use, with special emphasis on preserving prime agricultural soils. Preservation of primary agricultural soils shall be accomplished through innovative land use design resulting in compact development patterns which will maintain a sufficient acreage of primary agricultural soils on the project tract capable of supporting or contributing to an economic or commercial agricultural operation and shall be enforceable by permit conditions issued by the district commission. The number of acres of primary agricultural soils to be preserved shall be derived by:

(A) determining the number of acres of primary agricultural soils affected by the proposed development or subdivision; and

(B) multiplying the number of affected acres of primary agricultural soils by a factor based on the quality of those primary agricultural soils, and other factors as the secretary of agriculture, food and markets may deem relevant, including the soil's location; accessibility; tract size; existing agricultural operations; water sources; drainage; slope; the presence of ledge or protected wetlands; the infrastructure of the existing farm or municipality in which the soils are located; and the N.R.C.S. rating system for Vermont soils. This factor shall result in a ratio of no less than 2:1, but no more than 3:1, protected acres to acres of impacted primary agricultural soils.

(3) Mitigation flexibility.

(A) Notwithstanding the provisions of subdivision (1) of this subsection pertaining to a development or subdivision on primary agricultural soils within a designated growth center, the district commission may, in appropriate circumstances, require onsite mitigation with special emphasis on preserving prime agricultural soils if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of section 4302 of Title 24. In this situation, the approved plans must designate specific soils that shall be preserved inside growth centers. For projects located within a designated growth center, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

(B) Notwithstanding the provisions of subdivision (2) of this subsection pertaining to a development or subdivision on primary agricultural soils outside a designated growth center, the district commission may, in appropriate circumstances, approve off-site mitigation or some combination of onsite and off-site mitigation if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of section 4302 of Title 24. For projects located outside a designated growth center, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection, subject to a ratio of no less than 2:1, but no more than 3:1.

(4) Industrial parks.

(A) Notwithstanding any provision of this chapter to the contrary, a conversion of primary agricultural soils located in an industrial park as defined in subdivision 212(7) of this title and permitted under this chapter and in existence as of January 1, 2006, shall be allowed to pay a mitigation fee computed according to the provisions of subdivision (1) of this subsection, except that it shall be entitled to a ratio of 1:1, protected acres to acres of affected primary agricultural soil. If an industrial park is developed to the fullest extent before any expansion, this ratio shall apply to any contiguous expansion of such an industrial park that totals no more than 25 percent of the area of the park or no more than

10 acres, whichever is larger; provided any expansion based on percentage does not exceed 50 acres. Any expansion larger than that described in this subdivision shall be subject to the mitigation provisions of this subsection at ratios that depend upon the location of the expansion.

(B) In any application to a district commission for expansion of an existing industrial park, compact development patterns shall be encouraged that assure the most efficient use of land and the realization of maximum economic development potential through appropriate densities. Industrial park expansions and industrial park infill shall not be subject to requirements established in subdivision 6086(a)(9)(B)(iii) of this title, nor to requirements established in subdivision (9)(C)(iii).

(b) Easements required for protected lands. All primary agricultural soils preserved for commercial or economic agricultural use by the Vermont housing and conservation board pursuant to this section shall be protected by permanent conservation easements (grant of development rights and conservation restrictions) conveyed to a qualified holder, as defined in section 821 of this title, with the ability to monitor and enforce easements in perpetuity. Off-site mitigation fees may be used by the Vermont housing and conservation board to pay reasonable staff or transaction costs, or both, of the board and agency of agriculture, food, and markets to preserve primary agricultural soils or to implement section 6086(a)(9)(B) or 6093 of this title.