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Title 10: Conservation and Development

Chapter 151: State Land Use and Development Plans

Subchapter 1: General Provisions

§ 6001. Definitions

As 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 each of the following:

(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 on a tract or tracts of land, owned or controlled by a person, involving more than one acre 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 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 24 V.S.A. chapter 59, 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 mobile home parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land and within any continuous period of five years. However:

(I) A priority housing project shall constitute a development under this subdivision (iv) only if the number of housing units in the project is:

(aa) [Repealed.]

(bb) [Repealed.]

(cc) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000.

(dd) 50 or more, in a municipality with a population of less than 6,000.

(ee) [Repealed.]

(ff) Notwithstanding subdivisions (cc) through (ee) of this subdivision (3)(A)(iv)(I), 10 or more if 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. However, demolition shall not be considered to create jurisdiction under this subdivision (ff) if the Division for Historic Preservation has determined that the proposed demolition will have no adverse effect, will have no adverse effect if specified conditions are met, or will have an adverse effect that will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

(II) The determination of jurisdiction over a priority housing project shall count only the housing units included in that discrete project.

(III) Housing units in a priority housing project shall not count toward determining jurisdiction over any other project.

(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.

(ix) Any support structure proposed for construction that is primarily for communication or broadcast purposes and that 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, independently of the acreage involved.

(I) Under this subdivision (ix):

(aa) the word “development” shall also include 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; and

(bb) the word “development” shall not include future improvements that are not ancillary to the support structure and do not involve an additional support structure, unless they would otherwise be considered a development under this subdivision (3).

(II) The criteria and procedures for obtaining a permit for a development under this subdivision (ix) shall be the same as for any other development;

(x) Any withdrawal of more than 340,000 gallons of groundwater per day from any well or spring on a single tract of land or at a place of business, independently of the acreage of the tract of land or place of business, if the withdrawal requires a permit under section 1418 of this title or is by a bottled water facility regulated under chapter 56 of this title.

(xi) Notwithstanding any other provision of law to the contrary, until July 1, 2026, the construction of housing projects such as cooperatives, condominiums, dwellings, or mobile homes, with 25 or more units, constructed or maintained on a tract or tracts of land, located entirely within a designated downtown development district, a designated neighborhood development area, a designated village center with permanent zoning and subdivision bylaws, or a designated growth center, 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. For purposes of this subsection, the construction of four units or fewer of housing in an existing structure shall only count as one unit towards the total number of units.

(B) [Repealed.]

(C) For the purposes of determining jurisdiction under subdivision (3)(A) of this section, the following shall apply:

(i)-(iii) [Repealed.]

(iv) Railroad projects. 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) Permanently affordable housing. Notwithstanding subdivisions (3)(A)(iv) and (19) of this section, jurisdiction shall be determined exclusively by counting 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, provided the affordable housing units are located in a discrete project on a single tract or multiple contiguous tracts of land, regardless of whether located within an area designated under 24 V.S.A. chapter 76A.

(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, energy storage, or transmission facility that requires a certificate of public good under 30 V.S.A. § 248 or is subject to regulation under 30 V.S.A. § 8011; a natural gas facility as defined in 30 V.S.A. § 248(a)(3); or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs that are registered with the Agency of Agriculture, Food and Markets and that are open to the public for 60 days per year or fewer,

provided that, if the improvement is a building, the building was constructed prior to January 1, 2011 and is used solely for the purposes of the agricultural fair.

(v) 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.

(vi) The construction of improvements for any one of the actions or abatements authorized in subdivision (I) of this subdivision (vi):

(I)(aa) a remedial or removal action for which the Secretary of Natural Resources has authorized disbursement under section 1283 of this title;

(bb) abating a release or threatened release, as directed by the Secretary of Natural Resources under section 6615 of this title;

(cc) a remedial or removal action directed by the Secretary of Natural Resources under section 6615 of this title;

(dd) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under section 6615b of this title;

(ee) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under chapter 159, subchapter 3 of this title;

(ff) the management of "development soils," as that term is defined in 10 V.S.A. § 6602(39), under a plan approved by the Secretary of Natural Resources under section 6604c of this title.

(II) The exemption provided by this subdivision (3)(D)(vi) shall not apply to subsequent development.

(vii) The construction of improvements below the elevation of 2,500 feet for the on-site storage, preparation, and sale of compost, provided that one of the following applies:

(I) The compost is produced from no more than 100 cubic yards of material per year.

(II) The compost is principally produced from inputs grown or produced on the farm.

(III) The compost is principally used on the farm where it was produced.

(IV) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:

(aa) manure produced on the farm; and

(bb) unlimited clean, dry, high-carbon bulking agents from any source.

(V) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:

(aa) manure produced on the farm;

(bb) up to 2,000 cubic yards per year of organic inputs allowed under the Agency of Natural Resources' acceptable management practices, including food residuals or manure from off the farm, or both; and

(cc) unlimited clean, dry, high-carbon bulking agents from any source.

(VI) The compost is produced on a farm primarily used for the cultivation or growing of food, fiber, horticultural, or orchard crops, that complies with the Agency of Natural Resources' solid waste management rules, only from up to 5,000 cubic yards per year of total organic inputs allowed under the Agency of Natural Resources' acceptable management practices, including up to 2,000 cubic yards per year of food residuals.

(viii)(I) The construction of a priority housing project in a municipality with a population of 10,000 or more.

(II) If the construction of a priority housing project in this subdivision (3)(D)(viii) involves demolition of one or more buildings that are listed or eligible to be listed on the State or National Register of Historic Places, this exemption shall not apply unless the Division for Historic Preservation has made the determination described in subdivision (A)(iv)(I)(ff) of this subdivision (3) and any imposed conditions are enforceable in the manner set forth in that subdivision.

(III) Notwithstanding any other provision of law to the contrary, until July 1, 2026, the construction of a priority housing project located entirely within a designated downtown development district, designated neighborhood development area, or a designated growth center.

(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision (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 that do not support the development and that restrict or conflict with required agricultural practices adopted by the Secretary of Agriculture, Food and Markets. Any portion of the tract that is used to produce compost ingredients for a composting facility located elsewhere on the tract shall not constitute land that supports the development unless it is also used for some other purpose that supports the development.

(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) "Flood hazard area" has the same meaning as under section 752 of this title.

(7) "River corridor" has the same meaning as under section 752 of this title.

(8) "Productive forest soils" means those soils that are not primary agricultural soils but that have a reasonable potential for commercial forestry and that 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.

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(9) “Historic site” means any site, structure, district, or archeological landmark that has been officially included in the National Register of Historic Places or the State Register of Historic Places, or both, or that 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 interests created by trusts, partnerships, corporations, cotenancies, and contracts.

(12) “Necessary wildlife habitat” means concentrated habitat that 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 intent 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 each of the following:

(A) An important farmland soils map unit that the Natural Resources Conservation Service of the U.S. Department of Agriculture (NRCS) has identified and determined to have a rating of prime, statewide, or local importance, unless the District Commission determines that the soils within the unit have lost their agricultural potential. In determining that soils within an important farmland soils map unit have lost their agricultural potential, the Commission shall consider:

(i) impacts to the soils relevant to the agricultural potential of the soil from previously constructed improvements;

(ii) the presence on the soils of a Class I or Class II wetland under chapter 37 of this title;

(iii) the existence of topographic or physical barriers that reduce the accessibility of the rated soils so as to cause their isolation and that cannot reasonably be overcome; and

(iv) other factors relevant to the agricultural potential of the soils, on a site-specific basis, as found by the Commission after considering the recommendation, if any, of the Secretary of Agriculture, Food and Markets.

(B) Soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities and that have not been identified by the NRCS as important farmland soil map units.

(16)(A) "Existing settlement" means an area that constitutes one of the following:

(i) a designated center; or

(ii) an existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.

(B) Strip development outside an area described in subdivision (A)(i) or (ii) of this subdivision (16) shall not constitute an existing settlement.

(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 that is above an elevation of 1,500 feet above sea level or that flows at any time at a rate of less than 1.5 cubic feet per second.

(19)(A) "Subdivision" means each of the following:

(i) A tract or tracts of land, owned or controlled by a person, that 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.

(ii) A tract or tracts of land, owned or controlled by a person, that 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 that does not have duly adopted permanent zoning and subdivision bylaws.

(iii) A tract or tracts of land, owned or controlled by a person, that 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.

(I) In this subdivision (iii), "public auction" means any auction advertised or publicized in any manner or to which more than ten persons have been invited.

(II) If sales described under this subdivision (iii) 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.

(B) The word "subdivision" shall not include each of the following:

(i) 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;

(ii) a lot or lots created for the purpose of conveyance to the State or to a "qualified holder" of "conservation rights and interest," as defined in section 821 of this title.

(20) "Fissionable source material" means mineral ore that:

(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 that 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 that 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 storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally 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; or

(H) the importation of 2,000 cubic yards per year or less of food residuals or food processing residuals onto a farm for the production of compost, provided that:

(i) the compost is principally used on the farm where it is produced; or

(ii) the compost is produced on a small farm that raises or manages poultry.

(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 24 V.S.A. § 2202a and chapter 121, 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 that is primarily for communication or broadcast purposes and that 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 the following apply:

(A) Owner-occupied housing. At least 20 percent of the housing units meet the requirements of affordable owner-occupied housing under subdivision (29)(A) of this section, adjusted for the number of bedrooms, as established and published annually by the Vermont Housing Finance Agency.

(B) Rental housing. For not less than 15 years following the date that rental housing is initially placed in service, at least 20 percent of the housing units meet the requirements of affordable rental housing under subdivision (29)(B) of this section, adjusted for the number of bedrooms, as established and published annually by the Vermont Housing Finance Agency.

(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.

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(29) “Affordable housing” means either of the following:

(A) Owner-occupied housing for which the total annual cost of ownership, including principal, interest, taxes, insurance, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 120 percent of the highest of the following:

(i) the county median income, as defined by the U.S. Department of Housing and Urban Development;

(ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or

(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

(B) Rental housing for which the total annual cost of renting, including rent, utilities, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 80 percent of the highest of the following:

(i) the county median income, as defined by the U.S. Department of Housing and Urban Development;

(ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or

(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

(30) “Designated center” means a downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.

(31) “Farm,” for purposes of subdivisions (3)(D)(vii)(V) and (VI) of this section, means a parcel of land devoted primarily to farming, as farming is defined in subdivision (22)(A) or (B) of this section, and:

(A) from which parcel, annual gross income from farming, as defined in subdivision (22) of this section, exceeds the annual gross income from a composting operation on that parcel. For purposes of this subdivision, a federal, State, or municipal highway or road shall not be determined to divide tracts of land that are otherwise physically contiguous;

(B) for purposes of subdivision (3)(D)(vii)(V) of this section, uses no more than 10 acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management;

(C) for purposes of subdivision (3)(D)(vii)(VI) of this section, uses no more than four acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management.

(32) “Livestock” means cattle, sheep, goats, equines, fallow deer, red deer, American bison, swine, water buffalo, poultry, pheasant, chukar partridge, courtnix quail, camelids, ratites (ostriches, rheas, and emus), llamas, alpacas, yaks, rabbits, cultured trout propagated by commercial trout farmers, or other animal types designated by the Secretary of Agriculture, Food and Markets by procedure.

(33) “Compost” means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management, but shall not mean sewage, septage, or materials derived from sewage or septage.

(34) “Agricultural fair” means an event or activity that is intended to promote farming by:

(A) exhibiting a variety of livestock and agricultural products;

(B) exhibiting arts, equipment, and implements related to farming; or

(C) conducting contests, displays, and demonstrations designed to advance farming, advance the local food economy, or train or educate farmers, youth, or the public regarding agriculture.

(35) “Priority housing project” means a discrete project located on a single tract or multiple contiguous tracts of land that consists exclusively of mixed income housing or mixed use, or any combination thereof, and is located entirely within a designated downtown development district, designated new town center, designated growth center, or designated neighborhood development area under 24 V.S.A. chapter 76A.

(36) “Strip development” means linear commercial development along a public highway that includes three or more of the following characteristics: broad road frontage, predominance of single-story buildings, limited reliance on shared highway access, lack of connection to any existing settlement except by highway, lack of connection to surrounding land uses except by highway, lack of coordination with surrounding land uses, and limited accessibility for pedestrians. In determining whether a proposed development or subdivision constitutes strip development, the District Commission shall consider the topographic constraints in the area in which the development or subdivision is to be located.

(37) “Industrial park” means an area of land permitted under this chapter that is planned, designed, and zoned as a location for one or more industrial buildings; that includes adequate access roads, utilities, water, sewer, and other services necessary for the uses of the industrial buildings; and includes no retail use except that which is incidental to an industrial use and no office use except that which is incidental or secondary to an industrial use.

(38) “Farm” means, for the purposes of subdivision (22)(H) of this section, a parcel or parcels of land owned, leased, or managed by a person and devoted primarily to farming that meets the threshold criteria as established under the Required Agricultural Practices.

(39) “Food processing residuals” means the remaining organic material from a food processing plant and may include whey and other dairy, cheese making, and ice cream residuals or residuals from any food manufacturing process excluding livestock or poultry slaughtering and rendering operations. “Food processing residuals” does not include food residuals from markets, groceries, or restaurants.

(40) “Food residuals” has the same meaning as in section 6602 of this title.

(41) “Principally used” means, for the purposes of subdivisions (3)(D)(vii)(III) and (22)(H) of this section, that more than 50 percent, either by volume or weight, of the compost produced on the farm is physically and permanently incorporated into the native soils on the farm as a soil enhancement and is not removed or sold at any time thereafter.

(42) “Small farm” has the same meaning as in 6 V.S.A. § 4871 and also means a small farm that is subject to the Required Agricultural Practices Rule (RAPs) and is not required to certify as a small farm under Section 4 of the RAPs, is not required to operate as a Medium Farm Operation under 6 V.S.A. § 4858, and is not required to operate as a Large Farm Operation under 6 V.S.A. § 4851.

From the Vermont General Assembly’s webpage, dated July 18, 2024,
https://legislature.vermont.gov/statutes/fullchapter/10/151

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

(44) “Wood products manufacturer” means a manufacturer that aggregates wood products from forestry operations and adds value through processing or marketing in the wood products supply chain or directly to consumers through retail sales. “Wood products manufacturer” includes sawmills; veneer mills; pulp mills; pellet mills; producers of firewood, woodchips, mulch, and fuel wood; and log and pulp concentration yards. “Wood products manufacturer” does not include facilities that purchase, market, and resell finished goods, such as wood furniture, wood pellets, and milled lumber, without first receiving wood products from forestry operations. (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.); 1989, No. 231 (Adj. Sess.), § 1, eff. July 1, 1991; 1989, No. 234 (Adj. Sess.), § 4; 1993, No. 200 (Adj. Sess.), § 1; 1993, No. 232 (Adj. Sess.), § 24, eff. March 15, 1995; 1995, No. 10, § 1; 1995, 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; 2005, No. 183 (Adj. Sess.), § 6; 2007, No. 79, § 13, eff. June 9, 2007; 2007, No. 92 (Adj. Sess.), § 4; 2007, No. 176 (Adj. Sess.), §§ 6, 7; 2009, No. 54, § 52, eff. June 1, 2009; 2009, No. 141 (Adj. Sess.), §§ 1a-3, eff. June 1, 2010; 2011, No. 18, §§ 1, 2, eff. May 11, 2011; 2013, No. 11, § 1; 2013, No. 59, § 11; 2013, No. 147 (Adj. Sess.), § 1, eff. June 1, 2014; 2013, No. 159 (Adj. Sess.), § 16b; 2013, No. 199 (Adj. Sess.), § 37; 2015, No. 52, § 4, eff. June 5, 2015; 2015, No. 64, § 13; 2017, No. 69, § H.3, eff. June 28, 2017; 2021, No. 41, § 1, eff. May 20, 2021; 2021, No. 54, § 3; 2021, No. 174 (Adj. Sess.), § 11, eff. July 1, 2022; 2021, No. 182 (Adj. Sess.), §§ 30, 35, 38, eff. July 1, 2022; 2023, No. 47, § 16, eff. July 1, 2023.)

§§ 6001a-6001d. Repealed. 2013, No. 11, § 2.

§ 6001e. Commercial composting facility; circumvention

Notwithstanding subdivisions 6001(3)(D)(vii)(I)-(VI) of this title, a permit under this chapter may be required for the construction of improvements below the elevation of 2,500 feet for the onsite storage, preparation, and sale of compost if the Chair of the District Commission, based on the information available to the Chair, determines that action has been taken to circumvent the requirements of this chapter. (Added 2009, No. 141 (Adj. Sess.), § 1b, eff. June 1, 2010.)

§ 6002. Procedures

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

§ 6003. Penalties

A violation of any provision of this chapter or the rules adopted under this chapter 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. (Added 1969, No. 250 (Adj. Sess.), § 28, eff. April 4, 1970; amended 2001, No. 40, § 2; 2015, No. 97 (Adj. Sess.), § 28.)

§§ 6004-6006. Repealed. 1989, No. 98, § 4(b).

§ 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 14 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 chapter 151 of this title, 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 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 subdivision 6001(14) of this title.

(3) A statement identifying any partition or division of land that has been completed:

(A) within the preceding five years;

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

(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 that 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 that is the subject of the opinion is located and shall serve the opinion on all persons listed in subdivisions 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.

(d) [Repealed.] (Added 1987, No. 64, § 3; amended 1991, No. 111, § 3, eff. June 28, 1991; 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; 2009, No. 154 (Adj. Sess.), § 236; 2013, No. 11, § 8; 2015, No. 150 (Adj. Sess.), § 33, eff. May 31, 2016; 2021, No. 170 (Adj. Sess.), § 18, eff. July 1, 2022.)

Subchapter 2: Administration

§ 6021. Board; vacancy, removal

(a) A Natural Resources Board is created.

(1) The Board shall consist of five members appointed by the Governor, with the advice and consent of the Senate, so that one appointment expires in each year. In making these appointments, the Governor and the Senate shall give consideration to experience, expertise, or skills relating to the environment or land use.

(A) The Governor shall appoint a chair of the Board, a position that shall be a full-time position.

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

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

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

(B) The Chair of the Board may assign alternates to sit on specific matters before the Board in situations where fewer than five members are available to serve.

(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 of the Board, 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 of the District Commission are disqualified or otherwise unable to serve. (Added 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; 1993, No. 232 (Adj. Sess.), § 26, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 48, eff. Jan. 31, 2005; 2013, No. 11, § 9.)

§ 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. (Added 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. (Added 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. (Added 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 itself and the District Commissions.

(b) The Board may adopt substantive rules, in accordance with the provisions of 3 V.S.A. chapter 25, that interpret and carry out the provisions of this chapter. 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;

(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 Natural Resources Board 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) [Repealed.]

(d), (e) [Repealed.] (Added 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; 2009, No. 31, § 7; 2011, No. 138 (Adj. Sess.), § 24, eff. May 14, 2012; 2013, No. 11, §§ 10, 25.)

§ 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 3 V.S.A. § 4001.

(2) District No. 2, comprising administrative district 2 as provided in 3 V.S.A. § 4001.

(3) District No. 3, comprising administrative district 3 as provided in 3 V.S.A. § 4001.

(4) District No. 4, comprising administrative district 4 as provided in 3 V.S.A. § 4001, excluding the towns of Addison, Bridport, Bristol, Cornwall, Ferrisburgh, 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 3 V.S.A. § 4001.

(6) District No. 6, comprising administrative district 6 as provided in 3 V.S.A. § 4001.

(7) District No. 7, comprising administrative district 7 as provided in 3 V.S.A. § 4001.

(8) District No. 8, comprising administrative district 8 as provided in 3 V.S.A. § 4001.

(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 Chair 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. (Added 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 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 Board 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 Natural Resources Board may designate or establish such regional offices as it deems necessary to implement the provisions of this chapter and the rules adopted hereunder. The Natural Resources Board 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 Natural Resources Board 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 Division 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 Natural Resources Board 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 chapters 201 and 211 of this title, and may petition the Environmental Division 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 Natural Resources Board 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 Natural Resources Board may participate as a party in all matters before the Environmental Division that relate to land use permits issued under this chapter.

(k) [Repealed.]

(l) A District Commission may reject an application under this chapter that misrepresents any material fact and may after notice and opportunity for hearing award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application.

(m) After notice and opportunity for hearing, a District Commission may withhold a permit or suspend the processing of a permit application for failure of the applicant to pay costs assessed under 3 V.S.A. § 2809 related to the participation of the Agency of Natural Resources in the review of the permit or permit application. (Added 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; 2009, No. 54, § 46, eff. June 1, 2009; 2009, No. 146 (Adj. Sess.), § F20; 2009, No. 154 (Adj. Sess.), § 236; 2013, No. 11, §§ 15, 25.)

§ 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. (Added 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 32 V.S.A. chapter 7, subchapter 5. (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; 2003, 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.)

§ 6031. Ethical standards

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

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

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

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

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

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

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

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

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

(b) As soon as practicable after grounds become known, a party may move to disqualify a Board member or District Commissioner from a particular matter before the Board or District Commission.

(1) The motion shall contain a clear statement of the specific grounds for disqualification and when such grounds were first known.

(2) On receipt of the motion, a District Commissioner who is the subject of the motion shall disqualify himself or herself or shall refer the motion to the Chair of the Board.

(A) The Chair of the Board may disqualify the District Commissioner from the matter before the District Commission if, on review of the motion, the Chair determines that such disqualification is necessary to ensure compliance with subsection (a) (ethical standards) of this section.

(B) On disqualification of a District Commissioner under this subsection (b), the Chair of the Board shall assign another District Commissioner to take the place of the disqualified Commissioner. The Chair shall consider making such an assignment from among the members of the same District Commission before assigning a member of another District Commission.

(3) On receipt of the motion, a Board member who is the subject of the motion shall disqualify himself or herself or shall refer the motion to the full Board. The Board may disqualify a member from the matter before the Board if, on review of the motion, the Board determines that such disqualification is necessary to ensure compliance with subsection (a) (ethical standards) of this section. The Board member who is the subject of the motion shall not be eligible to vote on the motion.

(c) For one year after leaving office, a former appointee to the Board or a District Commission shall not, for pecuniary gain:

(1) be an advocate on any matter before the Board or the District Commission to which he or she was appointed; or

(2) be an advocate before any other public body or the General Assembly or its committees regarding any matter in which, while an appointee, he or she exercised any official responsibility or participated personally and substantively. (Added 2013, No. 11, § 12.)

Subchapter 3: Use and Development Plans

§ 6041. Omitted.

§ 6042. Capability and Development Plan

The Board shall adopt a Capability and Development Plan consistent with the Interim Land Capability Plan that 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 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 that 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 24 V.S.A. § 4302. (Added 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 15 days prior to the hearing.

(d) The provisions of 3 V.S.A. chapter 25 shall not apply to the hearings under this section. (Added 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 subdivision 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 that 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. (Added 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 14 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.] (Added 1969, No. 250 (Adj. Sess.), § 24, eff. April 4, 1970; amended 1983, No. 114 (Adj. Sess.), § 4; 2021, No. 170 (Adj. Sess.), § 19, eff. July 1, 2022.)

Subchapter 4: Permits

§ 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) [Repealed.]

(c) No permit or permit amendment is required for activities at a solid waste management facility authorized by a provisional certification issued under section 6605d of this title; 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 construction of improvements to preexisting municipal, county, or State projects shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section:

(1) municipal, county, or State wastewater treatment facility enhancements that do not expand the capacity of the facility by more than 10 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility;

(2) municipal, county, or State water supply enhancements that do not expand the capacity of the facility by more than 10 percent;

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

(4) municipal, county, or State building renovations or reconstruction that does not expand the floor space of the building by more than 10 percent.

(5) [Repealed.]

(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 that began disposal operations prior to July 1, 1992 and that 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 not less than 14 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 such 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.

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

(p) No permit or permit amendment is required for a priority housing project in a designated center if the project remains below any applicable jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) 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.

(s)(1) No permit amendment is required for farming that:

(A) will occur on primary agricultural soils preserved in accordance with section 6093 of this title; or

(B) will not conflict with any permit condition issued pursuant to this chapter.

(2) Permits shall include a statement that farming is permitted on lands exempt from amendment jurisdiction under this subsection.

(t) [Repealed.]

(u) A building constructed prior to January 1, 2011 in accordance with subdivision 6001(3)(D)(iv) of this title shall not be subject to an enforcement action under this chapter for:

(1) construction or any event or activity at the building that occurred prior to January 1, 2011; and

(2) any event or activity at the building on or after January 1, 2011 if the building is used solely for the purpose of an agricultural fair.

(v) A permit or permit amendment shall not be required for a development or subdivision in a designated downtown development district for which the District Commission has issued positive findings and conclusions under section 6086b of this title on all the criteria listed in that section. A person shall obtain new or amended findings and conclusions from the District Commission under section 6086b of this title prior to commencement of a material change, as defined in the rules of the Board, to a development or subdivision for which the District Commission has issued such findings and conclusions. A person may seek a jurisdictional opinion under section 6007 of this title concerning whether such a change is a material change.

(w)(1) A permit or permit amendment shall not be required for a change to a sport shooting range, as defined in section 5227 of this title, if a jurisdictional opinion issued under subsection 6007(c) of this title determines that each of the following applies:

(A) The range was in operation before January 1, 2006 and has been operating since that date.

(B) The range has a lead management plan approved by the Department of Environmental Conservation under chapters 47 and 159 of this title that requires implementation of best management practices to mitigate environmental impacts to soil and water.

(C) The change is for the purpose of one or more of the following:

(i) To improve the safety of range employees, users of the range, or the public.

(ii) To abate noise from activities at the range. A qualified noise abatement professional may certify that a change in a sport shooting range is for this purpose and this certification shall be conclusive evidence that a purpose of the change is to abate noise from activities at the range.

(iii) To remediate, mitigate, or reduce impacts to air or water quality from the range or the deposit or disposal of waste generated by the range or its use.

(2) Obtaining a certification described in subdivision (1)(B)(ii) of this subsection shall be at the option of the range's owner.

(x)(1) No permit or permit amendment is required for the construction of improvements for any one of the actions or abatements authorized in this subdivision:

(A) a remedial or removal action for which the Secretary of Natural Resources has authorized disbursement under section 1283 of this title;

(B) abating a release or threatened release, as directed by the Secretary of Natural Resources under section 6615 of this title;

(C) a remedial or removal action directed by the Secretary of Natural Resources under section 6615 of this title;

(D) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under section 6615b of this title;

(E) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under chapter 159, subchapter 3 of this title; or

(F) the management of "development soils," as that term is defined in subdivision 6602(39) of this title, under a plan approved by the Secretary of Natural Resources under section 6604c of this title.

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(2) Any development subsequent to the construction of improvements for any one of the actions or abatements authorized in subdivision (1) of this subsection shall not be exempt from the provisions of this chapter.

[Subsection (y) repealed effective January 1, 2026.]

(y) No permit or permit amendment is required for a retail electric distribution utility's rebuilding of existing electrical distribution lines and related facilities to improve reliability and service to existing customers, through overhead or underground lines in an existing corridor, road, or State or town road right-of-way. Nothing in this section shall be interpreted to exempt projects under this subsection from other required permits or the conditions on lands subject to existing permits required by this section. (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; 1989, No. 276 (Adj. Sess.), §§ 17a, 17b, eff. June 20, 1990; 1989, 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; 1993, 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; 2003, No. 133 (Adj. Sess.), § 1; 2007, No. 38, § 15, eff. May 21, 2007; 2009, No. 54, § 53; 2009, No. 54, § 54, eff. June 1, 2009; 2011, No. 18, § 3, eff. May 11, 2011; 2011, No. 53, §§ 4, 4a, eff. May 27, 2011; 2013, No. 11, § 25; 2013, No. 147 (Adj. Sess.), § 4, eff. June 1, 2014; 2015, No. 145 (Adj. Sess.), § 31; 2017, No. 69, § H.4, eff. June 28, 2017; 2017, No. 74, § 17; 2017, No. 209 (Adj. Sess.), § 2, eff. May 30, 2018; 2021, No. 170 (Adj. Sess.), § 20, eff. July 1, 2022; 2021, No. 182 (Adj. Sess.), § 31, eff. July 1, 2022; 2023, No. 47, § 19b, eff. July 1, 2023; 2023, No. 53, § 16, eff. June 8, 2023; 2023, No. 78, § C.124, eff. June 20, 2023.)

§ 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 Commission 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) Four 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 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 Board and Commissions shall make all practical efforts to process matters before the Board and permits in a prompt manner. The Board 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 Board shall report annually by February 15 to the General Assembly by electronic submission. 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. The annual report shall list the number of enforcement actions taken by the Board, the disposition of such cases, and the amount of penalties collected. The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not apply to the report to be made under this subsection.

(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, or 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 Division, 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 Division and shall not reside with the District Commission. (Added 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; 1989, 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; 2003, No. 115 (Adj. Sess.), § 52, eff. Jan. 31, 2005; 2007, No. 191 (Adj. Sess.), § 11; 2009, No. 146 (Adj. Sess.), § F21; 2009, No. 154 (Adj. Sess.), § 236; 2011, No. 139 (Adj. Sess.), § 10, eff. May 14, 2012; 2013, No. 11, §§ 13, 25.)

§ 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 each of 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 applications for projects involving construction, $6.65 for each $1,000.00 of the first $15,000,000.00 of construction costs, and $3.12 for each $1,000.00 of construction costs above $15,000,000.00. An additional $0.75 for each $1,000.00 of the first $15,000,000.00 of construction costs shall be paid to the Agency of Natural Resources to account for the Agency of Natural Resources' review of Act 250 applications.

(2) For applications for projects involving the creation of lots, $125.00 for each lot.

(3) For applications 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 applications for projects involving the extraction of earth resources, including sand, gravel, peat, topsoil, crushed stone, or quarried material, the greater of: a fee as determined under subdivision (1) of this subsection; or a fee equivalent to the rate of $0.02 per cubic yard of the first million cubic yards of the total volume of earth resources to be extracted over the life of the permit, and $.01 per cubic yard of any such earth resource extraction above one million cubic yards. Extracted material that is not sold or does not otherwise enter the commercial marketplace shall not be subject to the fee. The fee assessed under this subdivision for an amendment to a permit shall be based solely upon any additional volume of earth resources to be extracted under the amendment.

(5) For applications 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.

(b) Notwithstanding the provisions of subsection (a) of this section, there shall be a minimum fee of $187.50 for original applications and $62.50 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. In addition, in no event shall the fee for an individual permit or permit amendment application, including each individual permit or permit amendment application seeking approval for any portion of a project involving a master plan, exceed $165,000.00.

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

(d) Neighborhood development area fees. Fees for residential development in a Vermont neighborhood or neighborhood development area designated according to 24 V.S.A. § 2793e shall be no more than 50 percent of the fee otherwise charged under this section. The fee shall be paid within 30 days after the permit is issued or denied.

(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.

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(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 Natural Resources Board 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 Natural Resources Board 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; 2003, No. 115 (Adj. Sess.), § 53, eff. Jan. 31, 2005; 2007, No. 176 (Adj. Sess.), § 8; 2009, No. 134 (Adj. Sess.), § 33; 2011, No. 161 (Adj. Sess.), § 8; 2013, No. 11, § 25; 2013, No. 59, § 12; 2015, No. 57, § 18; 2019, No. 131 (Adj. Sess.), § 13; 2023, No. 47, § 18, eff. July 1, 2023.)

§ 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; the Vermont Agency of Natural Resources; and 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 in which 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 14 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 14 days before the hearing or prehearing conference.

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(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.

(f) [Repealed.]

(g) When an application concerns the construction of improvements for one of the following, the application shall be processed as a minor application in accordance with subsections (b) through (e) of this section:

(1) a sawmill that produces three and one-half million board feet or less annually; or

(2) an operation that involves the primary processing of forest products of commercial value and that annually produces:

(A) 3,500 cords or less of firewood or cordwood; or

(B) 10,000 tons or less of bole wood, whole tree chips, or wood pellets. (Added 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; 2009, No. 146 (Adj. Sess.), § F22; 2017, No. 69, § H.5, eff. June 28, 2017; 2017, No. 113 (Adj. Sess.), § 45; 2017, No. 194 (Adj. Sess.), § 6, eff. May 30, 2018; 2021, No. 170 (Adj. Sess.), § 21, eff. July 1, 2022; 2021, No. 182 (Adj. Sess.), § 32, eff. July 1, 2022.)

§ 6085. Hearings; party status

(a), (b) [Repealed.]

(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) Reexamination of party status. A District Commission shall reexamine party status determinations before the close of hearings and state the results of that reexamination in the District Commission decision. In the reexamination 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.

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(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 Natural Resources Board 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 Natural Resources Board 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 Division, 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. (Added 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; 2009, No. 154 (Adj. Sess.), § 236; 2013, No. 11, § 25.)

§ 6085a. Repealed.

§ 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) Flood hazard areas; river corridors. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands within a flood hazard area or river corridor will not restrict or divert the flow of floodwaters; cause or contribute to fluvial erosion; and endanger the health, safety, and welfare of the public or of 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 Secretary of Natural Resources, as adopted under chapter 37 of this title, 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)(A) 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.

(B) As appropriate, will incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned

pedestrian, bicycle, and transit networks and services. In determining appropriateness under this subdivision (B), the District Commission shall consider whether such a strategy, access, or connection constitutes a measure that a reasonable person would take given the type, scale, and transportation impacts of the proposed development or subdivision.

(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 subdivisions 7(a)(1) through (19) of Act 85 of 1973 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 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;

(ii) except in the case of an application for a project located in a designated area listed in subdivision 6093(a)(1) of this title, 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;

(iii) except in the case of an application for a project located in a designated area listed in subdivision 6093(a)(1) of this title, 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 Natural Resources Board.

(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 that ensures 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, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide evidence that the subdivision or development complies with the applicable building energy standards under 30 V.S.A. § 51 or 53.

(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 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) Settlement patterns. To promote Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision:

(i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and

(ii)(I) will not contribute to a pattern of strip development along public highways; or

(II) if the development or subdivision will be confined to an area that already constitutes strip development, will incorporate infill as defined in 24 V.S.A. § 2791 and is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title.

(10) Is in conformance with any duly adopted local or regional plan or capital program under 24 V.S.A. chapter 117. 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)(1) Permit conditions. A permit may contain such requirements and conditions as are allowable proper exercise of the police power and that are appropriate within the respect to subdivisions (a)(1) through (10) of this section, including those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and the filing of bonds to ensure 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 Natural Resources Board.

(2) Permit conditions on a wood products manufacturer.

(A) When issuing a permit with conditions on wood products manufacturing and delivery, the District Commission shall account for the seasonal, weather-dependent, land-dependent, and varied conditions unique to the industry.

(B) A permit condition that sets hours of operation for a wood products manufacturer shall only be imposed to mitigate an impact under subdivision (a)(1), (5), or (8) of this section. If an adverse impact would result, a permit with conditions shall allow the manufacturer to operate while allowing for flexible timing of deliveries of wood products from forestry operations to the manufacturer outside permitted hours of operation, including nights, weekends, and holidays, for the number of days demonstrated by the manufacturer as necessary to enable deliveries, not to exceed 90 days per year.

(C) Permit with conditions on the delivery of wood heat fuels. A permit with conditions issued to a wood products manufacturer that produces wood chips, pellets, cord wood, or other fuel wood

used for heat shall allow for flexible delivery of that fuel wood from the manufacturer to the end user outside permitted hours of operation, including nights, weekends, and holidays, from October 1 through April 30 of each year. Permits with conditions shall mitigate the undue adverse impacts while enabling deliveries by the manufacturer.

(D) Permit amendments. A wood products manufacturer holding a permit may request an amendment to existing permit conditions related to hours of operation and seasonal restrictions to be consistent with subdivisions (B) and (C) of this subsection (c). Requests for condition amendments under this subsection shall not be subject to Act 250 Rule 34(E).

(d) The Natural Resources Board may by rule allow the acceptance of a permit or permits or approval of any State agency with respect to subdivisions (a)(1) through (5) of this section or a permit or permits of a specified municipal government with respect to subdivisions (a)(1) through (7) and (9) and (10) of this section, 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 Board, 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 Board 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 14 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

Division. 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 Division pursuant to the provisions of chapter 220 of this title. A District Commission shall not stay construction authorized by a permit processed under the Board's minor application procedures.

(g) If a municipality fails to respond to a request by the applicant within 90 days as to the impacts related to subdivision (a)(6) or (7) of this section, the application will be presumed not to have an unreasonable burden on educational, municipal, or governmental services. (Added 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; 1989, 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; 2005, No. 183 (Adj. Sess.), § 7; 2009, No. 154 (Adj. Sess.), § 236; 2011, No. 138 (Adj. Sess.), §§ 16, 27, eff. May 14, 2012; 2013, No. 11, § 25; 2013, No. 89, §§ 10, 11; 2013, No. 147 (Adj. Sess.), § 2, eff. June 1, 2014; 2015, No. 51, § F.7; 2021, No. 170 (Adj. Sess.), § 22, eff. July 1, 2022; 2021, No. 182 (Adj. Sess.), §§ 33, 34, 36, eff. July 1, 2022.)

§ 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.)

§ 6086b. Downtown development; findings master plan permits

(a) Findings and conclusions. Notwithstanding any provision of this chapter to the contrary, each of the following shall apply to a development or subdivision that is completely within a downtown development district designated under 24 V.S.A. chapter 76A and for which a permit or permit amendment would otherwise be required under this chapter:

(1) In lieu of obtaining a permit or permit amendment, a person may request findings and conclusions from the District Commission, which shall approve the request if it finds that the development or subdivision will meet subdivisions 6086(a)(1) (air and water pollution), (2) (sufficient water available), (3) (burden on existing water supply), (4) (soil erosion), (5) (traffic), (8) (aesthetics, historic sites, rare and irreplaceable natural areas), (8)(A) (endangered species; necessary wildlife habitat), (9)(B) (primary agricultural soils), (9)(C) (productive forest soils), (9)(F) (energy conservation), and (9)(K) (public facilities, services, and lands) of this title.

(2) The request shall be complete as to the criteria listed in subdivision (1) of this subsection and need not address other criteria of subsection 6086(a) of this title.

(A) The requestor shall file the request in accordance with the requirements of subsection 6084(a) of this title and the requestor shall provide a copy of the request to each agency and department listed in subdivision (3) of this section.

(B) Within 10 days of the request's filing, the District Coordinator shall determine whether the request is complete. Within 10 days of the date the District Coordinator determines the request to be complete, the District Commission shall provide notice of the complete request to each person

required to receive a copy of the filing under subdivision (2)(A) of this section and to each adjoining property owner and shall post the notice and a copy of the request on the Board's web page.

(3) Within 30 days of receiving notice of a complete request:

(A) The State Historic Preservation Officer or designee shall submit a written recommendation on whether the improvements will have an undue adverse effect on any historic site.

(B) The Commissioner of Public Service or designee shall submit a written recommendation on whether the improvements will meet or exceed the applicable energy conservation and building energy standards under subdivision 6086(a)(9)(F) of this title.

(C) The Secretary of Transportation or designee shall submit a written recommendation on whether the improvements will have a significant impact on any highway, transportation facility, or other land or structure under the Secretary's jurisdiction.

(D) The Commissioner of Buildings and General Services or designee shall submit a written recommendation on whether the improvements will have a significant impact on any adjacent land or facilities under the Commissioner's jurisdiction.

(E) The Secretary of Natural Resources or designee shall submit a written recommendation on whether the improvements will have a significant impact on any land or facilities under its jurisdiction or on any important natural resources, other than primary agricultural soils. In this subdivision (E), "important natural resources" shall have the same meaning as under 24 V.S.A. § 2791.

(F) The Secretary of Agriculture, Food and Markets or designee shall submit a written recommendation on whether the improvements will reduce or convert primary agricultural soils and on whether there will be appropriate mitigation for any reduction in or conversion of those soils.

(4) Any person may submit written comments or ask for a hearing within 30 days of the date on which the District Commission issues notice of a complete request. If the person asks for a hearing, the person shall include a petition for party status in the submission. The petition for party status shall meet the requirements of subdivision 6085(c)(2) of this title.

(5) The District Commission shall not hold a hearing on the request unless it determines that there is a substantial issue under one or more applicable criteria that requires a hearing. The District Commission shall hold any hearing within 20 days of the end of the comment period specified in subdivisions (3) and (4) of this section. Subdivisions 6085(c)(1)-(5) of this title shall govern participation in a hearing under this section.

(6) The District Commission shall issue a decision within 60 days of issuing notice of a complete request under this section or, if it holds a hearing, within 15 days of adjourning the hearing. The District Commission shall send a copy of the decision to each State agency listed in subdivision (3) of this section, to the municipality, to the municipal and regional planning commissions for the municipality, and to each person that submitted a comment, requested a hearing, or participated in the hearing, if any. The decision may include conditions that meet the standards of subsection 6086(c) of this title.

(7) The requestor may waive the time periods required under subdivisions (3), (4), and (6) of this section as to one or more agencies, departments, the District Commission, the District Coordinator, or other persons. Such a waiver shall extend the applicable and subsequent time periods by the amount of time

waived. In the absence of a waiver under this subdivision, the failure of a State agency to file a written determination or a person to submit a comment or ask for a hearing within the time periods specified in subdivisions (3) and (4) of this section shall not delay the District Commission's issuance of a decision on a complete request.

(b) Master plan permits.

(1) Any municipality within which a downtown development district or neighborhood development area has been formally designated pursuant to 24 V.S.A. chapter 76A may apply to the District Commission for a master plan permit for that area or any portion of that area pursuant to the rules of the Board. Municipalities making an application under this subdivision are not required to exercise ownership of or control over the affected property.

(2) Subsequent development of an individual lot within the area of the master plan permit that requires a permit under this chapter shall take the form of a permit amendment.

(3) In neighborhood development areas, subsequent master plan permit amendments shall only be issued for development that is housing.

(4) In approving a master plan permit and amendments, the District Commission may include specific conditions that an applicant for an individual project permit shall be required to meet.

(5) For a master plan permit issued pursuant to this section, an application for an amendment may use the findings issued in the master plan permit as a rebuttable presumption to comply within any applicable criteria under subsection 6086(a) of this title. (Added 2013, No. 147 (Adj. Sess.), § 3, eff. June 1, 2014; amended 2021, No. 170 (Adj. Sess.), § 23, eff. July 1, 2022; 2023, No. 47, § 17, eff. July 1, 2023.)

§ 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 6086(a)(5), (6), and (7) of this title. However, reasonable conditions and requirements allowable in subsection 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 six months, apply for reconsideration of his or her 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. (Added 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 6086(a)(1), (2), (3), (4), (9), and (10) of this title.

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

§ 6089. Appeals

Appeals of any act or decision of a District Commission under this chapter or a district coordinator under subsection 6007(c) of this title shall be made to the Environmental Division in accordance with chapter 220 of this title. For the purpose of this section, a decision of the Chair of a District Commission under section 6001e of this title on whether action has been taken to circumvent the requirements of this chapter shall be considered an act or decision of the District Commission. (Added 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; 2009, No. 154 (Adj. Sess.), § 236; 2013, No. 11, § 14; 2015, No. 150 (Adj. Sess.), § 34, eff. May 31, 2016.)

§ 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.

(c) [Repealed.] (Added 1969, No. 250 (Adj. Sess.), § 16, eff. April 4, 1970; amended 1985, No. 32; 1993, No. 232 (Adj. Sess.), § 35, eff. June 21, 1994; 2003, No. 115 (Adj. Sess.), § 119(b).)

§ 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 Natural Resources Board, 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. (Added 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; 2013, No. 11, § 25.)

§ 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 certain designated areas. This subdivision applies to projects located in the following areas designated under 24 V.S.A. chapter 76A: a downtown development district, a growth center, a new town center designated on or before January 1, 2014, and a neighborhood development area associated with a designated downtown development district. If the project tract is located in one of these designated areas, 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 area described in this subdivision (a)(1), 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, regardless of location in or outside a designated area described in this subdivision (a)(1). 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. As used in 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 certain designated areas. If the project tract is not located in a designated area described in subdivision (1) of this subsection, 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 that 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.

(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 NRCS 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 (a)(1) of this section pertaining to a development or subdivision on primary agricultural soils within certain designated areas, the District Commission may, in appropriate circumstances, require on-site 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 24 V.S.A. § 4302. In this situation, the approved plans must designate specific soils that shall be preserved inside a designated area described in subdivision (a)(1) of this section. For projects located within such a designated area, 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 (a)(2) of this section pertaining to a development or subdivision on primary agricultural soils outside a designated area described in subdivision (a)(1) of this section, the District Commission may, in appropriate circumstances, approve off-site mitigation or some combination of on-site and off-site mitigation if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of 24 V.S.A. § 4302. For projects located outside such a designated area, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection (a), 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 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 (a), 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 to amend a permit for an existing industrial park, the most efficient and full use of land shall be allowed consistent with all applicable criteria of subsection 6086(a) of this title. Industrial park expansions and industrial park infill shall not be subject to requirements established in subdivision 6086(a)(9)(B)(iii) or 6086(a)(9)(C)(iii) of this title.

(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 and shall be used by the Agency of Agriculture, Food and Markets to pay reasonable staff or transaction costs, or both, of the Board and Agency related to the preservation of primary agricultural soils or to the implementation of subdivision 6086(a)(9)(B) or section 6093 of this title. (Added 2005, No. 183 (Adj. Sess.), § 8; amended 2007, No. 65, § 232a; 2013, No. 159 (Adj. Sess.), § 16a; 2013, No. 199 (Adj. Sess.), § 39; 2015, No. 97 (Adj. Sess.), § 29.)

Subchapter 5: Transportation Impact Fees

§ 6101. Purpose

The purpose of this subchapter is to provide a mechanism to allocate the costs to mitigate the impacts of land use projects to the transportation system in a manner that is equitable and that supports the planning goals of 24 V.S.A. § 4302. (Added 2013, No. 145 (Adj. Sess.), § 2.)

§ 6102. Definitions

As used in this subchapter:

(1) “Agency” means the Agency of Transportation.

(2) “Capacity” means each of the following:

(A) the number of vehicles per hour accommodated by transportation infrastructure;

(B) the ability of transportation infrastructure to provide connectivity for pedestrians and cyclists; and

(C) the number of people that can be accommodated by bus at levels of service specified for each mode of travel.

(3) “Capital Transportation Program” means the multiyear transportation program under 19 V.S.A. § 10g as established each year by the General Assembly.

(4) “Capital transportation project” means:

(A) a physical improvement to the State transportation system or to a municipal highway, right-of-way, or transportation facility; and

(B) a study or survey requested or commissioned by a District Commission or the Agency relating to any physical improvement of one or more of the following:

(i) the State transportation system; and

(ii) a municipal highway, right-of-way, or transportation improvement or facility.

(5) “District Commission” shall have the same meaning as under section 6001 of this title except that the term also shall include the Board in exercising its authority to make findings of fact and conclusions of law.

(6) “Land use project” means any activity requiring a permit under this chapter or 19 V.S.A. § 1111.

(7) “Municipality” means a city, town, incorporated village, or unorganized town or gore.

(8) “Pass-by trips” means traffic that is present on a roadway adjacent to a land use project for reasons other than accessing the project and that enters the project.

(9) “Regional planning commission” shall have the same meaning as under 24 V.S.A. § 4303.

(10) “Secretary” means the Secretary of Transportation or designee.

(11) “State transportation system” means the highways, rights-of-way, and transportation facilities under the jurisdiction of the Agency or any other agency of the State and does not include highways, rights-of-way, and transportation facilities under the jurisdiction of a municipality.

(12) “Transportation Demand Management” or “TDM” means measures that reduce vehicle trips or redistribute vehicle trips to non-peak times or other areas. Examples include telecommuting, incentives to carpool or ride public transit, and staggered work shifts.

(13) “Transportation impact fee” means a fee that is assessed to a land use project as a condition of a permit issued under this chapter or a State highway access permit under 19 V.S.A. § 1111 and is used to support any portion of the costs of a completed or planned capital transportation project that will benefit or is attributable to the land use project.

(14) “Transportation Improvement District” or “TID” means a discrete geographic area that includes and will benefit from one or more capital transportation projects included in the Capital Transportation Program and for which the Agency has established a transportation impact fee under this subchapter.

(15) “Vehicle trips” means the number of trips by motorized conveyance generated by a proposed land use project measured at a specific place and for a specific duration. The ownership of and number of persons within the conveyance shall be irrelevant. (Added 2013, No. 145 (Adj. Sess.), § 2.)

§ 6103. Authority

A District Commission or the Agency may assess a transportation impact fee in accordance with this subchapter. (Added 2013, No. 145 (Adj. Sess.), § 2.)

From the Vermont General Assembly’s webpage, dated July 18, 2024,
https://legislature.vermont.gov/statutes/fullchapter/10/151

§ 6104. Transportation impact fee; District Commission

(a) A District Commission may require payment of a transportation impact fee in accordance with section 6106 of this title to fund, in whole or in part, capital improvements that are necessary to mitigate the transportation impacts of a proposed development or subdivision or that benefit the proposed development or subdivision. The Agency shall review the application and recommend to the District Commission whether to require mitigation of the transportation impacts of the development or subdivision. The District Commission may require an applicant to pay the entire cost of a capital transportation project and may provide for reimbursement of the applicant by developments and subdivisions subsequently receiving permits or amended permits under this chapter that benefit from the capital transportation project. The period for reimbursement shall expire when the associated capital transportation project ceases to provide additional capacity.

(b) A District Commission may require an applicant for a development or subdivision within a TID to pay the transportation impact fee established by the Secretary if the Commission determines that the fee will fund, in whole or in part, improvements to mitigate transportation impacts of the development or subdivision.

(c) This subchapter shall apply to the exercise of authority by a District Commission under any permit condition issued pursuant to subdivision 6086(a)(5) of this title in which the District Commission has reserved the right to conduct proceedings that may result in assessment and collection of impact fees to support transportation improvements.

(d) The authority granted to the District Commissions under this subchapter is in addition to their other authority. (Added 2013, No. 145 (Adj. Sess.), § 2.)

§ 6105. Transportation Improvement District and fee; Agency of Transportation

(a) The Secretary may establish a TID and transportation impact fee in accordance with this section and section 6106 of this title if one or more capital transportation projects in the most recent Capital Transportation Program will provide capacity that benefits one or more future land use projects within a discrete geographic area or will provide capacity for future land use projects identified by a regional planning commission or municipality within a discrete geographic area.

(b) To establish a TID and transportation impact fee, the Secretary shall cause the Agency to issue a proposed TID and transportation impact fee.

(1) In preparing the proposal, the Agency shall consult with each regional planning commission, municipality, and the public in which the TID will be located on the geographic extent of the TID, the land use assumptions to be used, the performance standards and the consistency of the proposal with each applicable municipal and regional plan.

(2) The Agency shall prepare a transportation infrastructure plan for the capital transportation project that identifies highway, transit, bicycle, and pedestrian infrastructure needs of a proposed TID. The Agency's proposal shall identify the recommended geographic extent of the TID, the proposed performance standards within the TID, and the proposed transportation impact fee in accordance with section 6106 of this title.

(A) The infrastructure plan shall follow generally accepted planning and engineering standards.

(B) The performance standard for a TID shall be suitable for the area in which the TID is located.

(C) The proposed fee shall reflect a rational nexus between the needs that the transportation infrastructure plan is designed to meet and the benefits that will be provided or the impacts attributable to the proposed land use projects to which the fee will be assessed and shall be roughly proportional to those benefits or impacts.

(3) On issuance of the proposal, the Agency shall provide notice of a public hearing on the proposal before the Secretary. The notice shall include the date and location of the hearing, a description of the TID including the capital transportation project or projects, the TID's geographic extent, and the proposed transportation impact fee. The Agency shall provide the notice to each property owner within the TID, the municipal legislative body and municipal and regional planning commissions for the area in which the TID is located, and shall publish the notice on its web page and in a newspaper of general circulation in the geographic area of the TID. The date of the public hearing shall be not less than 30 days after issuance and publication of the notice.

(4) The Secretary shall hold a public hearing and take testimony on the Agency's proposal. The Secretary shall provide an opportunity for members of the public and affected property owners to testify.

(5) After completing the public hearing, the Secretary may approve, approve with revisions, or deny the Agency's proposal. The Secretary's approval shall establish the proposed TID and transportation impact fee, with any revisions required by the Secretary.

(c) The Secretary shall consider the following to establish the boundaries of a TID:

(1) the existing and planned pattern of development as set forth in the municipal or regional plans;

(2) the future land use projects to be served by the capital transportation projects that the TID will fund; and

(3) each land use project having transportation impacts that are mitigated by a capital transportation project to serve the TID.

(d) The Agency may assess a transportation impact fee to each land use project within a TID for which a State highway access permit is required under 19 V.S.A. § 1111. This subsection shall not apply to a development or subdivision requiring a permit under section 6081 of this title.

(e) The TID and transportation impact fee shall expire after the Secretary determines that the associated capital transportation project or projects no longer meet the approved performance standards. (Added 2013, No. 145 (Adj. Sess.), § 2.)

§ 6106. Transportation impact fee; formula

(a) When assessing a transportation impact fee to a land use project, the Secretary shall apply a formula that reflects the performance standards for the TID, and the District Commission shall apply a formula that reflects those performance standards or the mitigation that the Commission determines is required to address the transportation impacts of the development or subdivision. In either case, the formula shall account for each of the following:

(1) the vehicle trips generated by the land use project estimated pursuant to a generally accepted methodology;

(2) the capital costs of highway infrastructure, pedestrian and bicycle facilities, public transportation, and other transportation infrastructure that benefit or mitigate the transportation impacts of the land use project;

(3) conditions not attributable to the transportation impacts of the land use project including forecasted growth in background traffic and existing infrastructure and capacity deficiencies;

(4) the proportional share of the capital costs of transportation infrastructure that provides benefit to or is attributable to the transportation impacts of the land use project and determined pursuant to a reasonably accepted methodology; and

(5) other funding sources available to finance the capital transportation project.

(b) When determining a transportation impact fee under this section for a land use project, the Secretary or the District Commission may adjust the result of the formula to account for one or more of the following:

(1) a traffic allocation, if any, set for the land use project by a prior permit;

(2) the net change in vehicle trip generation of a proposed land use project considering pass-by-trips and the amount of traffic already generated by the tract of land on which the land use project is to be located;

(3) municipal traffic impact fees paid by the applicant to the extent that those fees fund improvements on which the transportation impact fee is based;

(4) the fair market value of dedications of land, interests in land, or transportation infrastructure improvements provided by the developer to mitigate offsite traffic impacts;

(5) TDM programs offered by the applicant that reduce vehicle trips; and

(6) the siting of a proposed land use project in a downtown, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.

(c) A transportation impact fee for one or more capital transportation projects in a TID shall not exceed the portion of the cost of each capital transportation project that is required to mitigate the transportation impacts of the land use project and shall not include costs attributable to the operation, administration, or maintenance of the capital transportation project.

(d) An applicant may choose to fund the entire cost of a capital transportation project. An applicant for a permit under this chapter who chooses to fund the entire cost of a capital transportation project may request and the District Commission may authorize reimbursement in accordance with subsection 6104(a) of this title.

(e) In assessing a transportation impact fee to an applicant under this subchapter, the Agency or District Commission shall require the applicant to pay the transportation impact fee prior to commencement of construction of the applicant's land use project and shall not require the applicant to delay commencement of construction of that project until construction of each capital transportation project for which the fee was assessed, unless the Agency or District Commission determines that the capital transportation project must first be built to address a transportation safety issue caused or exacerbated by the land use project. If a land use project is to be constructed in stages, the Agency or District Commission

may approve payment of a proportionate amount of the fee prior to commencement of construction on each stage. (Added 2013, No. 145 (Adj. Sess.), § 2.)

§ 6107. Transportation Improvement District Fund

(a) There is created a special fund within the Transportation Fund known as the Transportation Improvement District Fund. The Agency shall deposit into the District Fund each transportation impact fee it receives under this subchapter. The Agency shall administer the District Fund.

(b) Balances in the District Fund shall be expended only for the purposes authorized in this subchapter and shall not be used for the general obligations of government. All balances in the District Fund at the end of any fiscal year shall be carried forward and remain within the District Fund. Interest earned by the District Fund shall be deposited in the District Fund.

(c) The Agency shall provide to the Treasurer an annual accounting of each TID and associated transportation impact fee for that district showing the source, the amount collected, each project that was funded or that will be funded with the fee, and the amount expended. (Added 2013, No. 145 (Adj. Sess.), § 2.)

§ 6108. Payment of fees

(a) An applicant shall pay a transportation impact fee assessed under this subchapter to the Agency, except that a District Commission may direct an applicant to pay a transportation impact fee to a municipality if the impacts of the applicant's development or subdivision are limited to municipal highways and rights-of-way or other municipal transportation facilities.

(b) A municipality receiving a transportation impact fee under this subchapter shall place the fee into a separate account, with balances in the account carried forward from year to year and remaining within the account. Interest earned by the account shall be deposited into the account. The municipality shall provide to the voters an annual accounting of each fee received under this subchapter showing the source, the amount of each fee received, and each project that was funded or will be funded with the fee. (Added 2013, No. 145 (Adj. Sess.), § 2.)

§ 6109. Unspent fee amounts; refunds

Within 15 years from the date of payment, a fee assessed under this subchapter shall be spent on the capital transportation project or projects in the appropriate TID or on the appropriate capital transportation project for which the fee was paid. If the Agency or municipality to which the fee was paid does not spend all or portion of the fee collected on the appropriate capital transportation project or projects, the applicant or its successors may apply to the Agency or municipality for a refund of the proportionate share of that fee within one year of the date on which the applicant's right to claim the refund accrued. (Added 2013, No. 145 (Adj. Sess.), § 2.)

§ 6110. Appeals

(a) A person aggrieved by a decision of the Secretary regarding the establishment of a TID or the transportation impact fee for the TID may appeal to the Civil Division of the Superior Court under Rule 74 of the Vermont Rules of Civil Procedure.

(b) A permit issued by the Agency under 19 V.S.A. § 1111 may be appealed in accordance with 19 V.S.A. § 5.

(c) Appeal of an act or decision of a District Commission under this subchapter shall be pursuant to section 6089 of this title. (Added 2013, No. 145 (Adj. Sess.), § 2.)

§ 6111. Rulemaking

The Board and the Agency may adopt rules to implement the provisions of this subchapter. (Added 2013, No. 145 (Adj. Sess.), § 2.)