STATE OF VERMONT
ENVIRONMENTAL BOARD

RULES

EFFECTIVE OCTOBER 9, 1973
REVISION: 1-JULY 15, 1974
REVISION: 2-JULY 21, 1975

ENVIRONMENTAL BOARD
MONTPELIER, VERMONT
ADOPTED: SEPTEMBER 13, 1973
FILED WITH SECRETARY OF STATE: SEPTEMBER 19, 1973
REVISED: JULY 15, 1974
REVISED: JULY 21, 1975

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These Rules are promulgated pursuant to the authority vested in the Environmental Board under 3 V.S.A. Chapter 25 and 10 V.S.A. Section 6025.

RULE 1: Description of the Organization

(A) The Environmental Board and District Commissions were established by Act 250 of the Acts of the Adjourned Session of the 1969 General Assembly of the State of Vermont. (Chapter 151 of Title 10).

(B) For administrative purposes the State is divided in nine districts as shown on the map below. Each district has a three member commission, appointed by the Governor, which serves as a quasi-judicial body with the authority to determine whether and under what conditions a land use permit may be issued for development or subdivision of land subject to the jurisdiction of Act 250.

1. Administrative support for the commissions is provided by a district coordinator. The location of each office for the coordinators is shown on the map below. (Map and office locations revised - July 21, 1975.)

(C) The Environmental Board consists of nine members appointed by the Governor. Administrative support for the Board consists of a full-time Chairman and an Executive Assistant with offices in the Environmental Agency, Court Street, Montpelier, Vermont. The Board has three functions:

1. To serve as a quasi-judicial appellate body to hear appeals from commission decisions, with the authority to determine whether and under what conditions

a land use permit may be issued for a development or subdivision of land subject to the jurisdiction of Act 250;

2. To adopt an interim land capability and development plan, a capability and development plan, and a land use plan;

3. To prepare and adopt rules to interpret and carry out the provisions of Act 250.

RULE 2: Definitions

(A) "Development" means:

1. Any construction of improvements, for any purpose, above the elevation of 2500 feet;

2. The construction of improvements for any commercial or industrial purpose other than farming, logging, forestry, or housing projects (see (A)3 below) which is located on a tract or tracts of land of more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws, this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres. In determining the amount of land, the area of the entire tract or tracts of involved land owned or controlled by a person will be used (amended, Revision 2, effective July 21, 1975).

3. The construction of a housing project such as cooperatives, apartments, condominiums, dwellings, construction or creation of mobile home parks or

trailer parks, with ten 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 within any period of time after June 1, 1970;

4. The construction of improvements for state, county or municipal purposes, on a tract or tracts of land involving more than ten acres of land. For state, county and municipal projects only, the computation of involved land shall include the land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that a project is incidental to or a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction;

5. Any construction of improvements which will be a substantial change or addition to or expansion of an existing development over which the Board has jurisdiction or in an existing development that would have been subject to Board jurisdiction but for the exemptions provided for in 10 V.S.A. §6081.

6. The construction of improvements for a road or roads to provide access to or within a tract of land

incidental to the sale or lease of land if the road is to provide access to more than 5 parcels or is more than 800 feet in length. For the purposes of determining the length of a road, the length of all other roads within the tract of land constructed within any continuous period of 2 years commencing after the effective date of this rule shall be included (added, Revision 2, effective July 21, 1975).

(B) "Subdivision" means the partitioning or dividing of a tract or tracts of land into ten or more lots including all other lots which have been created through subdivision within a five mile radius of any point of subdivided land, within any continuous period of ten years after April 4, 1970. A subdivision shall be deemed to have been created with the first of any of the following events:

1. The sale or offer to sell or lease of the first lot within a tract of land in accordance with a plot plan for all or any part of the tract of land whereby 10 or more lots are delineated (Added, effective July 15, 1974);
2. The filing of a plot plan on town records;
3. The sale or offer to sell or lease the tenth lot of a tract or tracts of land, owned or controlled by a person, when the lot is within a radius of five miles of any point on any other lot created within any continuous period of ten years subsequent to April 4, 1970.

(C) "Commencement of Construction) means the construction of the first improvement on the land or to any structure or facility located on the land including work preparatory to construction such as clearing, the staking out or use of a right-of-way or in

any way incidental to altering the land according to a plan or intention to improve or to divide land by sale, lease or otherwise transfer an interest in the land.

(D) "Construction of improvements" means any activity which extends, modifies, or initiates any use of the land, other than that which is principally for the preparation of plans and specifications that may be required and necessary for making application for a permit, such as test-wells and pits, percolation tests, and line-of-sight clearing for surveys, provided that no significant alteration of the land and land cover will result unless a District Environmental Commission or Board approves more extensive exploration work.

(E) "State, County or Municipal Purposes" means projects which are undertaken by or for the state, county or municipality and which are to be used by the state, county, municipality, or members of the general public.

(F) "Involved Land" includes all land within a radius of five miles which is part of, closely related or contiguous to or will or may be affected by the development, and which is owned or controlled by a person including, but not limited to, interests created by trusts, partnerships, corporations, cotenancies, easements and contracts.

(G) "Substantial Change" means any change in a development or subdivision which may result in significant impact with respect to any of the criteria specified in 10 VSA, §6086(a)(1) through (a)(10).

(H) "Person" means an individual, partnership, corporation, association, unincorporated organization, trust or any other legal or commercial entity, including a joint venture or affiliated

ownership which owns or controls the tract or tracts of land to be developed or subdivided. The word "person" also means a municipality or state agency.

(I) "Dwelling" means any building or structure or part thereof, including but not limited to hotels, rooming houses, dormitories and other places for the accommodation of people, that is intended to be used and occupied for human habitation.

(J) "Lot" means any undivided interest in land of less than 10 acres, whether freehold or leasehold, including but not limited to interests created by trusts, partnerships, corporations, cotenancies and contracts.

(K) "Party" means any person designated as a party under the Act or these rules and includes the applicant.

(L) "Commercial purpose" means the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object having value. (Added, effective July 15, 1974.)

RULE 3: Pleadings and Service Thereof

(A) All applications, notices, petitions, entries of appearance and other pleadings filed with the Board or District Commissions shall be deemed to have been filed when a pleading is received by the Board or a District Commission.

(B) The pleading initiating a case before the Board or a District Commission shall be signed by the petitioner or an officer thereof.

1. In a case initiated before a District Commission, the original and four copies of the pleading shall be filed with the appropriate District Commission. The applicant shall certify by affidavit in the application that copies of the application have been forwarded to the municipality, the municipal and regional planning commissions wherein the land is located and any adjacent Vermont municipality, municipal or regional planning commission if the land is located on a boundary. A copy of the notice of application shall be posted by the applicant in the town clerk's office of the town or towns wherein the land lies. Notice to other persons shall be solely within the discretion and the responsibility of the district commission.

2. Service of the initial pleading upon each party entitled to be served a copy pursuant to 10 V.S.A. Section 6084 shall be made on or before filing with a District Commission by personal service or by certified mail, except in cases where a different manner of service is required by an applicable provision of law.

3. The party initiating a case shall be responsible for publication of notice of application in a local newspaper generally circulating in the area where the land is located. Publication shall occur not more than seven days after the District Commission has received the pleading. The notice shall contain the name of the applicant, the name of his predecessor in title, his address, location of the proposed development or subdivision, the character or nature of such development or subdivision, and if a subdivision, the number of lots proposed, the location of the District Commission where the application was filed and the date of filing. The location specified in the notice shall be sufficiently precise so that a person generally familiar with the area can approximately locate the tract of land on an official town highway map.

(C) The Board or a District Commission may treat any written communication as a pleading initiating a case for determination.

(D) Every pleading by any party subsequent to the initial pleading in a case shall be served upon the attorneys of record for all other parties and upon all parties who have appeared for themselves. Service within this subsection of the rule shall be made upon an attorney or upon a party by handing a copy to him or by mailing a copy to him at his last known address.

RULE 4: Petitions for Rulemaking and Declaratory Rulings

(A) The authority to adopt rules, act upon petitions for declaratory rulings and to issue orders is vested in the Board. Other than the authority to compel the attendance of witnesses and require the production of evidence (10 V.S.A. §6027(a)) the authority of District Commissions is to receive and act upon applications and issue permits under 10 V.S.A. Subchapter 4.

(B) Petitions for the adoption, amendment or repeal of any rule will be entertained by the Board. Petitions will be either denied within 30 days pursuant to 3 V.S.A. Section 806 or will be considered and disposed of pursuant to the procedure specified in 3 V.S.A. Section 803.

(C) Petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the Board will be entertained by the Board. Such petitions will be considered and disposed of promptly. Petitions shall be treated as a petition for adoption of rules pursuant to 3 V.S.A. Section 806 or as a contested case under 3 V.S.A. Section 809 ET SEQ. as may be proper under the circumstances. The Chairman may issue preliminary rulings subject to timely objection of any party in interest in which event the matter shall be considered by the Board.

(D) Due notice of filing of a petition to each party entitled to service, pursuant to 10 V.S.A., §6084, shall be certified to by the petitioner.

RULE 5: Appearances

(A) Upon the filing of a pleading initiating a case before the Board or a District Commission, the name of any attorney who has countersigned such pleading will be entered on the docket of the Board or District Commission. Except for appearances before the Board or a District Commission, all other appearances by attorneys or persons appearing for themselves shall be by notice in writing filed with the Board or a District Commission, and served pursuant to Rule 3 herein.

(B) All notice given to or by an attorney of record for a party shall be considered in all respects as notice to or from the party represented by such attorney.

(C) Any party to a case before the Board or a District Commission must appear for himself or by an attorney at law.

(D) An attorney who is not a member of the Vermont Bar shall be allowed to practice before the Board or a Commission only if accompanied by a member of the Vermont Bar.

RULE 6: Permit Applications

(A) Applications shall be made in the name or names of all persons who have a substantial interest in the tract of involved land by reason of ownership or control; however, in all instances unless specifically authorized by the Board or district commission, the owner of the tract of involved land shall be the applicant or a co-applicant with any other person or persons who have an interest by contract, lease, option or other legal arrangement in the tract of involved land, or some portion thereof, which is related to a proposed development or subdivision.

(B) The Board shall from time to time issue guidelines for the use of commissions and applicants in determining the information and documentation that is necessary or desirable for thorough review and evaluation of projects under applicable criteria. The Board or a commission may require such additional information or supplementary information as the Board or commission deems necessary to fairly and properly review the proposal. In addition:

1. If the applicant submits or intends to submit permits or certifications as evidence under Rule 13, he shall, upon request of the Board or a commission or upon challenge of a party under Rule 13(C)(6), submit copies of all materials relevant to such permit or certification.
2. If the applicant intends to make an application sequentially under Rule 13(D), he shall submit such information as may be proper or necessary for consideration under the specific criteria in the order they are to be considered by the Board or a District Commission.

RULE 7: Hearing Schedules

(A) Hearings on applications and appeals to the Board shall be scheduled and held in accordance with the statutory requirements set forth in 10 VSA, Section 6085. Hearings may be continued until all testimony and evidence relating to the criteria set forth in the Act has been presented and all parties have had adequate opportunity in the judgment of the Board or Commission to be heard.

(B) An applicant, subject to the approval of the Board or District Commission, may waive the statutory requirements pertaining to the scheduling of hearings. A party at any time prior to adjournment of a hearing by the Board or a District Commission, may petition that the matter be recessed for a reasonable period of time. The Board or Commission may grant or deny a recess at its discretion. During such period, the applicant may, with due notice to all parties to the application, move to reopen the hearing on any of the criteria specified in 10 V.S.A. Section (a)(1) through (a)(10) for the purpose of offering further relevant evidence or testimony.

RULE 8: Fees

(A) Each application for a permit shall declare the estimated cost of the project, excluding land if owned by the applicant, and shall be accompanied by a fee equaling one dollar for each $1,000 of declared estimated cost; provided, however, the application fee for a subdivision shall not be less than a sum equal to five dollars per lot or parcel for the subdivision as it appears on the recorded plan or if the plan is not recorded, equal to five dollars per lot or parcel for the number of lots or parcels contemplated by the owner at the time of filing his application. The check should be made payable to the State of Vermont.

In the event there is final action denying an application for a permit, a refund shall be made to the applicant as follows:

(i) if final action taken within one year of filing of the application, 50% of any fee paid in excess of $1,000.

(ii) if final action taken within two years of filing of the application, 25% of any fee paid in excess of $1,000.

This provision shall apply to all applications filed on and after October 9, 1973. (Amended, effective July 15, 1974.)

(B) No fees will be required for the installation of water or air pollution abatement facilities for private enterprises, if the facilities are ordered or approved by the Agency of Environmental Conservation.

(C) No fees will be required for rental housing funded under the provisions of Section 236 of the Federal Housing Act.

(D) Fees for housing projects, sponsored by a municipality, will be held in escrow and returned to the applicant if a public housing authority accepts the project upon completion.

(E) All governmental agencies shall be exempt from all fees under these rules.

(F) Fees for projects undertaken by corporations not-for-profit qualified for exemption by ruling of the U.S. Internal Revenue Service, shall not exceed $1,000.

RULE 9: Evidence at Hearings

(A) The admissibility of evidence in all cases before the Board and a District Commission shall be determined under the criteria set forth in the Administrative Procedures Act, V.S.A., Section 810.

(B) In the event no party enters an appearance having an interest adverse to the application or no party offers evidence in opposition to the application, the Board or a District Commission may make reasonable inquiry as they find necessary to make affirmative findings as required; in this event the Board or a District Commission may recess the proceedings and require such investigations, tests, certifications or witnesses as are deemed necessary by the Board or Commission, as the case may be, to evaluate the effect of the project under the criteria in question.

RULE 10: Joint Hearings

(A) In order to avoid duplication of testimony and avoid unnecessary expense, the Board and District Commissions may hold a hearing with another affected governmental agency if the agency communicates its agreement to or request for a joint hearing to the Board or a District Commission at least ten days before the scheduled hearing date. The communication must be in writing signed by a representative of the Agency but can be sent through any party to the proceedings or directly from the affected Agency. Any party may petition, in writing, to the Board or District Commission to request a joint hearing with another affected governmental agency.

RULE 11: Subpoenas

(A) A party may subpoena witnesses only upon approval by the Board or a District Commission or their Chairman of a written request stating the reasons therefor and representing that reasonable efforts have been made by the party to obtain voluntary attendance of witnesses or production of documents or other evidence. In all other respects Rule 45. SUBPOENA of the Vermont Rules of Civil Procedure shall apply and are incorporated in these rules by reference.

RULE 12: Conduct of Hearings

(A) Unless waived by all parties, a quorum of the Board to conduct business, including holding a hearing, shall consist of more than half of its members, but in no event less than four members. A quorum of a District Commission to conduct business, including holding a hearing, shall consist of two members. In the event that a tie vote results during the conduct of any business, conduct of business will be adjourned until an uneven number of members can meet and break the tie. A qualified stenographer or an electronic sound recording device shall be used to record all hearings where an even number of Board or District Commission members are conducting the hearing. In the event of a hearing decision over which a deadlock exists, a rehearing will either be held or decided on the transcript or recording thereof; the decision to rehear will be made by a majority of those members of the Board or District Commission who convene to break the deadlock.

In the event that only two members of a District Commission are available to conduct a hearing, the Board may, upon request of the District Commission or a party to the application at issue and if the issues so warrant it, designate a member of another District Commission to serve with the remaining members.

(B) At any hearing, the members convened therefor will designate a member as chairman to conduct the hearings if the duly appointed chairman is absent, or for some other reason elects not to chair the hearing. The chairman or acting chairman shall have the power to administer oaths to witnesses; and, unless a party objects, rule on questions of evidence and offers of proof, take depositions or order such to be taken, rule on the validity of service of subpoenas and other notices, and do whatever is

necessary and proper to conduct the hearing in a judicious and fair manner.

(C) The Board or a District Commission may allow as parties to a proceeding, individuals or groups not accorded party status by law upon written or oral petition if:

1. The petition is made on or before the first hearing day to the Board or District Commission.
2. The petitioner states the details of the petitioner's interest in the proceedings including whether the petitioner's position is in support of or in opposition to the order sought, if known and, in the case of a petition by an organization, a description and purposes of the organization;

The Board or a District Commission will issue an order, verbal or written, granting or denying the petition. Prior to admitting a person as a party, the Board or Commission shall find that the person has adequately demonstrated that a proposed development or subdivision may adversely affect his interest under any of the provisions of Section 6086(a)(1) through (a)(10) or that his participation will materially assist the Board or Commission by providing testimony and other evidence relevant to the provisions of Section 6086(a)(1) through (a)(10). Appeals to the Board from a decision of a District Commission under this rule shall be based solely on the record of the proceedings before the Commission.

(D) Upon request of a party, a hearing will be transcribed by a qualified stenographer or will be recorded on an electronic sound recording device at the election of the party. If transcription by a stenographer is requested, the request shall be in writing and filed at least ten days before a hearing. Cost of stenographic, recording and transcription shall be borne by the

requesting party. The requesting party shall provide one copy of the transcript to the Board or District Commission, without cost; other parties wishing a copy shall reimburse the requesting party on a pro-rata basis. Disputes over sharing of costs shall be resolved by the Board or a District Commission.

(E) Cross-examination of any witness shall be done only by an attorney who has entered his appearance as required by Rules 3 and 5 herein, or by a party to the proceeding who is not represented by counsel unless the Board or District Commission directs otherwise.

RULE 13: Consideration of Applications, Other Permits and Appeals to Board

(A) The Board and District Commissions shall consider each application in the order presented and may require any applicant to submit supplementary data to them for use by them in determining whether or not to issue a permit.

(B) The Board and District Commissions may conduct such investigations, examinations, tests and site evaluations as they deem necessary to verify information contained in the application. Before granting a land use permit, the Board or District Commission shall determine that the applicant has:

1. Sufficient personal finances to undertake the project; or,
2. Evidence that sufficient funds are or will be committed to undertake the project by a recognized financial institution; or,
3. Posted performance bonds as available from a recognized surety sufficient to guarantee against a default in completing the development or subdivision or some portion thereof; or,
4. Adequate conditions can be attached to the permit which insure that no unreasonable or undue burdens, as set forth in 10 VSA, §6086(a), will result if the development or subdivision is not completed as planned.

(C) In the event a subdivision or development is also subject to standards of and/or requires one or more permits from another state or local agency, such permits, or in lieu therefor certifications of compliance, must be obtained prior to issuance of a permit under Act 250 and when obtained will create the following rebuttable presumptions:

l. That sewage can be disposed of through installation of sewage collection, treatment and disposal systems without resulting in undue water pollution:

a. A subdivision permit - Agency of Environmental Conservation, under 18 VSA, Chapter 23 and regulations promulgated thereunder.

b. A public building permit (for facilities exterior to building only) - Agency of Environmental Conservation, under 18 VSA, Chapter 25 and regulations promulgated thereunder.

c. A mobile home park permit - Agency of Environmental Conservation, under 10 VSA, Chapter 153 and regulations promulgated thereunder.

d. A trailer camp or tentsite permit - Agency of Environmental Conservation, under 18 VSA, Chapter l and regulations promulgated thereunder.

e. A discharge permit for the facility to be used by the project - Agency of Environmental Conservation, 10 VSA, Chapter 47 and the regulations promulgated thereunder; or, if a facility not controlled or owned by the applicant, a certification of compliance that use of the facility complies with a permit issued therefore by the department.

f. A sanitary landfill permit -Agency of Environmental Conservation, under 24 VSA, Chapter 51 and regulations promulgated thereunder.

2. That no undue air pollution will result:

   a. Certification of compliance - Agency of Environmental Conservation, under 10 VSA, Chapter 51, and regulations promulgated thereunder.

3. That a sufficient supply of potable water is available:

   a. Public utility permit - Public Service Board under 10 VSA, Sections 203 and 219.

   b. Municipal permit - local water authority

   c. Subdivision permit - see Rule 13(C)1.c. above

   d. Mobile home park permit - see Rule 13(C)1.c. above

   e. Trailer camp or campsite permit - see Rule 13(C) 1.d. above

   f. Community systems - Department of Health permit under 18 VSA, Section 1205.

4. That the proposed use is in conformity with a duly adopted local plan - local zoning permit under Chapter 91 of Title 24 VSA.

5. An applicant may, at his option, obtain any permit or certification specified in Rule 13(C) prior to submission of an application under the Act and attach a copy to the application. In the alternative, the applicant may make application without such a permit or certification with due notice to all parties entitled to notice, in which event the Board or District Commission will proceed under subsection (d) of this rule and will receive no evidence on the applicable criteria and recess the hearing on these criteria until the applicant obtains such permit or

certification and petitions the commission or Board to reopen the hearing.

In the event a permit or certification imposes restrictions or conditions which materially change the character of the proposed subdivision or development, the applicant shall amend his application to reflect such changes with due notice to all parties and thereafter if requested by any party or upon motion of the Board or commission, if found necessary and proper to do so, a re-hearing shall be held on criteria under the Act insofar as such changes are relevant to the criteria.

6. Permits and certifications filed under this rule shall create a rebuttable presumption that the application is not detrimental to the public health and welfare with respect to the criteria specified in these rules; provided, however, that any party may challenge such presumption. If a party challenges the presumption, it shall state the reasons therefor and offer evidence at a hearing to support its challenge. In such event and after proper evidence rebutting the presumption has been presented, as determined by the Board or District Commission, the applicant shall have the burden of proof under the relevant criteria and the permit or certification shall serve as evidence of compliance only. (Amended, effective July 15, 1974.)

(D) In order to avoid unnecessary or unreasonable costs in preparation of detailed specifications for projects that are complex by reason of size, multiplicity of uses, potential impact

under the criteria of the Act or the period of time contemplated for completion, an applicant, upon notice and approval of a District Commission or the Board and upon filing an application or an appeal to the Board, may elect to offer evidence in support of or have the project reviewed under any of the criteria under the Act in such sequence as the applicant finds most expedient and practicable. However, such procedure shall not be permitted by the Board or a District Commission if it works a substantial hardship or inequity upon other parties to the proceedings or will unduly delay final action on the application or make comprehensive review of an application under applicable criteria impractical or unduly difficult. If the applicant intends to do so, he shall notify the Board or District Commission and all parties entitled to receive notice of his intention, including proper notice by publication, and to the best of his knowledge the sequence and timing under which he intends to offer evidence or submit the project for review under specified criteria.

Insofar as the applicant sustains his burden of proof or a party opposing the application fails to sustain its burden of proof as provided for in the Act under the applicable criteria, the Board or District Commission shall make affirmative findings of fact and conclusions of law including any conditions or limitations relevant thereto to be imposed by the District Commission or Board. If the Commission or Board are unable to make such findings by reasons of inadequate evidence or information, it shall inform the applicant and all parties. Such affirmative findings, conclusions of law and any conditions or limitations shall remain in effect, pending issuance or denial of a permit under the Act, for a reasonable and proper term as determined by the Commission or Board. For

the purposes of this section, any findings of fact or conclusions of law made by a commission based upon criteria 6086(a)(9) and (a)(10) shall be a final decision and subject to appeal to the Board as provided for under the law; provided, however, the applicant, and any other party if agreed to by the applicant, may elect to reserve an appeal from findings and conclusions under these criteria until after final action on the application has been made by the District Commission.

The findings of fact and conclusions of law made under the terms of this section shall be binding upon all parties during the period specified by the Commission or Board unless it is clearly shown that there was misrepresentation or fraud or that the facts relevant to the matter have so materially changed as to render the findings or conclusions clearly erroneous, contrary to the purposes of the Act and without basis in fact.

A permit shall not be granted under this section until the applicant has fully complied with all criteria and all affirmative findings have been made by the Commission or Board as required by the Act.

(E) The procedures authorized under this section are intended to minimize costs and inconvenience to applicants and shall be applied liberally by the Board or District Commission for that purpose consistent with the right of other parties and the requirements of law and any pertinent regulations. (Amended, effective July 15, 1974.)

RULE 14: Order of Evidence

The Board or a Commission shall receive evidence and testimony on any of the criteria in whatever order as appears to the Board or Commission most expeditious and equitable. Upon conclusion of an offer of proof under a criterion and unless otherwise directed by the Board or a District Commission, all other parties shall at that time present whatever evidence and testimony they intend to offer on the criteria before proceeding to another criterion.

RULE 15: Approval or Denial of Applications

(A) If the Board or a District Commission approves an application, it shall issue a permit to the applicant enabling him to proceed with the development or subdivision in accordance with the terms of the application as approved.

(B) If the Board or District Commission does not approve an application, it shall give written notice to the applicant that the application for a permit has been denied and specify the reasons therefor.

(C) The Board or District Commission may issue a permit to the applicant subject to such conditions or restrictions as it may impose, consistent with the intent of these rules and the Act.

(D) The Board or Commissions shall make all findings and conclusions for which sufficient evidence was offered within 20 days of the final hearing; such findings and conclusions shall constitute final action of the Board or Commissions with regard to the applicable criteria and shall be valid and binding for a reasonable period as determined by the Commission or Board and as provided for in Rule 19.

(E) A party may file within 15 days from date of the decision such motions as are appropriate with respect to the decision. The Board or District Commission shall act upon such motions promptly; the running of time in which to appeal to the Board or Supreme Court shall be stayed upon filing of the motion and until a final decision has been made by the Board or Commission.

RULE 16: Appeals

(A) Any party aggrieved by an adverse determination by a District Commission may appeal to the Board, subject to removal to County Court as provided for in 10 VSA section 6089, and will be given a de novo hearing on all findings requested filed with the Commission by any party and such other findings of the Commission as allowed by the Board but only upon showing of good cause and sufficient evidence that a substantial adverse impact under criteria specified in 10 VSA section 6086(a)(1) through (a)(10) may otherwise result. An appeal shall be filed with the Board within 30 days after date of the decision of the commission. The appeal shall consist of the original and 10 copies of the appeal and of the decision of the commission and such additional copies of both as will be sufficient to enable the Board to give notice to all other persons entitled to notice as parties to the application before the commission under 10 VSA section 6085(c); reasons assigned why the appellant believes the commission was in error and issues the appellant claims are relevant shall be filed with the Board within 10 days after filing of the appeal. A filing fee of $25.00 shall accompany the appeal payable to the State of Vermont.

(B) The Board shall provide notice to parties as required under 10 VSA 6085(a) by sending copies of the appeal by U.S. Mail and by publication of notice of appeal not less than 10 days before the hearing date.

(C) The scope of the appeal hearing shall be limited to those reasons assigned by the appellant why the commission was in error unless substantial inequity or injustice would result from such limitation.

(D) Any party to the application on receiving notice of the appeal under the requirements of 10 VSA 6089(a) may enter its

appearance in the appeal before the Board within 10 days after receipt of notice or expiration of the 30 days allowed for filing appeals whichever is latest. If timely notice of appeal is filed by a party, any other party entitled to take an appeal under 10 VSA, section 6085(c) may file a notice of appeal within 14 days of the date on which the first notice of appeal was mailed to him by the Board as provided for in this Rule. Such appeal shall comply with the requirements of paragraphs (A) and (B) of this Rule, excepting, however, the filing of copies of the decision of the commission with the Board is not required.

(E) Any party aggrieved by an adverse determination of the Board may appeal to the Vermont Supreme Court under the provisions of Chapter 102 of Title 12 VSA.

RULE 17: Administrative Hearing Officer - Environmental Board: Expedited Hearings

(A) Upon agreement of the parties any or all of the issues raised on appeal may be held before a hearing officer. The hearing officer shall be a member of the Board. Rules governing proceedings before the hearing officer shall be the same as those which pertain to hearings before the Board. The hearing officer may, if it appears that issues should be heard by the Board by reason of complexity, necessity to judge credibility or other appropriate reasons, decline to hear the issues; in which event those matters at issue shall be referred for hearing to the Board. If the parties agree, the hearing officer shall prepare and transmit to the Board recommended Findings of Fact with record of the proceedings.

(B) A record of proceedings shall be prepared and reviewed by the Board members and Board action shall be based exclusively on the record; provided, however, parties may request opportunity for oral argument before the Board prior to its final decision.

(C) Unless otherwise agreed to by the parties, the Board shall make a final decision on the record within 20 days after the hearing before the hearing officer is adjourned and the transcript thereof is made available to the Board. Parties may file within such time period requests for findings.

(D) The hearing officer shall hold such pre-hearing conferences and issue such notices and orders as may be necessary for the orderly and expeditious conduct of hearings. Any questions of law raised before the hearing officer shall be certified to the Board.

RULE 18: Pre-Hearing Conferences

(A) The Board acting through the Chairman or a Commission may hold such pre-hearing conferences, upon due notice, as may be useful in expediting processing of an application and hearings thereon. The purposes of such pre-hearing conferences shall be to:

1. Clarify the issues in controversy.
2. Identify documents, witnesses and other offers of proof to be presented at a hearing by any party.
3. Obtain such stipulations of parties as to issues, offers of proof and other matters as may be appropriate.

(B) The results of any pre-hearing conference including any orders shall be in writing and signed by the District Commission or Chairman of the Board and copies shall be forwarded to all parties to the application or appeal at least 5 days prior to a hearing on the application or appeal. Parties who have received notice of the pre-hearing conference shall be bound by the pre-hearing order except upon showing of cause, filing of timely objection or if fairness requires otherwise.

RULE 19: Duration and Conditions of Permits

(A) All conditions relating to a permit shall be clearly and specifically stated in the permit. Conditions may pertain to improvement of land, proper operation and maintenance of any facility during the terms of the permit relating to a development or subdivision or to the termination or completion of a development or subdivision. The duration of permits shall not be for a shorter period of time than that over which the permittee or successor may by reason of conditions in a permit be responsible and accountable for compliance with such conditions including proper and timely completion of a project and the operation and maintenance of services such as water, sewage disposal and property maintenance.

In determining the duration of permits, a commission or the Board shall give due regard for the economic considerations attending the proposed development or subdivision such as the type and terms of financing, the cost of development or subdivision, and the period of time over which the development or subdivision will take place.

(B) The Board or a district commission may, as they find necessary and appropriate, require a permittee to file affidavits of compliance with respect to specific conditions of a permit at reasonable intervals. Failure to submit such affidavits shall be cause for revocation of the permit by the Board.

RULE 20: Transfer of Permits

A permit approved by the Board or District Commission may be transferred to another person upon 20 days written notice to the Board or District Commission granting the permit and the parties to the original proceeding. Within 20 days the Board or District Commission or any party to the application may request that a meeting or hearing be reopened to determine the capability and willingness of the transferee to complete and/or operate the development as approved. The notice to the Board or District Commission shall include sufficient information to show the capability of the transferee to fund and complete and/or operate the approved development and an affidavit that the transferee accepts the responsibility for completing the application as approved with any conditions attached to the original approval. Failure to comply with the requirements of this Rule shall be sufficient grounds for a petition for revocation of the permit.

If the permit has been filed with a Town Clerk as provided for in Rule 23, approval to transfer a permit under this Rule shall be filed with the Clerk within 10 days of final action by the Board or a District Commission at the expense of the transferor.

RULE 21: Application for minor development or subdivision (10 VSA, Sec. 6027(f)

(A) Purpose: This Rule is adopted to implement the amendment to Act 250 adopted by the 1973 general assembly which authorizes the Board to provide for simplified or less stringent procedures in certain instances that are otherwise required in 10 VSA, sections 6083 (applications), 6084 (notice) and 6085 (hearings). The purpose of this Rule is to enable District Commissions to review applications and issue permits for developments or subdivisions which are minor in nature in terms of the impact they may have under the criteria specified in 10 VSA, section 6086(a)(1) through (a)(10).

(B) Definition: A minor development or subdivision is one which by reason of its location, size, type of use or other pertinent facts has little potential for adverse impact under the criteria specified in paragraph (A) and:

1. No request for a hearing is filed with the District Commission by any party entitled to notice as provided for in 10 VSA, section 6084 or any adjoining property owner or other person who is made a party under Rule 12(C), including any affected state agency;

2. The proposed development or subdivision does not require any of the permits specified in Rule 13(C); or, in the alternative, has received all permits or certifications of compliance specified by Rule 13(C), provided that the District Commission may waive this requirement if it finds that no significant benefit would result and that such permits will not materially assist the Commission in making findings required under the Act; and

3. No hearing is ordered by the District Commission.

(C) An applicant intending to file an application under this Rule shall first obtain the concurrence of the District Environmental Commission or the Commission Coordinator; in the event the applicant disagrees with the ruling of the Coordinator, he may request a meeting with the District Commission.

At such meeting the District Commission may decide to process the application under this Rule and issue a permit effective immediately with such conditions as the Commission finds proper and necessary; or in the alternative, if the Commission refuses to process the application under this Rule, or if the applicant objects to any conditions to be imposed by the Commission, the Commission shall set a date for hearing within the requirements of 10 VSA, section 6085.

If concurrence is given, the applicant shall publish a notice of intention to file an application under this Rule and in all other respects shall comply with the notice provisions of Rule 3 hereof. A notice of intention shall be valid notice for a period not exceeding 60 days during which time the applicant must file an application under this Rule. In addition to other parties, the applicant shall also serve a copy of the notice on the Vermont Agency of Environmental Conservation; such service shall constitute service on the State of Vermont and any constituent agency thereof.

Publication and service of a notice of intention to file under this Rule shall satisfy the notice requirements of 10 VSA, section 6084.

Notwithstanding the provisions of 10 VSA, section 6085, any person receiving notice under (C) must file a request for hearing

within 7 days of receipt of notice or publication of notice of intention whichever occurs latest; in addition, if a person other than one entitled to receive written notice or an adjoining property owner requests a hearing, such request must be accompanied by a written petition to be admitted as a party under Rule 12(C). In absence of such filings, the District Commission shall consider the application under this Rule as soon after the expiration of the seven day period and the filing of an application as is practicable.

RULE 22: Certification of Compliance

Any person holding a permit may at any time petition the Board or a District Commission issuing the permit for a certificate of compliance with the terms and conditions that may be imposed by the permit. Under usual circumstances, a person may petition for a certification upon completion of the construction of a development or division of land that completion or division has been accomplished in compliance with the permit.

Thereafter, if the permit establishes terms and conditions regarding operation and/or maintenance of a development or subdivision the person holding the permit may from time to time petition the Board or District Commission for certification of compliance.

A certification shall be a matter of public record and shall estop any claim that the construction of a development or division of land or the operation and/or maintenance thereof do not comply with the provisions of the permit unless fraud or misrepresentation are shown. The notice and hearing requirements of the Act shall be complied with when a petition for certificate of compliance is filed with the Board or a District Commission.

RULE 23: Recording

Any permit which contains conditions governing the operation or maintenance of a development or subdivision over a period of not less than 5 years shall be filed by the Commission or Board at the expense of the applicant with the Town Clerk of the town in which the development or subdivision is to be located. Any official action of the Board or a District Commission regarding the terms or conditions of the permit or compliance therewith and any transfer of a permit shall be recorded with the same Town Clerk. For the purposes of recordation, the State of Vermont shall be shown as grantee and the original permittee as grantor.

RULE 24: Revocation of Permits

A petition for revocation of a permit under 10 VSA section 6090(b) may be made to the Board by any person who was party to the application, or any municipal or state agency having an interest which is affected by the development or subdivision. The Board may after hearing and upon due notice revoke a permit if adequate evidence is offered that there is a violation of any condition attached to the permit or the terms of the application or violation of any Rule of the Board; however, unless there is a clear and imminent threat to public health or safety by reason of the violation, the Board shall give the permittee reasonable opportunity to correct any violation prior to any order of revocation becoming final. For this purpose, the Board shall clearly state in writing the nature of the violation and the steps necessary for its correction or elimination. Nothing in this Rule shall be construed, however, to preclude the Board or any other agency of the state from instituting such other action, criminal or civil, as may be permitted by law against the permittee for such violation.