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ENVIRONMENTAL BOARD RULES

ARTICLE I. GENERAL PROVISIONS

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 into nine districts. Each district has a three member commission, with alternates, 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. Administrative support for the commissions is provided by a district coordinator and assistants, as required. The location and telephone number of each administrative office is listed in the telephone directory under "Vermont, State of: ENVIRONMENTAL BOARD, District Environmental Commissions."

(C) The environmental board consists of nine members appointed by the governor. Support for the board consists of the board chair, legal and administrative staff, as required, with offices in Montpelier, Vermont. The board has the following 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 prepare and adopt rules to interpret and carry out the provisions of Act 250;

(3) To act upon petitions for declaratory rulings concerning the applicabilities of any statutory provision, or any rule or order of the board;

(4) To provide for the fair and efficient management of the permit process through the chair of the board and through the issuance of guidelines for program administration;

(5) To enter into inter-agency agreements for the administration and enforcement of the permit process;

(6) To initiate administrative and legal proceedings to prevent, restrain, correct or abate any violation of Act 250, these rules, or any permit lawfully issued thereunder.

Rule 2. Definitions

(A) A project is a "development" if it satisfies any of the following definitions:

(1) Any construction of improvements, for any purpose, above the elevation of 2,500 feet;

(2) The construction of improvements for any commercial or industrial purpose, including commercial dwellings, 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 unless the municipality in which the proposed project is located has elected by ordinance, adopted under chapter 59 of Title 24, to have jurisdiction apply to development on more than one acre

of land. This jurisdiction does not apply to construction for farming, logging, or forestry purposes below the elevation of 2,500 feet. 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;

(3) The construction of a housing project or projects such as cooperatives, apartments, condominiums, detached residences, construction or creation of mobile home parks or trailer parks, or commercial dwellings 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 a continuous period of five years;

(4) The construction of improvements for state, county or municipal purposes, on a tract or tracts of land involving **the physical alteration of** more than ten acres of land. The computation of land **to be considered** 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 **to be physically altered** in the entire project shall be included for the purposes of determining jurisdiction;

(5) Any construction of improvements which will be a substantial change of a pre-existing development, and any

material **or substantial** change to an existing development over which the board or a district commission has jurisdiction;

(6) The construction of improvements for a road or roads, incidental to the sale or lease of land, to provide access to or within a tract 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. For the purpose of determining jurisdiction, any parcel of land which will be provided access by the road is land involved in the construction of the road. This jurisdiction shall not apply unless the road is to provide access to more than five parcels or is to be more than 800 feet in length. For the purpose of determining the length of a road, the length of all other roads within the tract of land constructed within any continuous period of ten years commencing after the effective date of this rule shall be included;

(7) Any exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material;

(8) The drilling of a well for the testing of an oil or natural gas reservoir, or for the extraction of oil or natural gas;

(9) Any low-level radioactive waste disposal facility proposed for construction under 10 V.S.A. chapter 161 regardless of the acreage involved; and,

(10) Any construction of improvements which is likely to generate low-level radioactive waste, regardless of the acreage involved. **(See 10 V.S.A. § 6001b.)**

(11) The construction of any support structure, which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, above the mounting surface in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes, independent of the acreage involved. If jurisdiction is triggered for such a support structure, then jurisdiction will also extend to the construction of improvements ancillary to the support structure, including buildings, broadcast or communication equipment, foundation pads, cables, wires, antennas or hardware, and all means of ingress and egress to the support structure. To the extent that future improvements are not ancillary to the support structure and do not involve an additional support structure, those improvements shall not be considered a development, unless they would trigger jurisdiction under 10 V.S.A. § 6001(3). A permit will not be required prior to the emergency replacement of a support structure to protect the health and safety of the public. Persons may take whatever action, without notice, hearing or a permit, necessary and appropriate to meet such an emergency. Upon cessation of such emergency, the work performed to meet the emergency shall be evaluated in accordance with the provisions of this rule and, if such work requires a land use permit, the person shall apply for

such permit as soon as reasonably possible. Other exemptions can be found at 10 V.S.A. § 6081.

(12) The construction of improvements for electrical distribution or communication lines and related facilities that are located on rights-of-way, or easements, of more than one acre of land owned or controlled by a person or persons in a municipality without both permanent zoning and subdivisions bylaws. The phrase "construction of improvements" shall include construction, relocation, extension, and reconstruction. Reconstruction does not mean repair or replacement of component parts, in the usual course of business, with equivalent component parts. In a municipality with both permanent zoning and subdivision bylaws, this jurisdiction will apply if the rights-of-ways or easements involve more than ten acres of land. For the construction of improvements by a municipally-owned utility, regardless of the existence of zoning or subdivision bylaws in the area where improvements will be constructed, this jurisdiction will apply only if the rights-of-ways or easements involve more than ten acres of land.

(a) Acreage shall be calculated by aggregating the total area of all s of new corridor, including all s of existing corridor to be substantially changed, which area shall be calculated by multiplying the length of each by the width of the associated right(s) of way in that section. For the purpose of calculating project acreage, right-of-way width shall be: twenty (20) feet for electrical distribution lines or projects involving

both electrical and communication lines, ten (10) feet for lines to be used exclusively for communications, or the maximum width of the area to be physically altered, whichever is greater. Jurisdiction will apply if a project exceeds the acreage thresholds set forth above.

(i) "New corridor" shall include (A) a corridor for which construction of improvements is proposed outside of any existing corridor, and (B) an existing corridor, if improvements to be constructed or reconstructed will constitute a substantial change.

(ii) "Existing corridor" shall mean a right-of-way cleared and in use for electrical distribution or communication lines and related facilities.

(iii) "Substantial change" shall be as defined in Rule 2(G) and shall include, but not be limited to, the addition above the ground of more than ten feet in height to a pole, including the length of any apparatus attached to the pole to the extent such apparatus extends vertically above the pole.

(iv) Lines, facilities or portions thereof to be constructed underground shall not be used for acreage calculation, provided that: the underground line or facility is to be reseeded or reforested; no portion of the underground line is located above the elevation of 2,500 feet; and no portion of the underground line or facility is located in a rare or irreplaceable natural area, or land which is or contains a natural resource referred to in 10 V.S.A., § 6086(a)(1)(E)

(streams), (1)(F) (shorelines), (1)(G) (Class I or II wetlands), (8)(A) (necessary wildlife habitat or endangered species), or (9)(B) (primary agricultural soils). In addition, a line or facility or portion thereof to be constructed underground in a scenic area shall be used for acreage calculation to the extent that such line or facility will be located on land not already cleared prior to commencement of construction of the line or facility. For purposes of this subparagraph, "scenic area" means an area formally designated as scenic by the State of Vermont or the applicable regional or municipal plan.

(v) In the event that a project is, or is to be, completed in stages, all new corridor and all existing corridor to be substantially changed that is involved in the entire project shall be included for the purpose of determining jurisdiction. As used in Rule 2(A)(12), the term "project" shall mean adjacent lines, facilities, or portions thereof to be constructed in accordance with a plan to achieve one or more objectives identified or reasonably identifiable by the utility at the time construction is commenced. Other construction, not identified or reasonably identifiable at the time the project is commenced, shall not be considered part of such project.

(vi) If acreage thresholds are reached, jurisdiction shall apply to all sections of the new corridor or existing corridor to be substantially changed including those sections to be built underground, regardless of whether those underground s were used for acreage calculation.

(b) Exemptions from this jurisdiction shall include the following:

(i) an electric distribution or communication line or related facility within a development or subdivision having obtained a permit from a district environmental commission or the board, provided that such line or related facility was included in the application for such permit; or,

(ii) any emergency situation requiring immediate action, in order to protect the health or safety of the public. Utility companies may take whatever action, without notice, hearing or a permit, necessary and appropriate to meet such an emergency on a temporary basis. Upon cessation of such emergency, the work performed to meet the emergency shall be evaluated in accordance with the provisions of this rule and, if such work requires a land use permit, the utility shall apply for such permit as soon as reasonably possible.

(c) All utilities undertaking the construction of improvements for electrical distribution or communication lines or related facilities which improvements are considered to be in an existing corridor, or to be exempt under sub (b) of this rule, shall notify the district environmental commission in which district the project predominates and provide sufficient information so that a jurisdictional opinion may be rendered if deemed necessary by the district coordinator. However, notification shall be required only if the construction considered to be in an existing corridor or to be exempt under

subdivision (b) exceeds the applicable acreage threshold. Prior notification of projects considered exempt under subdivision (b)(ii) of this rule shall not be required; however, the notification required by this rule shall be made upon cessation of the emergency.

(d) Electric distribution or communication projects, which as of the effective date of this rule are subject to a land use permit or have been finally determined subject to 10 V.S.A. Chapter 151(Act 250), shall remain subject to jurisdiction regardless of the provisions of this rule.

(B) "Subdivision" means a person's partitioning or dividing a tract or tracts of land into ten or more lots including all other lots which that person has created through subdivision within an environmental district, or within a five mile radius of any point of subdivided land if any lots have been created in any adjoining district, within any continuous period of five years after April 4, 1970. "Subdivision" shall also mean any material change to an existing subdivision over which a district commission or the board has jurisdiction and any substantial change to a pre-existing subdivision. 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 the first lot within a tract or tracts of land with an intention to sell, offer for sale, or lease 10 or more lots. A person's intention to create a subdivision may be inferred from the existence of a plot plan, the person's statements to financial agents or potential purchasers, or other similar evidence;

(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 an environmental district or within a five mile radius of any point on any other lot created by that person within any continuous period of five years after 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, partition, or otherwise transfer an interest in the land.

(D) "Construction of improvements" means any physical action on a project site which initiates development for any purpose enumerated in Rule 2(A). Activity which is principally for preparation of plans and specifications that may be required and necessary for making application for a permit, such as test wells and pits (not including exploratory oil and gas wells), percolation tests, and line-of-sight clearing for surveys may be undertaken without a permit, provided that no permanent improvements to the land will be constructed and no substantial impact on any of the 10 criteria will result. A district commission or the board may approve more extensive exploratory work prior to issuance of a permit after complying with the notice and hearing requirements of Rule 51 herein for minor applications.

(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:

(1) The entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial or industrial purposes will occur, and any other tract, within a radius of five miles, to be used as part of the project or where there is a relationship to the tract or tracts upon which the construction of improvements will occur such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the event that a commercial or industrial project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction.

2) Those portions of any tract or tracts of land to be physically altered and upon which construction of improvements will occur for state, county, or municipal purposes including land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings, bearing some relationship to the land which is actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected

by Act 250 will be substantially affected by reason of that relationship. 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 the 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.

(3) For the purposes of electrical distribution or communication lines and related facilities, only the acreage identified and calculated as set forth in subsection (A)(12) of these rules.

(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 V.S.A. § 6086(a)(1) through (a)(10).

(H) "Person" is defined at 10 V.S.A. §6001(14)(A) and (B).

(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, 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 Rule 14 of these rules.

(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.

(M) "Commercial Dwelling" means any building or structure or part thereof, including but not limited to hotels, motels, rooming houses, nursing homes, dormitories and other places for the accommodation of people, that is intended to be used and occupied for human habitation on a temporary or intermittent basis, in exchange for payment of a fee, contribution, donation or other object having value. The term does not include conventional residences, such as single family homes, duplexes, apartments, condominiums or vacation homes, occupied on a permanent or seasonal basis.

(N) "Pre-existing subdivision" shall mean a subdivision exempt under the regulations of the department of health in effect on January 1, 1970 or any subdivision which had a permit issued prior to June 1, 1970 under the board of health regulations, or had pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plans on file as of June 1, 1970 provided such permit was granted prior to August 1, 1970.

(O) "Pre-existing development" shall mean any development in existence on June 1, 1970 and any development which was commenced before June 1, 1970 and completed by March 1, 1971. **“Pre-existing development” shall also mean any telecommunication**

facility in existence on July 1, 1997, unless that facility is already subject to jurisdiction pursuant to 10 V.S.A., § 6001(3).

(P) "Material change" means any alteration to a project which has a significant impact on any finding, conclusion, term or condition of the project's permit and which affects one or more values sought to be protected by the Act.

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

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

(1) shares a boundary with a tract of land where a proposed or actual development or subdivision is located: or

(2) 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 a public highway.

(T) "Electrical lines, communication lines, and related facilities" shall mean any wire, conduit, and physical structure or equipment, whether above, below, or on ground, used for the purpose of transmitting, distributing, storing, or consuming of electricity or communications, but shall not include: 1) a line or facility that requires a certificate of public good pursuant to 30 V.S.A. § 248; or, 2) a "telecommunication facility" as defined at 10 V.S.A. § 6001(26).

(U) "Tract" is defined as one or more physically contiguous parcels of land owned or controlled by the same person or persons.

Rule 3. Rulemaking, Jurisdictional Opinions and Declaratory Rulings

(A) Authority for rules and declaratory rulings. The authority to adopt rules and to act upon petitions for declaratory rulings is vested solely in the board.

(B) Petitions for rulemaking. Petitions for the adoption, amendment or repeal of any rule will be entertained by the board. Petitions will be considered and disposed of pursuant to the procedures specified in the Administrative Procedure Act, 3 V.S.A. Chapter 25.

(C) Jurisdictional opinions. Any person seeking a ruling as to the applicability of 10 V.S.A. Chapter 151 (Act 250), these rules or order of the board may request a jurisdictional opinion from a district coordinator in the appropriate environmental district. In addition, district coordinators may issue jurisdictional opinions when, in their judgment, the applicability of Act 250, these rules or an order of the board needs to be determined.

(1) If the person who requested the opinion wants it to be a final determination, the district coordinator, at the expense of the requestor, shall serve the opinion on all persons identified in writing by the requestor, or known to the coordinator, as either qualifying as parties under Rule 14(A) or who may be affected by the outcome of the opinion.

(2) Persons who qualify as parties under Rule 14(A) or who may be affected by the outcome of the opinion may request reconsideration from the district coordinator within 30 days of the mailing of the opinion. The filing of a timely request for reconsideration shall stop the period for appeal. A new full period for appeal shall begin on the date of a refusal to reconsider or, if reconsideration is accepted, on the date the reconsidered opinion is mailed.

(3) A jurisdictional opinion of a district coordinator may be appealed to the environmental board by any person who qualifies as a party under Rule 14(A) or who may affected by the outcome of the opinion. Such appeals shall be by means of a petition for a declaratory ruling under section (D) of this rule. An appeal from a jurisdictional opinion issued by a district coordinator must be filed with the board within 30 days of mailing of the jurisdictional opinion to the person appealing. Failure to appeal within the prescribed period shall render the opinion final for all persons to whom it has been mailed. A district coordinator may reconsider, or accept a request for reconsideration of, a jurisdictional opinion at any time upon an adequate showing of a failure to disclose material facts or fraud

(D) Declaratory rulings. Petitions for declaratory rulings as to the applicability of Act 250, these rules, or an order of the

board shall be filed with the board and shall be accompanied by a filing fee **as prescribed in 10 V.S.A., § 6083a**, an original and ten copies of the petition and the jurisdictional opinion

appealed from, and a certificate showing that the following persons have been served: all parties under Rule 14(A) and any other persons on whom the district coordinator served the opinion. Petitions for declaratory ruling will be considered and disposed of promptly. A petition may be treated as a petition for adoption of rules or as a contested case as may be proper under the circumstances. The chair may issue preliminary rulings subject to timely objection of any party in interest, in which event the matter shall be considered by the board.

(1) Notice of declaratory rulings. The board shall provide due notice of the filing of a petition for declaratory ruling to each party under Rule 14(A) and to any other persons on whom the district coordinator served the relevant jurisdictional opinion. At the cost of the petitioner, the board will publish a notice of the hearing or initial prehearing conference in a local newspaper generally circulating in the area in which the land is located.

(2) Reconsideration of declaratory rulings. The board may reconsider a declaratory ruling. Any request for reconsideration must be received within 30 days from the date of the declaratory ruling in accordance with Rule 31(A) of these rules, unless the board finds an adequate showing of failure to disclose material facts or fraud. **See 10 V.S.A. § 6007(c).**

Rule 4. Subpoenas

The chair of the board, the chair of a district commission, or a licensed attorney representing a party before the board or a district commission may compel, by subpoena, the attendance and

testimony of witnesses and the production of books and records. A party not represented by a licensed attorney may submit a written request for a subpoena stating the reasons therefor and representing that reasonable efforts have been made to obtain voluntary compliance with its requests. Costs of service, fees, and compensation shall be paid in advance by the party requesting the subpoena. The board or a district commission may issue subpoenas for the attendance of witnesses or the production of documents on its own motion. In all other respects, the **applicable** provisions of the Vermont Rules of Civil Procedure and **the Administrative Procedures Act**, shall apply and are incorporated herein.

Rule 6. Computation of Time

In computing any period of time prescribed or allowed by Act 250, these rules, or an order of the board or district commissions, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless this day is a Saturday, Sunday, State legal holiday, or the day after Thanksgiving, in which event the period runs until the end of the next day which is not a Saturday, Sunday, State legal holiday, or the day after Thanksgiving.

Whenever a person has the right or is required to file a document within a prescribed period after the service of paper on the person and the paper is served on the person by mail, the period shall begin to run three days after the date on which the

paper was postmarked, unless the board or district commission served the paper or set a specific date by which the person must file.

ARTICLE II. PROCEDURE BEFORE THE DISTRICT COMMISSIONS AND ENVIRONMENTAL BOARD

Rule 10. Permit Applications

(A) An application shall be signed by the applicant and any co-applicant, or an officer or duly-appointed agent thereof. The record owner(s) of the tract(s) of involved land shall be the applicant(s) or co-applicant(s) unless good cause is shown to support waiver of this requirement. When the applicant is a municipality or a solid waste management district empowered to condemn the involved land or an interest in it, then the application need only be signed by that party. The application shall list the name or names of all persons who have a substantial property interest, such as through title, lease, purchase or lease option, right-of-way or easement, in the tract or tracts of involved land by reason of ownership or control and shall describe the extent of their interests. The district commission or board may, upon its own motion or upon the motion of a party, find that the property interest of any such person is of such significance that the application cannot be accepted or the review cannot be completed without their participation as co-applicants.

(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. If the applicant submits or intends to submit permits or certifications as evidence under Rule 19, the applicant shall, upon request of the board or a commission or upon challenge of a party under Rule 19, submit copies of all materials relevant to such permit or certification.

(C) In order to avoid unnecessary or unreasonable costs for applicants and other parties, the board or a district commission may authorize the sequential filing of information for review under the 10 criteria.

(D) An application that is incomplete in substantial respects shall not be accepted for filing by the district coordinator, and therefore shall not initiate the time and notice requirements of the Act and these rules. A coordinator's decision that an application is substantially incomplete may be appealed in accordance with Rules 3(C)(3) and 3(D) of these rules. A coordinator's decision that an application is complete is for the purpose of initiating the time and notice requirements and cannot be appealed.

(E) The applicant shall file an original and four copies of the application, and the fee prescribed by **10 V.S.A. § 6083a** with the appropriate district commission. The applicant shall certify by affidavit in the application that the applicant has forwarded notice and copies of the application 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; and the owner of the land if the applicant is not the owner; and the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to § 6602(10) of 10 V.S.A. and that the applicant has either posted or caused to be posted a copy of the notice of application in the town clerk's office of the town or towns wherein the land lies. **See 10 VSA § 6084(a).**

(F) The applicant shall file with the application a list of adjoining property owners to the tract or tracts of land proposed to be developed or subdivided unless this requirement is waived by the district coordinator, in consultation with the chair of the district commission. Provision of personal notice of the hearing or public comment period to adjoining property owners and persons not listed in section (E) of this Rule by the district commission shall be solely within the discretion and responsibility of the chair of the district commission. The chair of the district commission may authorize a waiver of personal notice of the hearing or public comment period to adjoining property owners by the district commission. Any waiver must be based on a determination that the adjoining property owners subject to the waiver reasonably could not be affected by the proposed development or subdivision and that service to each and every property owner by the district commission would constitute a significant administrative burden without corresponding public benefit. However, personal notice of the hearing or public comment period shall be provided by the

district commission to any adjoining property owner who has requested such notice. **See 10 VSA § 6084(b).**

(G) The applicant shall be responsible for the cost of publication of notice of the application in a local newspaper generally circulated in the area where the land is located. The district commission shall be responsible for the publication of this notice, and publication shall occur not more than seven days after the district commission has received the completed application. The notice shall contain the name of the applicant and his or her address; the location of the proposed 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 project location specified in the notice shall be sufficiently precise so that a person generally familiar with the area can approximately locate the tract or tracts of land on an official town highway map. The district commission shall provide notice of the application and the date of hearing or public comment deadline to all those listed in section (E) of this rule and 10 V.S.A. § 6084(b), except that provision of personal notice to adjoining property owners by the district commission may be waived by the chair of the district commission as specified in section (F).

(H) Applications for amendments to permits shall be on forms provided by the board. Procedural requirements for notice and hearings regarding permit amendments are set forth in Rule 34 of these rules.

Rule 11. Fees. See 10 V.S.A. § 6083a Fees.

Note: Repealed by Act 155, (Adj. Sess.), § 22 placed Environmental Board fees in statute effective July 1, 1998.

Rule 12. Documents and Service Thereof; Page Limits; Motions and Replies

(A) All applications, notices, petitions, appeals, entries of appearance and other documents filed with the board or district commissions shall be deemed to have been filed when the document is received by the board or a district commission, except that applications which do not contain information required by the application forms and guidelines issued by the board shall be considered filed on the date that all required information is received, as provided for in Rule 10 of these rules.

(B) The board or a district commission may treat any written communication as a document initiating a case for determination. The document initiating a case before the board or a district commission shall be signed by the petitioner or an officer thereof.

The requirements for content and service of initial documents are specified in these rules as follows:

Petitions for Rulemaking or Declaratory Rulings: Rule 3

Applications for permits: Rule 10

Applications for permit amendments: Rule 34

Petitions for permit revocation: Rule 38

Appeals: Rule 40

Additional requirements concerning these initial documents are specified in sections (C), (D) and (G) below.

When required by these rules, the service of an initial document by a party shall be made by personal service or by certified mail, except in cases where a different manner of service is required by an applicable provision of law.

(C) Each of the following types of documents are to be double-spaced: petitions for declaratory ruling, petitions for rulemaking, notices of appeal, petitions for revocation, motions, initial legal memoranda and briefs, reply memoranda and briefs, proposed findings of fact and conclusions of law, petitions for party status, prefiled testimony, and any pleading filed with the board.

(D) Documents are to comply with the following page limits:

(1) Motions: no more than five pages.

(2) Notices of appeal; petitions for revocation, declaratory ruling, and party status; memoranda; briefs; and other pleadings: no more than 25 pages.

(3) Reply memoranda, briefs, or other reply pleadings: no more than 25 pages.

(4) Proposed findings of fact and conclusions of law: no more than 50 pages.

(5) There is no limit on prefiled direct or rebuttal testimony or on evidentiary exhibits.

(E) All motions should be accompanied by a supporting memorandum.

(F) Unless otherwise specified in these rules, all memoranda in reply to a motion shall be filed within fifteen days of service of the motion, or within the same number of days in which the movant was required to file, whichever is shorter.

(G) For documents filed with the board, the limits contained in s (D) and (F) of this rule may be enlarged or extended for reasonable grounds by the chair of the board. If the document is to be filed with the district commission, such enlargement or extension may be granted by the chair of the district commission. Any person seeking to enlarge a page limit or extend a filing deadline must file a written request no later than the applicable deadline. Such requests may not exceed five pages, double-spaced. If the request is to enlarge a page limit, the request may be accompanied by the subject document.

(H) All proposed findings of fact and conclusions of law should state the location of the supporting evidence in the record and should discuss the applicable legal provisions, showing how each element of a claim is met or not met based on the facts of a case.

(I) The party initiating a case before the board or a district commission shall be responsible for the cost of publication of notice of the proceeding in a local newspaper generally circulating in the area where the land is located. The district commission or board shall be responsible for the publication of the notice.

(J) Every document filed by any party subsequent to the initial document filed in a case shall be served upon the attorneys or other representatives 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 a representative or a party by delivering a copy in person or by mailing a copy to the last known address of the individual.

Rule 13. Hearing Schedules

(A) Scheduling. Hearings on applications and appeals to the board shall be scheduled and held in accordance with the statutory requirements set forth in 10 V.S.A. § 6085, except that an applicant may, with the approval of the board or district commission, waive those requirements. Hearings may be continued until all testimony and evidence relating to the criteria set forth in the Act have been presented and all parties have had adequate opportunity in the judgment of the board or district commission to be heard. If additional hearings are required, their scheduling is within the discretion of the district commission or board.

(B) Recesses. Any time prior to adjournment of a hearing by the board or a district commission, a party may petition that the matter be recessed for a reasonable period of time. The board or district commission may, on petition or on its own motion, recess a hearing pending the convening of further hearings, receipt of submissions from parties, conduct of investigations, review of evidence in the record, deliberation or other similar reason. 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. § 6086(a)(1) through (a)(10) for the purpose of offering further relevant evidence or testimony.

(C) Order of hearings. To the extent reasonable, the initial hearings on applications and appeals shall be scheduled in the order that completed applications and appeals are filed, unless an applicant waives this priority right.

Rule 14. Parties and Appearances

(A) Parties by right. In proceedings before the board and district commissions, the following persons shall be entitled to party status:

(1) The applicant;

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

(3) The municipality in which the project site is located, and the municipal and regional planning commissions for that municipality; and 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 § 6602(10) of Title 10;

(4) Any state agency directly affected by the proposed project, and any state agency receiving notice of the proceedings through the Interagency Act 250 Review Committee;

(5) Any adjoining property owner who requests a hearing, or who requests the right to be heard by entering an appearance on or before the first prehearing conference or, if no prehearing conference is held, the first day of a hearing that has previously been scheduled, to the extent that the adjoining property owner demonstrates that the proposed development or subdivision may have a direct effect on the adjoiner's property under any of the 10 criteria listed at 10 VSA § 6086(a). In making a request for party status, an adjoining property owner shall provide the district commissions or the board with the following:

(a) A description of the location of the adjoining property in relation to the proposed project, including a map, if available;

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

(B) Parties by permission. The board or a district commission may allow as parties to a proceeding individuals or groups, including adjoining property owners, not otherwise accorded party status by statute upon petition if it finds that the petitioner has adequately demonstrated:

(1) That a proposed development or subdivision may affect the petitioner's interest under any of the provisions of § 6086(a) or

(2) That the petitioner's participation will materially assist the board or commission by providing testimony, cross-examining witnesses, or offering argument or other evidence relevant to the provisions of § 6086(a).

(3) A petition for party status under this rule may be made orally or in writing to the district commission and must be made in writing to the board, unless waived by the chair. Any such petition:

(a) must state 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 application, if known;

(b) must, in the case of a petition by an organization, describe the organization, its membership and its purposes; and

(c) must be made to the board or district commission on or before the first hearing day if a prehearing conference is not held and to the board or district commission on or before the day of the prehearing conference, if one is held, unless the board or district commission finds that the petitioner has demonstrated good cause for failure to appear on time, and that its late appearance will not unfairly delay the proceedings or place an unfair burden on the applicant or other parties.

(4) If the request for party status is being made pursuant to (B)(1) of this rule, the petition must include:

(a) A description of the location of the petitioner's property in relation to the proposed project, including a map, if available.

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

(5) If the request for party status is being made pursuant to Rule 14(B)(2), the petition must include a description of the evidence or argument that will be presented.

The board or commission will issue an order, oral or written, granting or denying the petition. The order may restrict the participation of the petitioner to certain provisions of § 6086(a) or to certain aspects of the project, as may be appropriate under the terms of this rule. Any such order by a district commission must comply with Rule 14(F).

(C) Appearances. A party by right to a case before the board or a district commission may appear by filing a pleading initiating a case, by attending a pre-hearing conference or hearing, or by filing a written notice of appearance with the board or commission, and serving that notice on all other parties of record.

(D) Representatives. A party to a case before the board or a district commission may appear in person, or may be represented by an attorney or other representative of his choice. The board or district commission shall enter on its docket and certificates of service the name of any representative who has appeared for a party or who has countersigned a party's pleadings. Any notice given to or by a representative of record for a party shall be considered in all respects as notice to or from the party represented.

(E) Notice for information only. The board or district commission may provide notice for information only to such additional persons as it deems appropriate. However, the receipt of notice so marked does not confer party status under § 6084(b) or this rule.

(F) Preliminary determinations of party status by district commissions and re-examination.

(1) The district commissions shall make preliminary determinations concerning party status. If a prehearing conference is not held, such determinations shall be made at the commencement of the first hearing on the application. If a prehearing conference is held, such determinations shall be made in writing immediately following the conference and prior to the

first hearing day on the application.

(2) If a district commission has made an oral preliminary determination concerning party status, a party or petitioner for party status may request that the district commission issue such determination in writing. The district commission shall issue such written determination no later than five days following the date on which the request for a written determination was made.

(3) On motion of a party or on its own motion, the district commission shall re-examine preliminary party status determinations, unless an interlocutory appeal concerning the determination(s) has been accepted by the board under Rule 43. Any re-examination of party status shall occur prior to completion of deliberations and after each party has had opportunity to present evidence, to cross-examine, and to offer argument. In such re-examination, the district commission shall presume that a party continues to qualify for party status, unless it is demonstrated that the party does not so qualify under the standards of Rule 14(A) or (B).

(4) The district commission shall state the results of all party status determinations and re-examinations in its final decision on the application. **See 10 VSA § 6085(c)(2).**

Rule 15. Joint Hearings

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 16. Prehearing Conferences and Preliminary Rulings.

(A) Purposes. The board or a commission acting through a duly authorized delegate may conduct such prehearing conferences, upon due notice, as may be useful in expediting its proceedings and hearings. The purposes of such prehearing 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; and

(3) Obtain such stipulations of parties as to issues, offers of proof and other matters as may be appropriate.

(B) Preliminary rulings. The convening officer, if a member of the board or district commission, may make such preliminary rulings as to matters of notice, scheduling, party status, and other procedural matters, including interpretation of these rules, as are necessary to expedite and facilitate the hearing process. Such rulings may also be made by a commission chair or board chair without the convening of a prehearing conference. However, any such ruling may be objected to by any interested party, in which case the ruling shall be reviewed and the matter resolved by the board or district commission.

(C) Prehearing order. The convening officer may prepare a

prehearing order stating the results of the prehearing conference. Any such order shall be binding upon all parties to the proceeding who have received notice of the prehearing conference if it is forwarded to the parties at least five day prior to the hearing. However, the time requirement may be waived upon agreement of all parties to the proceeding; and the board or a district commission may waive a requirement of a prehearing order upon a showing of cause, filing a timely objection, or if fairness so requires.

(D) Informal and non-adversarial resolution of issues. In the normal course of their duties, the board and the district commissions shall promote expeditious, informal and non-adversarial resolution of issues, require the timely exchange of information concerning an application and encourage participants to settle differences in any Act 250 proceeding. The board and district commissions may require the timely exchange of information regardless of whether parties are involved in informal resolution of issues. **See 10 VSA § 6085(e).**

Rule 17. Evidence at Hearings

(A) Admissibility. The admissibility of evidence in all cases before the board and district commissions shall be determined under the criteria set forth in the Administrative Procedure Act, 3 V.S.A. § 810.

(B) Documents submitted for the record. Applications, certifications, and related documents accompanying applications submitted by parties shall be entered into the record of a case when they are accepted for filing by the district coordinator,

district commission or board. However, all such documents shall be subject to evidentiary objections by parties to the proceeding.

(C) Order of evidence. The board or district commission shall receive evidence and testimony on any of the criteria in whatever order as appears to the board or district commission most expeditious and equitable. Upon conclusion of an offer of proof under a criterion, unless otherwise directed by the board or district commission, all other parties shall at that time present whatever evidence and testimony they intend to offer on the criterion before proceeding to another criterion. An applicant or a party may, however, request a partial review under the criteria in a particular sequence pursuant to Rule 21.

(D) Prefiled testimony. Any party to a contested case may elect to submit testimony to the board or district commission in writing. Such testimony must be clearly organized with respect to the criteria of the Act and any other issues which are addressed, and must contain a table of contents identifying the criteria and issues addressed.

(1) Notice and distribution. A party intending to utilize prefiled testimony must notify the board or commission and all other parties of the issues to be addressed and the witnesses to be used at least 14 days prior to the hearing at which this testimony will be offered. At least 7 days prior to the hearing, the offering party must submit a copy of the testimony to each

party of record, to the district coordinator or board staff, and to each board or commission member who will be reviewing the testimony. These time requirements may be waived by the board or district commission upon a showing of good cause.

(2) Hearing procedure. Prefiled testimony is intended only to facilitate presentation of a witness's direct testimony. The witness must be present at the hearing to present his direct testimony in writing and to affirm its truthfulness. Objections to the admissibility of the testimony will be heard when it is offered unless an earlier deadline for objections has been established by the board or district commission. The witness must remain available for cross-examination. If the parties have received copies of the testimony in accordance with this Rule, the board or district commission may require that cross-examination proceed immediately.

(E) Prehearing submissions. The board or district commission may direct, by way of a prehearing conference order or otherwise, that all parties to a contested case submit to the board or district commission in advance of any scheduled hearing date, a copy of all proposed exhibits, a list of all proposed witnesses, a summary of all proposed testimony, memoranda concerning any issue in controversy, prefiled testimony, or such other information as the board or district commission deems appropriate.

Rule 18. Conduct of Hearings

(A) Quorum and deadlocks. 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 recessed until an uneven number of members can meet and break the tie. 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.

(B) Alternate commission members. In the event that any member of a district commission is unavailable to participate in a hearing or is disqualified, the district commission chair may, if the issues so warrant it, assign an alternate commissioner. At the request of the chair of a commission, the board chair may assign a member or members from another district to serve on the commission.

(C) Chair. At any hearing the members convened therefor will designate a member as chair to conduct the hearings if the duly appointed chair is absent, or for some other reason elects not to chair the hearing. The chair or acting chair 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, fair and expeditious manner.

(D) Dismissal. The board **or a district commission** may, on its own motion or at the request of a party, consider the dismissal, in whole or in part, of any matter before **it** for reasons provided by these rules, by statute, or by law. At the request of a party or on its own motion, the board **or district commission** will entertain oral argument prior to considering any such dismissal; such argument shall be preceded by notice to the parties unless dismissal is considered at a regularly convened hearing on the matter. A decision to dismiss shall include a statement of **reasons for the dismissal** and shall be made within 20 days of the final hearing at which dismissal is considered.

(E) Recording of proceedings. A qualified stenographer or an electronic sound recording device shall be used to record all hearings where:

(1) An even number of board or district commission members are conducting the hearing; or

(2) A party requests that proceedings be recorded; or

(3) When the board or commission deems appropriate.

Any party intending to stenographically record a hearing shall so notify the commission or board not less than one working day prior to the hearing. The party requesting this method of recording shall be responsible for arranging the appearance of, and payment to, the stenographer. A copy of any transcript shall be provided 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 district commission.

(F) Completion of deliberations. A hearing shall not be closed until a district commission or the board has provided an opportunity for all parties under the relevant criteria to respond to the last permit or evidence submitted. Once a hearing has been closed, a commission or the board shall conclude deliberations as soon as is reasonably practicable. A decision of a commission or the board shall be issued within 20 days of the completion of deliberations. **See 10 V.S.A. § 6085(f).**

(G) When it is determined that a development or subdivision, or its potential impacts, will extend into an adjacent district, the chair of the board may assign the case to the district commission in which district the project predominates if this assignment will provide for greater efficiency of review. The district commission assigned to the case may review the entire scope of the project and render a decision.

Rule 19. Compliance with Other Laws - Presumptions

(A) Alternative procedures. In the event that a subdivision or development is also subject to standards of or requires one or more permits from another state agency, the applicant may elect to follow any one or any combination of the following procedures:

(1) Obtain other permits or certifications before filing the Act 250 application (See (B) below); or

(2) File the Act 250 application prior to, or together with other applications, but with an intention to use other permits or certifications to establish presumptions of compliance with substantive criteria of the Act (See (C) below); or

(3) With the approval of the district commission, an Act 250 application may be filed first, with an intention to satisfy certain substantive criteria of the Act with independent evidence of compliance (See (D) below).

In addition, an applicant may file an application for partial findings under the appropriate criteria in accordance with Rule 21.

(B) Permits accompanying application. If the applicant obtains applicable permits or certifications listed in section (E) of this rule prior to filing an Act 250 application, he or she shall attach copies of such permits or certifications to the application. Such permits and certifications, when entered in the record pursuant to Rule 17(B), will create presumptions of compliance with the applicable criteria of the Act in the manner set out in section(F) of this rule.

(C) Permits obtained after application. If an applicant states an intention to use applicable permits or certifications not yet issued to raise presumptions under this rule, the board or district commission may, at its discretion, defer issuing a land use permit until the necessary permits or certifications are issued, and may recess the hearing until they are submitted by the applicant. The applicant must submit copies of each permit or certification relied upon to the district commission or board. The district commission or board will, within five days, forward copies of each permit or certification to each party who has requested an opportunity to review it, together with a notice of the party's right to request a reconvened hearing.

The district commission or board may reconvene the hearing on its own motion, or upon the request of a party intending to rebut the presumption or claiming that there has been a substantial change in circumstances pertaining to the application. Any request by a party to reconvene must be filed within 10 days of the date of mailing of the permit or certification and notice. If no such request is received, the hearing will be considered closed on the relevant criteria. If a request is received and the hearing is reconvened, evidence will be taken in the manner set out in section (F) of this rule.

(D) No reliance on permits. With district commission approval, an applicant may seek to satisfy the burden of proof under applicable criteria of the Act without submitting permits or certifications from other state agencies by offering affirmative evidence through testimony, exhibits and other relevant material upon which the district commission or board can make findings of fact and conclusions of law. However, if any of the permits or certifications identified in section (E) of this Rule must be obtained prior to construction or use of the project, or portion thereof, the district commission or board may, on its own motion or on motion by a party, defer taking evidence until the necessary permits or certifications are issued and may recess the hearing until they are submitted by the applicant. If action is deferred, the provisions of section (C) of this rule shall apply.

(E) Permits creating presumptions. In the event a subdivision or development is also subject to standards of or requires one or more permits from another state agency, such permits or

certifications of compliance, when entered in the record pursuant to Rule 17(B), will create the following presumptions:

(1) That waste materials and wastewater can be disposed of through installation of wastewater and waste collection, treatment and disposal systems without resulting in undue water pollution:

(a) A subdivision permit - Agency of Natural Resources, under 18 V.S.A. Chapter 23 and rules adopted thereunder.

(b) A water supply and wastewater disposal permit (even if limited to exterior sewer approval only) - Agency of Natural Resources under 10 V.S.A. Chapter 61 and rules adopted thereunder.

(c) A mobile home park permit - Agency of Natural Resources, under 10 V.S.A. Chapter 153 and rules adopted thereunder.

(d) A campground permit - Agency of Natural Resources, under 3 V.S.A. § 2873(c) and rules adopted thereunder.

(e) A discharge permit for a discharge or for a waste-water treatment facility owned or controlled by the applicant and to be used by the project - Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder.

(f) A certification of compliance that the project's use of a sewage treatment facility not owned or controlled by the applicant complies with the permit issued for that facility by the Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder.

(g) A sewer lines extension permit - Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder.

(h) An underground injection permit for the discharge of non-sanitary waste into an injection well - Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder.

(i) A solid waste or hazardous waste certification - Agency of Natural Resources, under 10 V.S.A. Chapter 159 and rules adopted thereunder.

(j) An underground storage tank permit with regard solely to the substance to be stored in the underground storage tank - Agency of Natural Resources under 10 V.S.A. Chapter 59 and rules adopted thereunder.

(2) That no undue air pollution will result:

(a) Air Pollution Control Permit - Agency of Natural Resources, under 10 V.S.A. § 556 and rules adopted thereunder.

(3) That a sufficient supply of potable water is available:

(a) Public utility permit - Public Service Board under 30 V.S.A. §§ 203 and 219.

(b) Municipal permit - Local water authority.

(c) Subdivision permit - Agency of Natural Resources, under 18 V.S.A. Chapter 23 and rules adopted thereunder.

(d) Water supply and wastewater disposal permit (even if limited to exterior water approval only) - Agency of Natural Resources under 10 V.S.A. Chapter 61 and rules adopted thereunder.

(e) Mobile home park permit - Agency of Natural Resources, under 10 V.S.A. Chapter 153 and rules adopted thereunder.

(f) Campground permit - Agency of Natural Resources, under 3 V.S.A. Chapter 51 and rules adopted thereunder.

(g) A public water system construction permit - Agency of Natural Resources, under 10 V.S.A. Chapters 48, 56, and 61; 18 V.S.A. § 1218, and rules adopted thereunder.

(h) A public water system operating permit - Agency of Natural Resources, under 10 V.S.A. Chapters 48, 56, and 61; 18 V.S.A. § 1218, and rules adopted thereunder.

(4) That the application of pesticides will not result in undue water or air pollution and will not cause an unreasonable burden on an existing water supply:

(a) Permit for the application of herbicides to maintain and clear rights-of-way - Department of Agriculture, under 6 V.S.A. Chapter 87 and rules adopted thereunder.

(5) That the development or subdivision will not violate the rules of the water resources board relating to significant wetlands:

(a) A conditional use determination with respect to uses in class one or class two wetlands or their buffer zones - Agency of Natural Resources under 10 V.S.A. Chapter 37, and rules adopted thereunder.

(F) Effect of presumptions. A permit or certification filed under this rule shall create a rebuttable presumption that the portion of the development or subdivision subject to the permit

or certification is not detrimental to the public health and welfare with respect to the criteria specified in these rules. However, the district commission or board may on its own motion question the applicant, the issuing agency or other witnesses concerning the permit or certification, and any party may challenge the presumption. If a party challenges the presumption, it shall state the reasons therefor and offer evidence at a hearing to support its challenge. If the commission or board concludes, following the completion of its own inquiry or the presentation of the challenging party's witnesses and exhibits, that a preponderance of the evidence shows that undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the water resources board relating to significant wetlands is likely to result, then the commission or board shall rule that the presumption has been rebutted. Technical non-compliance with the applicable health, water resources and Agency of Natural Resources' rules shall be insufficient to rebut the presumption without a showing that the non-compliance will result in, or substantially increases the risk of, undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the water resources board relating to significant wetlands. Upon the rebuttal of the presumption, the applicant shall have the burden of proof under the relevant criteria and the permit or certification shall serve only as evidence of compliance.

(G) Changes requiring amendment. In the event a permit or certification issued after the filing of an Act 250 application imposes restrictions or conditions which substantially change the character or impacts of the proposed subdivision or development, the applicant shall amend the application to reflect such changes with due notice to all parties. The district commission or board may, on its own motion or on motion of any party, reconvene a hearing to consider evidence which is relevant to such changes.

(H) As used in this rule, the terms "permit" and "certification" shall refer to any written document issued by the appropriate state agency attesting to a project's compliance with the regulations or statutes listed in section (E) of this rule. With respect to approvals identified in section (E)(1) of this rule, a commission or the board may accept a "site and foundation approval" as establishing presumption if it determines that said approval is based upon an evaluation by the Agency of Natural Resources of site characteristics and a specific waste disposal system plan.

(I) Municipal presumptions. The board and the district commissions shall accept determinations issued by a development review board under the provisions of § 4449 of Title 24 with respect to municipal impacts under criteria 6, educational services; 7, municipal services; and 10, conformance with the municipal plan (10 V.S.A. § 6086(a)). These decisions must include findings of fact and conclusions of law demonstrating compliance or non-compliance with the relevant criteria of Act 250. Such determinations of a development review board, either positive or negative, under the provisions of § 4449 of

Title 24, shall create a rebuttable presumption only to the extent that the impacts under the criteria are limited to the municipality issuing the decision. A development review board decision involving local Act 250 review of municipal impacts must include a notice that it constitutes a rebuttable presumption under the relevant criteria and that the presumption may be challenged in proceedings under 10 V.S.A. chapter 151. **See 10 V.S.A. § 6086(d).**

Rule 20. Information Required

(A) Supplementary information. The board or district commission may require any applicant to submit relevant supplementary data for use in resolving issues raised in a proceeding, and in determining whether or not to issue a permit. When necessary to an adequate evaluation of an application under the criteria set forth in 10 V.S.A. § 6086(a)(1) through (a)(10), the district commission or board may require supplementary data concerning the current or projected use of property owned by the applicant or others adjoining the project site.

(B) Investigation.

(1) The board or district commission may conduct such investigations, examinations, tests and site evaluations as it deems necessary to verify information contained in the application or otherwise presented in a proceeding.

(2) The board or district commission may make reasonable inquiry as it finds necessary to make findings and conclusions as required; in this event the board or district commission may recess the proceedings or require such investigations, tests, certifications, witnesses, or other assistance as it deems

necessary to evaluate the effects of the project under the criteria in question or any other issues before it.

Rule 21. Order of Evidence - Partial Review

(A) To avoid unnecessary or unreasonable costs, 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 offer evidence in support of or have the project reviewed **with respect to** any **appropriate issue under** the criteria or sub-criteria **of** the Act in any sequence approved by the district commission or the board. 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, will unduly delay final action on the application, or make comprehensive review of an application under applicable criteria impractical or unduly difficult. An applicant seeking to use this procedure shall notify the board or district commission and all parties entitled to receive notice, of his or her petition and the sequence and timing under which he or she intends to offer evidence or submit the project for review **with respect to any appropriate issue** under specified criteria or sub-criteria.

(B) A district commission or the board, on its own motion, may consider whether to review **any appropriate issue under** the criteria or sub-criteria before proceeding to the review of **appropriate issues under** the remaining criteria.

(C) In any proceeding under sections (A) or (B) of this rule, the district commission or the board, shall, within 20 days

of the completion of deliberations **of appropriate issues under** the criteria **or subcriteria** that are the subject of the proceeding, either issue its findings **of fact, conclusions of law,** and decision thereon, or proceed to a consideration of **appropriate issues under** the remaining criteria. The decision to issue a decision or proceed to the remaining criteria shall be in the sole discretion of the district commission or board. If the district commission first issues a partial decision under this rule, the **decision must state which findings of fact support conclusions of law under the applicable criteria, and which findings of fact are preliminary in nature and thus do not support a conclusion of law. The** applicant or a party may appeal **any conclusion of law supported by findings of fact** within 30 days under § 6089 of Title 10 and Rule 40 of these rules, or may appeal after the final decision on the complete application.

(D) If the district commission or the board decides to issue a partial decision and insofar as the applicant sustains his or her 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 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 district commission or board is unable to make such findings **of fact supporting a conclusion of law** by reasons of inadequate evidence or information, it shall inform the applicant and all parties. Such findings **of fact**, 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 district commission or board. For the purposes of this section, any conclusions of law, made by a district commission **under** the criteria of § 6086(a) 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 may elect to reserve an appeal from conclusions **of law** under these criteria until after final action on **a complete** application has been made by the district commission. **Acknowledging that the applicant has the burden of production under all criteria, any finding of fact indicating that the applicant has failed to supply adequate evidence or information under a criterion is not appealable under this rule or 10 V.S.A., § 6086(b) provided that this failure does not support a conclusion of law.**

(E) The findings of fact and conclusions of law made under the terms of this shall be binding upon all parties during the period specified by the district 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.

(F) A permit shall not be granted under this rule until the applicant has fully complied with all criteria and **positive** findings **of fact and conclusions of law** have been made by the district commission or board as required by the Act. If a master plan **application** has been presented and reviewed for an

industrial park or other large project, the district commission or the board may issue a master permit to the extent that the district commission or the board has made **positive** findings **of fact and conclusions of law under all criteria for any element or phase approved for construction** and has imposed conditions as required by 10 V.S.A. Chapter 151. Subsequent phases may be reviewed and approved as amendments to the master permit in accordance with board rules and statutory provisions.

(G) The procedures authorized under this 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.

ARTICLE III. LAND USE PERMITS

Rule 30. Approval or Denial of Applications

The board or district commission shall, within 20 days of the completion of deliberations on an application, issue a decision approving, conditionally approving, or denying the application. The date of completion for deliberations shall be governed by Rule 18(F) of these rules. The decision on the application shall contain findings of fact and conclusions of law specifying the reasons for the decisions reached on all issues for which sufficient evidence was offered. If the application is approved, the decision shall also contain a land use permit in the name of the applicant, enabling the applicant to proceed with the

development or subdivision in accordance with any stated terms and conditions.

Rule 31. Reconsideration of Decisions

(A) Motions to alter decisions. A party may file within 30 days from the date of a decision of the board or district commission one and only one motion to alter with respect to the decision. However, no party may file a motion to alter a decision concerning or resulting from a motion to alter.

(1) All requested alterations must be based on a proposed reconsideration of the existing record. New arguments are not allowed, with the exception of arguments in response to permit conditions or allegedly improper use of procedures, provided that the party seeking the alteration reasonably could not have known of the conditions or procedures prior to decision. New evidence may not be submitted unless the board or district commission, acting on a motion to alter, determines that it will accept new evidence.

(2) A motion to alter should number each requested alteration separately. The motion may be accompanied by a supporting memorandum of law which contains numbered s corresponding to the motion. The supporting memorandum should state why each requested alteration is appropriate and the location in the existing record of the supporting evidence. Any reply memorandum of law should also contain numbered sections corresponding to the motion. Additional requirements concerning motions and memoranda are set out in Rule 12 of these rules.

(3) The board or district commission shall act upon motions to alter promptly. The running of any applicable time in which

to appeal to the board or supreme court shall be terminated by a timely motion filed under this rule. The full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion. It is entirely within the discretion of the board or district commission whether or not to hold a hearing on any motion.

(4) The board or district commission may on its own motion, within 30 days from the date of a decision, issue an altered decision or permit. Alterations by board or district commission motion shall be limited to instances of manifest error, mistakes, and typographical errors and omissions.

(B) Application for reconsideration of permit denial.

(1) Procedure. An applicant for a permit which has been denied by the board or district commission may, within six months of the date of that decision, apply to the district commission for reconsideration of the application.

The applicant for reconsideration shall certify by affidavit in the application that notice and copies of the application have been forwarded to all parties of record, and that the deficiencies in the application which were the basis of the permit denial 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 which has been deemed complete.

(2) Scope of review. The district commission may, but need not necessarily, limit its scope of review to those aspects of the project or application which have been modified to correct deficiencies noted in the prior permit decision. The findings of

the board or district commission in the original permit proceeding shall be entitled to a presumption of validity in the reconsideration proceeding, insofar as those findings are not affected by proposed modifications in the project. However, those presumptions may be rebutted by the district commission or by any party upon a showing that the circumstances of the application have changed, or upon a review of evidence not previously presented.

Rule 32. Duration and Conditions of Permits

(A) Permit conditions. The board or district commission may attach such conditions to permits as are appropriate to ensure that the development is completed as approved. This may include the posting of a bond or the establishment of an escrow account requiring the board or district commission to certify that permit conditions have been complied with prior to release of the bond or discharge of the escrow account in part or in whole. Permittees, and their successors and assigns shall comply with all terms and conditions stated in land use permits.

All conditions relating to a permit shall be clearly and specifically stated in the permit. Conditions may pertain to improvement of land and to proper operation and maintenance of any facility during the terms of the permit relating to a development or subdivision.

The board or a district commission may, as it finds 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.

When construction of a project will be pursued in stages involving more than one construction season, a commission or the board may require a permittee to file an annual certificate stating what portion of an approved project has been completed to date.

(B) Duration of permits. Permits issued under the Act shall be for land development or subdivision and the resulting land use. All permits shall run with the land. Permits for extraction of mineral resources, solid waste disposal facilities, and logging above the elevation of 2500 feet shall contain specific dates for completion of the project and for expiration of the land use permit. Permits issued for all other developments and subdivisions shall contain dates for completion of the project but shall not contain a date for expiration of the permit. Effective June 30, 1994, permits issued for all other developments and subdivisions shall be for an indefinite term, as long as there is substantial compliance with each condition of the permit. Expiration dates contained in permits (involving developments and subdivisions that are not for extraction of mineral resources, operation of solid waste disposal facilities and logging above the elevation of 2500 feet) are extended for an indefinite term, as long as there is substantial compliance with each condition of the permit. **See 10 V.S.A. § 6090(b)(1) and (2)**.

(1) Project completion date. In determining the dates for phased or full completion of construction or subdivision, the board or district commission shall consider the impacts of

project development under the criteria of the Act, and shall give due regard to the economic considerations attending the proposed development or subdivision (such as the type and terms of financing, and the cost of development or subdivision) and the period of time over which the development or subdivision will take place. If a project, or portion of a project, is not completed by the specified date, such project or portion may be reviewed for compliance with 10 V.S.A. § 6086. In any such review, due consideration shall be given to fairness to the parties involved, competing land use demands for available infrastructure, 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 or the board shall provide that the completion dates be extended for a reasonable period of time during which construction can be completed. **See 10 V.S.A. § 6090(b)(1).**

(2) Permit expiration date. When an expiration date is to be issued, the duration of a permit shall be for a specified period designated as a reasonable projection of time during the land will remain suitable for the use as contemplated in the application and shall at a minimum extend through that time period over which the permit holder or successors in interest will be responsible and accountable for compliance with time-specific permit conditions, including proper and timely completion of the project. During its term, a permit shall run with the land.

Rule 33 - Recording of Permits

(A) Recorded permits. Permits shall be recorded at the expense of the applicant in the land records of any municipality in which a development or subdivision is to be located unless the board or a district commission determines in specific instances that such action is not warranted. Any official action of the board or a district commission modifying the terms or conditions of a recorded permit shall also be recorded. The State of Vermont shall be shown as grantee and the original permittee and landowner as grantor. A commission or the board may retain a permit after issuance in order to assure payment of recording expenses or payment of fees under Rule 11.

(B) Unrecorded permits. The recording of permits is intended to assist purchasers and investors in property by providing actual notice of the terms and conditions of existing land use and development permits. The board and district commissions will, to the extent that it is feasible, contact holders of presently unrecorded permits and seek to have them recorded by voluntary agreement. In addition, any unrecorded permit shall be recorded upon issuance of any amendment, including an amendment required to renew an expired permit or transfer an unrecorded permit to a new permit holder.

(C) Permit transfers.

(1) A purchasing landowner will assume the rights and obligations of a recorded permit without the necessity of an amendment transferring the permit. The board or district commission may, however, by explicit permit condition make an exception to this rule upon a finding that the identity of a

permit holder is a critical factor in the satisfaction of the terms and conditions of the permit.

(2) No transfer of an unrecorded development permit shall be effective unless authorized by the board or district commission through an amendment to the permit; rights to an unrecorded subdivision permit may be conveyed or transferred, as authorized in the permit, however, persons acquiring such rights are required to comply with the permit.

(3) Notwithstanding the provisions of paragraphs (C)(1) and (2), above, all permits shall run with the land, and shall be enforceable against the permit holder and all successors in interest, whether or not the permit has been recorded in the land records.

Rule 34. Permit Amendments

(A) Amendments required. An amendment shall be required for any material or substantial change in a permitted project, or any administrative change in the terms and conditions of a land use permit. Applications for amendments shall be on forms provided by the board, and shall be filed with the district commission having jurisdiction over the project. Upon request, the district coordinator will expeditiously review a proposed change and determine whether it would constitute a substantial change to the project, or whether it involves only material or administrative changes that may be subject to simplified review procedures.

Continuing jurisdiction over all development and subdivision permits is vested in the district commissions unless the board,

in acting on an appeal, has specifically reserved the right to maintain jurisdiction over a development or subdivision in part or in its entirety.

(B) Substantial changes to a permitted project or permit. If a proposed amendment involves substantial changes to a permitted project or permit, it shall be considered as a new application subject to the application, notice and hearing provisions of §§ 6083, 6084 and 6085 and the related provisions of these Rules.

(C) Material changes to a permitted project or permit. If, in the judgment of the district coordinator, a proposed amendment involves material, but not substantial changes to a permitted project or permit, it shall be subject to the following simplified review procedures:

(1) Applications. Minor amendment applications shall conform to the requirements of Rule 10, sections (A) through (D). The applicant shall file with the appropriate district commission an original and five copies of the application, along with the fee prescribed by Rule 11.

(2) Review procedures. Applications processed under this shall be subject to the distribution, posting and publication requirements of 10 V.S.A. § 6084 and sections (E) through (G) of Rule 10. Such applications shall be processed in the same manner as minor applications under Rule 51(B).

(3) Consent agreements. The applicant may further expedite these procedures by submitting to the district commission a

written consent agreement, signed by all persons entitled to receive the Proposed Material Amendment, consenting to approval of the proposed change, either conditionally or without conditions. For this purpose, the consent of the State Interagency Act 250 Review Committee shall signify approval by all state agencies which were not otherwise parties to the underlying permit. If the district commission finds that a consent agreement satisfies the criteria of the Act, it may approve the proposal and issue the amendment without further proceedings.

(4) Effective date. If no hearing is requested or ordered on a material change, the proposed amendment will become effective when all necessary certifications or other permits specified in the Findings of Fact are obtained, and the amendment is recorded in the land records of the municipality.

(D) Administrative amendments to a permit. A district commission may authorize a district coordinator to amend a permit without notice or hearing when an amendment is necessary for record-keeping purposes **or to provide authorization for minor revisions to permitted projects raising** no likelihood of impacts under the criteria of the Act. Applications processed under this shall be exempt from the distribution, posting and publication requirements of 10 V.S.A. § 6084 and sections (E) through (G) of Rule 10 **except that all parties of record and current adjoining landowners shall receive a copy of any administrative amendment**. In particular, administrative amendments **may be** authorized to transfer a previously unrecorded permit to a new landowner, to

incorporate a revision in a certification of compliance, **or approve minor changes to a permitted project** when such revisions **will** not have any impact on the criteria of the Act **or any finding, term, conclusion or condition of prior permits. Administrative amendments are subject to motions to alter filed by any party or affected adjoining landowner pursuant to Rule 31(A).**

Rule 35. Renewal of Permits

(A) Renewal required. For any permit which expires under Rule 32(B) of these rules, renewal shall be required for any extension of the permitted use beyond the expiration date.

(B) Renewal applications. Applications for permit renewals shall be on forms provided by the board, and shall be filed with the district commission having jurisdiction over the project. The district commission will expeditiously review a proposed renewal and determine whether it would involve significant impacts under the criteria and upon the values sought to be preserved by the Act. Factors taken into consideration will include: whether the project has been constructed, operated, and maintained in conformance with the terms and conditions of the permit; whether the extension also involves other amendments to the project; whether the project involves continuing operations that are likely to have demonstrable impacts under the criteria of the Act beyond those considered during previous review of the

project; and whether the project is one for which a strictly limited term of operation was anticipated in the original permit.

Rule 37. Certification of Compliance

Any person holding a permit may at any time petition the board or a district commission issuing the permit for a certification 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 is 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 38. Revocation and Abandonment of Permits

(A) Revocation for violations. A petition for revocation of a permit under 10 V.S.A. § 6090(c) may be made to the board by any person who was party to the application, by any adjoining property owner whose property interests are directly affected by an alleged violation, by a municipal or regional planning

commission, or any municipal or state agency having an interest which is affected by the development or subdivision. The petition shall consist of an original and 10 copies of the petition which shall include a statement of reasons why the petitioner believes that grounds for revocation exist, a preliminary list of witnesses and the land use permit to which it applies. The board may also consider permit revocation on its own motion.

(1) Procedure. The board will treat a petition for revocation as an initial pleading in a contested case, in accordance with the notice and hearing procedures of Rule 40 of these rules. The petition shall be served on all parties to the original permit proceeding. No fee is required. **Note: This fee waiver has been superseded by 10 V.S.A. § 6083a(d) effective July 1, 1998.**

(2) Grounds for revocation. The board may after **providing an opportunity for a** hearing revoke a permit if it finds that: (a) The applicant or representative willfully or with gross negligence submitted inaccurate, erroneous, or materially incomplete information in connection with the permit application, and that accurate and complete information may have caused the district commission or board to deny the application or to require additional or different conditions on the permit; or (b) the applicant or successor in interest has violated the terms of the permit or any permit condition, the approved terms of the application, or the rules of the board; or (c) the applicant or successor in interest has failed to file an affidavit of

compliance with respect to specific conditions of a permit, contrary to a request by the board or district commission.

(3) Opportunity to correct a violation.

(a) Unless **the board makes a finding that** there is a clear threat of irreparable harm to public health, safety, or general welfare or to the environment by reason of the violation, the board shall give the permit holder 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 **within a reasonable period of time as specified in the order**. These terms may include conditions, including the posting of a bond or payments to an escrow account, to assure compliance with the board's order.

(b) If the permit holder fails to correct or eliminate the violation by the deadline established by the board or fails to comply with any aspect of the board's order, the board may, on its own motion or motion of a party, revoke the permit after providing due notice and opportunity for the permit holder to demonstrate that it has complied with the board's order.

(c) In the case where a permit holder is responsible for repeated violations **of the permit subject to the petition or other permits subject to the jurisdiction of Act 250**, the board may revoke a permit without offering an opportunity to correct a violation.

(4) Emergency action. If the board finds that public health, safety, or welfare imperatively requires emergency

action, and incorporates a finding to that effect in its order, it may order a summary suspension of a permit pending proceedings for revocation in accordance with the provisions of this rule or the board may take other appropriate action.

(B) Abandonment by non-use. Non-use 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 associated land use permit. For the permit to be "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. In the initial proceeding or in subsequent proceedings, the district commission or the board may provide for a period longer than three years in which a permit must be used. **See 10 V.S.A. § 6091(b).**

(1) Initiation of proceeding. A petition to declare a permit void for non-use may be filed by any person who was a party to the application proceedings, by a local or regional planning commission, or by any municipality or state agency having an interest potentially affected by the development or subdivision. The board or a district commission having jurisdiction over a permit may also, on its own motion, initiate a review of its use.

(2) Procedure. Determinations of use or abandonment will be made by the board or the district commission retaining jurisdiction over the permit. The proceeding will be treated as a contested case. Petitions will be heard and disposed of

promptly. The board or district commission shall provide at least 20 days' notice of the proceeding to the permit holder, to all persons who were parties to the permit proceedings, and to the governmental statutory parties listed in Rule 14(A). If the permit holder does not request the right to be heard, the board or district commission may declare the permit void without a hearing.

Rule 40. Appeals

(A) Any party aggrieved by an adverse determination by a district commission may appeal to the board and will be given a de novo hearing on findings, conclusions and permit conditions issued by the district commission.

An appeal shall be filed with the board within 30 days after the 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 a statement of the reasons why the appellant believes the commission was in error, the issues to be addressed in the appeal, a summary of the evidence that will be presented, and a preliminary list of witnesses who will testify on behalf of the appellant. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the Board deems appropriate, which may include dismissal of the appeal.

A filing fee **as prescribed in 10 V.S.A. § 6083a** payable to the State of Vermont shall accompany the appeal.

(B) The appellant shall send a copy of the notice of appeal by U.S. mail to all parties of right and all parties of record to

the commission proceedings and shall file a certification of service with the board at the time it files its appeal.

(C) The board shall provide notice to parties as required under 10 V.S.A. § 6089(a) by publication of notice of appeal not less than 10 days before the hearing date.

(D) If any party of right or other parties of record to an application wishes to appeal findings of the district commission relating to criteria or issues other than those raised by the appellant, the party must file a cross-appeal with the board within 14 days of the date the notice of appeal was mailed to the party by the appellant, or before the expiration of the 30 days allowed for filing appeals, whichever is later. 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) The scope of the appeal hearing shall be limited to the errors and issues assigned by the appellant and any cross-appellant unless substantial inequity or injustice would result from such limitation.

(F) Any party to the application may enter its appearance in the appeal before the board within 14 days after notice was mailed to the party by the appellant or expiration of the 30 days allowed for filing appeals, whichever is latest.

Rule 41. Administrative Hearing Officer or Panel - Environmental Board

(A) Unless otherwise directed by the board, the chair may

appoint a hearing officer or a subcommittee of the board to hear any appeal or petition before the board, or any portion thereof. A subcommittee of the board shall be known as a "hearing panel." (Amended, effective January 2, 1996.)

(B) Parties shall be given due notice of the chair's intention to appoint a hearing officer or panel and shall have reasonable opportunity to object to the appointment within a stated time. If a party raises an objection, the board shall review the chair's decision to determine whether, by reason of complexity, necessity to judge the credibility of witnesses, or other appropriate reasons, the matter should be heard by the full board. The decision of the board shall be final. The hearing officer or panel shall be a member or members of the board including alternates. If it appears that any issue should be heard by the full board by reason of complexity, necessity to judge the credibility of witnesses, or other appropriate reasons, the hearing officer or panel may decline to hear that issue, in which event the matter shall be referred for hearing to the board.

(C) Rules governing proceedings before the hearing officer or panel shall be the same as those which pertain to hearings before the board. The hearing officer or panel shall hold such prehearing conferences and issue such notices and orders as may be necessary for the orderly and expeditious conduct of hearings.

(D) The hearing officer or panel shall prepare and transmit to the board and all parties of record recommended findings of fact and conclusions of law. A record of proceedings shall be prepared and made available to all board members for their

review. The board's final findings and conclusions shall be based on the record. Prior to final decision by the board, parties shall be given an opportunity to request oral argument and to present a memorandum objecting to the recommendations of the panel or officer. Any such request for oral argument or memorandum must be filed within 15 days from the date of service for the proposed findings and conclusions, unless a longer period is provided by the board. **See 10 V.S.A. § 6027(g).**

(E) Upon its review of the record and the hearing officer's or panel's recommendations, the board shall determine whether the record is complete and whether the hearing should be adjourned. In the case of an appeal, unless otherwise agreed to by the parties, the board shall make a final decision within 20 days after the completion of deliberations by the board.

Rule 42. Stay of Decisions

No decision of the board or a district commission is automatically stayed by the filing of an appeal. **Prior to the filing of an appeal of a district commission decision, any aggrieved party may file a stay request with the district commission. Following appeal of the district commission decision, such stay request must be filed with the board.** Any party aggrieved by a **decision** of the board **may file a stay** request with the board**, notwithstanding an appeal to the Supreme Court. Any stay request must be filed by written motion** identifying the order or portion thereof for which a stay is sought and stating in detail the grounds for the request. In deciding whether to grant or deny a stay, the board **or district commission** may

consider the hardship to parties, the impact, if any, on the values sought to be protected by Act 250, and any effect upon public health, safety or general welfare. The board **or district commission** may issue a stay containing such terms and conditions, including the filing of a bond or other security, as it deems just. The chair of the board **or district commission** may issue a preliminary stay which shall be effective for a period not to exceed 30 days. Any preliminary stay shall be reviewed by the board **or district commission, as appropriate,** within that 30 day period. A party may file a motion to dissolve a preliminary stay within 10 days of issuance.

Rule 43. Appeals to the Board Before Final Decision of District Commissions: Questions of Law and Party Status

(A) Motion for interlocutory appeal regarding all orders or rulings except those concerning party status. Upon motion of any party, the board may permit an appeal to be taken from any interlocutory (preliminary) order or ruling of a district commission if the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal may materially advance the application process. The appeal shall be limited to questions of law.

(B) Motion for interlocutory appeal regarding party status. Upon motion of any party, or person denied party status, the board in its sole discretion may review an appeal from any interlocutory (preliminary) order or ruling of a district

commission if the order or ruling grants or denies party status and the board determines that such review may materially advance the application process.

(C) Filing of appeal and response. Any motion for interlocutory appeal under this rule must be made to the board within 10 days after entry of the order or ruling appealed from and shall include a copy of that order or ruling. The motion must be accompanied by the filing fee **as prescribed in 10 V.S.A. § 6083a**. An original and ten copies of the motion, supporting memorandum, and order or ruling shall be filed with the board and a copy of the motion shall be sent by U.S. mail to all parties and to the district commission. Within five days of such service, an adverse party may file an original and ten copies of a memorandum in reply to the motion with the board. A copy of a memorandum in reply shall be sent to all parties and to the district commission.

(D) Proceedings on appeal. Any interlocutory appeal shall be determined upon the motion and any response without hearing unless the board otherwise orders. If a motion for interlocutory appeal is granted under section (A) of this rule, board proceedings shall be confined to those issues identified in the order permitting the appeal. If a motion for interlocutory appeal is granted under section (B) of this rule, board proceedings shall be confined to the specific grant(s) or denial(s) of party status identified in the motion. For any interlocutory appeal, the board may convene such hearings to hear oral argument as it deems necessary to dispose of the appeal.

Such proceedings shall be conducted as provided by these rules for appeals to the board.

(E) Stay of district commission proceedings. On receipt of a motion filed under this rule the chair of the board may issue an order staying district commission proceedings until disposition of the motion by the board.

ARTICLE V. SUBSTANTIVE REVIEW - SPECIAL PROCEDURES

Rule 51. Minor Application Procedures

(A) Qualified projects. Any development or subdivision subject to the permit requirements of 10 V.S.A. § 6081 and these Rules may be reviewed in accordance with this Rule as a "Minor Application" if the district commission finds that there is demonstrable likelihood that the project will not present significant adverse impact under any of the 10 criteria of 10 V.S.A. § 6086(a). In making this finding, the district commission may consider:

(1) the extent to which potential parties and the district commission have identified issues cognizable under the 10 Criteria;

(2) whether or not other State permits identified in Rule 19 are required and, if so, whether those permits have been obtained or will be obtained in a reasonable period of time;

(3) the extent to which the project has been reviewed by a municipality pursuant to a by-law authorized by 24 V.S.A. Chapter 117;

(4) the extent to which the district commission is able

to draft proposed permit conditions addressing potential areas of concern; and

(5) the thoroughness with which the application has addressed each of the 10 criteria.

(B) Preliminary procedures. The district commission shall review each application to determine whether the project qualifies for treatment under this Rule. If the project is found to qualify under section (A), the district commission shall:

(1) prepare a proposed permit including appropriate conditions; and

(2) provide written notice and a copy of the proposed permit to those entitled to written notice under 10 V.S.A. § 6084; and

(3) provide published notice as required by 10 V.S.A. § 6084; the notice shall state that:

(a) the district commission intends to issue a permit without convening a public hearing unless a request for hearing is received by a date specified in the notice which is not less than seven days from the date of publication; and

(b) the preparation of findings of fact and conclusions of law by the district commission may be waived; and

(c) statutory parties, adjoiners, potential parties under Rule 14(B) and the district commission, on its own motion, may request a hearing;

(d) any hearing request shall state the criteria or subcriteria at issue, why a hearing is required and what evidence will be presented at the hearing; and

(e) any hearing request by a non-statutory party must include a petition for party status under the rules of the board.

(C) No hearing requested. If no hearing is requested by a statutory party, adjoining property owner or potential party under Rule 14(B), or by the district commission on its own motion, the proposed permit may be issued with any necessary modifications. The district commission may delegate the authority to sign minor permits which have been approved by the district commission to the district coordinator or the assistant district coordinator;

(D) Hearing requested. Upon receipt of a request for a hearing, the district commission shall determine whether or not substantive issues have been raised under the criteria and shall convene a hearing if it determines that substantive issues have been raised. If the district commission determines that substantive issues have not been raised, the district commission may proceed to issue a decision without convening a hearing.

If a hearing is convened, it shall be limited to those criteria or sub-criteria identified by a statutory party, successful petitioner for party status, or by the district commission unless the district commission, at its discretion, determines before or during the hearing, that additional criteria or subcriteria should be addressed.

(E) Party status petitions. The district commission shall rule on all party status petitions prior to or at the outset of the hearing.

(F) The district commission need only prepare findings of fact and conclusions of law on those criteria or sub-criteria at issue during the hearing. However, findings of fact and conclusions of

law may be issued with a decision to address issues identified and resolved during the minor application process, even if no hearing is held.

(G) Material representations. Upon issuance of a land use permit under minor application procedures, the permit application and material representations relied on during the review and issuance of a district commission decision shall provide the basis for determining future substantial and material changes to the approved project and for initiating enforcement actions.

Rule 60. Qualified Purchasers of Lots in a Subdivision Created Without the Benefit of a Land Use Permit as Required by 10 V.S.A. Chapter 151.

(A) Purpose. The purpose of this rule is to create a procedure for providing relief to the qualified purchaser of a lot or lots within a subdivision created without a Land Use Permit required by 10 V.S.A. Chapter 151. This rule provides for a modified application and review procedure by which a qualified purchaser, or a group of qualified purchasers, of one or more lots in a subdivision created without the required Act 250 review may apply for and shall obtain a Land Use Permit. A lot or lots eligible for review under this procedure must have been sold and conveyed to the qualified purchaser or purchasers prior to January 1, 1991 without the required Land Use Permit.

(B) Requirements. The requirements under 10 V.S.A. Chapter 151 may be modified to the minimum extent necessary to issue permits to qualified purchasers seeking relief. A complete application addressing all ten criteria of 10 V.S.A. § 6086(a) shall be filed by the qualified purchaser or purchasers seeking relief. Affidavits may be used to establish compliance for

existing septic systems, water supplies, and other improvements, as determined by the district commission or board. As in other Act 250 proceedings, district commissions and the board may place certain conditions and restrictions in the Land Use Permits to ensure that the values sought to be protected under Act 250 will not be adversely affected. Permit decisions will be based upon consideration of the requirements of the criteria of 10 V.S.A. § 6086(a)(1)-(10), as well as existing improvements, facts, and circumstances of each case.

In order to provide for an efficient review process and to reduce the expense for applicants, the board and the district commissions may require the consolidation of individual applications from any given subdivision. At least two weeks prior to the processing of an application under this rule, the district coordinator shall send notice to all potential applicants in the subdivision with a response period of not less than two weeks. The notice shall include the names and addresses of all lot owners within the subdivision. The lot owner(s) initiating the request shall provide a list of all other lot owners in the subdivision. Lot owners who are not qualified purchasers may join the application but they will not receive the benefit of modified standards under the criteria and will not be entitled by right to a permit under 10 V.S.A. § 6025(c).

(C) Jurisdictional Opinion. Prior to submission of an application, a qualified purchaser must obtain a jurisdictional opinion from the appropriate district coordinator in order to determine if the subdivided lot in question is subject to Act 250 jurisdiction. The potential applicant must provide the district

coordinator with all relevant information including signed affidavits on forms prepared by the board. If the opinion concludes that Act 250 jurisdiction does exist and one or more qualified purchasers have been identified, pre-application assistance will then be provided by the district coordinator.

(D) Eligibility Requirements For Applicants. The purchaser must demonstrate eligibility for relief under 10 V.S.A. § 6025(c). A purchaser eligible for relief under this rule must have purchased the lot or lots and the deed or deeds must have been conveyed prior to January 1, 1991; must not have been involved in any way with the creation of the lot or lots; must not be a person who owned or controlled the land when it was divided or partitioned; and did not know or could not reasonably have known at the time of purchase that the transfer was subject to a permit requirement that had not been met. In making the determination whether the purchaser had knowledge of the illegality of the subdivision, the district coordinator will take into consideration any advisory opinions, declaratory rulings, or judicial determinations which conclude that the purchaser sold or offered for sale any interest in, or commenced construction on, any subdivision in the state without a required Land Use Permit. The board or the district commissions may decide the jurisdictional and purchaser eligibility questions if properly raised during a public hearing on an application under this rule.

(E) Application Procedure

(1) For the sake of expedient review and an equitable sharing of costs associated with preparing application materials, all purchasers seeking relief within a subdivision may be

required to become co-applicants by the district commission or the board.

(2) Pre-application assistance from the district coordinator will be available to all purchasers prior to the filing of an Act 250 application. The application must be submitted on forms supplied by the board and in accordance with Board Rule 10 except as modified herein.

(3) The district coordinator will review the application for completeness within five working days of receipt of the application. The applicant will be notified if there are deficiencies that need to be corrected. Once the application has been accepted by the district coordinator, procedural requirements for notice and hearings will be followed as set forth in 10 V.S.A. Chapter 151 and Board Rule.

Rule 70. Utility Line Installations and Applications

(A) Installations.

(1) Underground installation should be installed whenever feasible.

(2) All utility companies should contact each other prior to underground installation in order to coordinate efforts.

(3) Installation shall be such as to not have an undue adverse effect on the scenic and aesthetic qualities and character of the area. In the district commission's analysis of 10 V.S.A. § 6086(a)(8)(aesthetics), due consideration shall be given to making the line or facility inconspicuous; screening it from view; lines of sight from public highways, and residential and recreational areas; height, number, color, type, and material

of poles, wires, cable, and other apparatus; width and degree of clearance of natural growth and cover; encroachment on open spaces, historic sites, rare and irreplaceable natural areas, and conspicuous natural out-cropping on hillsides and ridgelines of exposed natural features of the countryside.

(B) Permit applications. An application for a permit to construct, relocate, reconstruct, or extend any electrical distribution or communication line or related facility shall contain the following information and documents and shall be submitted to the district commission in which the greatest number of miles of the line or facility are located. The utility or utilities proposing to construct or use such line, facility or facilities shall be identified in the application.

(1) General location: approximate location on a 20 foot contour U.S.G.S. map, or other map, drawn to scale, including or accompanied by information (including contour data) adequately depicting the location of the line or facility.

(2) Plan showing:

(a) pole, transformer, and substation locations, if applicable. Proof of inability to comply shall be furnished in the permit application and the approximate locations of poles, transformers, and substations shall be provided in areas where property access is not available.

(b) approximate highway rights-of-way related to the lines or to the community the line is to serve.

(c) all lot lines intersecting the existing or proposed rights-of-way and names of property owners.

(3) Specifications:

(a) elevation drawings of any building to be constructed as part of the electrical distribution or communication line or related facility and its relation to existing human-made and natural objects on the site and along the periphery of contiguous properties within 500 feet. In urban areas with a population in excess of 2,500, a general profile of the buildings may replace the requirement for elevation drawings.

(b) a drawing of a typical supporting structure to be used.

(c) a list of specifications, including voltage, pole sizes, cross-arms, wire size, guys.

(d) a list of specifications for the major, visible components and exterior materials and color of any buildings.

(e) specifications for any ground cover to be seeded, refoliated, planted or sown and maintained.

(4) New corridor: for projects involving the construction in, or relocation of a line or facility to, new corridor as defined in Rule 2(A)(12)(a), an explanation of why existing corridor cannot or should not be used.

(5) Description: a description of the area adjacent to the line or facility, including the type and size of existing buildings and the height and extent of forest cover and open

space, and what measures, if any, have been or will be taken to minimize cutting and trimming of forest canopy.

(C) Care of right-of-way. Right-of-way improvements shall be specified in the application and shall clearly not have an undue adverse effect on the ecology and aesthetics of the area, and should include vegetation control techniques to avoid unreasonable soil erosion or water pollution. All herbicide applications shall be in strict conformance with the regulatory and licensing requirements of the commissioner of agriculture or as provided by statute.

last revision date: 1/18/01

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