ACT 250

Vermont's
Land Use and Development Law

Title 10, Chapter 151
Including all Legislative Amendments
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LAND USE AND DEVELOPMENT

10 V.S.A. Chapter 151.

State Land Use and Development Plans

Findings and Declaration of Intent

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Whereas, the unplanned, uncoordinated and uncontrolled use of the lands and the environment of the state of Vermont has resulted in usages of the lands and the environment which may be destructive to the environment and which are not suitable to the demands and needs of the people of the state of Vermont; and

Whereas, a comprehensive state capability and development plan and land use plan are necessary to provide guidelines for utilization of the lands and environment of the state of Vermont and to define the goals to be achieved through land environmental use, planning and control ; and

Whereas, it is necessary to establish an environmental board and district environmental commissions and vest them with the authority to regulate the use of the lands and the environment of the state according to the guidelines and goals set forth in the state comprehensive capability and development plan and to give these commissions the authority to enforce the regulations and controls; and

Whereas, it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state;

Now, therefore, the legislature declares that in order to protect and conserve the lands and the environment of the state and to insure that these lands and environment are devoted to uses which shall, in the interest of the public health, safety and welfare, exercise its power by creating a state environmental board and district environmental commissions conferring upon them the power to regulate the use of lands and to establish comprehensive state capability, development and land use plans as hereinafter provided. --1969, No. 250 (Adj. Sess.), § 1, eff. April 4, 1970.

SUBCHAPTER 1. General Provisions

§ 6001. Definitions

When used in this chapter:

(1) "Board" means the environmental board.

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

(3)**(A)** "Development" means:

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Construction of mixed income housing with 20 or more housing units or a mixed use project with 20 or more housing units, in a municipality of less than 5,000.

(v) Construction of 10 or more units of mixed income housing or a mixed use project with 10 or more housing units where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the state or national registers of historic places. Added 2002, No. 114 (Adj. Sess.), § 6, eff. May 28, 2002.

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

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

(ii) Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district shall be counted together with housing units constructed by a person partially or completely outside a designated downtown development district to determine jurisdiction over the housing units constructed by a person partially or completely outside the designated downtown development district and within a five-mile radius.

(iii) All housing units constructed by a person within a designated downtown development district within any continuous period of five years, commencing on or after the effective date of this subdivision, shall be counted together. Added 2002, No. 114 (Adj. Sess.), § 6, eff. May 28, 2002.

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

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

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

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under section 30 V.S.A. § 248 or a natural gas facility as defined in subdivision 30 V.S.A. § 248(a)(3). --Amended 1993, No. 200 (Adj. Sess.), §1, eff. June 17, 1994, amended 1997, No. 48, § 1, eff. July 1, 1997.

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

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

(6) "Floodway" means the channel of a watercourse which is expected to flood on an average of at least once every 100 years and the adjacent land areas which are required to carry and discharge the flood of the watercourse, as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects.

(7) "Floodway fringe" means an area which is outside a floodway and is flooded with an average frequency of once or more in each 100 years as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects.

(8) "Forest and secondary agricultural soils" means soils which are not primary agricultural soils but which have reasonable potential for commercial forestry or commercial agriculture, and which have not yet been developed. In order to qualify as forest or secondary agricultural soils the land containing such soils shall be characterized by location, natural conditions and ownership patterns capable of supporting or contributing to present or potential commercial forestry or commercial agriculture. If a tract of land includes other than forest or secondary agricultural soils only the forest or secondary agricultural soils shall be affected by criteria relating specifically to such soils.

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

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

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

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

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

(14)(A)"Person":

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

(ii) means a municipality or state agency;

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

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

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

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

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

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

(15) "Primary agricultural soils" means soils which have a potential for growing food and forage crops, are sufficiently well drained to allow sowing and harvesting with mechanized equipment, are well supplied with plant nutrients or highly responsive to the use of fertilizer, and have few limitations for cultivation or limitations which may be easily overcome. In order to qualify as primary agricultural soils, the average slope of the land containing such soils does not exceed 15 percent, and such land is of a size capable of supporting or contributing to an economic agricultural operation. If a tract of land includes other than primary agricultural soils, only the primary agricultural soils shall be affected by criteria relating specifically to such soils.

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

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

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

(19) "Subdivision" means a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same district commission, within any continuous period of five years. In determining the number of lots, a lot shall be counted if any portion is within five miles or within the jurisdictional area of the same district commission. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a qualified organization, as defined under section 6301a of this title, if the land to be transferred includes and will preserve a segment of the Long Trail. The word subdivision shall not include a lot or lots created for the purpose of conveyance to the state or to a qualified holder of conservation rights and interest, as those terms are defined in section 821 of this title. "Subdivision" shall also mean a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into six or more lots, within a continuous period of five years, in a municipality which does not have duly adopted permanent zoning and subdivision bylaws. Amended 1995, No. 10 (Adj. Sess.) § 1, eff. April 4, 1995; amended 2001, No. 40 § 1, eff. July 1, 2001.

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

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

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

(21) "Reconnaissance" means:

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

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

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

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

(22) "Farming" means:

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

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

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

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

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

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

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

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

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

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

(26) "Telecommunications facility" means a support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes.

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

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

(29) "Affordable housing" means either of the following:

(A) Owner-occupied housing in which the owner's gross annual household income does not exceed 80 percent of the county median household income, and for which the annual housing costs, which include payment of principal, interest, taxes, and insurance, are not more than 30 percent of the gross annual household income.

(B) Rental housing in which the renter's gross annual household income does not exceed 80 percent of the county median household income, and for which the annual housing costs, which include rent and utilities expenses, are not more than 30 percent of the gross annual household income.

--1969, No. 250 (Adj. Sess.), § 2, eff. April 4, 1970; Amended 1973, No. 85, § 8; 1979, No. 123 (Adj. Sess.), §§ 1-3, eff. April 14, 1980; 1981, No. 240 (Adj. Sess.), § 6, eff. April 28, 1982; 1983, No. 114 (Adj. Sess.), § 1; 1985, No. 64; 1987, No.64, § 2; 1987, No. 273 (Adj. Sess.), § 2, eff. June 21, 1988; 1989, No. 154 (Adj. Sess.); No. 231 (Adj. Sess.), § 1, eff. July 1, 1991; No. 234 (Adj. Sess.), § 4; 1993, No. 200 (Adj. Sess.), § 1; No. 232 (Adj. Sess.), § 24, eff. March 15, 1995; 1995, No. 10, § 1; No. 30, § 1 eff. April 13, 1995, Amended 1998, Act No. 94 (Adj. Sess.), § 5 eff. April 15,1998. **Subdivisions (27), (28), and (29) Added 2002, No. 114 (Adj. Sess.), § 7, eff. May 28, 2002.**

§ 6001a. Public auctions

As used in this chapter "development" shall also mean the sale of any interest in a tract or tracts of land, owned or controlled by a person, which have been partitioned or divided for the purpose of resale into five or more separate parcels of any size within a radius of five miles of any point on any such parcel, and within any period of ten years, by public auction; and "public auction" means any auction advertised or publicized in any manner, or to which more than ten persons have been invited. However, if the sales described under this section are of interests that, when sold by means other than public auction, are exempt from the provisions of this chapter under the provisions of subsection 6081(b) of this title, the fact that these interests are sold by means of a public auction shall

not, in itself, create a requirement for a permit under this chapter. --Added 1973, No. 256 (Adj. Sess.), eff. April 11, 1974; amended 1991, No. 111, §4, eff. June 28, 1991.

§ 6001b. Low-level radioactive waste disposal facility

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

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

In addition to other applicable law, any support structure proposed for construction, which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes, shall be a development under this chapter, independent of the acreage involved. If jurisdiction is triggered for such a support structure, then jurisdiction will also extend to the construction of improvements ancillary to the support structure, including buildings, broadcast or communication equipment, foundation pads, cables, wires, antennas or hardware, and all means of ingress and egress to the support structure. To the extent that future improvements are not ancillary to the support structure and do not involve an additional support structure, those improvements shall not be considered a development, unless they would be considered a development under this chapter in the absence of this section. The criteria and procedures for obtaining a permit under this section shall be the same as for any other development. --Added 1997, No. 48, § 2, eff. July 1, 1997.

§ 6002. Procedures

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

§ 6003. Penalties

A violation of any provision of this chapter or the rules promulgated hereunder is punishable by a fine of not more than $500.00 for each day of the violation or imprisonment for not more than two years, or both. A person who completely transfers ownership and control of property that is the subject of a permit under this chapter shall not be liable for later violations of that permit by another person. --1969, No. 250 (Adj. Sess.), §28, eff. April 4, 1970; amended 2001, No. 40 § 2, eff. July 1, 2001.

§ 6004. Repealed. 1989, No.98 (Adj. Sess.)

§ 6005. Repealed. 1989, No. 98 (Adj. Sess.)

§ 6006. Repealed. 1989, No. 98 (Adj. Sess.)

§ 6007. Act 250 disclosure statement; jurisdictional determination

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

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

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

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

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

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

(A) within the preceding five years;

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

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

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

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

(c) With respect to the partition or division of land, or with respect to an activity which might or might not constitute development, any person may submit to the district coordinator an Act 250 Disclosure Statement and other information required by the board, and may request a jurisdictional opinion from the district coordinator concerning the applicability of this chapter. If a requestor wishes a final determination to be rendered on the question, the district coordinator, at the expense of the requestor and in accordance with rules of the board, shall serve the opinion on individuals or entities who may be

affected by the outcome of the opinion, and on parties that would be entitled to notice under section 6084, if jurisdiction were determined to exist. A jurisdictional opinion of a district coordinator shall be subject to a request for reconsideration and may be appealed to the board by the applicant, by individuals or entities who may be affected by the outcome of the opinion, or by parties that would be entitled to notice under section 6084, if jurisdiction were determined to exist. An appeal from a jurisdictional opinion must be filed within 30 days of the mailing of the opinion to the person appealing. Failure to appeal within the prescribed period shall render the jurisdictional opinion the final determination with respect to jurisdiction under this chapter unless the opinion has not been properly served on parties that would be entitled to notice under section 6084, if jurisdiction were determined to exist, and on persons and entities which may be affected by the outcome of the decision, according to rules of the board. Any appeal shall be by means of a petition for declaratory ruling and must be accompanied by a fee authorized by section 6083a of this title. Such petition shall be treated as a contested case. 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. The board shall provide due notice of the filing of a petition for declaratory ruling to each party entitled to service pursuant to section 6084 of this title.--Added 1987, No. 64, § 3 and 1991, No. 111, § 3, eff. July 1, 1991. Amended 1993, No. 232 (Adj. Sess), § 25, eff. March 15, 1995. Amended 1998, No. 155 (Adj. Sess.), § 26. eff. July 1, 1998. Amended 1999, No. 155 (Adj. Sess.), eff. July 1, 1999.

Legislative findings. 1987, No. 64, § 1, provides: "It is the finding of the general assembly that the state of Vermont is experiencing a significant increase in the number of land subdivisions which are made for speculative purposes; that some of these subdivisions are eroding the natural resource base upon which Vermont's agricultural, forestry, mineral and recreational industries depend; that some of these subdivisions have the potential of imposing significant financial burdens upon local communities providing municipal and educational services; that it is the policy of the state of Vermont to ensure that major subdivision activity within the state comply with the criteria of Vermont's Land Use and Development Law (Act 250), in order to protect the public health, safety and general welfare; and that in order to ensure appropriate Act 250 review, it is necessary to treat persons with an affiliation for profit, consideration, or some other beneficial interest derived from the partition or division of land as a single person for the purpose of determining whether a particular conveyance is subject to Act 250 jurisdiction."

SUBCHAPTER 2. Administration

§ 6021. Board; vacancy, removal

(a) An environmental board is created. The board shall consist of nine members appointed in the month of February by the governor, with the advice and consent of the senate, so that five appointments expire in each odd numbered year. The members shall be appointed for terms of four years. The governor shall appoint up to five persons, who shall be former board or district commission members, with the advice and consent of the senate, to serve as alternates for board members. Alternates shall be appointed for terms of four years, with initial appointments being staggered. The board chair may assign alternates to sit on specific cases before the board, in situations where fewer than nine board members are available to serve.--1991, No. 111, § 1, eff. July 1, 1991; Amended 1993, No. 82, § 1, eff. July 1, 1993. Amended 1993, No. 232 (Adj. Sess.), § 26, eff. March 15, 1995.

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

(c) Notwithstanding the provisions of 3 V.S.A. § 2004, members shall be removable for cause only, except the chair, who shall serve at the pleasure of the governor.-- 1969, No. 250 (Adj. Sess.), § 3, eff. April 4, 1970.Amended 1993, No. 232 (Adj. Sess.), § 26, eff. March 15, 1995.

(d) The board chair, upon request of the chair of a district commission, may appoint and assign former commission members to sit on specific commission cases when some or all of the regular members and alternates are disqualified or otherwise unable to serve.-- 1989, No. 234 (Adj. Sess.), § 2.

§ 6022. Personnel

The board may appoint legal counsel and administrative personnel, as it finds necessary in carrying out its duties, unless the governor shall otherwise provide.--1969, No. 250 (Adj. Sess.), § 4, April 4, 1970; Amended 1993, No. 82, § 2, eff. July 1, 1993.

§ 6023. Grants

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

§ 6024. Intragovernmental cooperation

Other departments and agencies of state government shall cooperate with the board and make available to it data, facilities, and personnel as may be needed to assist the board in carrying out its duties and functions. There shall be established a regular schedule of project review that shall assure that all affected departments and agencies recognize and pursue their respective responsibilities. State employees whose job is to assist applicants in the permitting process established under this chapter, shall endeavor to assist all applicants regardless of the size and value of the projects involved. --1969, No. 250 (Adj. Sess.), § 4, eff. April 4, 1970; amended 2001, No. 40 § 3, eff. July 1, 2001.

§ 6025. Rules

(a) The board shall adopt rules under and only to the extent of the authority granted to agencies by 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act, to interpret and carry out the provisions of this chapter; however, the board may not adopt emergency rules.

(b) The rules may establish criteria under which applications for permits under this chapter may be classified in terms of complexity and significance of impact under the standards of section 6086(a) of this chapter. In accordance with that classification the rules may:

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

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

(3) provide a procedure by which a district commission may authorize a district coordinator to issue a permit that the district commission has determined under board rules is a minor application with no undue adverse impact.--1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 2; 1979, No. 123 (Adj. Sess.), § 4, eff. April 14, 1980; 1985 No. 52, § 3, eff. May 15, 1985; 1987, No. 186 (Adj. Sess.), eff. May 5, 1988.

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

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

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

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

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

(3) Notwithstanding the provisions of subsection (a) of this section, the board may adopt emergency rules under this subsection. Notwithstanding the provisions of 3 V.S.A. chapter 25, these emergency rules may remain in effect for 180 days, before they must be replaced by permanent rules.--1991, No. 111, § 5, eff. July 1, 1991.

§ 6026. District Commissioners

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

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

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

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

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

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

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

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

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

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

(b) A district environmental commission is created for each district. Each district commission shall consist of three members from that district appointed in the month of February by the governor so that two appointments expire in each odd numbered year. Two of the members shall be appointed for a term of four years, and the chair (third

member) of each district shall be appointed for a two-year term. In any district, the governor may appoint not more than four alternate members from that district whose terms shall not exceed two years, who may hear any case when a regular member is disqualified or otherwise unable to serve.

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

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

§ 6027. Powers

(a) The board and district commissions shall have the power to compel the attendance of witnesses, and require the production of evidence.

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

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

(d) The board, when it determines the workload in any district is such that unreasonable delays will result, may at the request of an overloaded district authorize the district commission of another district to sit in that district to consider applications.

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

(f) [Repealed.]--1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 3; 1979, No. 123 (Adj. Sess.), § 8 eff. April 14, 1980.

(f) The board may publish or contract to publish annotations and indices of its decisions, and the text of its decisions. The published product shall be available at a reasonable rate to the general public and at a reduced rate to libraries and governmental bodies within the state.-- 1991, No. 111, § 6, eff. July 1, 1991.

(g) Unless the board, acting on a motion of a party or on its own motion, directs the chair otherwise with respect to a particular appeal or petition, the chair may appoint a hearing officer or a subcommittee of the board to hear any appeal or petition before the board. Board members may be appointed as hearing officers, as may alternates. Any hearing officer or subcommittee shall report findings of fact and conclusions of law in writing to the board. A copy of the proposed decision shall be served on the parties pursuant to 3 V.S.A. § 811, but shall be subject to a final decision by the board. The parties shall have 15 days to request oral argument before the board. Added 1993, No. 232 (Adj. Sess.), § 28, eff. March 15, 1995.

§ 6028. Compensation

Members of the board and district commissions shall receive per diem and pay all necessary and actual expenses in accordance with 32 V.S.A. § 1010.--1969, No. 250 (Adj. Sess.), § 31, eff. April 4, 1970; Amended 1993, No. 82 § 3, eff. July 1, 1993.

§ 6029. Act 250 permit fund

There is hereby established a special fund to be known as the Act 250 permit fund for the purposes of implementing the provisions of this chapter. Revenues to the fund shall

be those fees collected in accordance with rules adopted under 10 V.S.A. §§ 6025 (a), 6083(a)(3) and 6089(a), gifts, appropriations, and copying and distribution fees. The environmental board shall be responsible for the fund and shall account for revenues and expenditures of the environmental board. At the commissioner's discretion, the commissioner of finance and management may anticipate amounts to be collected and may issue warrants based thereon for the purposes of this section. Disbursements from the fund shall be made through the annual appropriations process to the environmental board, and to the agency of natural resources to support those programs within the agency that directly or indirectly assist in the review of Act 250 applications. This fund shall be administered as provided in subchapter 5 of chapter 7 of Title 32, as a special program fund.--Added 1989, No. 279 (Adj. Sess.), § 2, eff. June 30, 1990; amended and reauthorized, 1993, No. 70, § 1, and 1995, No. 47, § 17; amended and reauthorized, 1997, Act 59, § 41, effective July 1, 1997.

§ 6030. Map of Wireless Telecommunications Facilities

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

SUBCHAPTER 3. Use and Development Plans

§ 6041. Omitted

§ 6042. Capability and development plan

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

"PLANNING FOR LAND USE AND ECONOMIC DEVELOPMENT"

"(1) THE CAPABILITY OF THE LAND

"The capability of land to support development or subdivision provides a foundation for judgment of whether a proposal of development or subdivision is consistent with policies designed to make reasonable use of the state's resources and to minimize waste or destruction of irreplaceable values. Accordingly, such information regarding the physical characteristics of land as is found in the interim land capability and development plan adopted under section 6041 of Title 10, and as may hereafter be adopted as a rule of the environmental board, shall be considered a part of this capability and development plan.

"(2) UTILIZATION OF NATURAL RESOURCES

"Products of the land and the stone and minerals under the land, as well as the beauty of our landscape are principal natural resources of the state. Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural units, conservation of the recreational opportunity afforded by the state's hills, forests, streams and lakes, wise use of the state's non-renewable earth and mineral reserves, and protection of the beauty of the landscape are matters of public good. Uses which threaten or significantly inhibit these resources should be permitted only when the public interest is clearly benefitted thereby.

"(3) PUBLIC AND PRIVATE CAPITAL INVESTMENT

"(A) A balance of public and private capital investment determines the economic well-being of a town or region. An area of industrial, recreational, or residential growth requires highways, school, utilities, and services the cost of which is borne in large part by others. A settled area, with a full complement of public services, needs continuing private capital investment to create a tax base to pay for the services. Increased demands for and costs of public services, such as schools, road maintenance, and fire and police protection must be considered in relation to available tax revenues and reasonable public and private capital investment. The location and rate of development must be considered, so that the revenue and capital resources of the town, region or state are not diverted from necessary and reasonably anticipated increased governmental services. Accordingly, conditions may be imposed upon the rate and location of development in order to control its impact upon the community.

"(B) Consideration must be given to the consequences of growth and development for the region and the state as well as for the community in which it takes place. An activity or project that imposes burdens or deprivations on other communities or the state as a whole cannot be justified on the basis of local benefit alone.

"(4) PLANNING FOR GROWTH

"(A) Strip development along highways and scattered residential development not related to community centers cause increased cost of government, congestion of highways, the loss of prime agricultural lands, overtaxing of town roads and services and economic or social decline in the traditional community center.

"(B) Provision should be made for the renovation of village and town centers for commercial and industrial development, where feasible, and location of residential and other development off the main highways near the village center on land which is other than primary agricultural soil.

"(C) Planning at all levels should provide for the development and allocation of lands and resources of existing cities, towns, and villages generally in proportion to their existing sizes as related to distribution state-wide and a projection of the reasonably expected population increase and economic growth, unless a community, through duly adopted plans, makes the determination that it desires and has the ability to accommodate more rapid growth.

"(D) Consistent with all other policies and criteria set forth in this act, development as defined in section 6001 of this chapter in areas which are not natural resources as referred to in paragraph (9) of this section should be permitted at reasonable population densities and reasonable rates of growth, with emphasis on cluster planning and new community planning designed to economize on the costs of roads, utilities and land usage.

"(5) SEASONAL HOME DEVELOPMENT

"Seasonal homes not only are convertible to permanent homes but are often so converted and may require increased municipal and public services. There should, therefore, be imposed such conditions upon a seasonal home development or subdivision as should be imposed upon a permanent residential development or subdivision.

"(6) GENERAL POLICIES FOR ECONOMIC DEVELOPMENT

"(A) In order to achieve a strong economy that provides satisfying and rewarding job and investment opportunities and sufficient income to meet the needs and aspirations of the citizens of Vermont, economic development should be pursued selectively so as to provide maximum economic benefit with minimal environmental impact.

"(B) Any effect which directly or indirectly accelerates economic growth should be consistent with local, regional and state objectives.

"(C) One of the long-range benefits to the community of commercial and industrial development should be to provide stable employment opportunities at all economic levels, particularly for Vermont's unemployed and underemployed.

"(7) SPECIFIC AREAS FOR RESOURCE DEVELOPMENT

"The flow of cash into Vermont to pay for goods manufactured in the state, grown in the state, or mined and quarried in the state, and to pay for services offered in the state to out-of-staters is of primary importance to the state's economy. Enterprises adding the greatest value by conversion of native raw materials or the products of the land are particularly beneficial to the public interest.

"(8) PLANNING FOR HOUSING

"(A) Opportunity for decent housing is a basic need of all Vermont's citizens. A decent home in a suitable living environment is a necessary element for protecting the health, safety, and general welfare of the public. The housing requirement for Vermont's expanding resident population, particularly for those citizens of low or moderate income, must be met by the construction of new housing units and the rehabilitation of existing substandard dwellings. It is in the public interest that new or rehabilitated housing should be safe and sanitary; available in adequate supply to meet the requirements of all Vermont's residents; located conveniently to employment and commercial centers; and, coordinated with the provision of necessary public facilities and utilities and consistent with municipal and regional plans.

"(B) Sites for multi-family and manufactured housing should be readily available in locations not inferior to those generally used for single-family conventional dwellings.

"(C) There should be a reasonable diversity of housing types and choice between rental and ownership for all citizens in a variety of locations suitable for residential development and convenient to employment and commercial centers.

"RESOURCE USE AND CONSERVATION"

"(9) NATURAL RESOURCES SPECIFICALLY PROVIDED FOR

"Those natural resources referred to in section 6086(a)(1)(A) 'Headwaters';, (B) 'Waste disposal', (C) 'Water conservation':, (D) 'Floodplain', (E) 'Watercourses', and (F) 'Shorelines', and section 6086(a)(8)(A) 'Wildlife habitat and endangered species', and section 6086(a)(9)(B) 'Primary agricultural soils', (C) 'Forests and secondary agricultural soils', (D) 'Earth resources', (E) 'Extraction of earth resources', and (K) 'Development

affecting public investments' should be planned for development and use under the principles of environmental conservation set forth in those sections.

"(10) RECREATIONAL RESOURCES

"(A) The use and development of land and waters should occur in such a way as not to significantly diminish the value and availability of outdoor recreational activities to the people of Vermont, including hunting, fishing, hiking, canoeing and boating, skiing, horseback riding, snowmobiling, and other outdoor recreational activities.

"(B) The effects of development and subdivision on availability of and access to lands which provide opportunities for outdoor recreation should be considered, and such availability of access should be provided for where feasible.

"(11) SPECIAL AREAS

"Lands that include or are adjacent to sites or areas of historical educational, cultural, scientific, architectural or archeological value, including those designated by the rules of the environmental board, should only be developed in a manner that will not significantly reduce that value of the site or area. Sites or areas which are in danger of destruction should be placed in whatever form of public or private ownership that would best maintain and utilize their value to the public.

"(12) SCENIC RESOURCES

"The use and development of lands and waters should not significantly detract from recognized scenic resources including river corridors, scenic highways and roads, and scenic views. Accordingly conditions may be imposed on development in order to control unreasonable or unnecessary adverse effects upon scenic resources.

"(13) CONSERVATION OF ENERGY

"Energy conversion and utilization depletes a limited resource, and produces wastes harmful to the environment, while facilitating our economy and satisfying human needs essential to life. Energy conservation should be actively encouraged and wasteful practices discouraged.

"(14) TAXATION OF LAND

"Land should be appraised and assessed for tax purposes on the use of the land consistent with this act and any other state or local law or regulation affecting current or prospective use of land.

"GOVERNMENT FACILITIES AND PUBLIC UTILITIES"

"(15) PLANNING FOR GROWTH

"The development and provision of governmental and public utility facilities and services should be based upon a projection of reasonably expected population increase and economic growth, and should recognize the limits of the state's human, financial, and natural resources.

"(16) PUBLIC FACILITIES OR SERVICES ADJOINING AGRICULTURAL OR FORESTRY LANDS

"The construction, expansion or provision of public facilities and services should not significantly reduce the resource value of adjoining agricultural or forestry lands unless

there is no feasible and prudent alternative, and the facility or service has been planned to minimize its effect on the adjoining lands.

"(17) PLANNING FOR TRANSPORTATION AND UTILITY CORRIDORS

"The development and expansion of governmental and public utility facilities and services should occur within highway or public utility rights-of-way corridors in order to reduce adverse physical and visual impact on the landscape and achieve greater efficiency in the expenditure of public funds.

"(18) TRANSPORTATION SYSTEMS

"Safe, convenient and economical transportation is essential to the people and economy of Vermont and should be planned so as to conform to and further the purposes of this act. Highway, air, rail and other means of transportation should be mutually supportive, balanced and integrated. The transportation system should provide convenience and service which are commensurate with need and should respect the integrity of the natural environment. New construction or major reconstruction of roads and highways should provide paths, tracks or areas solely for use by pedestrian or the non-motorized means of transportation when economically feasible and in the public interest.

"(19) PLANNING FOR WASTE DISPOSAL

"Development which is responsible for unique or large amounts of waste should be permitted only if it can be demonstrated that available methods will allow the environment to satisfactorily assimilate the waste and that the public can finance the disposal method without assuming an unreasonable economic burden.

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

§ 6044. Public hearings

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

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

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

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

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

§ 6046. Approval of governor and legislature

(a) Upon approval of a capability and development or interim land capability plan by the board, it shall submit the plan to the governor for approval. The governor shall approve the plan, or disapprove the plan or any portion of a plan, within 30 days of receipt. If the

governor fails to act, the plan shall be deemed approved by the governor. This section shall also apply to any amendment of a plan.

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

§ 6047. Changes in the capability and development plan

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

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

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

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

SUBCHAPTER 4. Permits

§ 6081. Permits required; exemptions

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

(b) Subsection (a) of this section shall not apply to a subdivision exempt under the regulations of the department of health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the board of health regulations, or has pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plats on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Subsection (a) of this section shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1970. Subsection (a) of this section shall not apply to a state highway on which a hearing pursuant to section 222 of Title 19 has been held prior to June 1, 1970. Subsection (a) of this section shall apply to any substantial change in such excepted subdivision or development. Subsection (a) of this section shall not apply to any telecommunications facility in existence prior to July 1, 1997, unless that facility is a "development" as defined in subdivision 6001(3) of this title.--1969, No. 250 (Adj. Sess.), §§ 6, 7. Amended 2000, No. 93 (Adj. Sess.), § 2, eff. July 1, 2000.

(c) No permit or permit amendment is required for activities at a solid waste management facility authorized by a provisional certification issued under 10 V.S.A. § 6605d; however, development at such a facility that is beyond the scope of that provisional certification is not exempt from the provisions of this chapter.--1990, No. 218 (Adj. Sess.), § 2.

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

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

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

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

(4) essential municipal building reconstruction or expansion that does not expand the floor space of the building by more than 10 percent.--1990, No. 276 (Adj. Sess.), § 17a.

(e) For purposes of this section, the replacement of water and sewer lines, as part of a municipality's regular maintenance or replacement of existing facilities, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the capacity of the relevant facility by more than 10 percent.--1990, No. 276 (Adj. Sess.), § 17b.

(f) A permit application for a development for which a certificate of need pursuant to section 6606a of this title is required shall be accompanied by such certificate.--Amended 1989, No. 218 (Adj. Sess.), § 2,; No. 276 (Adj. Sess.), §§ 17a, 17b, eff. June 20, 1990; No. 282 (Adj. Sess.), § 7, eff. June 22, 1990.

(g) The owners or operators of earth removal sites associated with a landfill closing, other than the landfill site itself, shall obtain a municipal zoning permit in lieu of a permit under this chapter, unless the municipality chooses to refer the matter to the district environmental commission having jurisdiction. At the district commission level, the matter will be treated as a minor application. If municipal zoning bylaws do not exist, the excavation application shall be subject to the provisions of this chapter as a minor application.--Added 1992, No. 256 (Adj. Sess.) § 30, eff. June 9, 1992.

(h) No permit or permit amendment is required for closure operations at an unlined landfill which began disposal operations prior to July 1, 1992 and which has been ordered closed under section 6610a or chapter 201 of this title. Closure and post-closure operations covered by this provision are limited to the following on-site operations: final landfill cover system construction and related maintenance operations, water quality monitoring, landfill gas control systems installation and maintenance, erosion control measures, site remediation and general maintenance. Prior to issuing a final order for closure for landfills qualifying for this exemption, a public informational meeting shall be noticed and held by the secretary with public comment accepted on the draft order. The public comment period shall extend no less than seven days before the public meeting and 14 days after the meeting. Public comment related to the public health, water pollution, air pollution, traffic, noise, litter, erosion and visual conditions shall be considered. Landfills with permits in effect under this chapter as of July 1, 1994, shall not qualify for an exemption as described under this section. --Added 1994, No. 232 (Adj. Sess.), § 4, eff. June 17, 1994.

(i) The repair or replacement of railroad facilities used for transportation purposes, as part of a railroad's maintenance, shall not be considered to be substantial changes and

shall not require a permit as provided under subsection (a) of this section, provided that the replacement or repair does not result in the physical expansion of the railroad's facilities.--Added 1994, No. 200 (Adj. Sess.), § 2, eff. June 17, 1994.

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

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

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

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

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

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

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

(5) With respect to a slate quarry located on a particular registered parcel of land, ancillary activities on the parcel related to the extraction and processing of slate into products that are primarily other than crushed stone products shall not be deemed to be substantial changes as long as the activities do not involve the creation of one or more new slate quarry holes that are not related to an existing slate quarry hole.

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

improvements associated with the telecommunications facility. Added 2000, No. 93 (Adj. Sess.), § 2, eff. July 1, 2000.

(n) No permit amendment is required for the replacement of a permitted telecommunications facility unless the replacement would constitute a material or substantial change to the permitted telecommunications facility to be replaced, or to improvements ancillary to the telecommunications facility, or both. No permit is required for repair or routine maintenance of a permitted telecommunications facility or of those ancillary improvements associated with the telecommunications facility. Added 2000, No. 93 (Adj. Sess.), § 2, eff. July 1, 2000.

(o) If a downtown development district designation pursuant to 24 V.S.A. § 2793 is removed, subsection (a) of this section shall apply to any subsequent substantial change to a project that was originally exempt pursuant to subdivision 6001(3)(B) of this title. Added 2002, No. 114 (Adj. Sess.), § 7c, eff. May 28, 2002.

(p) No permit or permit amendment is required for any change to a project that is located entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, if the change consists exclusively of any combination of mixed use and mixed income housing, and the cumulative changes within any continuous period of five years, commencing on or after the effective date of this subsection, remain below the jurisdictional threshold specified in subdivision 6001(3)(B) of this title. Added 2002, No. 114 (Adj. Sess.), § 7c, eff. May 28, 2002.

§ 6082. Approval by local governments and state agencies

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

§ 6083. Applications

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

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

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

(3) The fee prescribed by section 6083a of this title. Amended, 1998, No. 155, (Adj. Sess.), § 26 eff. July 1, 1998.

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

(b) The board and district commission may conduct such investigations, examinations, tests and site evaluations as they deem necessary to verify information contained in the application. An applicant shall grant the board or district commission, or their agents, permission to enter upon his land for these purposes.

(c) Where an application concerns the extraction of processing of fissionable source material, before the application is considered the district commission shall obtain the express approval of the general assembly by act of legislation stating that extraction or processing of fissionable source material will promote the general welfare. The district commission shall advise the general assembly of any application for extraction of processing of fissionable source material by delivering written notice to the speaker of the

house of representatives and the president of the senate, and shall make available all relevant material. The procedural requirements and deadlines applicable to permit applications under this chapter shall be suspended until the approval is granted. Approval by the general assembly under this subsection shall not be construed as approval of any particular application or proposal for development.

(d) The board and commissions shall make all practical efforts to process permits in a prompt manner. The board shall establish time limits for permit processing as well as procedures and time periods within which to notify applicants whether an application is complete. The board shall report annually by February 15 to the house and senate committees on natural resources and energy and government operations. The annual report shall assess the performance of the board and commissions in meeting the limits, identify areas which hinder effective performance; list fees collected for each permit; summarize changes by the board to improve performance; describe staffing needs for the coming year; and certify that the revenue from the fees collected is at least equal to the costs associated with those positions.--1969, No. 250 (adj. Sess.), §§ 8, 15, eff. April 4, 1970; amended 1979, No. 123 (Adj. Sess.), § 6, eff. April 14, 1980; 1987, No. 76, § 10; 1989, No. 276 (Adj. Sess.), § 17, eff. June 20, 1990; No. 279 (Adj. Sess.) § 3.

(e) The district commissions shall give priority to municipal projects that have been mandated by the state through a permit, enforcement order, court order, enforcement settlement agreement, statute, rule or policy.--Amended 1987, No. 76, § 10; 1989, No. 276 (Adj. Sess.), § 17, eff. June 20, 1990; No. 279 (Adj. Sess.), § 3.

(f) In situations where the party seeking to file an application 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. Amended 1991, Act 109, § 7, eff. June 28, 1991.

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

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

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

(2) Any decision under this subsection to issue a stay may be subject to an interlocutory appeal to the board.

(3) If the same violation is the subject of an enforcement action under chapter 201 of this title, then jurisdiction over the issuance of a stay shall remain with the environmental court and shall not reside with the district commission. --Added 2001, No. 40 § 4, eff. July 1, 2001.

§ 6083a. Fees

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

(1) For projects involving construction, $4.25 for each $1,000.00 of the first $15,000,000.00 of construction costs, and $2.00 for each $1,000.00 of construction costs above $15,000,000.00.

(2) For projects involving the creation of lots, $50.00 for each lot.

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

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

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

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

(b) Notwithstanding the provisions of subsection (a) of this section, there shall be a minimum fee of $100.00 for original applications and $25.00 for amendment applications, in addition to publication and recording costs. These costs shall be in addition to any other fee established by statute, unless otherwise expressly stated.

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

(d) All persons filing an appeal, cross appeal or petition from a district environmental commission decision or jurisdictional determination shall pay a fee of $100.00, plus publication costs.

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

(1) In the event that an application is withdrawn prior to the convening of a hearing, the district commission shall, upon request of the applicant, refund 50 percent of the fee paid between $100.00 and $5000.00, and all of that portion of the fee paid in excess of $5000.00 except that the district commission may decrease the amount of the refund if the direct and indirect costs incurred by the state of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the district commission.

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

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

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

(5) For the purposes of this section, a "hearing" is a duly warned meeting concerning an application convened by a quorum of the board or district commission, or a

hearing officer or panel of the board, at which parties may be present. However, a hearing does not include a prehearing conference.

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

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

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

(g) A commission or the board may require any permittee to file a certification of actual construction costs and may direct the payment of a supplemental fee in the event that an application understated a project's construction costs. Failure to file a certification or to pay a supplemental fee shall be grounds for permit revocation.

(h) The costs of republishing a notice due to a scheduling change requested by a party shall be borne by the party requesting the change. Added, 1998, No. 155 (Adj. Sess.), § 26 eff. July 1, 1998.

§ 6084. Notice

(a) On or before the date of filing of application the applicant shall send notice and a copy of the application to the owner of the land if the applicant is not the owner; the municipality in which the land is located; municipal and regional planning commissions for the municipality in which the land is located; any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a boundary. The applicant shall furnish to the district commission the names of those furnished notice by affidavit, and shall post a copy of the notice in the town clerk's office of the town or towns wherein the land lies. Amended 1991, Act 109, § 2, eff. June 28, 1991. Amended 1993, No. 232 (Adj. Sess.), § 29, eff. March 15, 1995.

(b) The district commission shall forward notice and a copy of the application to the board and any state agency directly affected, the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title, and any other municipality, state agency, or person the district commission or board deems appropriate. Notice shall also be published in a local newspaper generally circulating in the area where the land is located not more than 7 days after receipt of the application.--1969, No. 250 (Adj. Sess.), § 9, eff. April 4, 1970. Amended 1993, No. 232 (Adj. Sess.), § 29, eff. March 15, 1995.

§ 6085. Hearings

(a) Anyone required to receive notice by section 6084 of this title and any adjoining property owner may request a hearing by filing a request within 15 days of receipt of notice. Upon receipt of notice the district commission shall treat the application pursuant to section 814 of Title 3. The district commission may order a hearing without a request within 20 days of receipt of the application.

(b) The hearing or a prehearing conference shall be held within 40 days of receipt of the application or notice of appeal. The parties shall be given not less than 10 days notice. Notice shall also be published in a local newspaper generally circulating in the area where the land is located not less than 10 days before the hearing date. Amended 1993, No. 82, § 4, eff. July 1, 1993.

(c)(1) Parties shall be those who have received notice, adjoining property owners who have requested a hearing, and such other persons as the board may allow by rule. For the purposes of appeal to the supreme court, only the applicant, the landowner if the applicant is not the landowner, a state agency, the regional and municipal planning commissions and the municipalities required to receive notice shall be considered parties. An adjoining property owner may participate in the hearings and present evidence only to the extent the proposed development or subdivision will have a direct effect on his or her property under section 6086(a)(1) through (a)(10) of this title.

(2) A district commission, according to the procedures established in the rules of the board, shall determine party status with respect to individuals and organizations at the commencement of the hearing process and shall re-examine those determinations before the close of hearings and state the results of that re-examination in the district commission decision. In the re-examination of party status coming before the close of district commission hearings, persons having obtained party status up to that point in the proceedings shall be presumed to retain party status. However, on motion of a party, or on its own motion, a commission shall consider the extent to which parties continue to qualify for party status. Determinations made before the close of district commission hearings shall supersede any preliminary determinations of party status. Added, 1993, No. 232 (Adj. Sess.), § 30, eff. March 15, 1995.

(d) If no hearing has been requested or ordered within the prescribed period no hearing need be held by the district commission. In such an event a permit shall be granted or denied within 60 days of receipt; otherwise, it shall be deemed approved and a permit shall be issued.--1969, No 250 (Adj. Sess.), §§ 10, 11, eff. April 4, 1970; 1973, No. 85, § 9; 1991, No. 109, § 3 eff. June 28, 1991.

(e) The board and any district commission, acting through one or more duly authorized representatives at any prehearing conference or at any other times deemed appropriate by the board or by the district commission shall promote expeditious, informal and nonadversarial resolution of issues, require the timely exchange of information concerning the application, and encourage participants to settle differences. No board member or district commissioner who is participating as a decision maker in a particular case may act as a duly authorized representative for the purposes of this subsection. These efforts at dispute resolution shall not affect the burden of proof on issues before a commission or the board, nor shall they affect the requirement that a permit may be issued only after the issuance of affirmative findings under the criteria established in section 6086 of this title. Added, 1993, No. 232 (Adj. Sess.), § 31, eff. March 15, 1995.

(f) A hearing shall not be closed until a commission or the board provides an opportunity to all parties 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. Added, 1993, No. 232 (Adj. Sess.), § 31, eff. March 15, 1995.

§ 6085a. Pilot Project Regarding Appeals on the Record from District Environmental Commission Determinations

(a) At the time of application, the applicant may file a motion for recorded hearings which provides that any appeal to the board will consist of a review on that record.

(b) In the absence of a motion for recorded hearings properly filed by an applicant with the filing of a complete application and, within ten calendar days of the date that a district commission provides notice of a hearing under section 6084 of this title, any statutory party or any prospective party may file a motion for recorded hearings which provides that any appeal to the board will consist of a review on that record.

(c) Within ten calendar days of its receipt of a motion for recorded hearings properly filed by an applicant or a prospective party and the receipt of a complete application, the commission shall provide notice of the motion. If necessary, the commission shall cancel any previously scheduled hearings, and the commission shall schedule a prehearing conference. The purpose of the prehearing conference includes, but need not be limited to, determining party status and affording an opportunity to object to the motion for recorded hearings.

(d) After a final determination of preliminary party status is made, in determining whether to grant a motion for recorded hearings, the district commission shall consider the public interest, including, but not limited to: the cost of recorded hearings, the efficiency of the application process, the anticipated value of the particular proceeding in evaluating the recorded hearing pilot project, relative costs or cost savings to the parties, and whether recorded hearings will likely result in providing more complete or less complete information for the commission's consideration. If it is clear that the public interest would be served, the commission may grant such motions for recorded hearings, with the consent of all parties. The commission's decision on this issue shall not be subject to appeal.

(e) Motions under this section for recorded hearings before the district commission may be granted no more than 12 times throughout the state, without further legislative authority, and no more than three motions for recorded hearings may be granted by the same district commission.

(f) In situations in which recorded hearings are convened, the district commission shall extend the hearing schedule or take other appropriate action as necessary to provide a fair and reasonable opportunity for the parties to prepare, present, and respond to evidence presented, while preventing undue delay. Parties may prefile testimony and exhibits. If prefiled testimony is used, the applicant shall file its prefiled testimony, and then other parties shall be given the opportunity to file their prefiled testimony. Any rebuttal testimony shall be filed in similar sequence.

(g) Recorded hearings before the commission shall maintain the procedural and evidentiary flexibility and informality characteristic of administrative proceedings. Those standards shall be construed with particular flexibility in allowing the introduction of evidence.

(h) The commission hearing shall be recorded on videotape, at the expense of the board, to preserve the words and identity of the speakers, and to allow for the ready recovery of the testimony on the videotape by the parties and the board, if necessary to clarify the written record. In the event that an appeal is taken to the board, the commission shall provide the board with the original videotape of the hearing and the complete commission written record. The commission shall make and preserve a copy of the original tape for access and subsequent use by the parties and the board.

(i) The board shall adopt emergency rules following one or more public hearings and a written comment period to guide the implementation of this section throughout the state. In this adoption process, the board need not believe that there exists an imminent peril to public health, safety, and welfare. Review of these emergency rules by the legislative committee on administrative rules shall not include the issue of whether or not the rules are necessitated by an imminent peril to public health, safety, or welfare. These emergency rules shall remain in effect until the pilot project is terminated or the rules are amended through the normal rulemaking process. Upon receipt of a request from a commission for additional assistance in managing a recorded hearing, the board shall provide temporary additional resources as necessary.

(j) In the case of appeals taken on the record under this section, notwithstanding provisions to the contrary in section 6089 of this title, the following shall apply:

(1) Parties to the appeal shall conform with the filing and procedural requirements in the board rules adopted in accordance with emergency rulemaking authority granted to the board under this section.

(2) The board may require that additional evidence be presented, and may receive and consider evidence offered beyond that which was presented before the commission.

(3) The board shall remand the case to the district commission if it is persuaded that the district commission improperly excluded evidence, did not provide adequate notice or opportunity to prepare or to be heard, or otherwise failed to comply with the requirements of 3 V.S.A. chapter 25 pertaining to contested cases. The board need not remand for harmless error. Party status disputes shall be resolved through interlocutory appeal to the board prior to the district commission's convening hearings on the merits.

(4) The board may, in its discretion, substitute its judgment for the judgment of the commission without finding that the commission erroneously applied the law.

(k) The board shall provide interim reports on implementation of the recorded hearing pilot project to the general assembly, by no later than March 15, 2002 and January 15, 2003. The executive director of the board shall present to the legislative committees on natural resources and energy those interim reports, which shall detail the range of projects for which there were recorded hearings, the districts where the recorded hearings took place, the time required and the outcome of completed commission hearings, whether appeals were taken, and if so, by which party, and the time required for and the outcome of appellate proceedings before the board. The reports shall indicate the number of instances in which requests for recorded hearings were duly filed, but consent of all the parties was not obtained, and shall describe the nature of the projects involved, what were the concerns of the parties that refused to consent, and other circumstances regarding each case. In addition, the reports shall address the following, both from the perspective of the board and from the perspective of the commissions: the timeliness of the process, manageability of the process, any perceived effects on public participation, and any additional resource demands or resource efficiencies. The board shall provide the general assembly with a final report on the implementation of this section following the date for sunset and after all proceedings before the board are completed.

(l) This section shall be repealed on September 1, 2004, although proceedings pursuant to a motion for recorded hearings that is filed prior to that date shall continue under those sections until all of these proceedings before the board are completed.

Added 2001, No. 40 § 5, eff. July 1, 2001.

§ 6086. Issuance of permit; conditions and criteria

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

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

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

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

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

(iii) above 1,500 feet elevation; or

(iv) watersheds of public water supplies designated by the Vermont department of health; or

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

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

(C) Water conservation. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.

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

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

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

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

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

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

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

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

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

(G) Wetlands. A permit will be granted whenever it is demonstrated by the applicant, in addition to other criteria, that the development or subdivision will not violate the rules of the water resources board, as adopted under section 905(9) of this title, relating to significant wetlands.

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

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

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

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

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

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

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

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

subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species, and

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

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

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

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

(A) Impact of growth. In considering an application, the district commission or the board shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the district commission or the board shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.

(B) Primary agricultural soils. A permit will be granted for the development or subdivision of primary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not significantly reduce the agricultural potential of the primary agricultural soils; or

(I) the applicant can realize a reasonable return on the fair market value of his land only by devoting the primary agricultural soils to uses which will significantly reduce their agricultural potential; and

(ii) there are no nonagricultural or secondary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose; and

(iii) the subdivision or development has been planned to minimize the reduction of agricultural potential by providing for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage; and

(iv) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential.

(C) Forest and secondary agricultural soils. A permit will be granted for the development or subdivision of forest or secondary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not significantly reduce the potential of those soils for commercial forestry, including but not limited to specialized forest uses such as maple production or Christmas tree production, of those or adjacent primary agricultural soils for commercial agriculture; or

(I) the applicant can realize a reasonable return on the fair market value of his land only by devoting the forest or secondary agricultural soils to uses which will significantly reduce their forestry or agricultural potential; and

(ii) there are no nonforest or secondary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose; and

(iii) the subdivision or development has been planned to minimize the reduction of forestry and agricultural potential by providing for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.

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

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

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

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

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

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

event that the municipality is required to assume the responsibility for the services or facilities.

(H) Costs of scattered development. The district commission or board will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.

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

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

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

(10) Is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24. In making this finding, if the board or district commission finds applicable provisions of the town plan to be ambiguous, the board or district commission, for interpretive purposes, shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence. Amended 2001, No. 40 § 6, July 1, 2001.

(b) At the request of an applicant, or upon its own motion, the district commission or the board shall consider whether to review any criterion or group of criteria of subsection

(a) of this section before proceeding to or continuing to review other criteria. This request or motion may be made at any time prior to or during the proceedings. The district commission or the board, in its sole discretion, shall, within 20 days of the completion of deliberations on the criteria that are the subject of the request or motion, either issue its findings and decision thereon, or proceed to a consideration of the remaining criteria. If the district commission or the board first issues a partial decision under this subsection, the applicant or a party may appeal that decision within 30 days under section 6089 of this title, or may appeal it after the final decision on the complete application. If the applicant or party has not taken a prior appeal of a partial decision under this subsection with respect to particular criteria, then any findings on the complete application, relating to those criteria, may be appealed under section 6089 of this title.

(c) A permit may contain such requirements and conditions as are allowable within the proper exercise of the police power and which are appropriate with respect to (1) through (10) of subsection (a), including but not limited to those set forth in section 4407(4), (8) and (9), 4411(a)(2), 4415, 4416 and 4417 of Title 24, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule.

(d) The board may by rule allow the acceptance of a permit or permits or approval of any state agency with respect to (1) through (5) of subsection (a) or a permit or permits of a specified municipal government with respect to (1) through (7) and (9) and (10) of subsection (a), or a combination of such permits or approvals, in lieu of evidence by the applicant. The board shall accept determinations issued by a development review board under the provisions of 24 V.S.A. § 4449, with respect to local Act 250 review of municipal impacts. The acceptance of such approval, positive determinations, permit or permits shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. In the case of approvals and permits issued by the agency of natural resources, technical determinations of the agency shall be accorded substantial deference by the commissions and the board. The acceptance of negative determinations issued by a development review board under the provisions of 24 V.S.A. § 4449, with respect to local Act 250 review of municipal impacts shall create a presumption that the application is detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. Any determinations, positive or negative, under the provisions of 24 V.S.A. § 4449 shall create presumptions only to the extent that the impacts under the criteria are limited to the municipality issuing the decision. Such a rule may be revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act. The board shall not approve the acceptance of a permit or approval of such an agency or a permit of a municipal government unless it satisfies the appropriate requirements of subsection (a) of this section.--1969, No. 250 (Adj. Sess.), § 12, eff. April 4, 1970; amended 1973, No. 85, § 10; 1973, No. 195 (Adj. Sess.), § 3, eff. April 2, 1974; 1979, No. 123 (Adj. Sess.), § 5, eff. April 14, 1980; 1981, No. 240 (Adj. Sess.), §7, eff. April 28, 1982; 1985, No. 52, § 4, eff. May 15, 1985; 1985, No. 188 (Adj. Sess.), § 5; 1987, No. 76, § 18; 1989, No. 234 (Adj. Sess.), § 1, No. 280 (Adj. Sess.), § 13. Amended 1993, No. 232 (Adj. Sess.), § 32, eff. March 15, 1995; amended 2001, No. 40 § 7, eff. July 1, 2001; amended 2001, No. 40 § 7, eff. July 1, 2001

(e) This subsection shall apply with respect to a development that consists of the construction of temporary physical improvements for the purpose of producing films, television programs, or advertisements. These improvements shall be considered temporary improvements if they remain in place for less than one year, unless otherwise

extended by the permit or a permit amendment, and will not cause a long-term adverse impact under any of the 10 criteria after completion of the project. In situations where this subsection applies, jurisdiction under this chapter shall not continue after the improvements are no longer in place and the conditions in the permit have been met, provided there is not a long-term adverse impact under any of the 10 criteria after completion of the project; except, however, if jurisdiction is otherwise established under this chapter, this subsection shall not remove jurisdiction. This termination of jurisdiction in these situations does not represent legislative intent with respect to continuing jurisdiction over other types of development not specified in this subsection. Added 2001, No. 40 § 8, effective July 1, 2001.

(f) Prior to any appeal of a permit issued by a district commission, any aggrieved party may file a request for a stay of construction with the district commission together with a declaration of intent to appeal the permit. The stay request shall be automatically granted for seven days upon receipt and notice to all parties and pending a ruling on the merits of the stay request pursuant to board rules. The automatic stay shall not extend beyond the 30-day appeal period unless a valid appeal has been filed with the board. The automatic stay may be granted only once under this subsection during the 30-day appeal period. Following appeal of the district commission decision, any stay request must be filed with the board pursuant to board rules. A district commission shall not stay construction authorized by a permit processed under the board's minor application procedures. Added 2001, No. 40 § 9, eff. July 1, 2001.

§ 6086a. Generators of radioactive waste

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

§ 6087. Denial of application

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

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

(c) A denial of a permit shall contain the specific reasons for denial. A person may, within 6 months, apply for reconsideration of his permit which application shall include an affidavit to the district commission and all parties of record that the deficiencies have been corrected. The district commission shall hold a new hearing upon 25 days notice to the parties. The hearing shall be held within 40 days of receipt of the request for reconsideration. --1969, No. 250 (Adj. Sess.), § 12, eff. April 4, 1970.

§ 6088. Burden of proof

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

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

§ 6089. Appeals

(a) (1) An appeal from the district commission shall be to the board and shall be accompanied by a fee prescribed by section 6083a of this title.--Amended 1998, No. 155 (Adj. Sess.), § 28, eff. July 1, 1998.

(2) An appellant to the board, under this section, shall file with the notice of appeal a statement of 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.

(3) The board shall hold a de novo hearing on all findings requested by any party that files an appeal or cross-appeal, according to the rules of the board.

(4) Notice of appeal shall be filed with the board within 30 days. The board shall notify the parties set forth in section 6085(c) of this title of the filing of any appeal. The board shall proceed as in section 6085(b) and (c) of this title and treat the applicant pursuant to section 814 of Title 3.

(b) An appeal from a decision of the board under subsection (a) of this section shall be to the supreme court by a party as set forth in section 6085(c) of this title.

(c) No objection that has not been urged before the board may be considered by the supreme court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record as a whole, shall be conclusive.

(d) An appeal from the board will be allowed for all usual reasons, including the unreasonableness or insufficiency of the conditions attached to a permit. An appeal from the district commission will be allowed for any reason except no appeal shall be allowed when an application has been granted and no preliminary hearing requested.--1969, No. 250 (Adj. Sess.), § 14, eff. April 4, 1970; amended 1973, No. 85, § 12; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1985, No. 52, § 1, eff. May 15, 1985; 1987, No. 76, § 10a. Amended 1993, No. 232 (Adj. Sess.), § 34, eff. March 15, 1995.

§ 6090. Recording; duration and revocation of permits

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

(b)(1) Any permit granted under this chapter for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet, shall be for a specified period determined by the board in accordance with the rules adopted under this chapter as a reasonable projection of the time during which the land will remain suitable for use if developed or subdivided as contemplated in the application, and with due regard for the economic considerations attending the proposed development or subdivision. Other permits issued under this chapter shall be for an indefinite term, as long as there is compliance with the conditions of the permit.--Amended 1993,

No. 232 (Adj. Sess.), § 35, June 21, 1994.

(b)(2) Expiration dates contained in permits issued before July 1, 1994 (involving developments that are not for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet) are extended for an indefinite term, as long as there is compliance with the conditions of the permits. Added 1993, No. 232 (Adj. Sess.), § 35, eff. June 21, 1994.

(c) A permit may be revoked by the board in the event of violation of any conditions attached to any permit or the terms of any application, or violation of any rules of the board.--1969, No. 250 (Adj. Sess.), § 16, eff. April 4, 1970; amended 1985, No. 32.

§ 6091. Renewals and nonuse

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

(b) Nonuse of permit. Nonuse of a permit for a period of three years following the date of issuance shall constitute an abandonment of the development or subdivision and the permit shall be considered expired. For purposes of this section, for a permit to be considered used, construction must have commenced and substantial progress towards completion must have occurred within the three-year period, unless construction is delayed by litigation or proceedings to secure other permits or to secure title through foreclosure, or unless, at the time the permit is issued or in a subsequent proceeding, the district commission or board provides that substantial construction may be commenced more than three years from the date the permit is issued.--1991, No. 111, § 2, eff. June 21, 1994.

(c) Extensions. If the application is made for an extension prior to expiration the district commission may grant an extension and may waive the necessity of a hearing. --1969, No. 250 (Adj. Sess.), § 17, eff. April 4, 1970; amended 1991, No. 111, §2, eff. June 28, 1991.

(d) Completion dates for developments and subdivisions. Permits shall include dates by which there shall be full or phased completion. The board, by rule, shall establish requirements for review of those portions of developments and subdivisions that fail to meet their completion dates, giving due consideration to fairness to the parties involved, competing land use demands, and cumulative impacts on the resources involved. If completion has been delayed by litigation, proceedings to secure other permits, proceedings to secure title through foreclosure, or because of market conditions, the district commission or board shall provide that the completion dates be extended for a reasonable period of time.-- Added, 1993, No. 232 (Adj. Sess), § 36, eff. June 21, 1994.

§ 6092. Construction

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

SUBCHAPTER 5. Waste Facility Panel

§ 6101. Waste facility panel; jurisdiction; rules; fees

(a) A waste facility panel of the environmental board is created. The panel shall consist of the chair of the environmental board, who shall also be chair of the panel, and four members appointed by the governor and confirmed by the senate. The four members other than the chair shall include at least one current or past member of the water resources board and at least one current or past member of the environmental board. Members other than the chair shall be appointed for terms of four years and shall be entitled to per diem and reimbursement for all necessary and actual expenses. A vacancy shall be filled for the unexpired term in the same manner as the initial appointment.

(b) The waste facility panel shall have exclusive jurisdiction to review decisions and hear and determine appeals as provided in this subchapter.

(c) The waste facility panel shall operate under the rules of the environmental board to the extent the board's rules are consistent with this subchapter. The panel may adopt additional rules necessary to carry out this subchapter.

(d) A request for review or an appeal shall be filed with the waste facility panel within 30 days of the secretary's determination or the district commission's decision. The filing shall be accompanied by a fee. The amount shall be as provided for fees assessed for appeals to the environmental board and shall be deposited in the solid waste management assistance account of the waste management assistance fund, established by subsection 6618(a) of this title. A request for review or an appeal shall be filed with the waste facility panel within 30 days of the secretary's determination or the district commission's decision. The filing shall be accompanied by a fee. The amount, deposit and disbursement shall be as provided for fees assessed for appeals to the environmental board.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990. Amended 1998, No. 155, (Adj. Sess.), § 27, eff. July 1, 1998.

(e) In cases involving an appeal from a decision of a district commission or the agency of natural resources pursuant to this subchapter, the chair may assign current or alternate members of the environmental board to sit on cases when fewer than five panel members are available to serve. Added 1993, No. 82, § 5, eff. July 1, 1993.

§6102. Parties

(a) The applicant, the landowner if the applicant is not the landowner, the state, the solid waste management district, the municipality and municipal and regional planning commissions in which the waste facility is located and any adjacent solid waste management district, municipality and municipal and regional planning commissions if the waste facility is located on a boundary shall be parties in any proceeding before the waste facility panel.

(b) An owner or resident of adjoining property may participate in hearings and present evidence to the extent the waste facility would have a direct effect on that property.

(c) In addition to parties under subsections (a) and (b) of this section, in respect to proceedings involving a provisional certification or a determination of the secretary of natural resources, a person shall be entitled to participate as a party under the standards for party status in Rule 24 of the Vermont Rules of Civil Procedure.

(d) In addition to parties under subsections (a) and (b) of this section, in respect to proceedings involving a decision of a district environmental commission, a person shall be entitled to participate as a party as provided in the statutes and rules applicable to the environmental board.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990; Amended 1991, No. 109, § 4, eff. June 28, 1991.

§ 6103. Review of provisional certifications

(a) The panel shall have jurisdiction to review a determination of the secretary with respect to a provisional certification under section 6605d of this title. A review under this section shall take precedence over all other matters before the panel.

(b) If the panel finds that any party has established by clear and convincing evidence that the basis for the secretary's determination is not supported, the panel shall deny the provisional certification or issue a provisional certification with conditions, requirements or restrictions consistent with subdivision 6605d(c)(5) of this title.

(c) The panel shall hold a hearing or pre-hearing conference within 20 days of the request for review and shall issue its decision within 20 days of the date the hearing on the matter is adjourned.

(d) A request for review may, but shall not automatically stay the determination of the secretary. An application for a stay shall be acted upon within three days of its receipt. --Added 1989, No. 218 (Adj. Sess.) § 3.

§ 6103a. Review Certificates of need

(a) The panel shall have jurisdiction to review a determination of the secretary with respect to a certificate of need issued under section 6606a of this title.

(b) The findings, and the conditions, requirements or restrictions in the certificate of need shall be presumed to be valid, but may be rebutted by clear and convincing evidence. If rebutted, the panel shall make its own findings, and establish conditions, requirements or restrictions, with respect to the criteria set forth in section 6606a of this title.--Added 1989, No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6104. Review of agency determinations

(a) The panel shall have jurisdiction to review a determination of the secretary of natural resources with respect to a permit, certification, classification action, or endangered species variance for a solid waste management facility. Amended 1993, No. 92, § 11, eff. July 1, 1993.

(b) Review under this section shall be de novo.

(c) A request for review may, but shall not automatically stay the determination of the secretary.

(d) This section shall not apply to provisional certifications issued under section 6605d of this title.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6105. Appeals of district commission decisions

Appeals of a decision of a district environmental commission in respect to a waste management facility shall be to the panel. Such appeals shall be governed by the provisions and procedures applicable to appeals to the environmental board.--Added 1989, No. 218 (Adj. Sess.). § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6106. Consolidation of Act 250 and agency review proceedings

(a) If the panel is requested to review a determination of the secretary with respect to a permit, certification, air pollution order, classification action, or endangered species variance for a waste management facility which is also a development under this chapter, the panel shall not commence its review until the district commission has issued its final decision.

(b) If a decision of a district commission is appealed and the panel is requested to review a determination of the secretary with respect to the same waste management facility, the panel shall consolidate the proceedings.

(c) If requested by a party, a district commission shall first consider all criteria under subsection 6086(a) of this title, other than those for which a permit from the secretary of natural resources creates a presumption of a positive finding.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6107. Appeals to the supreme court

Appeals from decisions of the waste facility panel shall be to the supreme court:

(1) pursuant to section 6089 of this title and the applicable rules of the environmental board, with respect to parties under subsections 6102(a), (b) and (d) of this title;

(2) pursuant to the Vermont rules of appellate procedure, with respect to all other parties.--Added 1989, No. 218 (Adj. Sess.), § 3, No.282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6108. Transition authority

The waste facility panel may transfer and take jurisdiction over any appeal concerning a waste management facility that is pending, on the effective date of this subchapter, before the water resources board or the environmental board upon motion of any party when transfer would serve the public interest and not impose undue hardship; except that the panel may not take jurisdiction over any appeal to the environmental board that was filed before January 1, 1990.--Added 1989, No. 218 (Adj. Sess.), § 3.

(Updated: May 28, 2002)

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