Vermont

Municipal and Regional

Planning and Development Act

Title 24 VSA Chapter 117

(With Additional Associated Sections and the Downtown Development Act)

as amended through 2012

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Chapter 117: MUNICIPAL AND REGIONAL PLANNING AND DEVELOPMENT

1. GENERAL PROVISIONS; DEFINITIONS

§ 4301. Short title

This chapter may be referred to as the Vermont Planning and Development Act. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4302. Purpose; goals

(a) General purposes. It is the intent and purpose of this chapter to encourage the appropriate development of all lands in this state by the action of its constituent municipalities and regions, with the aid and assistance of the state, in a manner which will promote the public health, safety against fire, floods, explosions and other dangers; to promote prosperity, comfort, access to adequate light and air, convenience, efficiency, economy and general welfare; to enable the mitigation of the burden of property taxes on agricultural, forest and other open lands; to encourage appropriate architectural design; to encourage the development of renewable resources; to protect residential, agricultural and other areas from undue concentrations of population and overcrowding of land and buildings, from traffic congestion, from inadequate parking and the invasion of through traffic, and from the loss of peace, quiet and privacy; to facilitate the growth of villages, towns and cities and of

their communities and neighborhoods so as to create an optimum environment, with good civic design; to encourage development of a rich cultural environment and to foster the arts; and to provide means and methods for the municipalities and regions of this state to plan for the prevention, minimization and future elimination of such land development problems as may presently exist or which may be foreseen and to implement those plans when and where appropriate. In implementing any regulatory power under this chapter, municipalities shall take care to protect the constitutional right of the people to acquire, possess, and protect property.

(b) It is also the intent of the legislature that municipalities, regional planning commissions and state agencies shall engage in a continuing planning process that will further the following goals:

> (1) To establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions, and state agencies.
>
> (2) To encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact.
>
> (3) To consider the use of resources and the consequences of growth and development for the region and the state, as well as the community in which it takes place.
>
> (4) To encourage and assist municipalities to work creatively together to develop and implement plans.

(c) In addition, this chapter shall be used to further the following specific goals:

(1) To plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

(A) Intensive residential development should be encouraged primarily in areas related to community centers, and strip development along highways should be discouraged.

(B) Economic growth should be encouraged in locally designated growth areas, or employed to revitalize existing village and urban centers, or both.

(C) Public investments, including the construction or expansion of infrastructure, should reinforce the general character and planned growth patterns of the area.

(2) To provide a strong and diverse economy that provides satisfying and rewarding job opportunities and that maintains high environmental standards, and to expand economic opportunities in areas with high unemployment or low per capita incomes.

(3) To broaden access to educational and vocational training opportunities sufficient to ensure the full realization of the abilities of all Vermonters.

(4) To provide for safe, convenient, economic and energy efficient transportation systems that respect the integrity of the natural environment, including public transit options and paths for pedestrians and bicyclers.

(A) Highways, air, rail and other means of transportation should be mutually supportive, balanced and integrated.

(5) To identify, protect and preserve important natural and historic features of the Vermont landscape, including:

(A) significant natural and fragile areas;

(B) outstanding water resources, including lakes, rivers, aquifers, shorelands and wetlands;

(C) significant scenic roads, waterways and views;

(D) important historic structures, sites, or districts, archaeological sites and archaeologically sensitive areas.

(6) To maintain and improve the quality of air, water, wildlife and land resources.

(A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).

(7) To encourage the efficient use of energy and the development of renewable energy resources.

(8) To maintain and enhance recreational opportunities for Vermont residents and visitors.

(A) Growth should not significantly diminish the value and availability of outdoor recreational activities.

(B) Public access to noncommercial outdoor recreational opportunities, such as lakes and hiking trails, should be identified, provided, and protected wherever appropriate.

(9) To encourage and strengthen agricultural and forest industries.

(A) Strategies to protect long-term viability of agricultural and forest lands should be encouraged and should include maintaining low overall density.

(B) The manufacture and marketing of value-added agricultural and forest products should be encouraged.

(C) The use of locally-grown food products should be encouraged.

(D) Sound forest and agricultural management practices should be encouraged.

(E) Public investment should be planned so as to minimize development pressure on agricultural and forest land.

(10) To provide for the wise and efficient use of Vermont's natural resources and to facilitate the appropriate extraction of earth resources and the proper restoration and preservation of the aesthetic qualities of the area.

(11) To ensure the availability of safe and affordable housing for all Vermonters.

(A) Housing should be encouraged to meet the needs of a diversity of social and income groups in each Vermont community, particularly for those citizens of low and moderate income.

(B) New and rehabilitated housing should be safe, sanitary, located conveniently to employment and commercial centers, and coordinated with the provision of necessary public facilities and utilities.

(C) Sites for multi-family and manufactured housing should be readily available in locations similar to those generally used for single-family conventional dwellings.

(D) Accessory apartments within or attached to single family residences which provide affordable housing in close proximity to cost-effective care and supervision for relatives or disabled or elderly persons should be allowed.

(12) To plan for, finance and provide an efficient system of public facilities and services to meet future needs.

(A) Public facilities and services should include fire and police protection, emergency medical services, schools, water supply and sewage and solid waste disposal.

(B) The rate of growth should not exceed the ability of the community and the area to provide facilities and services.

(13) To ensure the availability of safe and affordable child care and to integrate child care issues into the planning process, including child care financing, infrastructure, business assistance for child care providers, and child care work force development.

(d) All plans and regulations prepared under the authority of this chapter shall be based upon surveys of existing conditions and probable future trends, and shall be made in the light of present and future growth and requirements, and with reasonable consideration, for the landowner, to topography, to needs and trends of the municipality, the region and the state, to the character of each area and to its peculiar suitability for particular uses in relationship to surrounding areas, and with a view to conserving the value of buildings.

(e) Use of goals.

(1) The goals established in this section shall be employed, as provided under this chapter, to carry out the general purposes established in this section.

(2) After July 1, 1989, none of the following shall be prepared or adopted, unless consistent with the goals established in this section:

(A) all plans prepared by regional planning commissions, and all plans required of state agencies under 3 V.S.A. § 4020;

(B) measures implementing state agency plans.

(f) Standard of review.

(1) As used in this chapter, "consistent with the goals" requires substantial progress toward attainment of the goals established in this section, unless the planning body determines that a particular goal is not relevant or attainable. If such a determination is made, the planning body shall identify the goal in the plan and describe the situation, explain why the goal is not relevant or attainable, and indicate what measures should be taken to mitigate any adverse effects of not making substantial progress toward that goal. The determination of relevance or attainability shall be subject to review as part of a consistency determination under this chapter.

(2) As used in this chapter, for one plan to be "compatible with" another, the plan in question, as implemented, will not significantly reduce the desired effect of the implementation of the other plan. If a plan, as implemented, will significantly reduce the desired effect of the other plan, the plan may be considered compatible if it includes the following:

(A) a statement that identifies the ways that it will significantly reduce the desired effect of the other plan;

(B) an explanation of why any incompatible portion of the plan in question is essential to the desired effect of the plan as a whole,

(C) an explanation of why, with respect to any incompatible portion of the plan in question, there is no reasonable alternative way to achieve the desired effect of the plan, and

(D) an explanation of how any incompatible portion of the plan in question has been structured to mitigate its detrimental effects on the implementation of the other plan. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 1; 1979, No. 174 (Adj. Sess.), § 1; 1987, No. 200 (Adj. Sess.), § 7, eff. July 1, 1989; 1989, No. 280 (Adj. Sess.), § 1; 1991, No. 130 (Adj. Sess.), § 1; 2003, No. 67, § 7b; 2003, No. 115 (Adj. Sess.), § 82.)

§ 4303. Definitions

The following definitions shall apply throughout this chapter unless the context otherwise requires:

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

(A) Housing that is owned by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees is not more than 30 percent of the household's gross annual income.

(B) Housing that is rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income.

(2) "Affordable housing development" means a housing development of which at least 20 percent of the units or a minimum of five units, whichever is greater, are affordable housing units. Affordable units shall be subject to covenants or restrictions that preserve their affordability for a minimum of 15 years or longer as provided in municipal bylaws.

(3) "Appropriate municipal panel" means a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review.

(4) "Bylaws" means municipal regulations applicable to land development adopted under the authority of this chapter.

(5) "Capacity study" means an inventory of available natural and human-made resources, based on detailed data collection, that identifies the capacities and limits of those resources to absorb land development. Data gathered, relevant to the geographic information system, shall be compatible with, useful to, and shared with the geographic information system established under 3 V.S.A. § 20.

(6) "Conformance with the plan" means a proposed implementation tool, including a bylaw or bylaw amendment that is in accord with the municipal plan in effect at the time of adoption, when the bylaw or bylaw amendment includes all the following:

(A) Makes progress toward attaining, or at least does not interfere with, the goals and policies contained in the municipal plan.

(B) Provides for proposed future land uses, densities, and intensities of development contained in the municipal plan.

(C) Carries out, as applicable, any specific proposals for community facilities, or other proposed actions contained in the municipal plan.

(7) "Element" means a component of a plan.

(8) "Flood hazard area" for purposes of section 4424 of this title means the land subject to flooding from the base flood. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Further, with respect to flood and other hazard area regulation pursuant to this chapter, the following terms shall have the following meanings:

(A) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures that substantially reduce or eliminate flood damage to any combination of real estate, improved real property, water or sanitary facilities, structures, and the contents of structures.

(B) "Floodway" means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than one foot.

(C) "Hazard area" means land subject to landslides, soil erosion, earthquakes, water supply contamination, or other natural or human-made hazards as identified within a "local mitigation plan" in conformance with and approved pursuant to the provisions of 44 C.F.R. section 201.6.

(D) "New construction" means construction of structures or filling commenced on or after the effective date of the adoption of a community's flood hazard bylaws.

(E) "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. However, the term does not include either of the following:

(i) Any project or improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.

(ii) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

(9) "Legislative body" means the selectboard in the case of a town, the trustees in the case of an incorporated village, and the mayor, alderpersons, and city council members in the case of a city, and the supervisor in the case of an unorganized town or gore.

(10) "Land development" means the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.

(11) "Municipal land use permit" means any of the following whenever issued:

(A) A zoning, subdivision, site plan, or building permit or approval, any of which relate to "land development" as defined in this section, that has received final approval from the applicable board, commission, or officer of the municipality.

(B) A wastewater system permit issued under any municipal ordinance adopted pursuant to chapter 102 of this title.

(C) Final official minutes of a meeting that relate to a permit or approval described in subdivision (11)(A) or (B) of this section that serve as the sole evidence of that permit or approval.

(D) A certificate of occupancy, certificate of compliance, or similar certificate that relates to the permits or approvals described in subdivision (11)(A) or (B) of this section, if the bylaws so require.

(E) An amendment of any of the documents listed in subdivisions (11)(A) through (D) and (F) of this section.

(F) A certificate of approved location for a salvage yard issued under subchapter 10 of chapter 61 of this title.

(12) "Municipality" means a town, a city, or an incorporated village or an unorganized town or gore. An incorporated village shall be deemed to be within the jurisdiction of a town for the purposes of this chapter, except to the extent that a village adopts its own plan and one or more bylaws either before, concurrently with, or subsequent to such action by the town, in which case the village shall have all authority granted a municipality under this chapter and the plans and bylaws of the town shall not apply during such period of time that said village plan and bylaws are in effect.

(13) "Nonconforming lots or parcels" means lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer.

(14) "Nonconforming structure" means a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer.

(15) "Nonconforming use" means use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer.

(16) "Nonconformity" means a nonconforming use, structure, lot, or parcel.

(17) "Person" means an individual, a corporation, a partnership, an association, and any other incorporated or unincorporated organization or group.

(18) "Plan" means a municipal plan adopted under section 4385 of this title.

(19) "Planned unit development" means one or more lots, tracts, or parcels of land to be developed as a single entity, the plan for which may propose any authorized combination of density or intensity transfers or increases, as well as the mixing of land uses. This plan, as authorized, may deviate from bylaw requirements that are otherwise applicable to the area in which it is located with respect to lot size, bulk, or type of dwelling or building, use, density, intensity, lot coverage, parking, required common open space, or other standards.

(20) "Planning commission" means a planning commission for a municipality created under subchapter 2 of this chapter.

(21) "Public notice" means the form of notice prescribed by sections 4444, 4449, or 4464 of this title, as the context requires.

(22) "Regional plan" means a plan adopted under section 4348 of this title.

(23) "Regional planning commission" means a planning commission for a region created under subchapter 3 of this chapter.

(24) "Renewable energy resources" means energy available for collection or conversion from direct sunlight, wind, running water, organically derived fuels, including wood and agricultural sources, waste heat, and geothermal sources.

(25) "Rural town" means a town having, as at the date of the most recent United States census, a population of less than 2,500 persons, as evidenced by that census, or a town having 2,500 or more but less than 5,000 persons that has voted by Australian ballot to be considered a rural town.

(26) "Should" means that an activity is encouraged but not mandated.

(27) "Structure" means an assembly of materials for occupancy or use, including a building, mobile home or trailer, sign, wall, or fence.

(28) "Technical deficiency" means a defect in a proposed plan or bylaw, or an amendment or repeal thereof, correction of which does not involve substantive change to the proposal, including corrections to grammar, spelling, and punctuation, as well as the numbering of sections.

(29) "Telecommunications facility" means a tower or other support structure, including antennae, that will extend 20 or more feet vertically, and related equipment, and base structures to be used primarily for communication or broadcast purposes to transmit or receive communication or broadcast signals.

(30) "Transit pass" means any pass, token, fare card, voucher, or similar item entitling a person to transportation to and from work on mass transit facilities and provided by an employer consistent with Internal Revenue Code Section 132(f).

(31) "Urban municipality" means a city, an incorporated village, or any town that is not a rural town.

(32) "Wetlands" means those areas of the state that are inundated by surface or groundwater with a frequency sufficient to support vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include marshes, swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs, and ponds, but excluding such areas as grow food or crops in connection with farming activities.

(33) “Public road” means a state highway as defined in 19 V.S.A. § 1 or a class 1, 2, or 3 town highway as defined in 19 V.S.A. § 302(a). A municipality may, at its discretion, define a public road to also include a class 4 town highway as defined in 19 V.S.A. § 302(a).

(Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 2; 1969, No. 223 (Adj. Sess.), § 2, eff. March 31, 1970; 1971, No. 78, § 3, eff. April 16, 1971; 1971, No. 257 (Adj. Sess.), § 20, eff. April 11, 1972; 1973, No. 261 (Adj. Sess.), § 1, eff. July 1, 1974; 1975, No. 164 (Adj. Sess.), § 1; 1979, No. 174 (Adj. Sess.), § 2; 1981, No. 132 (Adj. Sess.), §§ 1, 1a, 2, 2a; 1985, No. 188 (Adj. Sess.), § 6; 1987, No. 200 (Adj. Sess.), § 17, eff. July 1, 1989; 1989, No. 280 (Adj. Sess.), § 2; 1995, No. 122 (Adj. Sess.), § 1, eff. Apr. 25, 1996; 1997, No. 94 (Adj. Sess.), § 6, eff. April 15, 1998; 1999, No. 46, § 4, eff. May 26, 1999; 1999, No. 161 (Adj. Sess.), § 7; 2003, No. 115 (Adj. Sess.), § 83; 2009, No. 93 (Adj. Sess.), § 5; 2011, No. 155 (Adj. Sess.)

§ 4303a. Computation of time

Where an event is required or permitted to occur by this chapter before, on or after a specified period of time measured from another event, in calculating the period:

(1) the first day shall not be counted; and

(2) the final day shall be counted. (Added 1981, No. 132 (Adj. Sess.), § 3.)

§ 4304. Planning and land use manual

(a) The agency of commerce and community development shall prepare, maintain and distribute from time to time to all municipalities a manual setting forth:

(1) A copy of this chapter, together with all amendments thereof;

(2) Examples of land planning policies, and maps and documents prepared in conformance with plan requirements;

(3) An explanation and illustrative examples of bylaws, capital programs and budgets and procedures authorized in this chapter;

(4) Other explanatory material and data which will aid municipalities in the preparation of plans, capital budgets and programs and the administration of bylaws authorized in this chapter.

(b) The agency of commerce and community development shall, from time to time, confer with interested persons with a view toward insuring the maintenance of such manual in a form most useful to those regions and municipalities making use of it.

(c) Sections of this manual may be cited in any plan or by-law in the same manner as citations of this chapter, and may be incorporated by reference in any plan by-law. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 22, eff. April 11, 1972; 1975, No. 164 (Adj. Sess.), § 2; 1995, No. 190 (Adj. Sess.), § 1(a).)

§ 4305. Repealed. 2009, No. 146 (Adj. Sess), § G4, eff. June 1, 2010.

§ 4306. Municipal and regional planning fund

(a)

(1) A municipal and regional planning fund for the purpose of assisting municipal and regional planning commissions to carry out the intent of this chapter is hereby created in the state treasury.

(2) The fund shall be comprised of 17 percent of the revenue from the property transfer tax under chapter 231 of Title 32 and any moneys from time to time appropriated to the fund by the general assembly or received from any other source, private or public. All balances at the end of any fiscal year shall be carried forward and remain in the fund. Interest earned by the fund shall be deposited in the fund.

(3) Of the revenues in the fund, each year:

(A) 10 percent shall be disbursed to the Vermont center for geographic information;

(B) 70 percent shall be disbursed to the secretary of the agency of commerce and community development for performance contracts with regional planning commissions to provide regional planning services pursuant to section 4341a of this title; and

(C) 20 percent shall be disbursed to municipalities.

(b)

(1) Allocations for performance contract funding to regional planning commissions shall be determined according to a formula to be adopted by rule under chapter 25 of Title 3 by the department for the assistance of the regional planning commissions. Disbursement of funding to regional planning commissions shall be predicated upon meeting performance outcomes and measures pursuant to the terms of the performance contract.

(2) Disbursement to municipalities shall be awarded annually on or before December 31 through a competitive program administered by the department providing the opportunity for any eligible

municipality or municipalities to compete regardless of size, provided that to receive funds, a municipality:

(A) Shall use the funds for the purpose of developing a municipal plan to be submitted for approval by the regional planning commission, as required for municipal confirmation under section 4350 of this title; and

(B) Shall have voted at an annual or special meeting to provide local funds for municipal and regional planning purposes; or

Subdivision (b)(3) repealed effective July 2, 2012; see note set out below.

(3) Regardless of eligibility under subdivisions (1) and (2)(A) of this subsection, may apply to use the funds exclusively to research and map town highways, trails, and unidentified corridors under 19 V.S.A. § 302(a)(6) and (7).

(c) Funds allocated to municipalities shall be used for the purposes of:

(1) funding the regional planning commission in undertaking capacity studies;

(2) carrying out the provisions of subchapters 5 through 10 of this chapter; and

(3) acquiring development rights, conservation easements, or title to those lands, areas and strictures identified in either regional or municipal plans as requiring special consideration for provision of needed housing, aquifer protection, open space, farmland preservation, or other conservation purposes. (Added 1987, No. 200 (Adj. Sess.), § 4; amended 1997, No. 156 (Adj. Sess.), § 41; 1999, No. 1, § 97b, eff. March 31, 1999; No. 49, § 80; No. 62, § 263; 1999, No. 152 (Adj. Sess.), § 271d; 2003, No. 115 (Adj. Sess.), § 84; No. 164 (Adj. Sess.), § 14, eff. June 12, 2004; 2005, No. 178 (Adj. Sess.), § 9; 2009, No. 146 (Adj. Sess.), § G4.)

2. MUNICIPAL PLANNING COMMISSIONS

§ 4321. Creation of planning commissions

(a) A planning commission may be created at any time by the act of the legislative body of a municipality.

(b) In any urban municipality, the legislative body may create a planning department headed by a planning director as a substitute for a planning commission, and, in that event all of the powers and duties of planning commissions set forth herein shall be exercised by such planning director, subject to such regulations as that executive body shall from time to time specify, and sections 4322 and 4323 of this title shall not apply to such director. In such event, that legislative body may further create an advisory planning council, which shall only function in an advisory capacity to the planning director in the exercise of his or her powers and duties, and shall have such other functions as that legislative body shall, by resolution, assign to such council. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4322. Planning commission; membership

A planning commission shall have not less than three nor more than nine voting members. All members may be compensated and reimbursed by the municipality for necessary and reasonable expenses. At least a majority of the members of a planning commission shall be residents of the municipality. The selectmen of a rural town, or not more than two elected or appointed officials of an urban municipality who are chosen by the legislative body of the urban municipality, shall be nonvoting ex officio members of a planning commission. If a municipality has an energy coordinator under subchapter 12 of chapter 33 of this title, the energy coordinator may be a nonvoting ex officio member of the planning commission. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 3; 1973, No. 261 (Adj. Sess.), § 2, eff. July 1, 1974; 1979, No. 174 (Adj. Sess.), § 3.)

§ 4323. Appointment, term and vacancy; rules

(a) Members of a planning commission shall be appointed and any vacancy filled by the legislative body of a municipality. The length of the term of planning commission members shall be determined by the legislative body of a municipality. Any member may be removed at any time by unanimous vote of the legislative body. Any appointment to fill a vacancy shall be for the unexpired term.

(b) A planning commission shall elect a chair and a clerk, and at its organization meeting, shall adopt by majority vote of those members present and voting such other rules as it deems necessary and appropriate for the performance of its functions. A planning commission shall keep a record of its resolutions and transactions, which shall be maintained as a public record of the municipality.

(c) As an alternative to appointment under subsection (a) of this section, municipalities may choose to elect planning commissioners for terms of one to four years. The proposal to elect and the length of terms

to be filled shall be determined pursuant to a duly warned article at an annual or special meeting of the municipality. If a municipality chooses to elect planning commissioners:

(1) The length and spacing of terms shall be decided by vote of the municipality.

(2) Elections shall occur only as terms are completed, or as vacancies occur, or as new planning commissions are created.

(3) Vacancies may be filled by appointment of the legislative body only until the next meeting of the municipality, at which time the voters shall elect a commissioner to fill the unexpired term.

(4) Elected commissioners may not be removed by action of the legislative body. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; 1989, No. 280 (Adj. Sess.), § 3a; 2003, No. 103 (Adj. Sess.), § 1.)

§ 4324. Existing commissions

The members of any existing planning commission or body having similar powers and functions established under former laws shall continue in office until the end of their term as so established. New members shall be appointed and vacancies filled only under this chapter. Such commissions shall have, on March 23, 1968, all of the powers and duties of a planning commission created under this chapter. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4325. Powers and duties of planning commissions

Any planning commission created under this chapter may:

(1) Prepare a plan and amendments thereof for consideration by the legislative body and to review any amendments thereof initiated by others as set forth in subchapter 5 of this chapter;

(2) Prepare and present to the legislative body proposed bylaws and make recommendations to the legislative body on proposed amendments to such bylaws as set forth in subchapter 6 of this chapter;

(3) Administer bylaws adopted under this chapter, except to the extent that those functions are performed by a development review board;

(4) Undertake capacity studies and make recommendations on matters of land development, urban renewal, transportation, economic and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources and wetland protection. Data gathered by the planning commission that is relevant to the geographic information system established under 3 V.S.A. § 20 shall be compatible with, useful to, and shared with that system;

(5) Prepare and present to the legislative body recommended building, plumbing, fire, electrical, housing, and related codes and enforcement procedures, and construction specifications for streets and related public improvements;

(6) Prepare and present a recommended capital budget and program for a period of five years, as set forth in section 4440 of this title, for action by the legislative body, as set forth under section 4443 of this title;

(7) Hold public meetings;

(8) Require from other departments and agencies of the municipality such available information as relates to the work of the planning commission;

(9) In the performance of its functions, enter upon land to make examinations and surveys;

(10) Participate in a regional planning program;

(11) Retain staff and consultant assistance in carrying out its duties and powers;

(12) Undertake comprehensive planning, including related preliminary planning and engineering studies;

(13) Perform such other acts or functions as it may deem necessary or appropriate to fulfill the duties and obligations imposed by, and the intent and purposes of, this chapter. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1979, No. 174 (Adj. Sess.), § 4; 1985, No. 188 (Adj. Sess.), § 7; 1987, No. 200 (Adj. Sess.), § 18, eff. July 1, 1989; 1993, No. 232 (Adj. Sess.), § 45, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 85.)

§ 4326. Appropriations, reports and records

Every municipality may appropriate to and expend funds for its planning commission. The planning commission shall keep a record of its business and shall make an annual report to the municipality. A planning commission may accept and utilize any funds, personal or other assistance made available by this state or federal government or any of their agencies or from private sources. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4327. Joint planning commissions

(a) Any planning commission of a municipality which is a town having one or more municipalities contained within its area or which is one of such contained municipalities shall, upon the act of the legislative body of each municipality, be the planning commission under this chapter for such town and all such contained municipalities.

(b) A planning commission acting for more than one municipality shall be the planning commission for such town and all such contained municipalities until such joint arrangement is terminated by the act of the legislative body of any participating municipality.

(c) In any town containing one or more villages, any act required under this chapter to be taken by a legislative body or by the vote of a municipality shall be taken by the legislative body of the town or as the case may be the voters of the town including the voters of any contained village.

(d) If a contained village adopts its own plan, capital budget or program or one or more bylaws, then any act required under this chapter for the adoption shall be taken by the legislative body or voters of the village. Nevertheless, the voters of the village shall remain as voters in the town for the adoption of town bylaws and capital budget and program, as provided in subsection (c) of this section.

(e) A single planning commission, appointed by the board of governors of the unified towns and gores of Essex County, namely Averill, Avery's Gore, Ferdinand, Lewis, Warner's Grant, and Warren's Gore, shall serve as the planning commission for these towns and gores. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1973, No. 188 (Adj. Sess.), § 1, eff. July 1, 1974; No. 261 (Adj. Sess.),§§ 3, 7 eff. July 1, 1974; 1975, No. 164 (Adj. Sess.), § 3; 2005, No. 30, § 1; 2005, No. 105 (Adj. Sess.), § 1.)

§ 4328. Terms of office inconsistent with charter provisions

When a charter of a municipality exists having terms respecting the appointment and authority of municipal officials, relating to their activities under this chapter, which terms are inconsistent with this chapter, those terms of that charter shall prevail. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 4.)

3. REGIONAL PLANNING COMMISSIONS

§ 4341. Creation of regional planning commissions

(a) A regional planning commission may be created at any time by the act of the voters or the legislative body of each of a number of contiguous municipalities, upon the written approval of the agency of commerce and community development. Approval of a designated region shall be based on whether the municipalities involved constitute a logical geographic and a coherent socio-economic planning area. All municipalities within a designated region shall be considered members of the regional planning commission.

(b) Two or more existing regional planning commissions may be merged to form a single commission by act of the legislative bodies in a majority of the municipalities in each of the merging regions.

(c) A municipality may move from one regional planning commission to another regional planning commission on terms and conditions approved by the secretary of the agency of commerce and community development. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 1, eff. April 11, 1972; 1981, No. 132 (Adj. Sess.), § 4; 1987, No. 200 (Adj. Sess.), § 19, eff. July 1, 1989; 1995, No. 190 (Adj. Sess.), § 1(a); 2009, No. 146 (Adj. Sess.), § G5, eff. June 1, 2010; 2009, No. 156 (Adj. Sess.), § F.11, eff. June 3, 2010.)

§ 4341a. Performance contracts for regional planning services

(a) The secretary of the agency of commerce and community development shall negotiate and enter into performance contracts with regional planning commissions, or with regional planning commissions and regional development corporations in the case of a joint contract, to provide regional planning services.

(b) A performance contract shall address how the regional planning commission, or regional planning commission and regional development corporation jointly, will improve outcomes and achieve savings compared with the current regional service delivery system, which may include:

(1) a proposal without change in the makeup or change of the area served;

(2) a joint proposal to provide different services under one contract with one or more regional service providers;

(3) co-location with other local, regional, or state service providers;

(4) merger with one or more regional service providers;

(5) consolidation of administrative functions and additional operational efficiencies within the region; or

(6) such other cost-saving mechanisms as may be available. (Added 2009, No. 146 (Adj. Sess.), § G5, eff. June 1, 2010.)

§ 4342. Regional planning commissions; membership

A regional planning commission shall contain at least one representative appointed from each member municipality. All representatives may be compensated and reimbursed by their respective municipalities for necessary and reasonable expenses. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 2, eff. April 11, 1972; 1977, No. 158 (Adj. Sess.).)

§ 4343. Appointment, term and vacancy; rules

(a) Representatives to a regional planning commission representing each participating municipality shall be appointed for a term and any vacancy filled by the legislative body of such municipality in the manner provided and for the terms established by the charter and bylaws of the regional planning commission. Regardless of regional planning commission bylaws, representatives to the commission shall serve at the pleasure of the legislative body. The legislative body may, by majority vote of the entire body, revoke a commission member's appointment at any time.

(b) A regional planning commission may elect an executive board, consisting of not less than five nor more than nine members, to oversee the operations of the commission and implement the policies of the commission, and shall elect a chair, and a secretary, and, at its organization meeting shall adopt, by a two-thirds vote of those representatives present and voting at such meeting, such rules and create and fill such other offices as it deems necessary or appropriate for the performance of its functions, including, without limitation, the number and qualification of members, terms of office, and provisions for municipal representation and voting.

(c) A regional planning commission may also have such other members, who may be elected or appointed in such manner as the regional planning commission may prescribe by its rules adopted pursuant to this section. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1981, No. 132 (Adj. Sess.), § 5, eff. July 1, 1982; 1989, No. 280 (Adj. Sess.), § 3b; 2009, No. 146 (Adj. Sess.), § G5, eff. June 1, 2010.)

§ 4344. Repealed. 2009, No. 146 (Adj. Sess.), § G5.

§ 4345. Optional powers and duties of regional planning commissions

Any regional planning commission created under this chapter may:

(1) Develop an inventory of the region's fire and safety facilities; hospitals, rest homes, or other facilities for aging or disabled persons; correctional facilities; and emergency shelters; and work with regulated utilities, the department of public service, the department of public safety, potential developers of distributed power facilities, adjoining regional planning commissions, interested adjoining regional entities from adjoining states, and citizens of the region to propose and evaluate alternative sites for distributed power facilities that might provide uninterrupted local or regional power at least for identified critical

service providers in time of extended national, statewide, or regional power disruption or other emergency.

(2)-(5) [Repealed.]

(6) Undertake studies and make recommendations on land development, urban renewal, transportation, economic, industrial, commercial, and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources, state capital investment plans and wetland protection.

(7) [Repealed.]

(8) Require of each municipality in its area and all state agencies such available information as relates to the work of the regional planning commission.

(9) In the performance of its functions, enter upon land, with prior approval of the landowner, to make examinations and surveys.

(10) Retain staff and consultant assistance in carrying out its duties and powers, and contract with one or more persons to provide administrative, clerical, information technology, human resources, or related functions.

(11) Undertake comprehensive planning, including related preliminary planning, state capital investment plans and engineering studies.

(12) Carry out, with the cooperation of municipalities within the region, economic development programs for the appropriate development, improvement, protection, and preservation of the region's physical and human resources.

(13) Provide planning, training, and development services to local and regional communities and assist communities in evaluating economic conditions and prepare for economic growth and stability.

(14) Gather economic and demographic information concerning the area served.

(15) Assist existing business and industry, encourage the development and growth of small business, and to attract industry and commerce.

(16) Perform such other acts or functions as it may deem necessary or appropriate to fulfill the duties and obligations imposed by, and the intent and purposes of, this chapter. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 3, eff. April 11, 1972; 1979, No. 174 (Adj. Sess.), § 5; 1981, No. 132 (Adj. Sess.), § 6; 1985, No. 188 (Adj. Sess.), § 8; 1987, No. 200 (Adj. Sess.), § 20, eff. July 1, 1989; 1989, No. 280 (Adj. Sess.), § 3; 2005, No. 208 (Adj. Sess.), § 9; 2009, No. 146 (Adj. Sess.), § G5; 2011, No. 104 (Adj. Sess.), § 30.)

§ 4345a. Duties of regional planning commissions

A regional planning commission created under this chapter shall:

(1) Promote the mutual cooperation of its municipalities and assist and advise municipalities, compacts and authorities within the region to facilitate economic development programs for the appropriate development, improvement, protection and preservation of the region's physical and human resources.

(2) Advise municipal governing bodies with respect to public financing.

(3) Provide technical and legal assistance to municipalities in the preparation and maintenance of plans, capacity studies and bylaws and in related implementation activities.

(4) Cooperate with the planning, legislative or executive authorities of neighboring states, regions, counties or municipalities to promote coordination of planning for, conservation and development of the region and adjoining or neighboring territory.

(5) Prepare a regional plan and amendments that are consistent with the goals established in section 4302 of this title, and compatible with approved municipal and adjoining regional plans. When preparing a regional plan, the regional planning commission shall:

(A) develop and carry out a process that will encourage and enable widespread citizen involvement;

(B) develop a regional data base that is compatible with, useful to, and shared with the geographic information system established under 3 V.S.A. § 20;

(C) conduct capacity studies;

(D) identify areas of regional significance. Such areas may be, but are not limited to, historic sites, earth resources, rare and irreplaceable natural areas, recreation areas and scenic areas;

(E) use a land evaluation and site assessment system, that shall at a minimum use the criteria established by the secretary of agriculture, food and markets under 6 V.S.A. § 8, to identify viable agricultural lands;

(F) consider the probable social and economic benefits and consequences of the proposed plan; and

(G) prepare a report explaining how the regional plan is consistent with the goals established in section 4302 of this title.

(6) Prepare implementation guidelines that will assist municipalities and the regional commission in developing a planning process that will attain, within a reasonable time, consistency with the goals established in section 4302 of this title. Guidelines, which may be revised at any time, shall be prepared initially by July 1, 1989.

(7) Prepare, in conjunction with the commissioner of the department of economic, housing and community development, guidelines for the provision of affordable housing in the region, share information developed with respect to affordable housing with the municipalities in the region and with the commissioner of the department of economic, housing and community development, and consult with the commissioner when developing the housing element of the regional plan.

(8) Confirm municipal planning efforts, where warranted, as required under section 4350 of this title and provide town clerks of the region with notice of confirmation.

(9) At least every eight years, review the compatibility of municipal plans, and if the regional planning commission finds that growth in a municipality without an approved plan is adversely affecting an adjoining municipality, it shall notify the legislative body of both municipalities of that fact and shall urge that the municipal planning be undertaken to mitigate those adverse effects. If, within six months of receipt of this notice, the municipality creating the adverse effects does not have an approved municipal plan, the regional commission shall adopt appropriate amendments to the regional plan as it may deem appropriate to mitigate those adverse effects.

(10) Develop strategies specifically designed to assist municipalities in defining and managing growth and development that have cumulative impacts.

(11) Review proposed state capital expenditures for compatibility with regional plans.

(12) Assist municipalities to review proposed state capital expenditures for compatibility with municipal plans.

(13) Appear before district environmental commissions to aid them in making a determination as to the conformance of developments and subdivisions with the criteria of 10 V.S.A. § 6086.

(14) Appear before the public service board to aid the board in making determinations under 30 V.S.A. § 248.

(15) Hold public hearings.

(16) Before requesting the services of a mediator with respect to a conflict that has arisen between adopted or proposed plans of two or more regions or two or more municipalities located in different regions, appoint a joint interregional commission, in cooperation with other affected regional commissions for the purpose of negotiating differences.

(17) As part of its regional plan, define a substantial regional impact, as the term may be used with respect to its region. This definition shall be given due consideration, where relevant, in state regulatory proceedings.

(18) If a municipality requests the assistance of the regional planning commission in coordinating the way that its plan addresses projects of substantial regional impact with the way those projects are addressed by its neighbors' planning efforts, the regional planning commission shall convene an ad hoc working group to address the issue. The working group shall be composed of representatives of all municipalities likely to be affected by the plan in question, regardless of whether or not they belong to the same region. With the assistance of a facilitator provided by the regional planning commission, the ad hoc working group will attempt to develop a proposed consensus with respect to projects of substantial regional impact. If a proposed consensus is developed, the results of the consensus will be reported to the planning commissions and legislative bodies represented. (Added 1987, No. 200 (Adj. Sess.), § 21, eff. July 1, 1989; amended 1989, No. 280 (Adj. Sess.), § 4; 2003,

No. 42, § 2, eff. May 27, 2003; 2009, No. 146 (Adj. Sess.), § G5.)

§ 4346. Appropriations

Regional planning commissions may receive and expend monies from any source, including, without limitation, funds made available by the participating municipalities, and by the agency of commerce and community development, out of state funds appropriated to that agency for this purpose. Notwithstanding the provisions of any municipal charter, any municipality may appropriate and expend funds to and for regional planning commissions either by the authorization of its voters or by incorporating such amount as a line item in their administrative budget. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 4, eff. April 11, 1972; 1995, No. 190 (Adj. Sess.), § 1(a); 2009, No. 146 (Adj. Sess.), § G5, eff. June 1, 2010.)

§ 4347. Purposes of regional plan

A regional plan shall be made with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the region which will, in accordance with the 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. This general purpose includes, but is not limited to recommending a distribution of population and of the uses of the land for urbanization, trade, industry, habitation, recreation, agriculture, forestry and other uses as will tend to:

(1) create conditions favorable to transportation, health, safety, civic activities and educational and cultural opportunities;

(2) reduce the wastes of financial, energy and human resources which result from either excessive congestion or excessive scattering of population;

(3) promote an efficient and economic utilization of drainage, energy, sanitary and other facilities and resources;

(4) promote the conservation of the supply of food, water, energy and minerals;

(5) promote the production of food and fiber resources and the reasonable use of mineral, water, and renewable energy resources; and

(6) promote the development of housing suitable to the needs of the region and its communities. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1979, No. 174 (Adj. Sess.), § 6; 1987, No. 200 (Adj. Sess.), §§ 22, 23, eff. July 1, 1989.)

§ 4348. Adoption and amendment of regional plan

(a) A regional planning commission shall adopt a regional plan. Any plan for a region, and any amendment thereof, shall be prepared by the regional planning commission. At the outset of the planning

process and throughout the process, regional planning commissions shall solicit the participation of local citizens and organizations by holding informal working sessions that suit the needs of local people.

(b) The regional planning commission shall hold two or more public hearings within the region after public notice on any proposed plan or amendment. The minimum number of required public hearings may be specified within the bylaws of the regional planning commission.

(c) At least 30 days prior to the first hearing, a copy of the proposed plan or amendment, with a request for general comments and for specific comments with respect to the extent to which the plan or amendment is consistent with the goals established in section 4302 of this title, shall be delivered with proof of receipt, or sent by certified mail, return receipt requested, to each of the following:

(1) the chairperson of the legislative body of each municipality within the region;

(2) the executive director of each abutting regional planning commission;

(3) the department of economic, housing and community development within the agency of commerce and community development; and

(4) business, conservation, low income advocacy and other community or interest groups or organizations that have requested notice in writing prior to the date the hearing is warned.

(d) Any of the foregoing bodies, or their representatives, may submit comments on the proposed regional plan or amendment to the regional planning commission, and may appear and be heard in any proceeding with respect to the adoption of the proposed plan or amendment.

(e) The regional planning commission may make revisions to the proposed plan or amendment at any time not less than 30 days prior to the final public hearing held under this section. If the proposal is changed, a copy of the proposed change shall be delivered, with proof of receipt or by certified mail, return receipt requested, to the chairperson of the legislative body of each municipality within the region, and to any individual or organization requesting a copy, at least 30 days prior to the final hearing.

(f) A regional plan or amendment shall be adopted by not less than a 60 percent vote of the commissioners representing municipalities, in accordance with the bylaws of the regional planning commission, and immediately submitted to the legislative bodies of the municipalities that comprise the region. The plan or amendment shall be considered duly adopted and shall take effect 35 days after the date of adoption, unless, within 35 days of the date of adoption, the regional planning commission receives certification from the legislative bodies of a majority of the municipalities in the region vetoing the proposed plan or amendment. In case of such a veto, the plan or amendment shall be deemed rejected.

(g) Regional plans may be reviewed from time to time and may be amended in the light of new developments and changed conditions affecting the region.

(h) In proceedings under 10 V.S.A. chapter 151, 10 V.S.A. chapter 159, and 30 V.S.A. § 248, in which the provisions of a regional plan or a municipal plan are relevant to the determination of any issue in those proceedings:

(1) the provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan;

(2) to the extent that such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration in the proceedings would have a substantial regional impact.

(i) [Repealed.] (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 5, eff. April 11, 1972; 1979, No. 174 (Adj. Sess.), § 7; 1981, No. 132 (Adj. Sess.), § 7; 1987, No. 200 (Adj. Sess.), § 24, eff. July 1, 1989; 1989, No. 280 (Adj. Sess.), § 4a; No. 286 (Adj. Sess.), § 11, eff. June 22, 1990; 1995, No. 190 (Adj. Sess.), § 1(a); 2009, No. 146 (Adj. Sess.), § G5, eff. June 1, 2010.)

§ 4348a. Elements of a regional plan

(a) A regional plan shall be consistent with the goals established in section 4302 of this title and shall include but need not be limited to the following:

(1) A statement of basic policies of the region to guide the future growth and development of land and of public services and facilities, and to protect the environment;

(2) A land use element, which shall consist of a map and statement of present and prospective land uses:

(A) indicating those areas proposed for forests, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. § 8), residence, commerce, industry, public and semi-public uses, open spaces, and areas identified by the state, regional planning commissions or municipalities, which require special consideration for aquifer protection, wetland protection, or for other conservation purposes;

(B) indicating locations proposed for developments with a potential for regional impact, as determined by the regional planning commission, including but not limited to flood control projects, surface water supply projects, industrial parks, office parks, shopping centers and shopping malls, airports, tourist attractions, recreational facilities, private schools, public or private colleges and residential developments or subdivisions;

(C) setting forth the present and prospective location, amount, intensity and character of such land uses and the appropriate timing or sequence of land development activities in relation to the provision of necessary community facilities and services;

(D) indicating those areas that have the potential to sustain agriculture and recommendations for maintaining them which may include transfer of development rights, acquisition of development rights or farmer assistance programs;

(3) An energy element, which may include an analysis of energy resources, needs, scarcities, costs and problems within the region, a statement of policy on the conservation of energy and the development of renewable energy resources, and a statement of policy on patterns and densities of land use and control devices likely to result in conservation of energy;

(4) A transportation element, which may consist of a statement of present and prospective transportation and circulation facilities, and a map showing existing and proposed highways,

including limited access highways, and streets by type and character of improvement, and where pertinent, anticipated points of congestion, parking facilities, transit routes, terminals, bicycle paths and trails, scenic roads, airports, railroads and port facilities, and other similar facilities or uses, and recommendations to meet future needs for such facilities, with indications of priorities of need, costs and method of financing;

(5) A utility and facility element, consisting of a map and statement of present and prospective local and regional community facilities and public utilities, whether publicly or privately owned, showing existing and proposed educational, recreational and other public sites, buildings and facilities, including public schools, state office buildings, hospitals, libraries, power generating plants and transmission lines, wireless telecommunications facilities and ancillary improvements, water supply, sewage disposal, refuse disposal, storm drainage and other similar facilities and activities, and recommendations to meet future needs for those facilities, with indications of priority of need;

(6) A statement of policies on the preservation of rare and irreplaceable natural areas, scenic and historic features and resources;

(7) A program for the implementation of the regional plan's objectives, including a recommended investment strategy for regional facilities and services based on a capacity study of the elements in this section;

(8) A statement indicating how the regional plan relates to development trends, needs and plans and regional plans for adjacent municipalities and regions;

(9) A housing element that identifies the need for housing for all economic groups in the region and communities. In establishing the identified need, due consideration shall be given to data gathered pursuant to subsection 4382(c) of this title. If no such data has been gathered, the regional planning commission shall gather it.

Subdivision (10) effective July 1, 2012.

(10) An economic development element that describes present economic conditions and the location, type, and scale of desired economic development, and identifies policies, projects, and programs necessary to foster economic growth.

(b) The various elements and statements shall be correlated with the land use element and with each other. The maps called for by this section may be incorporated on one or more maps, and may be referred to in each separate statement called for by this section. (Added 1981, No. 132 (Adj. Sess.), § 7; amended 1985, No. 188 (Adj. Sess.), § 9; 1987, No. 200 (Adj. Sess.), §§ 26, 27, eff. July 1, 1989; 1997, No. 94 (Adj. Sess.), § 3, eff. April 15, 1998; 2011, No. 52, § 32, eff. July 1, 2012.)

§ 4348b. Readoption of regional plans

(a) Unless they are readopted, all regional plans, including all prior amendments, shall expire every eight years.

(b) A regional plan that has expired or is about to expire may be readopted as provided under section 4348 of this title for the adoption of a regional plan or amendment. Prior to any readoption, the regional planning commission shall review and update the information on which the plan is based, and shall consider this information in evaluating the continuing applicability of the regional plan. The readopted plan shall remain in effect for the ensuing eight years unless earlier readopted.

(c) Upon the expiration of a regional plan under this section, the regional plan shall be of no further effect in any other proceeding.

(d) All regional plans that expire after July 1, 1991 shall be readopted to be consistent with planning goals and shall follow the review process referred to in Act No. 200 of the Acts of 1987, Adjourned Session. (Added 1981, No. 132 (Adj. Sess.), § 8; amended 1987, No. 200 (Adj. Sess.), § 25, eff. July 1, 1989; 1989, No. 101, §§ 2, 3; 2009, No. 146 (Adj. Sess.), § G5, eff. June 1, 2010.)

§ 4348b. Readoption of regional plans

(a) Unless they are readopted, all regional plans, including all prior amendments, shall expire every eight years.

(b)

(1) A regional plan that has expired or is about to expire may be readopted as provided under section 4348 of this title for the adoption of a regional plan or amendment. Prior to any readoption, the regional planning commission shall prepare an assessment report which shall be submitted to the agency of commerce and community development and the municipalities within the region. The assessment report may include:

(A) the extent to which the plan has been implemented since adoption or readoption;

(B) an evaluation of the goals and policies and any amendments necessary due to changing conditions of the region;

(C) an evaluation of the land use element and any amendments necessary to reflect changes in land use within the region or changes to regional goals and policies;

(D) priorities for implementation in the next five years; and

(E) updates to information and data necessary to support goals and policies.

(2) The readopted plan shall remain in effect for the ensuing eight years unless earlier readopted.

(c) Upon the expiration of a regional plan under this section, the regional plan shall be of no further effect in any other proceeding.

(d) All regional plans that expire after July 1, 1991 shall be readopted to be consistent with planning goals and shall follow the review process referred to in No. 200 of the Acts the of 1987 Adj. Sess. (1988). (Added 1981, No. 132 (Adj. Sess.), § 8; amended 1987, No. 200 (Adj. Sess.), § 25, eff. July 1, 1989;

1989, No. 101, §§ 2, 3; 2009, No. 146 (Adj. Sess.), § G5, eff. June 1, 2010; 2011, No. 52, § 30, eff. July 1, 2012.)

§ 4349. Regional plan; adoption by municipality

(a) If a regional planning commission prepares and adopts a regional plan, the regional plan or a portion thereof may then be adopted by the legislative body of any member municipality as its plan in accordance with subchapter 5 of this chapter.

(b) The legislative body of any municipality may designate the regional planning commission of a region of which such municipality is a member as the planning commission of such municipality, and, if so designated, the regional planning commission shall thereafter act as the planning commission of such municipality until a planning commission is created under section 4321 of this title or until such regional planning commission notifies such legislative body, in writing, that it no longer will so act. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4350. Review and consultation regarding municipal planning effort

(a) A regional planning commission shall consult with its municipalities with respect to the municipalities' planning efforts, ascertaining the municipalities' needs as individual municipalities and as neighbors in a region, and identifying the assistance that ought to be provided by the regional planning commission. As a part of this consultation, the regional planning commission, after public notice, shall review the planning process of its member municipalities at least twice during a eight-year period, or more frequently on request of the municipality, and shall so confirm when a municipality:

(1) is engaged in a continuing planning process that, within a reasonable time, will result in a plan which is consistent with the goals contained in section 4302 of this title; and

(2) is maintaining its efforts to provide local funds for municipal and regional planning purposes.

(b)

(1) As part of the consultation process, the commission shall consider whether a municipality has adopted a plan. In order to obtain or retain confirmation of the planning process after January 1, 1996, a municipality must have an approved plan. A regional planning commission shall review and approve plans of its member municipalities, when approval is requested and warranted. Each review shall include a public hearing which is noticed at least 15 days in advance by posting in the office of the municipal clerk and at least one public place within the municipality and by publication in a newspaper or newspapers of general publication in the region affected. The commission shall approve a plan if it finds that the plan:

(A) is consistent with the goals established in section 4302 of this title;

(B) is compatible with its regional plan;

(C) is compatible with approved plans of other municipalities in the region; and

(D) contains all the elements included in subdivisions 4382(a)(1)-(10) of this title.

(2) Prior to January 1, 1996, if a plan contains all the elements required by subdivisions 4382(a)(1)-(10) and is submitted to the regional planning commission for approval but is not approved, it shall be conditionally approved.

(c) A commission shall give approval or disapproval to a municipal plan or amendment within two months of its receipt following a final hearing held pursuant to section 4385 of this title. The fact that the plan is approved after the deadline shall not invalidate the plan. If the commission disapproves the plan or amendment, it shall state its reasons in writing and, if appropriate, suggest acceptable modifications. Submissions for approval that follow a disapproval shall receive approval or disapproval within 45 days.

(d) The commission shall file any adopted plan or amendment with the department of economic, housing and community development within two weeks of receipt from the municipality. Failure on the part of the commission to file the plan shall not invalidate the plan.

(e) During the period of time when a municipal planning process is confirmed:

(1) The municipality's plan will not be subject to review by the commissioner of department of economic, housing and community development under section 4351 of this title.

(2) State agency plans adopted under chapter 67 of Title 3 shall be compatible with the municipality's approved plan. This provision shall not apply to plans that are conditionally approved under this chapter.

(3) The municipality may levy impact fees on new development within its borders, according to the provisions of chapter 131 of this title.

(4) The municipality shall be eligible to receive additional funds from the municipal and regional planning fund.

(f) Confirmation and approval decisions under this section shall be made by majority vote of the commissioners representing municipalities, in accordance with the bylaws of the regional planning commission. (Added 1987, No. 200 (Adj. Sess.), § 15, eff. July 1, 1989; 1989, No. 101, § 4; 1989, No. 280 (Adj. Sess.), § 5; 2003, No. 115 (Adj. Sess.), § 87; 2009, No. 146 (Adj. Sess.), § G5, eff. June 1, 2010.)

§ 4351. Review by commissioner of economic, housing and community development

(a) The commissioner of the department of economic, housing and community development shall establish guidelines for the provision of affordable housing by municipalities with plans that have not been approved under this chapter. These guidelines shall be consistent with goals established in section 4302 of this title.

(b) On a periodic basis, commencing in 1996, the commissioner of the department of economic, housing and community development, or a designee, shall review the planning process of municipalities that do not have approved plans, for compliance with the affordable housing criteria established under this section and shall issue a report to the municipality and to the regional planning commission. Each review shall include a public hearing which is noticed at least 15 days in advance by posting in the office of the municipal clerk and at least one public place within the municipality and by publication in a newspaper or newspapers of general publication in the region affected. (Added 1987, No. 200 (Adj. Sess.), § 15a, eff. July 1, 1989; amended 1989, No. 101, § 5; 1989, No. 280 (Adj. Sess.), § 6; 2003, No. 115 (Adj. Sess.), § 88; 2009, No. 146 (Adj. Sess.), § G5, eff. June 1, 2010.)

4. REGIONAL DEVELOPMENT

§ 4361. Repealed. 1981, No. 132 (Adj. Sess.), § 18.

§ 4362. Appropriations

(a) For the purposes outlined in section 4361 of this title, regional planning commissions may receive and expend monies from any source, including, without limitation, the participating municipalities and the agency of commerce and community development, out of funds appropriated to that office for this purpose. Municipalities may appropriate to and expend funds for regional planning commissions for this purpose. Direct financial assistance from the state to regional planning commissions for the purposes outlined in section 4361 of this title is restricted to fifty percent of the annual operating expenses of the commission.

(b) Regional planning commissions requesting state aid from the agency of commerce and community development shall submit annual reports to the agency of their activities and shall comply with such rules, regulations and standards as the agency shall prescribe to determine eligibility for state financial assistance, and, further, shall submit to the agency, or must be in the process of preparing, a program for the economic development of the region which is consistent with the regional plan for the region which has been adopted, or which is in the process of preparation. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 6, eff. April 11, 1972; 1995, No. 190 (Adj. Sess.), § 1(a).)

5. MUNICIPAL DEVELOPMENT PLAN

§ 4381. Authorization

Any municipality may undertake a comprehensive planning program including related preliminary planning and engineering studies, and prepare, maintain and implement a plan within its jurisdiction in accordance with this chapter. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1987, No. 200 (Adj. Sess.), § 9, eff. July 1, 1989; 1989, No. 280 (Adj. Sess.), § 4b.)

§ 4382. The plan for a municipality

(a) A plan for a municipality may be consistent with the goals established in section 4302 of this title and compatible with approved plans of other municipalities in the region and with the regional plan and shall include the following:

(1) A statement of objectives, policies and programs of the municipality to guide the future growth and development of land, public services and facilities, and to protect the environment;

(2) A land use plan, consisting of a map and statement of present and prospective land uses, indicating those areas proposed for forests, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. § 8), residence, commerce, industry, public and semi-public uses and open spaces reserved for flood plain, wetland protection, or other conservation purposes; and setting forth the present and prospective location, amount, intensity and character of such land uses and the appropriate timing or sequence of land development activities in relation to the provision of necessary community facilities and service;

(3) A transportation plan, consisting of a map and statement of present and prospective transportation and circulation facilities showing existing and proposed highways and streets by type and character of improvement, and where pertinent, parking facilities, transit routes, terminals, bicycle paths and trails, scenic roads, airports, railroads and port facilities, and other similar facilities or uses, with indications of priority of need;

(4) A utility and facility plan, consisting of a map and statement of present and prospective community facilities and public utilities showing existing and proposed educational, recreational and other public sites, buildings and facilities, including hospitals, libraries, power generating plants and transmission lines, water supply, sewage disposal, refuse disposal, storm drainage and other similar facilities and activities, and recommendations to meet future needs for community facilities and services, with indications of priority of need, costs and method of financing;

(5) A statement of policies on the preservation of rare and irreplaceable natural areas, scenic and historic features and resources;

(6) An educational facilities plan consisting of a map and statement of present and projected uses and the local public school system;

(7) A recommended program for the implementation of the objectives of the development plan;

(8) A statement indicating how the plan relates to development trends and plans for adjacent municipalities, areas and the region developed under this title;

(9) An energy plan, including an analysis of energy resources, needs, scarcities, costs and problems within the municipality, a statement of policy on the conservation of energy, including programs, such as thermal integrity standards for buildings, to implement that policy, a statement of policy on the development of renewable energy resources, a statement of policy on patterns and densities of land use likely to result in conservation of energy;

(10) A housing element that shall include a recommended program for addressing low and moderate income persons' housing needs as identified by the regional planning commission pursuant to subdivision 4348a(a)(9) of this title. The program should account for permitted accessory dwelling units, as defined in subdivision 4412(1)(E) of this title, which provide affordable housing.

Subdivision (11) effective July 1, 2012.

(11) An economic development element that describes present economic conditions and the location, type, and scale of desired economic development, and identifies policies, projects, and programs necessary to foster economic growth.

(b) The maps called for by this section may be incorporated on one or more maps, and may be referred to in each separate statement called for by this section.

(c) Where appropriate, and to further the purposes of subsection 4302(b) of this title, a municipal plan shall be based upon inventories, studies, and analyses of current trends and shall consider the probable social and economic consequences of the proposed plan. Such studies may consider or contain, but not be limited to:

(1) population characteristics and distribution, including income and employment;

(2) the existing and projected housing needs by amount, type, and location for all economic groups within the municipality and the region;

(3) existing and estimated patterns and rates of growth in the various land use classifications, and desired patterns and rates of growth in terms of the community's ability to finance and provide public facilities and services.

(d) Where appropriate, a municipal plan may provide for the use of "transit passes" or other evidence of reduced demand for parking spaces in lieu of parking spaces. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 7, eff. April 11, 1972; 1975, No. 236 (Adj. Sess.), § 2; 1979, No. 174 (Adj. Sess.), § 8; 1985, No. 188 (Adj. Sess.), § 10; 1987, No. 200 (Adj. Sess.), §§ 8, 10, eff. July 1, 1989; 1989, No. 280 (Adj. Sess.), § 7; 1991, No. 130 (Adj. Sess.), § 2; 1995, No. 122 (Adj. Sess.), § 2, eff. Apr. 25, 1996; 2003, No. 115 (Adj. Sess.), § 89; 2011, No. 52, § 33, eff. July 1, 2012.)

§ 4383. Repealed. 1987, No. 200 (Adj. Sess.), § 10, eff. July 1, 1989.

§ 4384. Preparation of plan; hearings by planning commission

(a) A municipality may have a plan. Any plan for a municipality shall be prepared by the planning commission of that municipality. At the outset of the planning process and throughout the process, planning commissions shall solicit the participation of local citizens and organizations by holding informal working sessions that suit the needs of local people. An amendment or repeal of a plan may be prepared by or at the direction of the planning commission or by any other person or body.

(b) If any person or body other than a municipal planning commission prepares an amendment to a plan, that person or body shall submit the amendment in writing and all supporting documents to the municipal planning commission. The planning commission may then proceed as if the amendment had been prepared by the commission. However, if the proposed amendment is supported by a petition signed by not less than five percent of the voters of the municipality, the planning commission shall correct any technical deficiency and shall, without otherwise changing the amendment, promptly proceed in accordance with subsections (c) through (f) of this section as if it had been prepared by the commission.

(c) When considering an amendment to a plan, the planning commission shall prepare a written report on the proposal. The report shall address the extent to which the plan, as amended, is consistent with the goals established in section 4302 of this title. If the proposal would alter the designation of any land area, the report should cover the following points:

(1) The probable impact on the surrounding area, including the effect of any resulting increase in traffic, and the probable impact on the overall pattern of land use.

(2) The long-term cost or benefit to the municipality, based upon consideration of the probable impact on:

(A) the municipal tax base; and

(B) the need for public facilities.

(3) The amount of vacant land which is:

(A) already subject to the proposed new designation; and

(B) actually available for that purpose, and the need for additional land for that purpose.

(4) The suitability of the area in question for the proposed purpose, after consideration of:

(A) appropriate alternative locations;

(B) alternative uses for the area under consideration; and

(C) the probable impact of the proposed change on other areas similarly designated.

(5) The appropriateness of the size and boundaries of the area proposed for change, with respect to the area required for the proposed use, land capability, and existing development in the area.

(d) The planning commission shall hold at least one public hearing within the municipality after public notice on any proposed plan or amendment.

(e) At least 30 days prior to the first hearing, a copy of the proposed plan or amendment and the written report shall be delivered with proof of receipt, or mailed by certified mail, return receipt requested, to each of the following:

(1) the chairperson of the planning commission of each abutting municipality, or in the absence of any planning commission in an abutting municipality, to the clerk of that municipality;

(2) the executive director of the regional planning commission of the area in which the municipality is located;

(3) the department of housing and community affairs within the agency of commerce and community development; and

(4) business, conservation, low income advocacy and other community or interest groups or organizations that have requested notice in writing prior to the date the hearing is warned.

Any of the foregoing bodies, or their representatives, may thereafter submit comments on the proposed plan or amendment to the planning commission, and may appear and be heard in any further proceeding with respect to the adoption of the proposed plan or amendment. The planning commission shall demonstrate that it has solicited comment from planning commissions of abutting municipalities and from the regional planning commission with respect to the compatibility of their respective plans with its own plan.

(f) The planning commission may make revisions to the proposed plan or amendment and to any written report, and shall thereafter submit the proposed plan or amendment and any written report to the legislative body of the municipality. However, if requested by the legislative body, or if a proposed amendment was supported by a petition signed by not less than five percent of the voters of the municipality, the planning commission shall promptly submit the amendment, with changes only to correct technical deficiencies, to the legislative body of the municipality, together with any recommendation or opinion it considers appropriate. Simultaneously with the submission, the planning commission shall file with the clerk of the municipality a copy of the proposed plan or amendment, and any written report, for public review. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 8, eff. April 11, 1972; 1981, No. 132 (Adj. Sess.), § 9; 1987, No. 20

0 (Adj. Sess.), § 11, eff. July 1, 1989; 1989, No. 280 (Adj. Sess.), § 8; 1995, No. 190 (Adj. Sess.), § 1(a).)

§ 4385. Adoption and amendment of plans; hearing by legislative body

(a) Not less than 30 nor more than 120 days after a proposed plan or amendment is submitted to the legislative body of a municipality under section 4384 of this title, the legislative body of a municipality with a population of 2,500 persons, or less shall hold the first of one or more public hearings, after public

notice, on the proposed plan or amendment, and shall make copies of the proposal and any written report by the planning commission available to the public on request. A municipality with a population of more than 2,500 persons shall hold two or more such hearings. Failure to hold a hearing within the 120 days shall not invalidate the adoption of the plan or amendment.

(b) The legislative body may change the proposed plan or amendment, but shall not do so less than 15 days prior to the final public hearing. If the legislative body at any time makes substantial changes in the concept, meaning or extent of the proposed plan or amendment, it shall warn a new public hearing or hearings under subsection (a) of this section.

If any part of the proposal is changed, the legislative body, at least 15 days prior to the hearing shall file a copy of the changed proposal with the clerk of the municipality, with any individual or organization requesting a copy in writing, and with the planning commission. The planning commission shall submit to the legislative body at or prior to the public hearing a report that analyzes the extent to which the changed proposal, when taken together with the rest of the plan, is consistent with the legislative goals established in section 4302 of this title.

(c) A plan of a municipality or an amendment thereof shall be adopted by a majority of the members of its legislative body at a meeting which is held after the final public hearing. If, however, at a regular or special meeting of the voters duly warned and held as provided in 17 V.S.A. chapter 55, a municipality elects to adopt or amend municipal plans by Australian ballot, that procedure shall then apply unless rescinded by the voters at a regular or special meeting similarly warned and held. If the proposed plan or amendment is not adopted so as to take effect within one year of the date of the final hearing of the planning commission, it shall be considered rejected by the municipality. Plans and amendments shall be effective upon adoption, and shall be provided to the regional planning commission and to the commissioner of housing and community affairs within 30 days of adoption. If a municipality wishes its plan or plan amendment to be eligible for approval under the provisions

of section 4350 of this title, it shall request approval. The request for approval may be before or after adoption of the plan by the municipality, at the option of the municipality.

(d) Plans may be reviewed from time to time and may be amended in the light of new developments and changed conditions affecting the municipality. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1981, No. 132 (Adj. Sess.), § 10; 1987, No. 200 (Adj. Sess.), §§ 12, 13, eff. July 1, 1989; 1989, No. 280 (Adj. Sess.), § 9.)

§ 4386. Repealed. 1971, No. 257 (Adj. Sess.), § 24, eff. April 11, 1972.

§ 4387. Readoption of plans

(a) All plans, including all prior amendments, shall expire every five years unless they are readopted according to the procedures in section 4385 of this title.

(b) A municipality may readopt any plan that has expired or is about to expire. Prior to any readoption, the planning commission shall review and update the information on which the plan is based, and shall

consider this information in evaluating the continuing applicability of the plan. The readopted plan shall remain in effect for the ensuing five years unless earlier readopted.

(c) Upon the expiration of a plan, all bylaws and capital budgets and programs then in effect shall remain in effect, but shall not be amended until a plan is in effect.

(d) The fact that a plan has not been approved shall not make it inapplicable, except as specifically provided by this chapter. Bylaws, capital budgets and programs shall remain in effect, even if the plan has not been approved. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1975, No. 164 (Adj. Sess.), § 4; 1981, No. 132 (Adj. Sess.), § 11; 1987, No. 200 (Adj. Sess.), § 14, eff. July 1, 1989; 1989, No. 280 (Adj. Sess.), § 10.)

6. IMPLEMENTATION OF PLAN

§ 4401. Purpose and authority

Any municipality that has adopted and has in effect a plan and has created a planning commission under this chapter may implement the plan by adopting, amending and enforcing any or all of the regulatory and nonregulatory tools provided for in this chapter. All such regulatory and nonregulatory tools shall be in conformance with the plan, shall be adopted for the purposes set forth in section 4302 of this title, and shall be in accord with the policies set forth therein. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 5; 1971, No. 257 (Adj. Sess.), §§ 9, 10, eff. April 11, 1972; 1973, No. 261 (Adj. Sess.), § 4, eff. July 1, 1974; 1975, No. 164 (Adj. Sess.), § 5; 1983, No. 249 (Adj. Sess.), § 4; 1993, No. 232 (Adj. Sess.), § 1, eff. March 15, 1995.; 2003, No. 115 (Adj. Sess.), § 91.)

§ 4402. Bylaws and regulatory implementation tools authorized

A municipality may adopt regulatory tools, including the following specific regulatory tools which are more fully described in subchapter 7 of this chapter:

(1) Zoning bylaws.

(2) Site plan bylaws.

(3) Subdivision bylaws.

(4) Unified development bylaws.

(5) Official map.

(6) Impact fees.

(7) Phasing.

(8) Transfer of development rights.

(9) Special or freestanding bylaws. (Added 2003, No. 115 (Adj. Sess.), § 92.)

§ 4403. Nonregulatory implementation tools

A municipality may utilize the following tools, and other tools not specifically listed, in conformance with the municipal plan and for the purposes established in section 4302 of this title, alone or in conjunction with regulatory tools described in section 4402 of this title.

(1) Capital budget and program. A municipality may adopt a capital budget and five-year program, pursuant to section 4430 of this title.

(2) Tax increment financing. Pursuant to chapter 53 of this title, a municipality may create within its jurisdiction one or more tax increment financing districts.

(3) Tax stabilization contracts. Pursuant to sections 4969 and 4985 of Title 32, a municipality may enter into tax stabilization contracts.

(4) Purchase or acceptance of development rights. A municipality may purchase or accept development rights as a method to implement its plan, pursuant to chapter 155 of Title 10.

(5) Plans supporting the municipal plan. A municipality may develop supporting plans and may incorporate these plans into the municipal plan pursuant to the process described in section 4385 of this title.

(6) Advisory commissions. For the purposes of this chapter, the term "advisory commissions" includes advisory committees. A municipality may form commissions that are composed of persons with particular expertise or interest to assist with implementation of the plan in areas such as design review, historic preservation, housing, and conservation. (Added 2003, No. 115 (Adj. Sess.), § 93.)

§§ 4404-4409. Repealed. 2003, No. 115 (Adj. Sess.), § 119(c).

7. BYLAWS

§ 4410. Regulatory implementation of the municipal plan

A municipality that has adopted a plan through its bylaws may define and regulate land development in any manner that the municipality establishes in its bylaws, provided those bylaws are in conformance with the plan and are adopted for the purposes set forth in section 4302 of this title. In its bylaws, a municipality may utilize any or all of the tools provided in this subchapter and any other regulatory tools or methods not specifically listed. However, no bylaws shall directly conflict with sections 4412 and 4413 of this title and subchapters 9, 10, and 11 of this title. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4411. Zoning bylaws

(a) A municipality may regulate land development in conformance with its adopted municipal plan and for the purposes set forth in section 4302 of this title to govern the use of land and the placement, spacing, and size of structures and other factors specified in the bylaws related to public health, safety, or welfare. Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development, including the following:

(1) Specific uses of land and shoreland facilities;

(2) Dimensions, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures;

(3) Areas and dimensions of land to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures;

(4) Timing or sequence of growth, density of population, and intensity of use;

(5) Uses within a river corridor and buffer, as those terms are defined in 10 V.S.A. §§ 1422 and 1427.

(b) All zoning bylaws shall apply to all lands within the municipality other than as specifically limited or exempted in accordance with specific standards included within those bylaws and in accordance with the provisions of this chapter. The provisions of those bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described by a zoning map made part of the bylaws. The land use map required pursuant to subdivision 4382(a)(2) of this title of any municipality may be designated as the zoning map except in cases in which districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the municipal plan land use map. All provisions shall be uniform for each class of use or structure within each district, except that additional classifications may be made within any district for any or all of the following:

(1) To make transitional provisions at and near the boundaries of districts.

(2) To regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.

(3) To regulate, restrict, or prohibit uses or structures at or near any of the following:

(A) Major thoroughfares, their intersections and interchanges, and transportation arteries.

(B) Natural or artificial bodies of water.

(C) Places of relatively steep slope or grade.

(D) Public buildings and public grounds.

(E) Aircraft and helicopter facilities.

(F) Places having unique patriotic, ecological, historical, archaeological, or community interest or value, or located within scenic or design control districts.

(G) Flood, or other hazard areas and other places having a special character or use affecting or affected by their surroundings.

(H) River corridors, river corridor protection areas and buffers, as the term “buffer” is defined in 10 V.S.A. § 1422.

(4) To regulate, restrict, or prohibit uses or structures in overlay districts, as set forth in subdivision 4414(2) of this title. (Added 2003, No. 115 (Adj. Sess.), § 95; amended 2009, No. 110 (Adj. Sess.), § 6; amended 2011, No. 138 (Adj. Sess.), § 12.)

§ 4412. Required provisions and prohibited effects

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(1) Equal treatment of housing and required provisions for affordable housing.

(A) No bylaw nor its application by an appropriate municipal panel under this chapter shall have the effect of excluding housing that meets the needs of the population as determined in the housing element of its municipal plan as required under subdivision 4382(a)(10) of this title or the effect of discriminating in the permitting of housing as specified in 9 V.S.A. § 4503.

(B) Except as provided in subdivisions 4414(1)(E) and (F) of this title, no bylaw shall have the effect of excluding mobile homes, modular housing, or prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded. A municipality may establish specific site standards in the bylaws to regulate individual sites within preexisting mobile home parks with regard to distances between structures and other standards as necessary to ensure public health, safety, and welfare, provided the standards do not have the effect of prohibiting the replacement of mobile homes on existing lots.

(C) No bylaw shall have the effect of excluding mobile home parks, as defined in 10 V.S.A. chapter 153, from the municipality.

(D) Bylaws shall designate appropriate districts and reasonable regulations for multiunit or multifamily dwellings. No bylaw shall have the effect of excluding these multiunit or multifamily dwellings from the municipality.

(E) No bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

(i) The property has sufficient wastewater capacity.

(ii) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.

(iii) Applicable setback, coverage, and parking requirements specified in the bylaws are met.

(F) Nothing in subdivision (1)(E) of this section shall be construed to prohibit:

(i) a bylaw that is less restrictive of accessory dwelling units;

(ii) a bylaw that requires conditional use review for one or more of the following that is involved in creation of an accessory dwelling unit:

(I) a new accessory structure;

(II) an increase in the height or floor area of the existing dwelling; or

(III) an increase in the dimensions of the parking areas.

(G) A residential care home or group home to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so considered if it is located within 1,000 feet of another existing or permitted such home.

(2) Existing small lots. Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of any bylaw, including an interim bylaw, may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms to minimum lot size requirements of the new bylaw or interim bylaw.

(A) A municipality may prohibit development of a lot if either of the following applies:

(i) the lot is less than one-eighth acre in area; or

(ii) the lot has a width or depth dimension of less than 40 feet.

(B) The bylaw may provide that if an existing small lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:

(i) The lots are conveyed in their preexisting, nonconforming configuration.

(ii) On the effective date of any bylaw, each lot was developed with a water supply and wastewater disposal system.

(iii) At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.

(iv) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. chapter 64.

(C) Nothing in this subdivision (2) shall be construed to prohibit a bylaw that is less restrictive of development of existing small lots.

(3) Required frontage on, or access to, public roads, class 4 town highways or public waters.

Land development may be permitted on lots that do not have frontage either on a public road, class 4 town highway, or public waters, provided that access through a permanent easement or right-of-way has been approved in accordance with standards and process specified in the bylaws. This approval shall be pursuant to subdivision bylaws adopted in accordance with section 4418 of this title, or where subdivision bylaws have not been adopted or do not apply, through a process and pursuant to standards defined in bylaws adopted for the purpose of assuring safe and adequate access. Any permanent easement or right-of-way providing access to such a road or waters shall be at least 20 feet in width.

(4) Protection of home occupations. No bylaw may infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

(5) Child care. A "family child care home or facility" as used in this subdivision means a home or facility where the owner or operator is to be licensed or registered by the state for child care. A family child care home serving six or fewer children shall be considered to constitute a permitted single-family residential use of property. A family child care home serving no more than six full-time children and four part-time children, as defined in subdivision 33 V.S.A. § 4902(3)(A), shall be considered to constitute a permitted use of property but may require site plan approval based on local zoning requirements. A family child care facility serving more than six full-time and four part-time children may, at the discretion of the municipality, be subject to all applicable municipal bylaws.

(6) Heights of renewable energy resource structures. The height of wind turbines with blades less than 20 feet in diameter, or rooftop solar collectors less than 10 feet high on sloped roofs, any of which are mounted on complying structures, shall not be regulated unless the bylaws provide specific standards for regulation. For the purpose of this subdivision, a sloped roof means a roof having a slope of more than

five degrees. In addition, the regulation of antennae that are part of a telecommunications facility, as defined in 30 V.S.A. § 248a, may be exempt from review under this chapter according to the provisions of that section.

(7) Nonconformities. All bylaws shall define how nonconformities will be addressed, including standards for nonconforming uses, nonconforming structures, and nonconforming lots.

(A) To achieve the purposes of this chapter set forth in section 4302 of this title, municipalities may regulate and prohibit expansion and undue perpetuation of nonconformities. Specifically, a municipality, in its bylaws, may:

(i) Specify a time period that shall constitute abandonment or discontinuance of that nonconforming use, provided the time period is not less than six months.

(ii) Specify the extent to which, and circumstances under which, a nonconformity may be maintained or repaired.

(iii) Specify the extent to which, and circumstances under which, a nonconformity may change or expand.

(iv) Regulate relocation or enlargement of a structure containing a nonconforming use.

(v) Specify the circumstances in which a nonconformity that is destroyed may be rebuilt.

(vi) Specify other appropriate circumstances in which a nonconformity must comply with the bylaws.

(B) If a mobile home park, as defined in 10 V.S.A. chapter 153, is a nonconformity pursuant to a municipality's bylaws, the entire mobile home park shall be treated as a nonconformity under those bylaws, and individual lots within the mobile home park shall in no event be considered nonconformities. Unless the bylaws provide specific standards as described in subdivision (1)(B) of this section, where a mobile home park is a nonconformity under bylaws, its status regarding conformance or nonconformance shall apply to the parcel as a whole, and not to any individual mobile home lot within the park. An individual mobile home lot that is vacated shall not be considered a discontinuance or abandonment of a nonconformity.

(C) Nothing in this section shall be construed to restrict the authority of a municipality to abate public nuisances or to abate or remove public health risks or hazards.

(8)

(A) Communications antennae and facilities. Except to the extent bylaws protect historic landmarks and structures listed on the state or national register of historic places, no permit shall be required for placement of an antenna used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the area of the largest face of the antenna is not more than 15 square feet, and if the antenna and any mast support do not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

(B) If an antenna structure is less than 20 feet in height and its primary function is to transmit or receive communication signals for commercial, industrial, institutional, nonprofit or public purposes, it shall not be regulated under this chapter if it is located on a structure located within the boundaries of a downhill ski area and permitted under this chapter. For the purposes of this subdivision, "downhill ski area" means an area with trails for downhill skiing served by one or more ski lifts and any other areas within the boundaries of the ski area and open to the public for winter sports.

(C) The regulation of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter when and to the extent jurisdiction is assumed by the public service board according to the provisions of that section.

(D) A municipality may regulate communications towers, antennae and related facilities in its bylaws provided that such regulations do not have the purpose or effect of being inconsistent with subdivisions (A) through (C) of this subdivision (8).

(9) De minimis telecommunications impacts. An officer or entity designated by the municipality shall review telecommunications facilities applications, and upon determining that a particular application will impose no impact or de minimis impact upon any criteria established in the bylaws, shall approve the application. (Added 2003, No. 115 (Adj. Sess.), § 95; amended 2005, No. 172 (Adj. Sess.), § 5, eff. May 22, 2006; 2007, No. 79, § 15; 2007, No. 79, § 15, eff. June 9, 2007; 2009, No. 54, § 45, eff. June 1, 2009; 2011, No. 53, § 14e, eff. May 27, 2011; amended 2011, No. 137 (Adj. Sess.), § 7; amended 2011, No. 155 (Adj. Sess.), § 14; amended 2011, No. 170 (Adj. Sess.), § 16e.)

§ 4413. Limitations on municipal bylaws

(a) The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

(1) State- or community-owned and operated institutions and facilities.

(2) Public and private schools and other educational institutions certified by the state department of education.

(3) Churches and other places of worship, convents, and parish houses.

(4) Public and private hospitals.

(5) Regional solid waste management facilities certified under 10 V.S.A. chapter 159.

(6) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

(b) A bylaw under this chapter shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.

(c) Except as otherwise provided by this section and by 10 V.S.A. § 1976, if any bylaw is enacted with respect to any land development that is subject to regulation under state statutes, the more stringent or restrictive regulation applicable shall apply.

(d) A bylaw under this chapter shall not regulate accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under 10 V.S.A. §§ 1021(f) and 1259(f) and 6 V.S.A. § 4810.

(1) For purposes of this section, "farm structure" means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

(2) A person shall notify a municipality of the intent to build a farm structure and shall abide by setbacks approved by the secretary of agriculture, food and markets. No municipal permit for a farm structure shall be required.

(3) A municipality may enact a bylaw that imposes forest management practices resulting in a change in a forest management plan for land enrolled in the use value appraisal program pursuant to 32 V.S.A. chapter 124 only to the extent that those changes are silviculturally sound, as determined by the commissioner of forests, parks and recreation, and protect specific natural, conservation, aesthetic, or wildlife features in properly designated zoning districts. These changes also must be compatible with 32 V.S.A. § 3755.

(e) A bylaw enacted under this chapter shall be subject to the restrictions created under section 2295 of this title, with respect to the limits on municipal power to regulate hunting, fishing, trapping, and other activities specified under that section.

(f) This section shall apply in every municipality, notwithstanding any existing bylaw to the contrary.

(g) Notwithstanding any provision of law to the contrary, a bylaw adopted under this chapter shall not:

(1) Regulate the installation, operation, and maintenance, on a flat roof of an otherwise complying structure, of a solar energy device that heats water or space or generates electricity. For the purpose of this subdivision, “flat roof” means a roof having a slope less than or equal to five degrees.

(2) Prohibit or have the effect of prohibiting the installation of solar collectors not exempted from regulation under subdivision (1) of this subsection, clotheslines, or other energy devices based on renewable resources.

Subsection (h) repealed effective July 1, 2014.

(h)

(1) Except as necessary to ensure compliance with the national flood insurance program, a bylaw under this chapter shall not regulate any of the following:

(A) An ancillary improvement that does not exceed a footprint of 300 square feet and a height of 10 feet.

(B) The following improvements associated with the construction or installation of a communications line:

(i) The attachment of a new or replacement cable or wire to an existing electrical distribution or communications distribution pole.

(ii) The replacement of an existing electrical distribution or communications distribution pole with a new pole, so long as the new pole is not more than 10 feet taller than the pole it replaces.

(2) For purposes of this subsection:

(A) "Ancillary improvement" shall have the same definition as is established in 30 V.S.A. § 248a(b).

(B) "Communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes. (Added 2003, No. 115 (Adj. Sess.), § 95; amended 2009, No. 45, § 15c, eff. May 27, 2009; 2011, No. 53, § 14, eff. May 27, 2011.)

§ 4414. Zoning; permissible types of regulations

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

(1) Zoning districts. A municipality may define different and separate zoning districts, and identify within these districts which land uses are permitted as of right, and which are conditional uses requiring review and approval, including the districts set forth in this subdivision (1).

(A) Downtown, village center, new town center, and growth center districts. The definition or purpose stated for local downtown, village center, new town center, or growth center zoning districts should conform with the applicable definitions in section 2791 of this title. Municipalities may adopt downtown, village center, new town center, or growth center districts without seeking state designation under chapter 76A of this title. A municipality may adopt a manual of graphic or written design guidelines to assist applicants in the preparation of development applications. The following objectives should guide the establishment of boundaries, requirements, and review standards for these districts:

(i) To create a compact settlement oriented toward pedestrian activity and including an identifiable neighborhood center, with consistently higher densities than those found in surrounding districts.

(ii) To provide for a variety of housing types, jobs, shopping, services, and public facilities with residences, shops, workplaces, and public buildings interwoven within the district, all within close proximity.

(iii) To create a pattern of interconnecting streets and blocks, consistent with historic settlement patterns, that encourages multiple routes from origins to destinations.

(iv) To provide for a coordinated transportation system with a hierarchy of appropriately designed facilities for pedestrians, bicycles, public transit, and automotive vehicles.

(v) To provide for natural features and undisturbed areas that are incorporated into the open space of the neighborhood as well as historically compatible squares, greens, landscaped streets, and parks woven into the pattern of the neighborhood.

(vi) To provide for public buildings, open spaces, and other visual features that act as landmarks, symbols, and focal points for community identity.

(vii) To ensure compatibility of buildings and other improvements as determined by their arrangement, building bulk, form, design, character, and landscaping to establish a livable, harmonious, and diverse environment.

(viii) To provide for public and private buildings that form a consistent, distinct edge, are oriented toward streets, and define the border between the public street space and the private block interior.

(B) Agricultural, rural residential, forest, and recreational districts.

deemed necessary to safeguard certain areas from urban or suburban development and to encourage that development in other areas of the municipality or region, the following districts may be created:

(i) Agricultural or rural residential districts, permitting all types of agricultural uses and prohibiting all other land development except low density residential development.

(ii) Forest districts, permitting commercial forestry and related uses and prohibiting all other land development.

(iii) Recreational districts, permitting camps, ski areas, and related recreational facilities, including lodging for transients and seasonal residents, and prohibiting all other land development except construction of residences for occupancy by caretakers and their families.

(C) Airport hazard area. In accordance with 5 V.S.A. chapter 17, any municipality may adopt special bylaws governing the use of land, location, and size of buildings and density of population within a distance of two miles from the boundaries of an airport under an approach zone and for a distance of one mile from the boundaries of the airport elsewhere. The designation of that area and the bylaws applying within that area shall be in accord with applicable airport zoning guidelines, if any, adopted by the Vermont transportation board.

(D) Shorelands.

(i) A municipality may adopt bylaws to regulate shorelands as defined in 10 V.S.A. § 1422 to prevent and control water pollution; preserve and protect wetlands and other terrestrial and aquatic wildlife habitat; conserve the scenic beauty of shorelands; minimize shoreline erosion; reserve public access to public waters; and achieve other municipal, regional, or state shoreland conservation and development objectives.

(ii) Shoreland bylaws may regulate the design and maintenance of sanitary facilities; regulate filling of and other adverse alterations to wetlands and other wildlife habitat areas; control building location; require the provision and maintenance of vegetation; require provisions for access to public waters for all residents and owners of the development; and impose other requirements authorized by this chapter.

(E) Design review districts. Bylaws may contain provisions for the establishment of design review districts. Prior to the establishment of such a district, the planning commission shall prepare a report describing the particular planning and design problems of the proposed district and setting forth a design plan for the areas which shall include recommended planning and design criteria to guide future development. The planning commission shall hold a public hearing, after public notice, on that report. After this hearing, the planning commission may recommend to the legislative body a design review district as a bylaw amendment. A design review district may be created for any area containing structures of historical, architectural, or cultural merit, and other areas in which there is a concentration of community interest and participation such as a central business district, civic center, or a similar grouping or focus of activities. These areas may include townscape areas that resemble in important aspects the earliest permanent settlements, including a concentrated urban settlement with striking vistas, views extending across open fields and up to the forest edge, a central focal point and town green, and buildings of high architectural quality, including styles of the early 19th century. Within such a designated design review district, no structure may be erected, reconstructed, substantially altered, restored, moved, demolished, or changed in use or type of occupancy without approval of the plans by the appropriate municipal panel. A design review board may be appointed by the legislative body of the municipality, in accordance with section 4433 of this title, to advise any appropriate municipal panel.

(F) Local historic districts and landmarks.

(i) Bylaws may contain provisions for the establishment of historic districts and the designation of historic landmarks. Historic districts shall include structures and areas of historic or architectural significance and may include distinctive design or landscape characteristics, areas, and structures with a particular relationship to the historic and cultural values of the surrounding area, and structures whose exterior architectural features bear a significant relationship to the remainder of the structures or to the surrounding area. Bylaws may reference national and state registers of historic places, properties, and districts. A report prepared under section 4441 of this title with respect to the establishment of a local historic district or designation of an historic landmark shall contain a map that clearly delineates the boundaries of the local historic district or landmark, justification for the boundary, a description of the elements of the resources tha

t are integral to its historical, architectural, and cultural significance, and a statement of the significance of the local historic district or landmark.

(ii) With respect to external appearances and other than normal maintenance, no structure within a designated historic district may be rehabilitated, substantially altered, restored, moved, demolished, or changed, and no new structure within an historic district may be erected without approval of the plans therefor by the appropriate municipal panel. The panel shall consider the following in its review of plans submitted:

(I) The historic or architectural significance of the structure, its distinctive characteristics, and its relationship to the historic significance of the surrounding area.

(II) The relationship of the proposed changes in the exterior architectural features of the structure to the remainder of the structure and to the surrounding area.

(III) The general compatibility of the proposed exterior design, arrangement, texture, and materials proposed to be used.

(IV) Any other factors, including the environmental setting and aesthetic factors that the panel deems to be pertinent.

(iii) When an appropriate municipal panel is reviewing an application relating to an historic district, the panel:

(I) Shall be strict in its judgment of plans for those structures deemed to be valuable under subdivision (1)(F)(i) of this section, but is not required to limit new construction, alteration, or repairs to the architectural style of any one period, but may encourage compatible new design.

(II) If an application is submitted for the alteration of the exterior appearance of a structure or for the moving or demolition of a structure deemed to be significant under subdivision (1)(F)(i) of this section, shall meet with the owner of the structure to devise an economically feasible plan for the preservation of the structure.

(III) Shall approve an application only when the panel is satisfied that the proposed plan will not materially impair the historic or architectural significance of the structure or surrounding area.

(IV) In the case of a structure deemed to be significant under subdivision (1)(F)(i) of this section, may approve the proposed alteration despite subdivision (1)(F)(ii)(III) of this section if the panel finds either or both of the following: (aa) The structure is a deterrent to a major improvement program that will be of clear and substantial benefit to the municipality. (bb) Retention of the structure would cause undue financial hardship to the owner.

(iv) This subdivision (1)(F), and bylaws issued pursuant to it, shall apply to designation of individual landmarks as well as to designation of local historic districts. A landmark is any individual building, structure, or site that by itself has a special historic, architectural, or cultural value.

(v) The provisions of this subdivision (1)(F) shall not in any way apply to or affect buildings, structures, or land within the "Capitol complex," as defined in 29 V.S.A. chapter 6.

(G) River corridors and buffers. In accordance with section 4424 of this title, a municipality may adopt bylaws to protect river corridors and buffers, as those terms are defined in 10 V.S.A. §§ 1422 and 1427, in order to protect public safety; prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands and waterways; maintain and protect natural channel, streambank, and floodplain stability; minimize fluvial erosion and damage to property and transportation infrastructure; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and aesthetics; and achieve other municipal, regional, or state conservation and development objectives for river corridors and buffers. River corridor and buffer bylaws may regulate the design and location of development; control the location of buildings; require the provision and maintenance or reestablishment of vegetation, including no net loss of vegetation; require screening of development or use from waters; reserve existing public access to public waters; and impose other requirements authorized by this chapter.

(2) Overlay districts. Special districts may be created to supplement or modify the zoning requirements otherwise applicable in underlying districts in order to provide supplementary provisions for areas such as shorelands and floodplains, aquifer and source protection areas, ridgelines and scenic features, highway intersection, bypass, and interchange areas, or other features described in section 4411 of this title.

(3) Conditional uses.

(A) In any district, certain uses may be allowed only by approval of the appropriate municipal panel, if general and specific standards to which each allowed use must conform are prescribed in the appropriate bylaws and if the appropriate municipal panel, under the procedures in subchapter 10 of this chapter, determines that the proposed use will conform to those standards. These general standards shall require that the proposed conditional use shall not result in an undue adverse effect on any of the following:

(i) The capacity of existing or planned community facilities.

(ii) The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan.

(iii) Traffic on roads and highways in the vicinity.

(iv) Bylaws and ordinances then in effect.

(v) Utilization of renewable energy resources.

(B) The general standards set forth in subdivision (3)(A) of this section may be supplemented by more specific criteria, including requirements with respect to any of the following:

(i) Minimum lot size.

(ii) Distance from adjacent or nearby uses.

(iii) Performance standards, as under subdivision (5) of this section.

(iv) Criteria adopted relating to site plan review pursuant to section 4416 of this title.

(v) Any other standards and factors that the bylaws may include.

(C) One or more of the review criteria found in 10 V.S.A. § 6086 may be adopted as standards for use in conditional use review.

(4) Parking and loading facilities. A municipality may adopt provisions setting forth standards for permitted and required facilities for off-street parking and loading which may vary by district and by uses within each district. These bylaws may also include provisions covering the location, size, design, access, landscaping, and screening of those facilities. In determining the number and size of parking spaces required under these regulations, the appropriate municipal panel may take into account the existence or availability of employer "transit pass" and rideshare programs, public transit routes, and public parking spaces in the vicinity of the development.

(5) Performance standards. As an alternative or supplement to the listing of specific uses permitted in districts, including those in manufacturing or industrial districts, bylaws may specify acceptable standards or levels of performance that will be required in connection with any use. These bylaws shall specifically describe the levels of operation that are acceptable and not likely to affect adversely the use of the surrounding area by the emission of such dangerous or objectionable elements as noise, vibration, smoke, dust, odor, or other form of air pollution, heat, cold, dampness, electromagnetic, or other disturbance, glare, liquid, or solid refuse or wastes; or create any dangerous, injurious, noxious, fire, explosive, or other hazard. The land planning policies and development bylaws manual prepared pursuant to section 4304 of this title shall contain recommended forms of alternative performance standards, and the assistance of the agency of commerce and community development shall be available to any municipality that requests aid in the application or enforcement of these bylaws.

(6) Access to renewable energy resources. Any municipality may adopt zoning and subdivision bylaws to encourage energy conservation and to protect and provide access to, among others, the collection or conversion of direct sunlight, wind, running water, organically derived fuels, including wood and agricultural sources, waste heat, and geothermal sources, including those recommendations contained in the adopted municipal plan, regional plan, or both. The bylaw shall establish a standard of review in conformance with the municipal plan provisions required pursuant to subdivision 4382(a)(9) of this title.

(7) Inclusionary zoning. In order to provide for affordable housing, bylaws may require that a certain percentage of housing units in a proposed subdivision or planned unit development meets defined affordability standards, which may include lower income limits than contained in the definition of "affordable housing" in subdivision 4303(1) of this title and may contain different affordability percentages than contained in the definition of "affordable housing development" in subdivision 4303(2) of this title. These provisions, at a minimum, shall comply with all the following:

(A) Be in conformance with specific policies of the housing element of the municipal plan.

(B) Be determined from an analysis of the need for affordable rental and sale housing units in the community.

(C) Include development incentives that contribute to the economic feasibility of providing affordable housing units, such as density bonuses, reductions or waivers of minimum lot,

dimensional or parking requirements, reductions or waivers of applicable fees, or reductions or waivers of required public or nonpublic improvements.

(D) Require, through conditions of approval, that once affordable housing is built, its availability will be maintained through measures that establish income qualifications for renters or purchasers, promote affirmative marketing, and regulate the price, rent, and resale price of affordable units for a time period specified in the bylaws.

(8) Waivers.

(A) A bylaw may allow a municipality to grant waivers to reduce dimensional requirements, in accordance with specific standards that shall be in conformance with the plan and the goals set forth in section 4302 of this title. These standards may:

(i) Allow mitigation through design, screening, or other remedy;

(ii) Allow waivers for structures providing for disability accessibility, fire safety, and other requirements of law; and

(iii) Provide for energy conservation and renewable energy structures.

(B) If waivers from dimensional requirements are provided, the bylaws shall specify the process by which these waivers may be granted and appealed.

(9) Stormwater management and control. Any municipality may adopt bylaws to implement stormwater management and control consistent with the program developed by the secretary of natural resources pursuant to 10 V.S.A. § 1264.

(10) Time-share projects. The bylaws may require that time-share projects consisting of five or more time-share estates or licenses be subject to development review.

(11) Archaeological resources. A municipality may adopt bylaws for the purpose of regulating archaeological sites and areas that may contain significant archaeological sites to make progress toward attaining the goals in the municipal plan concerning the protection of archaeological sites.

(12) Wireless telecommunications facilities and ancillary improvements.

facilities and ancillary improvements in a manner consistent with state or federal law. These bylaws may include requiring the decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements, and may establish requirements that a bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities.

(13)

(A) Wastewater and potable water supply systems. A municipality may adopt bylaws that:

(i) prohibit the initiation of construction under a zoning permit unless and until a wastewater and potable water supply permit is issued under chapter 64 of Title 10; or

(ii) establish an application process for a zoning or subdivision permit, under which an applicant may submit a permit application for municipal review, and the municipality may condition the issuance of a final permit upon issuance of a wastewater and potable water supply permit under chapter 64 of Title 10.

(B) For purposes of an appeal of a permit issued under a bylaw adopted under this subdivision (13), the appealable decision of the municipality shall be the issuance or denial of a final zoning or subdivision permit and not the requirement to condition issuance of a permit on issuance of a wastewater and potable water supply permit under chapter 64 of Title 10.

(14) Green development incentives. A municipality may encourage the use of low-embodied energy in construction materials, planned neighborhood developments that allow for reduced use of fuel for transportation, and increased use of renewable technology by providing for regulatory incentives, including increased densities and expedited review. (Added 2003, No. 115 (Adj. Sess.), § 95; amended 2005, No. 183 (Adj. Sess.), § 5; 2007, No. 32, § 4; 2007, No. 79, § 15; 2007, No. 32, § 4a, eff. May 18, 2007; 2007, No. 79, § 15a, eff. June 9, 2007; 2007, No. 209 (Adj. Sess.), § 11; 2009, No. 110 (Adj. Sess.), § 7; No. 145 (Adj. Sess.), § 2, eff. June 1, 2010.)

§ 4415. Interim bylaws

(a) If a municipality is conducting or has taken action to conduct studies, or has held or is holding a hearing for the purpose of considering a bylaw, a comprehensive plan, or an amendment, extension, or addition to a bylaw or plan, the legislative body may adopt interim bylaws regulating land development in all or a part of the municipality in order to protect the public health, safety, and general welfare and provide for orderly physical and economic growth. These interim bylaws shall be adopted, reenacted, extended, or amended by the legislative body of the municipality after public hearing upon public notice as an emergency measure. They shall be limited in duration to two years from the date they become effective and may be extended or reenacted only in accordance with subsections (f) and (g) of this section. An interim bylaw adopted under this section may be repealed after public hearing, upon public notice by the legislative body. The legislative body, upon petition of five

percent of the legal voters filed with the clerk of the municipality, shall hold a public hearing for consideration of amendment or repeal of the interim bylaws.

(b) An interim bylaw adopted, extended, or reenacted under this section may contain any provision authorized under this chapter.

(c) Interim bylaws shall be administered and enforced in accordance with the provisions of this title applicable to the administration and enforcement of permanent bylaws, except that uses other than those permitted by an interim bylaw may be authorized as provided for in subsection (d) of this section.

(d) Under interim bylaws, the legislative body may, upon application, authorize the issuance of permits for any type of land development as a conditional use not otherwise permitted by the bylaw after public hearing preceded by notice in accordance with section 4464 of this title. The authorization by the

legislative body shall be granted only upon a finding by the body that the proposed use is consistent with the health, safety, and welfare of the municipality and the standards contained in subsection (e) of this section. The applicant and all abutting property owners shall be notified in writing of the date of the hearing and of the legislative body's final determination.

(e) In making a determination, the legislative body shall consider the proposed use with respect to all the following:

(1) The capacity of existing or planned community facilities, services, or lands.

(2) The existing patterns and uses of development in the area.

(3) Environmental limitations of the site or area and significant natural resource areas and sites.

(4) Municipal plans and other municipal bylaws, ordinances, or regulations in effect.

(f) The legislative body of the municipality may extend or reenact interim bylaws for a one-year period beyond the initial two-year period authorized by subsection (a) of this section in accordance with the procedures for adoption in that subsection.

(g) A copy of the adopted, amended, reenacted, or extended interim bylaw shall be sent to adjoining towns, to the regional planning commission of the region in which the municipality is located, and to the agency of commerce and community development. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4416. Site plan review

As prerequisite to the approval of any use other than one- and two-family dwellings, the approval of site plans by the appropriate municipal panel may be required, under procedures set forth in subchapter 10 of this chapter. In reviewing site plans, the appropriate municipal panel may impose, in accordance with the bylaws, appropriate conditions and safeguards with respect to: the adequacy of parking, traffic access, and circulation for pedestrians and vehicles; landscaping and screening; the protection of the utilization of renewable energy resources; exterior lighting; the size, location, and design of signs; and other matters specified in the bylaws. The bylaws shall specify the maps, data, and other information to be presented with applications for site plan approval and a review process pursuant to section 4464 of this title. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4417. Planned unit development

(a) Any municipality adopting a bylaw should provide for planned unit developments to permit flexibility in the application of land development regulations for the purposes of section 4302 of this title and in conformance with the municipal plan. The following may be purposes for planned unit development bylaws:

(1) To encourage compact, pedestrian-oriented development and redevelopment, and to promote a mix of residential uses or nonresidential uses, or both, especially in downtowns, village centers, new town centers, and associated neighborhoods.

(2) To implement the policies of the municipal plan, such as the provision of affordable housing.

(3) To encourage any development in the countryside to be compatible with the use and character of surrounding rural lands.

(4) To provide for flexibility in site and lot layout, building design, placement and clustering of buildings, use of open areas, provision of circulation facilities, including pedestrian facilities and parking, and related site and design considerations that will best achieve the goals for the area as articulated in the municipal plan and bylaws within the particular character of the site and its surroundings.

(5) To provide for the conservation of open space features recognized as worthy of conservation in the municipal plan and bylaws, such as the preservation of agricultural land, forest land, trails, and other recreational resources, critical and sensitive natural areas, scenic resources, and protection from natural hazards.

(6) To provide for efficient use of public facilities and infrastructure.

(7) To encourage and preserve opportunities for energy-efficient development and redevelopment.

(b) The application of planned unit development bylaws to a proposed development may:

(1) Involve single or multiple properties and one owner or multiple owners. Procedures for application and review of multiple owners or properties under a common application, if allowed, shall be specified in the bylaws.

(2) Be limited to parcels that have a minimum area specified in the bylaws or a minimum size or number of units.

(3) Be mandatory for land located in specified zoning districts or for projects of a specified type or magnitude as provided in the bylaws.

(c) Planned unit development bylaws adopted pursuant to this section at a minimum shall include the following provisions:

(1) A statement of purpose in conformance with the purposes of the municipal plan and bylaws.

(2) The development review process to be used for review of planned unit developments to include conditional use or subdivision review procedures, or both, as specified in the bylaws.

(3) Specifications, or reference to specifications, for all application documents and plan drawings.

(4) Standards for the review of proposed planned unit developments, which may vary the density or intensity of land use otherwise applicable under the provisions of the bylaws in consideration of and with respect to any of the following:

(A) The location and physical characteristics of the proposed planned unit development.

(B) The location, design, type, and use of the lots and structures proposed.

(C) The amount, location, and proposed use of open space.

(5) Standards requiring related public improvements or nonpublic improvements, or both; and the payment of impact fees, incorporating by reference any development impact fee ordinance adopted pursuant to chapter 131 of this title.

(6) Provisions for the proposed planned unit development to be completed in reasonable phases, in accordance with the municipal plan and any capital budget and program.

(7) Provisions for coordinating the planned unit development review with other applicable zoning or subdivision review processes, specifying the sequence in which the various review standards will be considered.

(8) Reviews that are conducted in accordance with the procedures in subchapter 10 of this chapter.

(d) Planned unit development bylaws may provide for, as part of the standards described in subdivisions (c)(4) and (c)(5) of this section, the authorization of uses, densities, and intensities that do not correspond with or are not otherwise expressly permitted by the bylaws for the area in which a planned unit development is located, provided that the municipal plan contains a policy that encourages mixed use development, development at higher overall densities or intensities, or both.

(e) Standards for the reservation or dedication of common land or other open space for the use or benefit of the residents of the proposed planned unit development shall include provisions for determining the amount and location of that common land or open space, and for ensuring its improvement and maintenance.

(1) The bylaws may provide that the municipality may, at any time, accept the dedication of land or any interest in land for public use and maintenance.

(2) The bylaws may require that the applicant or landowner provide for and establish an organization or trust for the ownership and maintenance of any common facilities or open space, and that this organization or trust shall not be dissolved or revoked nor shall it dispose of any common open space, by sale or otherwise, except to an organization or trust conceived and established to own and maintain the common open space, without first offering to dedicate the same to the municipality or other governmental agency to maintain those common facilities or that open space.

(f) The approval of a proposed planned unit development shall be based on findings by the appropriate municipal panel that the proposed planned unit development is in conformance with the municipal plan and satisfies other requirements of the bylaws.

(g) The appropriate municipal panel may prescribe, from time to time, rules and regulations to supplement the standards and conditions set forth in the zoning bylaws, provided the rules and regulations are not inconsistent with any municipal bylaw. The panel shall hold a public hearing after public notice, as required by section 4464 of this title, prior to the enactment of any supplementary rules and regulations. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4418. Subdivision bylaws

In order to guide community settlement patterns and to ensure the efficient extension of services, utilities, and facilities as land is developed, a municipality may regulate the division of a lot or parcel of land into two or more lots or other division of land for sale, development, or lease. Subdivision bylaws shall establish standards and procedures for approval, modification, or disapproval of plats of land and approval or modification of plats previously filed in the office of the municipal clerk or land records.

(1) Subdivision bylaws shall be administered in accordance with the requirements of subchapter 10 of this chapter, and shall contain:

(A) Procedures and requirements for the design, submission, and processing of plats, any drawing and plans, and any other documentation required for review of subdivisions.

(B) Standards for the design and layout of streets, sidewalks, curbs, gutters, streetlights, fire hydrants, landscaping, water, sewage and stormwater management facilities, public and private utilities, and other necessary improvements as may be specified in a municipal plan. Standards in accordance with subdivision 4412(3) of this title shall be required for lots without frontage on or access to public roads or public waters.

(C) Standards for the design and configuration of parcel boundaries and location of associated improvements necessary to implement the municipal plan and achieve the desired settlement pattern for the neighborhood, area, or district in which the subdivision is located.

(D) Standards for the protection of natural resources and cultural features and the preservation of open space, as appropriate in the municipality.

(2) Subdivision bylaws may include:

(A) Provisions allowing the appropriate municipal panel to waive or modify, subject to appropriate conditions, the provision of any or all improvements and requirements as in its judgment of the special circumstances of a particular plat or plats are not requisite in the interest of the public health, safety, and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

(B) Procedures for conceptual, preliminary, partial, and other reviews preceding submission of a subdivision plat, including any administrative reviews.

(C) Specific development standards to promote the conservation of energy or to permit the utilization of renewable energy resources, or both.

(D) State standards and criteria under 10 V.S.A. § 6086(a). (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4419. Unified development bylaws

(a) Any bylaws authorized under this chapter may be integrated into a unified land development bylaw that combines the separate requirements into a consolidated review and permitting process. At a minimum, unified development bylaws shall consolidate zoning and subdivision bylaws. Unified development bylaws should incorporate other bylaws in conformance with this chapter and should cross reference all ordinances adopted by a municipality pursuant to authority outside this chapter that affect land development. Unified development bylaws shall provide for an orderly permitting process for all applicable regulations, in accordance with subchapters 10 and 11 of this chapter.

(b) Any municipality that has adopted unified development bylaws in conformance with the requirements of sections 4410, 4411, 4412, 4413, and 4417 of this title shall be deemed to have adopted permanent zoning and subdivision regulations in accordance with 10 V.S.A. § 6001(3). (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4420. Local act 250 review of municipal impacts

(a) This section shall apply to any municipality in which all of the following have taken place, either at the direction of the legislative body or pursuant to a vote of the municipality's voters at a duly warned municipal meeting considering the question:

(1) The criteria specified in this section have been adopted in the appropriate bylaws authorized under this chapter.

(2) The municipality's plan has been duly adopted under the provisions of this chapter.

(3) The municipality has adopted zoning bylaws and subdivision bylaws, either separately or incorporated into one unified development bylaw.

(4) The municipality has adopted, for purposes of this section, the municipal administrative procedure act established in chapter 36 of this title.

(5) A development review board has been created and has been authorized to undertake local Act 250 review of municipal impacts caused by a development or subdivision, or both, as the terms "development" and "subdivision" are defined in 10 V.S.A. chapter 151.

(b)

(1) With respect to developments or subdivisions to which this section applies, the development review board, pursuant to the procedures established in chapter 36 of this title, shall hear such applications as meet the criteria set forth in the bylaws with respect to size or impact, or both, for local Act 250 review of municipal impacts. Once a municipality has determined to conduct reviews under this section, all applicants meeting such criteria for Act 250 permits for developments or subdivisions located within the municipality shall go through this process, unless all the following apply:

(A) The applicant can establish to the satisfaction of the development review board that the applicant relied on a determination by the natural resource board's local district coordinator that Act 250 jurisdiction did not apply to the development or subdivision in question, and based upon that reliance, the applicant obtained local permits without complying with this section.

(B) The natural resource board's local district coordinator's jurisdictional ruling was later reconsidered or overturned on appeal, with the result that Act 250 jurisdiction does apply to the development or subdivision in question.

(C) The development review board waives its jurisdiction under this section in the interest of fairness to the applicant.

(2) Determinations by the development review board regarding whether to waive jurisdiction under this subsection shall not be subject to review.

(c) In proceedings under this section, the applicant shall demonstrate that the proposed development or subdivision:

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

(2) Will not cause an unreasonable burden on the ability of the municipality to provide municipal or governmental services.

(3) Is in conformance with the plan of the municipality adopted in accordance with this chapter.

(d) A violation of the provisions of this section shall be subject to enforcement as a violation of this chapter. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4421. Official map

A municipality may adopt an official map that identifies future municipal utility and facility improvements, such as road or recreational path rights-of-way, parkland, utility rights-of-way, and other public improvements, in order to provide the opportunity for the community to acquire land identified for public improvements prior to development for other use and to identify the locations of required public facilities for new subdivisions and other development under review by the municipality.

(1) Preparation of an official map. For the purposes of this chapter, the official map shall be based upon the most accurate data available as to the location and width of existing and proposed streets and drainageways and the location of all existing and proposed parks, schools, and other public facilities. Where questions arise in the administration of this section that require more precise determinations of the location of any street right-of-way line on all drainageways or the location of any park, school, or any other public facility, the legislative body shall have a survey prepared of the street or section, park, school, or other public facility in question, that may by resolution of the legislative body become a part of the official map.

(2) Changes to the official map. After adoption of the official map, the recordation of plats that have been approved as provided by this chapter, or the adoption of any urban renewal plan under chapter 85 of this title, shall, without further action, modify the official map accordingly. Minor changes in the location of proposed public facilities may also be made to particular sections of the official map if the change is recommended by a majority of the planning commission and approved by resolution of the legislative body. This process may take place concurrently with review of development or subdivision of a parcel that is proposed to be subject to a map change.

(3) Status of mapped public facilities. The adoption, as part of an official map, of any existing or proposed street or street line or drainageway, or any proposed park, school, or other public facility, shall not constitute a taking or acceptance of land by the municipality, nor shall the adoption of any street in an official map constitute the opening or establishment of the street for public use or obligate the municipality in any way for the maintenance of the street.

(4) Building on properties with mapped public facilities. No zoning permit may be issued for any land development within the lines of any street, drainageway, park, school, or other public facility shown on the official map, except as specifically provided in this section. No person shall recover any damages for the taking for public use of any land development constructed within the lines of any proposed street, drainageway, park, school, or other public facility after it has been included in the official map, and any such land development shall be removed at the expense of the owner.

(A) If a permit for any land development within the lines of any proposed street, drainageway, park, school, or other public facility shown on an official map is denied pursuant to subdivision (5) of this section, the legislative body shall have 120 days from the date of the denial of the permit to institute proceedings to acquire that land or interest in that land, and if no such proceedings are started within that time, the administrative officer shall issue the permit if the application otherwise conforms to all the applicable bylaws.

(B) A municipality may specify in its bylaws that conditional use review is required for any structure within the line of any public facility shown on the official map or within a specified area adjacent to the lines on the map. If conditional use review is required for these structures, the purpose of the review shall be to ensure that the structure is compatible with the location and function of existing and planned public facilities. If the conditional use is denied, the procedure provided in subdivision (4)(A) of this section shall be instituted.

(5) Development review for properties with mapped public facilities. Any application for subdivision or other development review that involves property on which the official map shows a public facility shall demonstrate that the mapped public facility will be accommodated by the proposed subdivision or development in accordance with the municipality's bylaws. Failure to accommodate the mapped public facility or obtain a minor change in the official map shall result in the denial of the development or subdivision. The legislative body shall have 120 days from the date of the denial of the permit to institute proceedings to acquire that land or interest in land, and if these proceedings are not started within that time, the appropriate municipal panel shall review the application without regard to the proposed public facilities. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4422. Adequate public facilities; phasing

Development may be phased or limited under a bylaw to avoid or mitigate any undue adverse impact on existing or planned community facilities or services. Where a capital budget and program has been adopted, the bylaw may limit or phase development based on the timing of construction or implementation of related necessary public facilities and services, in conformance with an adopted capital budget and program. A municipality also may levy impact fees in accordance with chapter 131 of this title. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4423. Transfer of development rights

(a) In order to accomplish the purposes of 10 V.S.A. § 6301, bylaws may contain provisions for the transfer of development rights. The bylaws shall do all the following:

(1) Specify one or more sending areas for which development rights may be acquired.

(2) Specify one or more receiving areas in which those development rights may be used.

(3) Define the amount of the density increase allowable in receiving areas, and the quantity of development rights necessary to obtain those increases.

(4) Define "density increase" in terms of an allowable percentage decrease in lot size or increase in building bulk, lot coverage, or ratio of floor area to lot size, or any combination.

(5) Define "development rights," which at minimum shall include a conservation easement, created by deed for a specified period of not less than 30 years, granted to the municipality under 10 V.S.A. chapter 155, limiting land uses in the sending area solely to specified purposes, but including, at a minimum, agriculture and forestry.

(b) Upon approval by the appropriate municipal panel, a zoning permit may be granted for land development based in part upon a density increase, provided there is compliance with all the following:

(1) The area subject to the application is a receiving area, and the density increase is allowed by the provisions relating to transfer of development rights.

(2) The applicant has obtained development rights from a sending area that are sufficient under the regulations for the density increase sought.

(3) The development rights are evidenced by a deed that recites that it is a conveyance under this subdivision and recites the number of acres affected in the sending area.

(4) The sending area from which development rights have been severed has been surveyed and suitably monumented.

(c) The municipality shall maintain a map of areas from which development rights have been severed. Following issuance of a zoning permit under this section, the municipality shall effect all the following:

(1) Ensure that the instruments transferring the conservation easements and the development rights are recorded.

(2) Mark the development rights map showing the area from which development rights have been severed and indicating the book and page in the land records where the easement is recorded.

(d) Failure to record an instrument or mark a map does not invalidate a transfer of development rights. Development rights transferred under this section shall be valid notwithstanding any subsequent failure to file a notice of claim under the marketable record title act. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4424. Shorelands; river corridor protection areas; flood or hazard area; special or freestanding bylaws

Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or, for the purpose of adoption of a flood hazard area bylaw, a local hazard mitigation plan approved under 44 C.F.R § 201.6 including the following, which may also be part of zoning or unified development bylaws:

(1) Bylaws to regulate development and use along shorelands.

(2) Bylaws to regulate development and use in flood areas, river corridor protection areas, or other hazard areas. The following shall apply if flood or other hazard area bylaws are enacted:

(A) Purposes.

(i) To minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding, landslides, erosion hazards, earthquakes, and other natural or human-made hazards.

(ii) To ensure that the design and construction of development in flood, river corridor protection, and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property in a flood hazard area or that minimizes the potential for fluvial erosion and loss or damage to life and property in a river corridor protection area.

(iii) To manage all flood hazard areas designated pursuant to 10 V.S.A. § 753.

(iv) To make the state and municipalities eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

(B) Contents of bylaws. Flood, river corridor protection area, and other hazard area bylaws may:

(i) Contain standards and criteria that prohibit the placement of damaging obstructions or structures, the use and storage of hazardous or radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions.

(ii) Require flood, fluvial erosion, and hazard protection through elevation, floodproofing, disaster preparedness, hazard mitigation, relocation, or other techniques.

(iii) Require adequate provisions for flood drainage and other emergency measures.

(iv) Require provision of adequate and disaster-resistant water and wastewater facilities.

(v) Establish other restrictions to promote the sound management and use of designated flood fluvial erosion and other hazard areas.

(vi) Regulate all land development in a flood hazard area, river corridor protection area, or other hazard area, except for development that is regulated under 10 V.S.A. § 754.

(C) Effect on zoning bylaws. Flood or other hazard area bylaws may alter the uses otherwise permitted, prohibited, or conditional in a flood or other hazard area under a bylaw, as well as the applicability of other provisions of that bylaw. Where a flood hazard bylaw, a hazard area bylaw, or both apply along with any other bylaw, compliance with the flood or other hazard area bylaw shall be prerequisite to the granting of a zoning permit. Where a flood hazard area bylaw or a hazard area bylaw but not a zoning bylaw applies, the flood hazard and other hazard area bylaw shall be administered in the same manner as are zoning bylaws, and a flood hazard area or hazard area permit shall be required for land development covered under the bylaw.

(D)(i) Mandatory provisions. All flood and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood or other hazard area until after both the following:

(I) A copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the agency of natural resources.

(II) Either 30 days have elapsed following the mailing or the agency or its designee delivers comments on the application.

(ii) The agency of natural resources may delegate to a qualified representative of a municipality with a flood hazard area bylaw or ordinance or to a qualified representative for a regional planning commission the agency'sauthority under this subdivision (a)(2)(D) to review and provide technical comments on a proposed permit for new construction or substantial improvement in a flood hazard area. Comments provided by a representative delegated under this subdivision (a)(2)(D) shall not be binding on a municipality.

(Added 2003, No. 115 (Adj. Sess.), § 95; amended 2011, No. 138 (Adj. Sess.), § 13.

§§ 4425, 4426. Repealed. 2003, No. 115 (Adj. Sess.), § 119(c).

§ 4427. Persons eligible to apply for permits

Municipalities and solid waste management districts empowered to condemn property or an interest in property may apply for any permit required by any zoning regulation adopted under this chapter. (Added 1991, No. 109, § 5, eff. June 28, 1991.)

8. NONREGULATORY IMPLEMENTATION OF THE MUNICIPAL PLAN

§ 4430. Capital budget and program

(a) A capital budget shall list and describe the capital projects to be undertaken during the coming fiscal year, the estimated cost of those projects, and the proposed method of financing. A capital program is a plan of capital projects proposed to be undertaken during each of the following five years, the estimated cost of those projects, and the proposed method of financing. A capital project is any one or more of the following:

(1) Any physical betterment or improvement, including furnishings, machinery, apparatus, or equipment for that physical betterment or improvement when first constructed or acquired.

(2) Any preliminary studies and surveys relating to any physical betterment or improvement.

(3) Land or rights in land.

(4) Any combination of subdivisions (1), (2), and (3) of this subsection.

(b) The capital budget and program shall be arranged to indicate the order of priority of each capital project and to state for each project all the following:

(1) A description of the proposed project and the estimated total cost of the project.

(2) The proposed method of financing, indicating the amount proposed to be financed by direct budgetary appropriation or duly established reserve funds; the amount, if any, estimated to be received from the federal or state governments; the amount, if any, to be financed by impact fees; and the amount to be financed by the issuance of obligations, showing the proposed type or types of obligations, together with the period of probable usefulness for which they are proposed to be issued.

(3) An estimate of the effect, if any, upon operating costs of the municipality.

(c) The planning commission may submit recommendations annually to the legislative body for the capital budget and program, that shall be in conformance with the municipal plan. (Added 2003, No. 115 (Adj. Sess.), § 97.)

§ 4431. Purchase or acceptance of development rights

A municipality may develop a program for purchase or acceptance of development rights and stewardship of those rights for the purposes set forth in section 4302 of this title and in conformance with the plan. (Added 2003, No. 115 (Adj. Sess.), § 97.)

§ 4432. Supporting plans

A municipality may adopt a plan or plans that support the municipal plan and may incorporate such supporting plan or plans into the municipal plan in the same manner as adoption of the municipal plan set forth in section 4385 of this title. In this event, the supporting plan shall become a part of the municipal plan. Supporting plans may include:

(1) Access management plan. A municipality may adopt an access management plan to manage traffic and access onto public roads from adjacent property in a manner that complies with 19 V.S.A. § 1111.

(2) Downtown, village center, or new town center plan. A municipality may adopt a plan for the development and revitalization of its downtown, villages, or a new town center, consistent with the purposes set forth in section 2790 of this title.

(3) Open space plan. A municipality may adopt a plan to guide public and private conservation strategies. (Added 2003, No. 115 (Adj. Sess.), § 97.)

§ 4433. Advisory commissions and committees

Municipalities may at any time create one or more advisory commissions, which for the purposes of this chapter include committees, or a combination of advisory commissions to assist the legislative body or the planning commission in preparing, adopting, and implementing the municipal plan. Advisory commissions authorized under this section and under chapter 118 of this title may advise appropriate municipal panels, applicants, and interested parties in accordance with the procedures established under section 4464 of this title.

(1) Creation of an advisory commission. Advisory commissions not authorized in chapter 118 of this title shall be created as follows:

> (A) An advisory commission may be created at any time when a municipality votes to create one, or through adoption of bylaws, or if the charter of a municipality permits it, when the legislative body of the municipality votes to create one.
>
> (B) An advisory commission shall have not less than three members. All members should be residents of the municipality, except that historic preservation, design advisory, or conservation commissions may be composed of professional and lay members, a majority of whom shall reside within the municipality creating the commission.
>
> (C) Members of the advisory commission shall be appointed, and any vacancy filled, by the legislative body of the municipality. The term of each member shall be as established by the legislative body, except for those first appointed, whose terms shall be varied in length so that in the future the number whose terms expire in each successive year shall be minimized. Any appointment to fill a vacancy shall be for the unexpired term.

(D) Any member of an advisory commission may be removed at any time for just cause by vote of the legislative body, for reasons given to the member in writing, and after a public hearing on the issue if the member so requests.

(2) Procedures for advisory commissions. Advisory commissions not authorized in chapter 118 of this title shall establish the following procedures:

(A) At its organizational meeting, an advisory commission shall adopt by majority vote of those present and voting such rules as it deems necessary and appropriate for the performance of its functions. It shall annually elect a chairperson, a treasurer, and a clerk.

(B) Times and places of meetings of an advisory commission shall be publicly posted in the municipality, and its meetings shall be open to the public in accordance with the terms of the open meeting law, subchapter 2 of chapter 5 of Title 1.

(C) The advisory commission shall keep a record of its transactions that shall be filed with the town clerk as a public record of the municipality.

(D) The advisory commission shall comply with ethical policies or ordinances as adopted by the town.

(3) Duties and powers of historic preservation commissions. In addition to the requirements set forth in subdivision (2) of this section, all historic preservation commissions shall comply with all the following:

(A) To the extent possible, have among their members professionals in the fields of historic preservation, history, architecture, archaeology, and related disciplines.

(B) Meet no fewer than four times each year and maintain an attendance rule for commission members.

(C) Have responsibilities set forth in the commission's rules of procedure that include:

(i) Preparation of reports and recommendations on standards for the planning commission in creating a local historic district bylaw under this chapter.

(ii) Advising and assisting the legislative body, planning commission, and other entities on matters related to historic preservation.

(iii) Advising the appropriate municipal panel and administrative officer in development review and enforcement pursuant to subdivision 4414(2)(C) and section 4464 of this title.

(iv) If provided in the bylaw, advising and assisting the legislative body, appropriate municipal panel, and administrative officer in creating and administering a design review district or downtown or village center district pursuant to subdivision 4414(1)(A) or (B) of this title.

(v) If provided in a bylaw developed in cooperation with the division for historic preservation, those procedural and advisory powers required of a Certified Local Government under the National Historic Preservation Act.

(4) Powers and duties of design review commissions. In addition to the requirements set forth in subdivision (2) of this section, all design review commissions shall:

(A) To the extent possible, have among their members professionals in the fields of architecture, landscape architecture, urban planning, historic preservation, and related disciplines.

(B) Have responsibilities identified by the legislative body that include:

(i) Preparation of reports and standards for the planning commission in creating a design review district bylaw under this chapter.

(ii) Advising and assisting the legislative body, planning commission, and other entities on design-related matters in the creation of plans and bylaws and planning for public improvements.

(iii) Advising appropriate municipal panels and the administrative officer in development review and enforcement pursuant to subdivisions 4414(1)(E) and (F) and section 4464 of this title.

(5) Powers and duties of housing commissions. In addition to the requirements set forth in subdivision (2) of this section, housing commissions may:

(A) Make an inventory of the current stock of housing units in the municipality and identify any gaps in the housing stock according to household incomes or special needs of the community. The inventory may include documentation of the affordable housing cost index for an average citizen of the municipality, the average cost of rental units and vacancy rates, and the annual average sales price of homes.

(B) Review the zoning ordinances, subdivision bylaws, building codes, and the development review process of the municipality, make recommendations to facilitate the development of affordable housing in the municipality, and promote bylaws that increase densities for the purpose of providing affordable housing.

(C) Assist the local appropriate municipal panels pursuant to section 4464 of this title and the district environmental commission by providing advisory testimony on the housing needs of the municipality, where pertinent to applications made to those bodies, for permits for development.

(D) Cooperate with the local legislative body, planning commission, zoning board of adjustment, road committee, or other municipal or private organizations on matters affecting housing resources of the municipality. This may include working with the municipality on a wastewater and water allocation policy that reserves a percentage of the capacity for future affordable housing.

(E) Collaborate with not-for-profit housing organizations, government agencies, developers, and builders in pursuing options to meet the housing needs of the local residents. (Added 2003, No. 115 (Adj. Sess.), § 97.)

9. ADOPTION, ADMINISTRATION, AND ENFORCEMENT

§ 4440. Administration; finance

(a) Appropriations may be made by any municipality to finance the work of planning commissions, regional planning commissions, administrative officers, appropriate municipal panels, and other officials in the preparation, adoption, administration, and enforcement of development plans and supporting plans, bylaws, capital budgets and programs, and other regulatory and nonregulatory efforts to implement the municipal plan, and to support or oppose, upon appeal to the courts, decisions of an appropriate municipal panel. For these same purposes, any municipality may accept gifts and grants of money and services from private sources and from the state and federal governments.

(b) The legislative body may prescribe reasonable fees to be charged with respect to the administration of bylaws and for the administration of development review. These fees may include the cost of posting and publishing notices and holding public hearings and the cost of conducting periodic inspections during the installation of public improvements. These fees may be required to be payable by the applicant upon submission of the application or prior to issuance of permits or certificates of occupancy.

(c) The legislative body may set reasonable fees for filing of notices of appeal and for other acts as it deems proper, the payment of which shall be a condition to the validity of the filing or act under this chapter.

(d) The legislative body may establish procedures and standards for requiring an applicant to pay for reasonable costs of an independent technical review of the application. (Added 2003, No. 115 (Adj. Sess.), § 99.)

§ 4441. Preparation of bylaws and regulatory tools; amendment or repeal

(a) A municipality may have one or more bylaws. Any bylaw for a municipality shall be prepared by or at the direction of the planning commission of the municipality and shall have the purpose of implementing the plan. An amendment or repeal of a bylaw may be prepared by the planning commission or by any other person or body.

(b) A proposed amendment or repeal prepared by a person or body other than the planning commission shall be submitted in writing along with any supporting documents to the planning commission. The planning commission may then proceed under this subchapter as if the amendment or repeal had been prepared by the commission. However, if the proposed amendment or repeal of a bylaw is supported by a petition signed by not less than five percent of the voters of the municipality, the commission shall correct any technical deficiency and shall, without otherwise changing the amendment or repeal, promptly proceed in accordance with subsections (c) through (g) of this section, as if it had been prepared by the commission.

(c) When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal. A single report may be prepared so as to satisfy the requirements of this subsection concerning bylaw amendments and subsection 4384(c) of this title concerning plan amendments. The department of housing and community affairs shall provide all municipalities with a

form for this report. The report shall provide a brief explanation of the proposed bylaw, amendment, or repeal and shall include a statement of purpose as required for notice under section 4444 of this title, and shall include findings regarding how the proposal:

(1) Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing.

(2) Is compatible with the proposed future land uses and densities of the municipal plan.

(3) Carries out, as applicable, any specific proposals for any planned community facilities.

(d) The planning commission shall hold at least one public hearing within the municipality after public notice on any proposed bylaw, amendment, or repeal.

(e) At least 15 days prior to the first hearing, a copy of the proposed bylaw, amendment, or repeal and the written report shall be delivered with proof of receipt, or mailed by certified mail, return receipt requested, to each of the following:

(1) The chairperson of the planning commission of each abutting municipality, or in the absence of any planning commission in a municipality, the clerk of that abutting municipality.

(2) The executive director of the regional planning commission of the area in which the municipality is located.

(3) The department of housing and community affairs within the agency of commerce and community development.

(f) Any of the bodies identified in subsection (e) of this section, or their representatives, may submit comments on the proposed bylaw, amendment, or repeal to the planning commission, or may appear and be heard in any proceeding with respect to the adoption of the proposed bylaw, amendment, or repeal.

(g) The planning commission may make revisions to a proposed bylaw, amendment, or repeal and to the written report, and shall then submit the proposed bylaw, amendment, or repeal and the written report to the legislative body of the municipality. However, if requested by the legislative body or if a proposed amendment was supported by a petition signed by not less than five percent of the voters of the municipality, the planning commission shall promptly submit the amendment, with changes only to correct technical deficiencies, to the legislative body of the municipality, together with any recommendation or opinion it considers appropriate. Simultaneously with the submission, the planning commission shall file with the clerk of the municipality a copy of the proposed bylaw, amendment, or repeal, and the written report for public review. (Added 2003, No. 115 (Adj. Sess.), § 100.)

§ 4442. Adoption of bylaws and related regulatory tools; amendment or repeal

(a) Public hearings. Not less than 15 nor more than 120 days after a proposed bylaw, amendment, or repeal is submitted to the legislative body of a municipality under section 4441 of this title, the legislative body shall hold the first of one or more public hearings, after public notice, on the proposed bylaw,

amendment, or repeal, and shall make copies of the proposal and the written report of the planning commission available to the public upon request. Failure to hold a hearing within the 120 days shall not invalidate the adoption of the bylaw or amendment or the validity of any repeal.

(b) Amendment of proposal. The legislative body may make minor changes to the proposed bylaw, amendment, or repeal, but shall not do so less than 14 days prior to the final public hearing. If the legislative body at any time makes substantial changes in the concept, meaning, or extent of the proposed bylaw, amendment, or repeal, it shall warn a new public hearing or hearings under subsection (a) of this section. If any part of the proposal is changed, the legislative body at least 10 days prior to the hearing shall file a copy of the changed proposal with the clerk of the municipality and with the planning commission. The planning commission shall amend the report prepared pursuant to subsection 4441(c) of this title to reflect the changes made by the legislative body and shall submit that amended report to the legislative body at or prior to the public hearing.

(c) Routine adoption.

> (1) A bylaw, bylaw amendment, or bylaw repeal shall be adopted by a majority of the members of the legislative body at a meeting that is held after the final public hearing, and shall be effective 21 days after adoption unless, by action of the legislative body, the bylaw, bylaw amendment, or bylaw repeal is warned for adoption by the municipality by Australian ballot at a special or regular meeting of the municipality.
>
> (2) However, a rural town as defined in section 4303 of this chapter, by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that bylaws, bylaw amendments, or bylaw repeals shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town.

(d) Petition for popular vote. Notwithstanding subdivision (c)(1) of this section, a vote by the legislative body on a bylaw, amendment, or repeal shall not take effect if five percent of the voters of the municipality petition for a meeting of the municipality to consider the bylaw, amendment, or repeal, and the petition is filed within 20 days of the vote. In that case, a meeting of the municipality shall be duly warned for the purpose of acting by Australian ballot upon the bylaw, amendment, or repeal.

(e) Multipurpose hearings. Nothing contained in this chapter shall be construed to prohibit any public hearing held under this chapter to be held for more than one purpose under this chapter. A municipality may prepare and adopt a plan, one or more bylaws, and a capital budget and program in the same proceedings. However, all the provisions of this chapter applicable to each purpose of the hearing shall be complied with.

(f) Unorganized towns and gores. A bylaw, amendment, or repeal of a bylaw of an unorganized town or gore shall be adopted by a majority of votes cast at a meeting of the regional planning commission in which the unorganized town or gore is located at which a quorum is present. However, a bylaw, amendment, or repeal of a bylaw of the unified towns and gores of Essex County, namely Averill, Avery's Gore, Ferdinand, Lewis, Warner's Grant, and Warren's Gore, shall be adopted by the board of governors.

(g) Time for action. If the proposed bylaw, amendment, or repeal is not approved or rejected under subsection (c) of this section within one year of the date of the final hearing of the planning commission, it shall be considered disapproved unless five percent of the voters of the municipality petition for a meeting of the municipality to consider the bylaw, amendment, or repeal, and the petition is filed within 60

days of the end of that year. In that case, a meeting of the municipality shall be duly warned for the purpose of acting upon the bylaw, amendment, or repeal by Australian ballot. (Added 2003, No. 115 (Adj. Sess.), § 100; amended 2005, No. 30, § 2; 2005, No. 105 (Adj. Sess.), § 1, eff. April 5, 2006; 2007, No. 121 (Adj. Sess.), § 20.) amended 2011, No. 155 (Adj. Sess.), § 15.

§ 4443. Adoption, amendment, or repeal of capital budget and program

(a) Notwithstanding any other provision of this chapter, a capital budget and program may be adopted, amended, or repealed by the legislative body of a municipality following one or more public hearings, upon public notice, if a utility and facilities plan as described in subdivision 4382(a)(4) of this title has been adopted by the legislative body in accordance with sections 4384 and 4385 of this title. A copy of the proposed capital budget and program shall be filed at least 15 days prior to the final public hearing with the clerk of the municipality and the secretary of the planning commission. The planning commission may submit a report on the proposal to the legislative body prior to the public hearing.

(b) The capital budget and program, or its amendment or repeal, shall be adopted or rejected by an act of the legislative body of a municipality promptly after the final public hearing held under subsection (a) of this section. (Added 2003, No. 115 (Adj. Sess.), § 100.)

§ 4444. Public hearing notice for adoption, amendment, or repeal of bylaw and other regulatory tools

(a) Any public notice required for public hearing under this subchapter shall be given not less than 15 days prior to the date of the public hearing by:

(1) the publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the municipality affected;

(2) the posting of the same information in three or more public places within the municipality in conformance with location requirements of 1 V.S.A. § 312(c)(2); and

(3) compliance with subsection (b) or (c) of this section.

(b) A municipality may complete public notice commenced under subsection (a) of this section by publishing and posting the full text of the proposed material or by publishing and posting the following:

(1) A statement of purpose.

(2) A map or description of the geographic areas affected.

(3) A table of contents or list of section headings.

(4) A description of a place within the municipality where the full text may be examined.

(c) As an alternative to the publication and posting provisions established under subsection (b) of this section, a municipality may make reasonable effort to mail or deliver copies of the full text or the material specified in subdivisions (b)(1) through (4), together with the public hearing notice of the proposed material and the public hearing notice to each voter, as evidenced by the voter checklist of the municipality, and to each owner of land within the municipality, as evidenced by the grand list of the municipality.

(d) No defect in the form or substance of any public hearing notice under this chapter shall invalidate the adoption, amendment, or repeal of any plan, bylaw, or capital budget and program. However, the action shall be invalidated if the notice is materially misleading in content or fails to include one of the elements required by subsection (b) of this section or if the defect was the result of a deliberate or intentional act. (Added 2003, No. 115 (Adj. Sess.), § 100.)

§ 4445. Availability and distribution of documents

Current copies of plans, bylaws, and capital budgets and programs shall be available to the public during normal business hours in the office of the clerk of any municipality in which those plans, bylaws, or capital budgets or programs have been adopted. The municipality shall provide all final adopted bylaws, amendments, or repeals to the regional planning commission of the area in which the municipality is located and to the department of housing and community affairs. (Added 2003, No. 115 (Adj. Sess.), § 100.)

§ 4445a. Repealed. 2003, No. 115 (Adj. Sess.), § 119(c).

§ 4446. Bylaws; effect of adoption

Within the jurisdiction of any municipality that has adopted any of the bylaws authorized by this chapter, no land development may be undertaken or effected except in conformance with those bylaws. Bylaws authorized by this chapter may specify for exclusion from review any land development determined to impose no impact or merely a de minimus impact on the surrounding area and the overall pattern of land development. (Added 2003, No. 115 (Adj. Sess.), § 100.)

§ 4447. Clerk's certificate

A certificate of the clerk of a municipality showing the publication, posting, consideration, and adoption or amendment of a plan, bylaw, or capital budget or program shall be presumptive evidence of the facts as they relate to the lawful adoption or amendment of that plan, bylaw, or capital budget or program, so stated in any action or proceeding in court or before any board, commission, or other tribunal. (Added 2003, No. 115 (Adj. Sess.), § 100.)

§ 4448. Appointment and powers of administrative officer

(a) An administrative officer, who may hold any other office in the municipality other than membership in the board of adjustment or development review board, shall be nominated by the planning commission and appointed by the legislative body for a term of three years promptly after the adoption of the first bylaws or when a vacancy exists. The compensation of the administrative officer shall be fixed under sections 932 and 933 of this title, and the officer shall be subject to the personnel rules of the municipality adopted under sections 1121 and 1122 of this title. The administrative officer shall administer the bylaws literally and shall not have the power to permit any land development that is not in conformance with those bylaws. An administrative officer may be removed for cause at any time by the legislative body after consultation with the planning commission.

(b) The planning commission may nominate and the legislative body may appoint an acting administrative officer who shall have the same duties and responsibilities as the administrative officer in the administrative officer's absence. If an acting administrative officer position is established, or, for municipalities that establish the position of assistant administrative officer, there shall be clear policies regarding the authority of the administrative officer in relation to the acting or assistant officer.

(c) The administrative officer should provide an applicant with forms required to obtain any municipal permit or other municipal authorization required under this chapter, or under other laws or ordinances that relate to the regulation by municipalities of land development. If other municipal permits or authorizations are required, the administrative officer should coordinate a unified effort on behalf of the municipality in administering its development review programs. The administrative officer should inform any person applying for municipal permits or authorizations that the person should contact the regional permit specialist employed by the agency of natural resources in order to assure timely action on any related state permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state permits.

(d) If the administrative officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the appropriate municipal panel, a permit shall be deemed issued on the 31st day. (Added 2003, No. 115 (Adj. Sess.), § 100.)

§ 4449. Zoning permit, certificate of occupancy, and municipal land use permit

(a) Within any municipality in which any bylaws have been adopted:

> (1) No land development may be commenced within the area affected by the bylaws without a permit issued by the administrative officer. No permit may be issued by the administrative officer except in conformance with the bylaws.
>
> (2) If the bylaws so adopted so provide, it shall be unlawful to use or occupy or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this chapter, within the area affected by those bylaws, until a certificate of occupancy is issued therefor by the administrative officer, stating that the proposed use of the structure or land conforms to the requirements of those bylaws.

(3) No permit issued pursuant to this section shall take effect until the time for appeal in section 4465 of this title has passed, or in the event that a notice of appeal is properly filed, no such permit shall take effect until adjudication of that appeal by the appropriate municipal panel is complete and the time for taking an appeal to the environmental division has passed without an appeal being taken. If an appeal is taken to the environmental division, the permit shall not take effect until the environmental division rules in accordance with 10 V.S.A. § 8504 on whether to issue a stay, or until the expiration of 15 days, whichever comes first.

(b) Each permit issued under this section shall contain a statement of the period of time within which an appeal may be taken and shall require posting of a notice of permit on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal in section 4465 of this title has passed. Within three days following the issuance of a permit, the administrative officer shall:

(1) Deliver a copy of the permit to the listers of the municipality; and

(2) Post a copy of the permit in at least one public place in the municipality until the expiration of 15 days from the date of issuance of the permit.

(c)

(1) Within 30 days after a municipal land use permit has been issued or within 30 days of the issuance of any notice of violation, the appropriate municipal official shall:

(A) deliver the original or a legible copy of the municipal land use permit or notice of violation or a notice of municipal land use permit generally in the form set forth in subsection 1154(c) of this title to the town clerk for recording as provided in subsection 1154(a); and

(B) file a copy of that municipal land use permit in the offices of the municipality in a location where all municipal land use permits shall be kept.

(2) The municipal officer may charge the applicant for the cost of the recording fees as required by law.

(d) If a public notice for a first public hearing pursuant to subsection 4442(a) of this title is issued under this chapter by the local legislative body with respect to the adoption or amendment of a bylaw, or an amendment to an ordinance adopted under prior enabling laws, the administrative officer, for a period of 150 days following that notice, shall review any new application filed after the date of the notice under the proposed bylaw or amendment and applicable existing bylaws and ordinances. If the new bylaw or amendment has not been adopted by the conclusion of the 150-day period or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under existing bylaws and ordinances. An application that has been denied under a proposed bylaw or amendment that has been rejected or that has not been adopted within the 150-day period shall be reviewed again, at no cost, under the existing bylaws and ordinances, upon request of the applicant. Any determination by the

administrative officer under this section shall be subject to appeal as provided in section 4465 of this title.

(e) Beginning October 1, 2010, any application for an approval or permit and any approval or permit issued under this section shall include a statement, in content and form approved by the secretary of natural resources, that state permits may be required and that the permittee should contact state agencies to determine what permits must be obtained before any construction may commence. (Added 2003, No. 115 (Adj. Sess.), § 100; amended 2009, No. 146 (Adj. Sess.), § F27; No. 154 (Adj. Sess.), § 236.)

§ 4450. Eligibility to apply for permits

Municipalities and solid waste management districts empowered to condemn property or an interest in property may apply for any permit or approval required by any bylaws adopted under this chapter. (Added 2003, No. 115 (Adj. Sess.), § 101.)

§ 4451. Enforcement; penalties

(a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than $200.00 for each offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. In default of payment of the fine, the person, the members of any partnership, or the principal officers of the corporation

shall each pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of bylaws shall be paid over to the municipality whose bylaw has been violated.

(b) Any person who, being the owner or agent of the owner of any lot, tract, or parcel of land, lays out, constructs, opens, or dedicates any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or sells, transfers, or agrees or enters into an agreement to sell any land in a subdivision or land development whether by reference to or by other use of a plat of that subdivision or land development or otherwise, or erects any structure on that land, unless a final plat has been prepared in full compliance with this chapter and the bylaws adopted under this chapter and has been recorded as provided in this chapter, shall be fined not more than $200.00, and each lot or parcel so transferred or sold or agreed or included in a contract to be sold shall be deemed a separate violation. All fines collected for these violations shall be paid over to the municipality whose bylaw has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from these penalties or from the remedies provided in this chapter. (Added 2003, No. 115 (Adj. Sess.), § 101.) amended 2011, No. 155 (Adj. Sess.), § 3.

§ 4452. Enforcement; remedies

If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any bylaw adopted under this chapter, the administrative officer shall institute in the name of the municipality any appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate that construction or use, or to prevent, in or about those premises, any act, conduct, business, or use constituting a violation. A court action under this section may be initiated in the environmental division, or as appropriate, before the judicial bureau, as provided under section 1974a of this title. (Added 2003, No. 115 (Adj. Sess.), § 101; amended 2009, No. 154 (Adj. Sess.), § 236.)

§ 4453. Challenges to housing provisions in bylaws

The attorney general or a designee shall investigate when there is a complaint that a bylaw or its manner of administration violates subdivision 4412(1) of this title, relating to equal treatment of housing and adequate provision of affordable housing. Upon determining that a violation has occurred, the attorney general may file an action in the environmental division to challenge the validity of the bylaw or its manner of administration. In this action, the municipality shall have the burden of proof to establish by a preponderance of the evidence that the challenged bylaw or its manner of administration does not violate the provisions of subdivision 4412(1) of this title. If the court finds the bylaw or its administration to be in violation, it shall grant the municipality a reasonable period of time to correct the violation and may extend that time. If the violation continues after that time, the court shall order the municipality to grant all requested permits and certificates o

f occupancy for housing relating to the area of continuing violation. (Added 2003, No. 115 (Adj. Sess.), § 101; amended 2009, No. 154 (Adj. Sess.), § 236.)

§ 4454. Enforcement; limitations

(a) An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

(b) No action, injunction, or other enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit that received final approval from the applicable board, commissioner, or officer of the municipality after July 1, 1998, unless the municipal land use permit or a notice of the permit generally in the form provided for in subsection 1154(c) of this title was recorded in the land records of the municipality as required by subsection 4449(c) of this title.

(c) Nothing in this section shall prevent any action, injunction, or other enforcement proceeding by a municipality under any other authority it may have, including a municipality's authority under Title 18, relating to the authority to abate or remove public health risks or hazards.

(d)(1) As used in this section, "person" means any of the following:

(A) An individual, partnership, corporation, association, unincorporated organization, trust, or other legal or commercial entity, including a joint venture or affiliated ownership.

(B) A municipality or state agency.

(C) Individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from real estate.

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

(A) A stockholder in a corporation shall be presumed not to be affiliated with a person solely on the basis of being a stockholder if the stockholder owns, controls, or has a beneficial interest in less than five percent of the outstanding shares in the corporation.

(B) An individual shall be presumed not to be affiliated with a person solely for actions taken as an agent of another within the normal scope of duties of a court-appointed guardian, 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.

(C) A seller or chartered lending institution shall be presumed not to be affiliated with a person solely for financing all or a portion of the purchase price at rates not substantially higher than prevailing lending rates in the community. (Added 2003, No. 115 (Adj. Sess.), § 101; amended 2009, No. 93 (Adj. Sess.), § 3a.)

§ 4455. Revocation

On petition by the municipality and after notice and opportunity for hearing, the environmental division may revoke a municipal land use permit issued under this chapter, including a permit for a telecommunications facility, on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact. (Added 2009, No. 54, § 47, eff. June 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 236.)

10. APPROPRIATE MUNICIPAL PANELS

§ 4460. Appropriate municipal panels

(a) If a municipality establishes a development review board and appoints members to that board, the development review board in that municipality, until its existence is terminated by act of the legislative body, shall exercise all of the functions otherwise exercised under this chapter by the board of adjustment. It also shall exercise the specified development review functions otherwise exercised under this chapter by the planning commission. In municipalities that have created development review boards, the planning commission shall continue to exercise its planning and bylaw development functions and other duties established under this chapter. In situations where this chapter refers to functions that may be performed by a development review board or a planning commission or functions that may be performed by a development review board or a board of adjustment, it is intended that the function in question shall be performed by the development review board if one exists and by the other specified body if a development review board does not exist.

(b) The board of adjustment or the development review board for a rural town or an urban municipality may consist of the members of the planning commission of that town or may include one or more members of the planning commission. The board of adjustment for a rural town or an urban municipality shall consist of not fewer than three nor more than nine persons, as the legislative body of the municipality determines, appointed by the legislative body of the municipality promptly after the first adoption of a bylaw by the municipality. If the legislative body of a municipality creates a development review board to perform all development review functions under this chapter, that board shall consist of not fewer than five nor more than nine persons, as the legislative body of the municipality determines, appointed by the legislative body of the municipality. A municipality may not have a board of adjustment and a development review board at the same time. Upon creation of a development review board, the existence of any board of adjustment shall terminate.

(c) In the case of an urban municipality or of a rural town where the planning commission does not serve as the board of adjustment or the development review board, members of the board of adjustment or the development review board shall be appointed by the legislative body, the number and terms of office of which shall be determined by the legislative body subject to the provisions of subsection (a) of this section. The municipal legislative body may appoint alternates to a board of adjustment or a development review board for a term to be determined by the legislative body. Alternates may be assigned by the legislative body to serve on the board of adjustment or the development review board in situations when one or more members of the board are disqualified or are otherwise unable to serve. Vacancies shall be filled by the legislative body for the unexpired terms and upon the expiration of such terms. Each member of a board of adjustment or a development review board may be removed for cause by the legislative body upon written charges and after public hearing. If a development review board is created, provisions of this subsection regarding removal of members of the board of adjustment shall not apply.

(d) A joint board of adjustment or development review board may be created upon the act of each legislative body of those municipalities having joint planning commissions as provided in section 4327 of this title. The joint board of adjustment or development review board for these participating municipalities shall consist of persons who would have been the members of the board of adjustment or development review board of each of those municipalities. Joint entities created under this subsection may include a board of adjustment and a development review board, if those different entities exist in the participating municipalities.

(e) The following review functions shall be performed by the appropriate municipal panel authorized by a municipality as specified in the municipal bylaws and in accordance with this chapter, whether a zoning board of adjustment, planning commission, or development review board. Unless the matter is an appeal from the decision of the administrative officer, the matter shall come before the panel by referral from the administrative officer. Any such referral decision shall be appealable as a decision of the administrative officer.

(1) Review of right-of-way or easement for land development without frontage as authorized in subdivision 4412(3) of this title;

(2) Review of land development or use within an historic district or with respect to historic landmarks as authorized in subdivision 4414(1)(F) of this title;

(3) Review of land development or use within a design control district as authorized in subdivision 4414(1)(E) of this title;

(4) Review of proposed conditional uses as authorized in subdivision 4414(3) of this title;

(5) Review of planned unit developments as authorized in section 4417 of this title;

(6) Review of requests for waivers as authorized in subdivision 4414(9) of this title;

(7) Site plan review as authorized in section 4416 of this title;

(8) Review of proposed subdivisions as authorized in section 4418 of this title;

(9) Review of wireless telecommunications facilities as authorized in subdivision 4414(12) of this title;

(10) Appeals from a decision of the administrative officer pursuant to section 4465 of this title;

(11) Review of requests for variances pursuant to section 4469 of this title;

(12) Any other reviews required by the bylaws. (Added 2003, No. 115 (Adj. Sess.), § 103.)

§ 4461. Development review procedures

(a) Meetings. An appropriate municipal panel shall elect its own officers and adopt rules of procedure, subject to this section and other applicable state statutes, and shall adopt rules of ethics with respect to conflicts of interest. Meetings of any appropriate municipal panel shall be held at the call of the chairperson and at such times as the panel may determine. The officers of the panel may administer oaths and compel the attendance of witnesses and the production of material germane to any issue under review. All meetings of the panel, except for deliberative and executive sessions, shall be open to the public. The panel shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the clerk of the municipality as a public record. For the conduct of any hearing and the taking of any action, a quorum shall be not less

than a majority of the members of the panel, and any action of the panel shall be taken by the concurrence of a majority of the panel.

(b) Information gathering and record of participation by interested persons. An appropriate municipal panel in connection with any proceeding under this chapter may examine or cause to be examined any property, maps, books, or records bearing upon the matters concerned in that proceeding, may require the attendance of any person having knowledge in the premises, may take testimony and require proof material for its information, and may administer oaths or take acknowledgment in respect of those matters. Any of the powers granted to an appropriate municipal panel by this subsection may be delegated by it to a specifically authorized agent or representative, except in situations where the municipal administrative procedure act applies. In any hearing, there shall be an opportunity for each person wishing to achieve status as an interested person under subsection 4465(b) of this title to demonstrate that the criteria set forth in that subsection are met, and the panel shall keep a written record of the name, address, and participation of each of these persons.

(c) Expenditures for service. An appropriate municipal panel may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. All members of an appropriate municipal panel may be compensated for the performance of their duties and may be reimbursed by their municipality for necessary and reasonable expenses. (Added 2003, No. 115 (Adj. Sess.), § 104.)

§ 4462. Combined review

If more than one type of review is required for a project, the reviews, to the extent feasible, shall be conducted concurrently. A process defining the sequence of review and issuance of decisions shall be defined in the bylaw. (Added 2003, No. 115 (Adj. Sess.), § 104.)

§ 4463. Subdivision review

(a) Approval of plats. Before any plat is approved, a public hearing on the plat shall be held by the appropriate municipal panel after public notice. A copy of the notice shall be sent to the clerk of an adjacent municipality, in the case of a plat located within 500 feet of a municipal boundary, at least 15 days prior to the public hearing.

(b) Plat; record. The approval of the appropriate municipal panel shall expire 180 days from that approval or certification unless, within that 180-day period, that plat shall have been duly filed or recorded in the office of the clerk of the municipality. After an approved plat or certification by the clerk is filed, no expiration of that approval or certification shall be applicable.

(1) The bylaw may allow the administrative officer to extend the date for filing the plat by an additional 90 days, if final local or state permits or approvals are still pending.

(2) No plat showing a new street or highway may be filed or recorded in the office of the clerk of the municipality until it has been approved by the appropriate municipal panel, and that approval is endorsed in writing on the plat, or the certificate of the clerk of the municipality showing the

failure of the appropriate municipal panel to take action within the 45-day period is attached to the plat and filed or recorded with the plat. After that filing or recording, the plat shall be a part of the official map of the municipality.

(c) Acceptance of streets; improvements. Every street or highway shown on a plat filed or recorded as provided in this chapter shall be deemed to be a private street or highway until it has been formally accepted by the municipality as a public street or highway by ordinance or resolution of the legislative body of the municipality. No public municipal street, utility, or improvement may be constructed by the municipality in or on any street or highway until it has become a public street or highway as provided in this section. The legislative body shall have authority after a public hearing on the subject to name and rename all public streets and to number and renumber lots so as to provide for existing as well as future structures.

(d) Beginning October 1, 2010, any application for an approval and any approval issued under this section shall include a statement, in content and form approved by the secretary of natural resources, that state permits may be required and that the permittee should contact state agencies to determine what permits must be obtained before any construction may commence. (Added 2003, No. 115 (Adj. Sess.), § 104; amended 2009, No. 146 (Adj. Sess.), § F28.)

§ 4464. Hearing and notice requirements; decisions and conditions; administrative review; role of advisory commissions in development review

(a) Notice procedures. All development review applications before an appropriate municipal panel under procedures set forth in this chapter shall require notice as follows.

(1) A warned public hearing shall be required for conditional use review, variances, administrative officer appeals, and final plat review for subdivisions. Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all the following:

(A) Publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the municipality affected.

(B) Posting of the same information in three or more public places within the municipality in conformance with location requirements of 1 V.S.A. § 312(c)(2), including posting within view from the public right-of-way most nearly adjacent to the property for which an application is made.

(C) Written notification to the applicant and to owners of all properties adjoining the property subject to development, including the owners of properties which would be contiguous to the property subject to development but for the interposition of a highway or other public right-of-way and, in any situation in which a variance is sought regarding setbacks from a state highway, also including written notification to the secretary of transportation. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

(2) Public notice for hearings on all other types of development review, including site plan review, shall be given not less than seven days prior to the date of the public hearing, and shall include at a minimum all the following:

(A) Posting of the date, place, and purpose of the hearing in three or more public places within the municipality in conformance with the time and location requirements of 1 V.S.A. § 312(c)(2).

(B) Written notification to the applicant and to the owners of all properties adjoining the property subject to development, including the owners of properties which would be contiguous to the property subject to development but for the interposition of a highway or other public right-of-way and, in any situation in which a variance is sought regarding setbacks from a state highway, also including written notification to the secretary of transportation. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

(3) The applicant may be required to bear the cost of the public warning and the cost and responsibility of notification of adjoining landowners. The applicant may be required to demonstrate proof of delivery to adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.

(4) The bylaw may also require public notice through other effective means such as a notice board on a municipal website.

(5) No defect in the form or substance of any requirements in subdivision (1) or (2) of this subsection shall invalidate the action of the appropriate municipal panel where reasonable efforts are made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the environmental division or by the applicable municipal panel itself, the action shall be remanded to the applicable municipal panel to provide new posting and notice, hold a new hearing, and take a new action.

(b) Decisions.

(1) The appropriate municipal panel may recess the proceedings on any application pending submission of additional information. The panel should close the evidence promptly after all parties have submitted the requested information. The panel shall adjourn the hearing and issue a decision within 45 days after the adjournment of the hearing, and failure of the panel to issue a decision within this period shall be deemed approval and shall be effective on the 46th day. Decisions shall be issued in writing and shall include a statement of the factual bases on which the appropriate municipal panel has made its conclusions and a statement of the conclusions. The minutes of the meeting may suffice, provided the factual bases and conclusions relating to the review standards are provided in conformance with this subsection.

(2) In rendering a decision in favor of the applicant, the panel may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of this chapter and the pertinent bylaws and the municipal plan then in effect. A bylaw may provide for the

conditioning of permit issuance on the submission of a bond, escrow account, or other surety in a form acceptable to the legislative body of the municipality to assure one or more of the following: the completion of the project, adequate stabilization, or protection of public facilities that may be affected by a project.

(3) Any decision shall be sent by certified mail within the period set forth in subdivision (1) of this subsection to the applicant and the appellant in matters on appeal. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing and a copy of the decision shall be filed with the administrative officer and the clerk of the municipality as a part of the public records of the municipality.

(4) Conditions may require that no zoning permit, except for any permits that may be required for infrastructure construction, may be issued for an approved development unless the streets and other required public improvements have been satisfactorily installed in accordance with the approval decision and pertinent bylaws. In lieu of the completion of the required public improvements, the appropriate municipal panel may require from the owner for the benefit of the municipality a performance bond issued either by a bonding or surety company approved by the legislative body or by the owner with security acceptable to the legislative body in an amount sufficient to cover the full cost of those new streets and required improvements on or in those streets or highways and their maintenance for a period of two years after completion as is estimated by the appropriate municipal panel or such municipal departments or officials as the panel may designate. This bond or other security shall provide for, and secure to the public, the completion of any improvements that may be required within the period fixed in the subdivision bylaws for that completion and for the maintenance of those improvements for a period of two years after completion.

(5) The legislative body may enter into an agreement governing any combination of the timing, financing, and coordination of private or public facilities and improvements in accordance with the terms and conditions of a municipal land use permit, provided that agreement is in compliance with all applicable bylaws in effect.

(6) The performance bond required by this subsection shall run for a term to be fixed by the appropriate municipal panel, but in no case for a longer term than three years. However, with the consent of the owner, the term of that bond may be extended for an additional period not to exceed three years. If any required improvements have not been installed or maintained as provided within the term of the performance bond, the bond shall be forfeited to the municipality and upon receipt of the proceeds of the bond, the municipality shall install or maintain such improvements as are covered by the performance bond.

(c) Administrative review. In addition to the delegation of powers authorized under this chapter, any bylaws adopted under this chapter may establish procedures under which the administrative officer may review and approve new development and amendments to previously approved development that would otherwise require review by an appropriate municipal panel. If administrative review is authorized, the bylaws shall clearly specify the thresholds and conditions under which the administrative officer classifies an application as eligible for administrative review. The thresholds and conditions shall be structured such that no new development shall be approved that results in a substantial impact under any of the standards set forth in the bylaws. No amendment issued as an administrative review shall have the effect of substantively altering any of the findings of fact of the most recent approval. Any decision by an administrative officer under this subsection may be appealed as provided in section 4465 of this title.

(d) Role of advisory commissions in development review. An advisory commission that has been established through section 4433 or chapter 118 of this title and that has been granted authority under the bylaws, by ordinance, or by resolution of the legislative body to advise the appropriate municipal panel or panels, applicants, and interested parties should perform the advisory function in the following manner:

(1) The administrative officer shall provide a copy or copies of applications subject to review by the advisory commission and all supporting information to the advisory commission upon determination that the application is complete.

(2) The advisory commission may review the application and prepare recommendations on each of the review standards within the commission's purview for consideration by the appropriate municipal panel at the public hearing on the application. The commission or individual members of the commission may meet with the applicant, interested parties, or both, conduct site visits, and perform other fact-finding that will enable the preparation of recommendations.

(3) Meetings by the advisory commission on the application shall comply with the open meeting law, subchapter 2 of chapter 5 of Title 1, and the requirements of the commission's rules of procedure, but shall not be conducted as public hearings before a quasijudicial body.

(4) The advisory commission's recommendations may be presented in writing at or before the public hearing of the appropriate municipal panel on the application, or may be presented orally at the public hearing.

(5) If the advisory commission finds that an application fails to comply with one or more of the review standards, it shall make every effort to inform the applicant of the negative recommendations before the public hearing, giving the applicant an opportunity to withdraw the application or otherwise prepare a response to the advisory committee's recommendations at the public hearing. Advisory commissions may also suggest remedies to correct the deficiencies that resulted in the negative recommendations. (Added 2003, No. 115 (Adj. Sess.), § 104; amended 2007, No. 75, § 29; 2009, No. 154 (Adj. Sess.), § 236.)

11. APPEALS

§ 4465. Appeals of decisions of the administrative officer

(a) An interested person may appeal any decision or act taken by the administrative officer in any municipality by filing a notice of appeal with the secretary of the board of adjustment or development review board of that municipality or with the clerk of that municipality if no such secretary has been elected. This notice of appeal must be filed within 15 days of the date of that decision or act, and a copy of the notice of appeal shall be filed with the administrative officer.

(b) For the purposes of this chapter, an interested person means any one of the following:

(1) A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.

(2) The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.

(3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.

(4) Any ten persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.

(5) Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state.

(c) In the exercise of its functions under this section, a board of adjustment or development review board shall have the following powers, in addition to those specifically provided for elsewhere in this chapter:

(1) To hear and decide appeals taken under this section, including, without limitation, where it is alleged that an error has been committed in any order, requirement, decision, or determination made by an administrative officer under this chapter in connection with the administration or enforcement of a bylaw.

(2) To hear and grant or deny a request for a variance under section 4469 of this title. (Added 2003, No. 115 (Adj. Sess.), § 106.)

§ 4466. Notice of appeal

A notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant, and the alleged grounds why the requested relief is believed proper under the circumstances. (Added 2003, No. 115 (Adj. Sess.), § 106.)

§ 4467. [Reserved for future use.]

§ 4468. Hearing on appeal

The appropriate municipal panel shall set a date and place for a public hearing of an appeal under this chapter that shall be within 60 days of the filing of the notice of appeal under section 4465 of this title. The appropriate municipal panel shall give public notice of the hearing and shall mail to the appellant a copy of that notice at least 15 days prior to the hearing date. Any person or body empowered by section 4465 of this title to take an appeal with respect to that property at issue may appear and be heard in person or be represented by an agent or attorney at the hearing. Any hearing held under this section may be adjourned by the appropriate municipal panel from time to time; provided, however, that the date and place of the adjourned hearing shall be announced at the hearing. All hearings under this section shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in 3 V.S.A. § 810. (Added 2003, No. 115 (Adj. Sess.), § 106.)

§ 4469. Appeal; variances

(a) On an appeal under section 4465 or 4471 of this title or on a referral under subsection 4460(e) of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is not primarily a renewable energy resource structure, the board of adjustment or the development review board or the environmental division created under 4 V.S.A. chapter 27 shall grant variances and render a decision in favor of the appellant, if all the following facts are found, and the finding is specified in its decision:

(1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

(2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) Unnecessary hardship has not been created by the appellant.

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

(b) On an appeal under section 4465 or 4471 of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is primarily a renewable energy resource structure, the board of adjustment or development review board or the environmental division may grant that variance and render a decision in favor of the appellant if all the following facts are found, and the finding is specified in its decision:

(1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the bylaws.

(2) The hardship was not created by the appellant.

(3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(4) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaws and from the plan.

(c) In rendering a decision in favor of an appellant under this section, a board of adjustment or development review board or the environmental division may attach such conditions to variances as it may consider necessary and appropriate under the circumstances to implement the purposes of this chapter and the plan of the municipality then in effect. (Added 2003, No. 115 (Adj. Sess.), § 106; amended 2009, No. 154 (Adj. Sess.), § 236.) amended 2011, No. 138 (Adj. Sess.), § 14.

(d) A variance authorized in a flood hazard area shall meet applicable federal and state rules for compliance with the National Flood Insurance Program.

§ 4470. Successive appeals; requests for reconsideration to an appropriate municipal panel

(a) An appropriate municipal panel may reject an appeal or request for reconsideration without hearing and render a decision, which shall include findings of fact, within 10 days of the date of filing of the notice of appeal, if the appropriate municipal panel considers the issues raised by the appellant in the appeal

have been decided in an earlier appeal or involve substantially or materially the same facts by or on behalf of that appellant. The decision shall be rendered, on notice given, as in the case of a decision under subdivision 4464(b)(3) of this title, and shall constitute a decision of the appropriate municipal panel for the purpose of section 4471 of this title.

(b) A municipality shall enforce all decisions of its appropriate municipal panels, and further, the superior court's civil or environmental division shall enforce such decisions upon petition, complaint or appeal or other means in accordance with the laws of this state by such municipality or any interested person by means of mandamus, injunction, process of contempt, or otherwise. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1993, No. 232 (Adj. Sess.), § 20, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 107; 2009, No. 154 (Adj. Sess.), § 236.)

§ 4470a. Misrepresentation; material fact

An administrative officer or appropriate municipal panel may reject an application under this chapter, including an application for a telecommunications facility, that misrepresents any material fact. After notice and opportunity for hearing in compliance with section 809 of Title 3, an appropriate municipal panel may award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application. (Added 2009, No. 54, § 48, eff. June 1, 2009.)

§ 4471. Appeal to environmental division

(a) Participation required. An interested person who has participated in a municipal regulatory proceeding authorized under this title may appeal a decision rendered in that proceeding by an appropriate municipal panel to the environmental division. Participation in a local regulatory proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. An appeal from a decision of the appropriate municipal panel, or from a decision of the municipal legislative body under subsection 4415(d) of this title, shall be taken in such manner as the supreme court may by rule provide for appeals from state agencies governed by 3 V.S.A. §§ 801-816, unless the decision is an appropriate municipal panel decision which the municipality has elected to be subject to review on the record.

(b) Appeal on the record. If the municipal legislative body has determined (or been instructed by the voters) to provide that appeals of certain appropriate municipal panel determinations shall be on the record, has defined what magnitude or nature of development proposal shall be subject to the production of an adequate record by the panel, and has provided that the municipal administrative procedure act shall apply in these instances, then an appeal from such a decision of an appropriate municipal panel shall be taken on the record in accordance with the Vermont Rules of Civil Procedure.

(c) Notice. Notice of the appeal shall be filed by certified mailing, with fees, to the environmental division and by mailing a copy to the municipal clerk or the administrative officer, if so designated, who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

(d) Local Act 250 review. Notwithstanding the provisions of subsection (a) of this section, decisions of a development review board under section 4420 of this title, with respect to local Act 250 review of municipal impacts, are not subject to appeal, but shall serve as presumptions under the provisions of 10 V.S.A. chapter 151.

(e) Vermont neighborhood. Notwithstanding subsection (a) of this section, a determination by an appropriate municipal panel shall not be subject to appeal if the determination is that a proposed residential development within a designated downtown development district, designated growth center, or designated Vermont neighborhood seeking conditional use approval will not result in an undue adverse effect on the character of the area affected, as provided in subdivision 4414(3)(A)(ii) of this title. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 185 (Adj. Sess.), § 205, eff. March 29, 1972; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1993, No. 232 (Adj. Sess.), § 48, eff. March 15, 1995; 1999, No. 112 (Adj. Sess.), § 1; 2003, No. 115 (Adj. Sess.), § 107; 2007, No. 176 (Adj. Sess.), § 9, eff. May 28, 2008; 2009, No. 154 (Adj. Sess.), § 236.)

§ 4472. Exclusivity of remedy; finality

(a) Except as provided in subsections (b) and (c) of this section, the exclusive remedy of an interested person with respect to any decision or act taken, or any failure to act, under this chapter or with respect to any one or more of the provisions of any plan or bylaw shall be the appeal to the appropriate panel under section 4465 of this title, and the appeal to the environmental division from an adverse decision upon such appeal under section 4471 of this title. The appeal to the environmental division, if not on the record, as allowed under section 4471 of this title, shall be governed by the Vermont Rules of Civil Procedure and such interested person shall be entitled to a de novo trial in the environmental division. If the appeal to the environmental division is on the record, according to the provisions of section 4471 of this title, it shall be governed by the Vermont Rules of Civil Procedure. Whether proceeding on the record or de novo, the court shall have and may exercise all powers and authorities of a superior court.

(b) The remedy of an interested person with respect to the constitutionality of any one or more of the provisions of any bylaw or municipal plan shall be governed by the Vermont Rules of Civil Procedure with a de novo trial in the superior court, unless the issue arises in the context of another case under this chapter, in which instance it may be raised in the environmental division. In such cases, hearings before the appropriate municipal panel shall not be required. This section shall not limit the authority of the attorney general to bring an action before the environmental division under section 4453 of this title, with respect to challenges to housing provisions in bylaws.

(c) The provisions of this section shall not be construed as preventing appeals to the supreme court in accordance with the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure.

(d) Upon the failure of any interested person to appeal to an appropriate municipal panel under section 4465 of this title, or to appeal to the environmental division under section 4471 of this title, all interested persons affected shall be bound by that decision or act of that officer, the provisions, or the decisions of the panel, as the case may be, and shall not thereafter contest, either directly or indirectly, the decision or act, provision, or decision of the panel in any proceeding, including any proceeding brought to enforce this chapter. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974, No. 255 (Adj. Sess.), § 3, eff. April 9, 1974; No. 261, (Adj. Sess.), § 8, 1993, No. 232 (Adj. Sess.), § 49, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 107; 2009, No. 154 (Adj. Sess.), § 236.)

§ 4473. Purpose; limitation

It is the purpose of this chapter to provide for review of all questions arising out of or with respect to the implementation by a municipality of this chapter. Except as specifically provided herein, no board of adjustment or development review board may amend, alter, invalidate or affect any development plan or bylaw of any municipality or the implementation or enforcement thereof, or allow any use not permitted by any zoning regulations or other bylaw. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1973, No. 255, § 4, eff. April 11, 1974; 1993, No. 232 (Adj. Sess.), § 21, eff. March 15, 1995.)

§ 4474. Clerk's certificate

A certificate of the clerk of a municipality showing the publication, posting, consideration, and adoption of a plan, bylaw, capital budget, or program or amendment thereof shall be presumptive evidence of the facts as they relate to the lawful adoption of said plan, bylaw, capital budget or program or amendment thereof, so stated in any action or proceeding in court or before any board, commission, or other tribunal. (Added 1973, No. 261 (Adj. Sess.), § 9; amended 1975, No. 164 (Adj. Sess.), § 10.)

§ 4475. Repealed. 2003, No. 115 (Adj. Sess.), § 119(c).

§ 4476. Formal review of regional planning commission decisions

(a) Formal review. A request for formal review of the sufficiency of an adopted regional plan or amendment, or for formal review of the decision of a regional planning commission with respect to the confirmation of a municipal planning effort, or the decision relating to approval of a municipal plan, shall be to the regional review panel created under section 4305 of this title. A request for formal review shall be filed within 21 days of adoption of the plan or amendment or the decision.

(b) Standing. The following have standing to request formal review or become parties to formal review conducted under this section:

(1) a person owning title to property affected by a decision of the regional planning commission who alleges that that decision imposes on that property unreasonable or inappropriate restrictions that significantly impair present or potential use under the particular circumstances of the case;

(2) a municipality whose planning effort is the subject of a decision by the regional planning commission, any other municipality within the region, any municipality which adjoins the region, or a regional planning commission which adjoins the region;

(3) any agency, department or other governmental subdivision of the state owning property or an interest therein within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development;

(4) any 20 persons who by signed petition allege that the decision, if confirmed, will not be in accord with the requirements of this chapter, and who own or occupy real property located within any combination of the following:

(A) any municipality whose planning effort is the subject of the decision by the regional planning commission; or

(B) any municipality which adjoins a municipality whose planning effort is subject of the decision by the regional planning commission;

(5) with respect to the sufficiency of an adopted or amended regional plan, any 20 persons who by signed petition allege that the plan or amendment is not in accord with the requirements of this chapter, and who own or occupy real property located within the area that includes the region and the municipalities that adjoin the region;

(6) the regional planning commission whose plan, amendment, or decision is the subject of the request for formal review.

(c) Procedure; regional review panel. Notice of formal review shall be sent by mail to the municipalities within the region, to the regional planning commission, and to the agency of commerce and community development and shall be accompanied by a statement of all reasons why the appellant believes the plan or opinion to be in error and all issues which the appellant believes to be relevant. Within 30 days of receipt of the notice of formal review, the date for a hearing shall be set and the council shall publish notice of the hearing in a newspaper of general circulation in the applicable region, and shall provide notice in writing of the hearing to individuals and organizations that had requested notice from the regional planning commission under section 4348 relating to the adoption of a regional plan. The appellant shall pay the costs of publication. The hearing shall be held within 45 days of receipt of the notice of formal review. Upon motion, for good cause shown, the panel may extend the date of the hearing. Within 20 days of adjournment of the hearing, the regional review panel shall issue a decision approving, conditionally approving or disapproving the regional plan or amendment or the opinion with respect to confirmation of the municipal planning effort or approval of the municipal plan. The regional review panel shall be governed by the provisions for contested cases in chapter 25 of Title 3.

(d) Issues on formal review.

(1) With respect to formal review of the sufficiency of an adopted or amended regional plan, the regional review panel shall determine:

(A) whether the plan contains the elements required by law;

(B) whether the plan is compatible with the plans of adjoining regions; and

(C) whether the plan is consistent with the goals established in section 4302 of this title.

(2) With respect to formal review of a regional planning commission decision on the confirmation of a municipal planning effort, the regional review panel shall determine:

(A) whether the municipality is engaged in a continuing planning process that, within a reasonable time, will attain consistency with the goals established in section 4302 of this title; and

(B) whether the municipality is maintaining its efforts to provide local funds for municipal and regional planning purposes.

(3) With respect to formal review of a regional planning commission decision on the approval or disapproval of a municipal plan, the regional review panel shall determine:

(A) whether the plan is consistent with the goals established in section 4302 of this title;

(B) whether the plan is compatible with its regional plan; and

(C) whether the plan is compatible with approved plans of other municipalities in the region.

(e) Stays.

(1) The filing of a notice of formal review shall not stay the effect of the plan or the decision of the regional planning commission, unless so ordered by the regional review panel.

(2) If notice of formal review of the decision of a regional planning commission to approve or disapprove a municipal plan is filed prior to final adoption of the plan, the regional review panel shall stay formal review proceedings pending final adoption. The panel, however, may proceed with formal review upon the request of the municipality whose plan is the subject of the review.

(f) Appeal to supreme court. An appeal from a decision of the regional review panel shall be to the supreme court. (Added 1987, No. 200 (Adj. Sess.), § 33, eff. July 1, 1989; amended 1989, No. 280 (Adj. Sess.),§§ 11, 11a; 1995, No. 190 (Adj. Sess.), § 1(a).)

12. CONSTRUCTION OF ACT, SAVING CLAUSE, SEVERABILITY

§ 4480. Construction of chapter

The provisions of this chapter shall not affect any act done, contract executed, or liability incurred prior to its effective date, or affect any suit or prosecution pending or to be instituted, to enforce any right, rule, regulation, or ordinance or to punish any offense against any such repealed laws or against any ordinance enacted under them. All ordinances, resolutions, regulations, and rules made under any act of the general assembly repealed by this chapter shall continue in effect as if such act had not been repealed, except as otherwise specifically provided in this chapter. (Added 2003, No. 115 (Adj. Sess.), § 109.)

§ 4481. Saving clause

The amendment of this chapter and the repeal of prior enabling laws relating to zoning ordinances, subdivision regulations, or bylaws or any ordinance or regulation similar to a bylaw authorized by this chapter shall not invalidate any zoning ordinance, subdivision regulation, or bylaw or any such ordinance or regulation enacted under those prior enabling laws, except as follows. Effective September 1, 2005, the provisions of sections 4412 and 4413 of this title, and the provisions of subchapters 9, 10, and 11 of this chapter and the related definitions in section 4303 of this title, shall control over any inconsistent municipal regulations, ordinances, or bylaws. With respect to other provisions of this chapter, any previously enacted zoning ordinance, subdivision regulation, bylaw, or such similar ordinance or regulation shall be amended to conform with the provisions of this chapter by September 1, 2011. (Added 2003, No. 115 (Adj. Sess.), § 109.)

§ 4482. Severability

If any provision of this chapter or the application of this chapter to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and for this purpose, the provisions of this chapter are severable. (Added 2003, No. 115 (Adj. Sess.), § 109.)

§ 4483. Construction; limitation

(a) In reviewing the procedures used in the adoption, amendment, or repeal of any plan or bylaw, no court shall invalidate the plan or bylaw or its amendment or repeal because of a failure to adhere to strict and literal requirements of this chapter concerning minor or nonessential particulars. The court shall uphold the plan, bylaw, or action if there has been substantial compliance with the procedural requirements of this chapter.

(b) No person shall challenge for purported procedural defects the validity of any plan or bylaw as adopted, amended, or repealed under this chapter after two years following the day on which it would have taken effect if no defect had occurred. (Added 2003, No. 115 (Adj. Sess.), § 109.)

§§ 4490-4496. Repealed. 2003, No. 115 (Adj. Sess.), § 119(c).

13. ANNUAL HOUSING REPORTS

§ 4498. Housing budget and investment reports

The commissioner of housing and community affairs shall:

(1) Create a Vermont housing budget designed to assure efficient expenditure of state funds appropriated for housing development, to encourage and enhance cooperation among housing organizations, to eliminate overlap and redundancy in housing development efforts, and to ensure appropriate geographic distribution of housing funds. The Vermont housing budget shall include any state funds of $50,000.00 or more awarded or appropriated for housing. The Vermont housing budget and appropriation recommendations shall be submitted to the General Assembly annually on or before January 15, and shall include the amounts and purposes of funds appropriated for or awarded to the following:

(A) The Vermont housing and conservation trust fund.

(B) The agency of human services.

(C) The agency of commerce and community development.

(D) Any other entity that fits the funding criteria.

(2) Annually, develop a Vermont housing investment plan in consultation with the Vermont housing council. The housing investment plan shall be consistent with the Vermont consolidated plan for housing, in order to coordinate the investment of state, federal and other resources, such as state appropriations, tax credits, rental assistance and mortgage revenue bonds, to increase the availability and improve the quality of Vermont's housing stock. The housing investment plan shall be submitted to the general assembly, annually on January 15, and shall:

(A) target investments at single-family housing, mobile homes, multifamily housing and housing for homeless persons and people with special needs;

(B) recommend approaches that maximize the use of available state and federal resources;

(C) identify areas of the state that face the greatest housing shortages; and

(D) recommend strategies to improve coordination among state, local and regional offices in order to remedy identified housing shortages. (Added 2005, No. 189 (Adj. Sess.), § 12.)

Title 1: General Provisions

Chapter 5: COMMON LAW; GENERAL RIGHTS

3. ACCESS TO PUBLIC RECORDS

§ 316. Access to public records and documents

(a) Any person may inspect or copy any public record of a public agency, as follows:

(1) For any agency, board, department, commission, committee, branch, instrumentality, or authority of the state, a person may inspect a public record on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and 12 o'clock in the forenoon and between one o'clock and four o'clock in the afternoon;

(2) For any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the state, a person may inspect a public record during customary business hours.

(b) If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) Unless otherwise provided by law, in the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

(d) The secretary of state, after consultation with the secretary of administration, shall establish the actual cost of providing a copy of a public record that may be charged by state agencies. The secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost" the secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly

associated with copying a record. The secretary of state shall adopt, by rule, a uniform schedule of public record charges for state agencies.

(e) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the secretary of state. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges established by the secretary of state until the local legislative body establishes such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.

(f) State agencies shall provide receipts for all moneys received under this section. Notwithstanding any provision of law to the contrary, a state agency may retain moneys collected under this section to the extent such charges represent the actual cost incurred to provide copies under this subchapter. Amounts collected by a state agency under this section for the cost of staff time associated with providing copies shall be deposited in the general fund, unless another disposition or use of revenues received by that agency is specifically authorized by law. Charges collected under this section shall be deposited in the agency's operating account or the general fund, as appropriate, on a monthly basis or whenever the amount totals $100.00, whichever occurs first.

(g) A public agency having the equipment necessary to copy its public records shall utilize its equipment to produce copies. If the public agency does not have such equipment, nothing in this section shall be construed to require the public agency to provide or arrange for copying service, to use or permit the use of copying equipment other than its own, to permit operation of its copying equipment by other than its own personnel, to permit removal of the public record by the requesting person for purposes of copying, or to make its own personnel available for making handwritten or typed copies of the public record or document requested.

(h) Standard formats for copies of public records shall be as follows: for copies in paper form, a photocopy of a paper public record or a hard copy print-out of a public record maintained in electronic form; for copies in electronic form, the format in which the record is maintained. Any format other than the formats described in this subsection is a nonstandard format.

(i) If an agency maintains public records in an electronic format, nonexempt public records shall be available for copying in either the standard electronic format or the standard paper format, as designated by the party requesting the records. An agency may, but is not required to, provide copies of public records in a nonstandard format, to create a public record or to convert paper public records to electronic format.

(j) A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage.

(k) Information concerning facilities and sites for the treatment, storage, and disposal of hazardous waste shall be made available to the public under this subchapter in substantially the same manner and to the same degree as such information is made available under the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. chapter 82, subchapter 3, and the Federal Freedom of Information Act, 5 U.S.C. section 552 et seq. In the event of a conflict between the provisions of this subchapter and the cited federal laws, federal law shall govern. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 1987, No.

85, § 5, eff. June 9, 1987; 1995, No. 159 (Adj. Sess.), § 1; 2003, No. 158 (Adj. Sess.), § 4; 2011, No. 59, § 2.)

§ 317. Definitions; public agency; public records and documents

(a) As used in this subchapter:

(1) "Business day" means a day that a public agency is open to provide services.

(2) "Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the state.

(b) As used in this subchapter, "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

(c) The following public records are exempt from public inspection and copying:

(1) records which by law are designated confidential or by a similar term;

(2) records which by law may only be disclosed to specifically designated persons;

(3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the state;

(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the general assembly and the executive branch agencies of the state of Vermont;

(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, that records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public;

(6) a tax return and related documents, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont department of taxes or submitted by a person to any public agency in connection with agency business;

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or

corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative;

(8) test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination;

(9) trade secrets, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 shall not be included in this subdivision;

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees;

(11) student records, including records of a home study student, at educational institutions or agencies funded wholly or in part by state revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as amended;

(12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;

(13) information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof;

(14) records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation;

(15) records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees;

(16) any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the state of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document;

(17) records of interdepartmental and intradepartmental communications in any county, city, town, village, town school district, incorporated school district, union school district, consolidated water district, fire district, or any other political subdivision of the state to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with section 312 of this title;

(18) records of the office of internal investigation of the department of public safety, except as provided in 20 V.S.A. § 1923;

(19) records relating to the identity of library patrons or the identity of library patrons in regard to library patron registration records and patron transaction records in accordance with chapter 4 of Title 22;

(20) information which would reveal the location of archeological sites and underwater historic properties, except as provided in 22 V.S.A. § 762;

(21) lists of names compiled or obtained by Vermont Life magazine for the purpose of developing and maintaining a subscription list, which list may be sold or rented in the sole discretion of Vermont Life magazine, provided that such discretion is exercised in furtherance of that magazine's continued financial viability, and is exercised pursuant to specific guidelines adopted by the editor of the magazine;

(22) any documents filed, received, or maintained by the agency of commerce and community development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit), except that all such documents shall become public records under this section subchapter when a tax credit certification has been granted by the secretary of administration, and provided that the disclosure of such documents does not otherwise violate any provision of Title 32;

(23) any data, records or information developed, discovered, collected, or received by or on behalf of faculty, staff, employees or students of the University of Vermont or the Vermont state colleges in the conduct of study, research or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records or information are published, disclosed in an issued patent or publicly released by the institution or its authorized agents. This subdivision applies to, but is not limited to, research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research;

(24) records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity;

(25) passwords, access codes, user identifications, security procedures and similar information the disclosure of which would threaten the safety of persons or the security of public property;

(26) information and records provided to the department of banking, insurance, securities, and health care administration by an individual for the purposes of having the department assist that individual in resolving a dispute with any person or company regulated by the department, and any information or records provided by a company or any other person in connection with the individual's dispute;

(27) information and records provided to the department of public service by an individual for the purposes of having the department assist that individual in resolving a dispute with a utility regulated by the department, or by the utility or any other person in connection with the individual's dispute;

(28) records of, and internal materials prepared for, independent external reviews of health care service decisions pursuant to 8 V.S.A. § 4089f and of mental health care service decisions pursuant to 8 V.S.A. § 4089a;

(29) the records in the custody of the secretary of state of a participant in the address confidentiality program described in chapter 21, subchapter 3 of Title 15, except as provided in that subchapter;

(30) all code and machine-readable structures of state-funded and controlled database applications, which are known only to certain state departments engaging in marketing activities and which give the state an opportunity to obtain a marketing advantage over any other state, regional or local governmental or nonprofit quasi-governmental entity, or private sector entity, unless any such state department engaging in marketing activities determines that the license or other voluntary disclosure of such materials is in the state's best interests;

(31) records of a registered voter's month and day of birth, motor vehicle operator's license number, the last four digits of the applicant's Social Security number, and street address if different from the applicant's mailing address contained in an application to the statewide voter checklist or the statewide voter checklist established under 17 V.S.A. § 2154;

(32) with respect to publicly-owned, -managed, or -leased structures, and only to the extent that release of information contained in the record would present a substantial likelihood of jeopardizing the safety of persons or the security of public property, final building plans and as-built plans, including drafts of security systems within a facility, that depict the internal layout and structural elements of buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by an agency before, on, or after the effective date of this provision; emergency evacuation, escape, or other emergency response plans that have not been published for public use; and vulnerability assessments, operation and security manuals, plans, and security codes. For purposes of this subdivision, "system" shall include electrical, heating, ventilation, air conditioning, telecommunication, elevator, and security systems. Information made exempt by this subdivision may be

disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the state. The entities or persons receiving such information shall maintain the exempt status of the information. Such information may also be disclosed by order of a court of competent jurisdiction, which may impose protective conditions on the release of such information as it deems appropriate. Nothing in this subdivision shall preclude or limit the right of the general assembly or its committees to examine such information in carrying out its responsibilities or to subpoena such information. In exercising the exemption set forth in this subdivision and denying access to information requested, the custodian of the information shall articulate the grounds for the denial;

(33) the account numbers for bank, debit, charge, and credit cards held by an agency or its employees on behalf of the agency;

(34) affidavits of income and assets as provided in 15 V.S.A. § 662 and Rule 4 of the Vermont Rules for Family Proceedings;

(35) [Expired.]

(36) anti-fraud plans and summaries submitted by insurers to the department of banking, insurance, securities, and health care administration for the purposes of complying with 8 V.S.A. § 4750;

(37) records provided to the department of health pursuant to the patient safety surveillance and improvement system established by chapter 43a of Title 18;

(38) records held by the agency of human services, which include prescription information containing prescriber-identifiable data, that could be used to identify a prescriber, except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in 18 V.S.A. §§ 4621, 4631, 4632, 4633, and 9410 and chapter 84 of Title 18, or as provided for in chapter 84A of Title 18 and for other law enforcement activities;

(39) records held by the agency of human services or the department of banking, insurance, securities, and health care administration, which include prescription information containing patient-identifiable data, that could be used to identify a patient;

(40) records of genealogy provided in support of an application for tribal recognition pursuant to chapter 23 of this title:

(41) documents reviewed by the victim's compensation board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ 5360 and 7043(c).

(Added 1975, No. 231 (Adj. Sess.), § 1; amended 1977, No. 202 (Adj. Sess.); 1979, No. 156 (Adj. Sess.), § 6; 1981, No. 227 (Adj. Sess.), § 4; 1989, No. 28, § 2; 1989, No. 136 (Adj. Sess.), § 1; 1995, No. 46, §§ 23, 58; 1995, No. 159 (Adj. Sess.), § 2; No. 167 (Adj. Sess.), § 29; No. 182 (Adj. Sess.), § 21, eff. May 22, 1996; No. 180 (Adj. Sess.), § 38; No. 190 (Adj. Sess.), § 1(a); 1997, No. 159 (Adj. Sess.), § 12, eff. April 29, 1998; 1999, No. 134 (Adj. Sess.), § 3, eff. Jan. 1, 2001; 2001, No. 28, § 9, eff. May 21, 2001; 2001, No. 76 (Adj. Sess.), § 3, eff. Feb. 19, 2002; No. 78 (Adj. Sess.), § 1, eff. Apr. 3, 2002; 2003, No. 59, § 1, eff. Jan. 1, 2006; No. 63, § 29, eff. June 11, 2003; 2003, No. 107 (Adj. Sess.), § 14; No. 146 (Adj. Sess.), § 6, eff. Jan. 1, 2005; No. 158 (Adj. Sess.), § 2; No. 159 (Adj. Sess.), § 12; 2005, No. 132 (Adj. Sess.), § 1; 2005, No. 179 (Adj. Sess.), § 3; 2005, No. 215 (Adj. Sess.), § 326; 2007, No. 80, § 18; 2007, No. 110 (Adj. Sess.), § 3; 2007, No. 129 (Adj. Sess.), § 2; 2009, No. 59, § 5; 2009, No. 107 (Adj. Sess.), § 5, eff. May 14, 2010; 2011, No. 59, § 3; 2011, (Adj. Sess.) No. 145 § 8.)

§ 317a. Disposition of public records

A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule approved by the state archivist pursuant to 3 V.S.A. § 117(a)(5). (Added 2007, No. 96 (Adj. Sess.), § 1.)

§ 318. Procedure

(a) Upon request, the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, the custodian shall so certify in writing. Such certification shall identify the records withheld and the basis for the denial. A record shall be produced for inspection or a certification shall be made that a record is exempt within three business days of receipt of the request, unless otherwise provided in subdivision (5) of this subsection. The certification shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five business days after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to the custodian by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten business days from receipt of the request. As used in this subdivision, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted the person's administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination

by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.

(c)

(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.

(2) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.

(d) In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

(e) A public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.

(f) If a person making the request has a disability which requires accommodation to gain equal access to the public record sought, the person shall notify the public agency of the type of accommodation requested. The public agency shall give primary consideration to the accommodation choice expressed by the requestor, but may propose an alternative accommodation so long as it achieves equal access. The public agency shall provide accommodation to the person making the request unless the agency can demonstrate that accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.

(g) The secretary of state shall provide municipal public agencies and members of the public information and advice regarding the requirements of the public records act and may utilize informational websites, toll-free telephone numbers, or other methods to provide such information and advice. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2005, No. 132 (Adj. Sess.), § 2; 2007, No. 110 (Adj. Sess.), § 1; 2011, No. 59, § 4.)

§ 319. Enforcement

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the civil division of the superior court in the county in which the complainant resides, or has his or her personal place of business, or in which the public records are situated, or in the civil division of the

superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden of proof shall be on the public agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the civil division of the superior court, as authorized by this section, and appeals there from, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d)

(1) Except as provided in subdivision (2) of this subsection, the court shall assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(2) The court may, in its discretion, assess against a public agency reasonable attorney fees and other litigation costs reasonably incurred in a case under this section in which the complainant has substantially prevailed provided that the public agency, within the time allowed for service of an answer under Rule 12(a)(1) of the Vermont Rules of Civil Procedure:

(A) concedes that a contested record or contested records are public; and

(B) provides the record or records to the complainant.

(3) The court may assesses against the complainant reasonable attorney fees and other litigation costs reasonably incurred in any case under this section when the court finds that the complainant has violated Rule 11 of the Vermont Rules of Civil Procedure. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2011, No. 59, § 5.)

Title 3: Executive

Chapter 67: AGENCY PLANNING

2. EXECUTIVE REORGANIZATION

§ 4020. State agency planning and coordination

(a) State agencies that have programs or take actions affecting land use, as determined by executive order of the governor, shall engage in a continuing planning process to assure that those programs and actions are consistent with the goals established in 24 V.S.A. § 4302 and compatible with regional and approved municipal plans, as those terms are defined in that section. This planning process shall be coordinated, in a manner established by executive order of the governor, with the planning process of other agencies and of regional and municipal entities of the regions in which the programs and actions are to have effect.

(b) In the process of preparing plans or amendments to plans, a state agency shall hold at least two public hearings which are noticed as provided in 3 V.S.A. § 839 for administrative rules, but plans shall not be adopted as administrative rules under 3 V.S.A. chapter 25. Specific notice also shall be provided to the following, at least 30 days prior to the public hearing:

(1) the executive director of each regional planning commission;

(2) the department of housing and community affairs within the agency of commerce and community development;

(3) the council of regional commissions; and

(4) business, conservation, low-income advocacy and other community or interest groups or organizations that have requested notice prior to the date the hearing is warned.

(c) Any of the foregoing bodies, or their representatives, may submit comments on the proposed plan or amendment, and may appear and be heard in any proceeding with respect to the adoption of the proposed plan or amendment. State agencies shall use an informal working format at locations convenient and accessible to the public in order to provide opportunities for all persons and organizations with an interest in their plans and actions to participate. (Added 1987, No. 200 (Adj. Sess.), § 28, eff. July 1, 1989; amended 1995, No. 190 (Adj. Sess.), § 1(a).)

§ 4021. Adoption of state agency plans

By January 1, 1991, each state agency that has programs or that takes actions affecting land use shall adopt an interim plan that is compatible with regional and approved municipal plans, and that is consistent with the goals established in 24 V.S.A. § 4302. By January 1, 1993, each state agency that has programs or that takes actions affecting land use shall adopt a plan that is compatible with regional plans and approved municipal plans, and that is consistent with the goals established in 24 V.S.A. § 4302. Thereafter, the agency shall readopt its plan biennially, to ensure that its plan remains compatible with regional plans and approved municipal plans, and remains consistent with the goals established in 24 V.S.A. § 4302. The term "approved municipal plans" as used in this section has the meaning established in 24 V.S.A. § 4350. (Added 1987, No. 200 (Adj. Sess.), § 28, eff. July 1, 1989; amended 1989, No. 280 (Adj. Sess.), § 12; 2009, No. 33, § 10.)

Title 10: Conservation and Development

Chapter 34: CONSERVATION AND PRESERVATION RIGHTS AND INTERESTS

§ 821. Definitions

(a) "Conservation rights and interests" mean rights held by a qualified holder to restrict or condition the use, modification or subdivision of a land or water area and rights to perform, or require the performance of, specified activities with respect thereto. These rights and interests shall be for the purpose of maintaining, enhancing and conserving that land or water area, including improvements thereon, predominantly in its natural, scenic, or open condition, or in agricultural, farming, forest, wildlife or open space use, or for public recreation, or in other use or condition consistent with the purposes set forth in section 6301 of this title.

(b) "Preservation rights and interests" mean rights held by a qualified holder to restrict or condition the use, modification or subdivision of a structure or site, and rights to perform, or require the performance of, specified activities with respect thereto. Such rights and interests shall be for the purpose of preserving, rehabilitating, or restoring a structure or site having significant historical, architectural, cultural or archaeological characteristics.

(c) "Qualified holder" and "holder," as used in this chapter, mean:

(1) a municipality, department or board of the state of Vermont;

(2) an organization qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, provided one of the stated purposes of the organization is to acquire property or rights and interests in property in order to preserve historic, agricultural, forestry or open space resources;

(3) an organization qualifying under Section 501(c)(2) of the Internal Revenue Code of 1986, as amended, provided that organization is controlled exclusively by an organization or organizations described in subdivision (2) of this subsection; and

(4) the United States of America. (Added 1977, No. 221 (Adj. Sess.), § 1, eff. April 12, 1978; amended 1987, No. 200 (Adj. Sess.), § 48; 1993, No. 59, § 25b, eff. June 3, 1993.)

§ 822. Rights and interests

Conservation and preservation rights and interests shall be stated in the form of a deed restriction, right, easement, covenant or condition. These rights and interests shall be valid, exercisable, and enforceable

by the holder thereof and by the holder's successors and assigns, against the owner of the encumbered property and the owner's heirs, successors and assigns, whether or not such rights or interests are appurtenant to or benefit a specific parcel of real property, and regardless of privity of contract, or lack thereof, between the holder of such rights or interests and the owner of the encumbered property. (Added 1977, No. 221 (Adj. Sess.), § 1, eff. April 12, 1978; amended 1987, No. 200 (Adj. Sess.), § 49.)

§ 823. Interests in real property

Conservation and preservation rights and interests shall be deemed to be interests in real property and shall run with the land. A document creating such a right or interest shall be deemed to be a conveyance of real property and shall be recorded under 27 V.S.A. chapter 5. Such a right or interest shall be subject to the requirement of filing a notice of claim within the 40- year period as provided in 27 V.S.A. § 603. Such a right or interest shall be enforceable in law or in equity. Any subsequent transfer, mortgage, lease, or other conveyance of the real property or an interest in the real property shall reference the grant of conservation rights and interests in the real property, provided, however, that the failure to include a reference to the grant shall not affect the validity or enforceability of the conservation rights and interests.

(Added 1977, No. 221 (Adj. Sess.), § 1, eff. April 12, 1978; amended 1987, No. 200 (Adj. Sess.), § 50; 2011, (Adj. Sess.) No. 823 § 5.)

Chapter 151: STATE LAND USE AND DEVELOPMENT PLANS

§ 6001. Definitions

When used in this chapter:

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

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

(3)

(A) "Development" means:

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

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

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

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

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

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

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

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

(B)

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

(I) Construction of mixed income housing with 200 or more housing units or a mixed use project with 200 or more housing units, in a municipality with a population of 15,000 or more.

(II) 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 10,000 or more but less than 15,000.

(III) 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 6,000 or more and less than 10,000.

(IV) 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 3,000 or more but less than 6,000.

(V) Construction of mixed income housing with 25 or more housing units or a mixed use project with 25 or more housing units, in a municipality with a population of less than 3,000.

(VI) Historic Buildings. Construction of 10 or more units of mixed income housing or a mixed use project with 10 or more housing units where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the state or national register of historic places. However, demolition shall not be considered to create jurisdiction under this subdivision if the division for historic preservation has determined the proposed demolition will have: no adverse effect; no adverse effect provided that specified conditions are met; or, will have an adverse effect, but that adverse effect will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

(ii) Mixed Income Housing Jurisdictional Thresholds. Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of mixed income housing and is located entirely within a Vermont neighborhood, but outside a growth center designated pursuant to 24 V.S.A. § 2793c and outside a downtown development district designated pursuant to 24 V.S.A. § 2793, "development" means:

(I) Construction of mixed income housing with 200 or more housing units, in a municipality with a population of 15,000 or more.

(II) Construction of mixed income housing with 100 or more housing units, in a municipality with a population of 10,000 or more but less than 15,000.

(III) Construction of mixed income housing with 50 or more housing units, in a municipality with a population of 6,000 or more and less than 10,000.

(IV) Construction of mixed income housing with 30 or more housing units, in a municipality with a population of 3,000 or more but less than 6,000.

(V) Construction of mixed income housing with 25 or more housing units, in a municipality with a population of less than 3,000.

(VI) Historic Buildings. Construction of 10 or more units of mixed income housing where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the state or national register of historic places. However, demolition shall not be considered to create jurisdiction under this subdivision if the division for historic preservation has determined the proposed demolition will have: no adverse effect; no adverse effect provided that specified conditions are met; or will have an adverse effect, but that adverse effect will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

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

(i) Incentive for Growth Inside Designated Areas. Notwithstanding subdivision (3)(A)(iv) of this section, housing units constructed by a person partially or completely outside a designated downtown development district, designated growth center, or designated Vermont neighborhood shall not be counted to determine jurisdiction over housing units constructed by that person entirely within a designated downtown development district, designated growth center, or designated Vermont neighborhood.

(ii) Five-Year, Five-Mile Radius Jurisdiction Analysis. Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district, designated growth center, or designated Vermont neighborhood shall be counted together with housing units constructed by that person partially or completely outside a designated downtown development district, designated growth center, or designated Vermont neighborhood to determine jurisdiction over the housing units constructed by a person partially or completely outside the designated downtown development district, designated growth center, or designated Vermont neighborhood and within a five-mile radius in accordance with subdivision (3)(A)(iv) of this section.

(iii) Discrete Housing Projects in Designated Areas and Exclusive Counting for Housing Units. Notwithstanding subdivisions (3)(A)(iv) and (19) of this section, jurisdiction shall be determined exclusively by counting housing units constructed by a person within a designated downtown development district, designated growth center, or designated Vermont neighborhood, provided that the housing units are part of a discrete project located on a single tract or multiple contiguous tracts of land.

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

right-of-way, only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved.

(v) Permanently Affordable Housing. Notwithstanding subdivisions (3)(A)(iv) and (19) of this section, jurisdiction shall be determined exclusively by counting affordable housing units, as defined by this section, that are subject to housing subsidy covenants as defined in 27 V.S.A. § 610 that preserve their affordability for a period of 99 years or longer, provided the affordable housing units are located in a discrete project on a single tract or multiple contiguous tracts of land, regardless of whether located within an area designated under 24 V.S.A. chapter 76A.

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

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

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

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs that are registered with the agency of agriculture, food and markets and that are open to the public for 60 days per year or fewer, provided that, if the improvement is a building, the building was constructed prior to January 1, 2011 and is used solely for the purposes of the agricultural fair.

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

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

A remedial or removal action for which the secretary of natural resources has authorized disbursement under section 1283 of this title. (bb) Abating a release or threatened release, as directed by the secretary of natural resources under section 6615 of this title. (cc) A remedial or removal action directed by the secretary of natural resources under section 6615 of this title. (dd) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under section 6615b of this title. (ee) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under subchapter 3 of chapter 159 of this title.

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

Subdivision (3)(D)(vii) repealed effective July 1, 2014.

(vii) The construction of improvements below the elevation of 2,500 feet for the onsite storage, preparation, and sale of compost, provided that:

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

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

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

(IV) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from: (aa) manure produced on the farm; and (bb) unlimited clean, dry, high-carbon bulking agents from any source; or

(V) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from: (aa) manure produced on the farm; (bb) up to 2,000 cubic yards per year of organic inputs allowed under the agency of natural resources' acceptable management practices, including food residuals or manure from off the farm, or both; and (cc) unlimited clean, dry, high-carbon bulking agents from any source; or

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

(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision 6001(22) of this section, only those portions of the parcel or the tract that support the development shall be subject to regulation under this chapter. Permits issued under this chapter shall not impose conditions on other portions of the parcel or tract of land which do not support the development and that restrict or conflict with accepted agricultural practices adopted by the secretary of agriculture, food and markets. Any portion of the tract that is used to produce compost ingredients for a composting facility located elsewhere on the tract shall not constitute land which supports the development unless it is also used for some other purpose that supports the development.

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

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

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

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

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

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

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

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

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

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

(14)

(A) "Person":

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

(ii) means a municipality or state agency;

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

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

(B) The following individuals and entities shall be presumed not to be affiliated for the purpose of profit, consideration, or other beneficial interest within the meaning of this chapter, unless there is substantial evidence of an 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 soil map units with the best combination of physical and chemical characteristics that have a potential for growing food, feed, and forage crops, have sufficient moisture and drainage, plant nutrients or responsiveness to fertilizers, few limitations for cultivation or limitations which may be easily overcome, and an average slope that does not exceed 15 percent. Present uses may be cropland, pasture, regenerating forests, forestland, or other agricultural or silvicultural uses. However, the soils must be of a size and location, relative to adjoining land uses, so that those soils will be capable, following removal of any identified limitations, of supporting or contributing to an economic or commercial agricultural operation. Unless contradicted by the qualifications stated in this subdivision, primary agricultural soils shall include important farmland soils map units with a rating of prime, statewide, or local importance as defined by

the Natural Resources Conservation Service (N.R.C.S.) of the United States Department of Agriculture (U.S.D.A.).

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

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

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

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

defined in section 821 of this title. "Subdivision" shall also mean a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into six or more lots, within a continuous period of five years, in a municipality which does not have duly adopted permanent zoning and subdivision bylaws.

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

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

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

(21) "Reconnaissance" means:

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

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

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

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

(22) "Farming" means:

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

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

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

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

(F) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or

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

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

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

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

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

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

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

(27) "Mixed income housing" means a housing project in which the following apply:

(A) Owner-occupied housing. At the option of the applicant, owner-occupied housing may be characterized by either of the following:

(i) at least 15 percent of the housing units have a purchase price which at the time of first sale does not exceed 85 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont housing finance agency; or

(ii) at least 20 percent of the housing units have a purchase price which at the time of first sale does not exceed 90 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont housing finance agency;

(B) Affordable Rental Housing. At least 20 percent of housing that is rented by the occupants whose gross annual household income does not exceed 60 percent of the county median income, or 60 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development for use with the Housing Credit Program under Section 42(g) of the Internal Revenue Code, and the total annual cost of the housing, as defined at Section 42(g)(2)(B), is not more than 30 percent of the gross annual household income as defined at Section 42(g)(2)(C), and with a duration of affordability of no less than 30 years.

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

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

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

(B) Housing that is rented by the occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the gross annual household income.

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

Subdivision (31) repealed effective July 1, 2014.

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

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

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

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

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

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

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

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

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

(C) conducting contests, displays, and demonstrations designed to advance farming, advance the local food economy, or train or educate farmers, youth, or the public regarding agriculture. (Added 1969, No. 250 (Adj. Sess.), § 2, eff. April 4, 1970; amended 1973, No. 85, § 8; 1979, No. 123 (Adj. Sess.), §§ 1-3, eff. April 14, 1980; 1981, No. 240 (Adj. Sess.), § 6, eff. April 28, 1982; 1983, No. 114 (Adj. Sess.), § 1; 1985, No. 64; 1987, No. 64, § 2; 1987, No. 273 (Adj. Sess.), § 2, eff. June 21, 1988; 1989, No. 154 (Adj. Sess.); No. 231 (Adj. Sess.), § 1, eff. July 1, 1991; No. 234 (Adj. Sess.), § 4; 1993, No. 200 (Adj. Sess.), § 1; No. 232 (Adj. Sess.), § 24, eff. March 15, 1995; 1995, No. 10, § 1; No. 30, § 1, eff. April 13, 1995; 1997, No. 48, § 1; 1997, No. 94 (Adj. Sess.), § 5, eff. April 15, 1998; 2001, No. 40, § 1; 2001, No. 114 (Adj. Sess.), §§ 6, 7, eff. May 28, 2002; 2003, No. 66, § 217c; 2003, No. 115 (Adj. Sess.), § 46, eff. Jan. 31, 2005; 2003, No. 121 (Adj. S

ess.), §§ 75, 76, eff. June 8, 2004; 2005, No. 183 (Adj. Sess.), § 6; 2007, No. 79, § 13, eff. June 9, 2007; 2007, No. 92 (Adj. Sess.), § 4; No. 176 (Adj. Sess.), §§ 6, 7; 2009, No. 54, § 52, eff. June 1, 2009; 2009, No. 141 (Adj. Sess.), §§ 1a-3, eff. June 1, 2010; 2011, No. 18, §§ 1, 2, eff. May 11, 2011.)

§ 6086. Issuance of permit; conditions and criteria

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

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

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

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

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

(iii) above 1,500 feet elevation; or

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

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

(B) Waste disposal. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet

any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria in the consideration of applications by a district commission.

(A) Impact of growth. In considering an application, the district commission shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare,

the district commission shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.

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

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

(ii) except in the case of an application for a project located in a designated growth center, there are no lands other than primary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; and

(iii) except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation; and

(iv) suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with section 6093 of this title and rules adopted by the land use panel.

(C) Productive forest soils. A permit will be granted for the development or subdivision of productive forest soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the potential of those soils for commercial forestry; or:

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

(ii) except in the case of an application for a project located in a designated growth center, there are no lands other than productive forest soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; and

(iii) except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of the potential of those productive forest soils through innovative land use design

resulting in compact development patterns, so that the remaining forest soils on the project tract may contribute to a commercial forestry operation.

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

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

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

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

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

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

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

(J) Public utility services. A permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be

available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

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

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

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

(b) At the request of an applicant, or upon its own motion, the district commission shall consider whether to review any criterion or group of criteria of subsection (a) of this section before proceeding to or continuing to review other criteria. This request or motion may be made at any time prior to or during the proceedings. The district commission, in its sole discretion, shall, within 20 days of the completion of deliberations on the criteria that are the subject of the request or motion, either issue its findings and decision thereon, or proceed to a consideration of the remaining criteria.

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

(d) The land use panel may by rule allow the acceptance of a permit or permits or approval of any state agency with respect to subdivisions (a)(1) through (5) of this title or a permit or permits of a specified municipal government with respect to subdivisions (a)(1) through (7) and (9) and (10) of this title, or a combination of such permits or approvals, in lieu of evidence by the applicant. A district commission, in accordance with rules adopted by the land use panel, shall accept determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review

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

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

(f) Prior to any appeal of a permit issued by a district commission, any aggrieved party may file a request for a stay of construction with the district commission together with a declaration of intent to appeal the permit. The stay request shall be automatically granted for seven days upon receipt and notice to all parties and pending a ruling on the merits of the stay request pursuant to board rules. The automatic stay shall not extend beyond the 30-day appeal period unless a valid appeal has been filed with the environmental division. The automatic stay may be granted only once under this subsection during the 30-day appeal period. Following appeal of the district commission decision, any stay request must be filed with the environmental division pursuant to the provisions of chapter 220 of this title. A district commission shall not stay construction authorized by a permit processed under the land use panel's minor application procedures. (Added 1969, No. 250 (Adj. Sess.), § 12,

eff. April 4, 1970; amended 1973, No. 85, § 10; 1973, No. 195 (Adj. Sess.), § 3, eff. April 2, 1974; 1979, No. 123 (Adj. Sess.), § 5, eff. April 14, 1980; 1981, No. 240 (Adj. Sess.), § 7, eff. April 28, 1982; 1985, No. 52, § 4, eff. May 15, 1985; 1985, No. 188 (Adj. Sess.), § 5; 1987, No. 76, § 18; 1989, No. 234 (Adj. Sess.), § 1; No. 280 (Adj. Sess.), § 13; 1993, No. 232 (Adj. Sess.), § 32, eff. March 15, 1995, 2001, No. 40, §§ 6-9; 2003, No. 115 (Adj. Sess.), § 56, eff. Jan. 31, 2005; 2005, No. 183 (Adj. Sess.), § 7; 2009, No. 154 (Adj. Sess.), § 236; 2011, No. 138 (Adj. Sess.), § 16.)

Chapter 155: ACQUISITION OF INTERESTS IN LAND BY PUBLIC AGENCIES

§ 6301. Purpose

It is the purpose of this chapter to encourage and assist the maintenance of the present uses of Vermont's agricultural, forest, and other undeveloped land and to prevent the accelerated residential and commercial development thereof; to preserve and to enhance Vermont's scenic natural resources; to strengthen the base of the recreation industry and to increase employment, income, business, and investment; to enable the citizens of Vermont to plan its orderly growth in the face of increasing development pressures in the interests of the public health, safety and welfare and to encourage the use of conservation and preservation tools to support farm, forest, and related enterprises, thereby strengthening Vermont's economy to improve the quality of life for Vermonters, and to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside. (1969, No. 229 (Adj. Sess.), § 2; amended 2011, No. 118 (Adj. Sess.), § 2.)

§ 6301a. Definitions

As used in this chapter:

(1) "State agency" means the agency of natural resources or any of its departments, agency of transportation, agency of agriculture, food and markets or Vermont housing and conservation board.

(2) "Qualified organization" means:

> (A) an organization qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which is not a private foundation as defined in Section 509(a) of the Internal Revenuw Code, and which has been certified by the commissioner of taxes as being principally engaged in the preservation of undeveloped land for the purposes expressed in section 6301 of this title.
>
> (B) an organization qualifying under Section 501(c)(2) of the Internal Revenue Code of 1986, as amended, provided such organization is controlled exclusively by an organization or organizations described in subdivision (2)(A) of this section.

(3) "Taxation" and "tax" means ad valorem taxes levied by the state and its municipalities. (Added 1987, No. 200 (Adj. Sess.), § 42; amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 6302. Power to acquire

(a) In order to carry out the purposes set forth in section 6301 of this title any owner of real property located within this state or of any right or interest therein may sell, donate, devise, exchange or transfer that real property or any right or interest therein to a municipality of this state, a state agency or a qualified organization. A municipality of this state by the action of its legislative body or a state agency

may acquire such real property or any right and interest therein by purchase with any authorized funds, or by donation, devise, exchange, or transfer, all as herein provided.

(b) For the purposes of this chapter, "real property" includes (without limitation) areas covered by water, areas beneath the surface of the ground, air space, and any buildings, other structures, and other improvements, and "real estate" as the same is defined in 1 V.S.A. § 132.

(c) The general assembly hereby declares that the acquisition of real property or any right and interest therein, for the purposes expressed in section 6301 of this title, constitutes a public use and a public purpose for which public funds may be expended or advanced.

(d) Prior to the acquisition of any right or interest in real property by a state agency, the state agency shall submit a report thereon to the legislative body of the municipality concerned, setting forth the location of the real property, the characteristics of the right or interest to be acquired, and the consideration to be given therefor. (1969, No. 229 (Adj. Sess.), § 3; amended 1983, No. 71, § 1; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1987, No. 76, § 18; 1987, No. 200 (Adj. Sess.), § 43.)

§ 6303. Interests which may be acquired

(a) The rights and interests in real property which may be acquired, used, encumbered and conveyed by a municipality, state agency or qualified organization shall include, but not be limited to, the following:

(1) Fee simple.

(2) Fee simple subject to right of occupancy and use, which may be defined as full and complete title subject only to a right of occupancy and use of the subject real property or part thereof by the grantor for residential or agricultural purposes, subject to the provisions of section 6304 of this title and to such other terms as the legislative body of the municipality, the qualified organization, or the state agency may fix.

(3) Fee simple and resale of rights and interests, which may be defined as the acquisition of real property in fee simple and the subsequent reconveyance of rights and interests in such property to the former owner or to others, subject to the provisions of section 6304 of this title and to specified covenants, restrictions, conditions or affirmative requirements fixed by the legislative body of the municipality, the qualified organization, or the state agency in its discretion and designed to accomplish the purposes set forth in section 6301 of this title.

(4) Fee simple and lease back, which may be defined as the acquisition of real property in fee simple and the lease for the life of a person or for a term of years of rights and interests therein, subject to the provisions of section 6304 of this title and to specified covenants, restrictions, conditions or affirmative requirements fixed by the legislative body of the municipality, the qualified organization, or the state agency in its discretion and designed to accomplish the purposes set forth in section 6301 of this title.

(5) Less than fee simple. The acquisition and retention of any rights and interests in real property less than fee simple.

(6) Lease. The lease of land or rights and interests in land for a term, with or without an option to purchase.

(7) Preemptive rights and options to purchase. The acquisition of preemptive rights such as a right of first refusal or an option to purchase land or rights and interests therein.

(b) The legislative body of a municipality, a state agency or a qualified organization, as the case may be, shall determine the types of rights and interests in real property to be acquired, including licenses, equitable servitudes, profits, rights under covenants, easements, development rights, or any other rights and interests in real property of whatever character.

(c) Where less than fee simple ownership is acquired or retained, such right and interest may, in the discretion of the legislative body of the municipality, the state agency or the qualified organization, include a right to enter in order to accomplish the purposes of section 6301 of this title. (1969, No. 229 (Adj. Sess.), § 4; 1987, No. 200 (Adj. Sess.), § 44; amended 2011, No. 118 (Adj. Sess.), § 7.)

§ 6304. Sales of land

In any case where rights and interests in real property have been reconveyed or leased back to a person by a municipality or a department, the use of land subject thereto shall not be changed, and no residential, industrial or commercial construction except for the use of the owner or his family shall be undertaken, except with the consent of the legislative body of the municipality or the department or except as specifically provided in the instrument evidencing the reconveyance or lease. In the event of the termination of any rights or interests of such person, the legislative body of the municipality or the department shall pay to such person an amount equal to the fair market value of that portion of such right which remained unexpired on the date of such termination, unless such termination is caused by the breach by such person of a term of the instrument by which he acquired such right or interest. In any case of acquisition subject to a right of occupancy and use, or acquisition and reconveyance, or acquisition and lease, under subsection 6303(a) of this title, the legislative body or department shall give priority to the grantor thereof in selecting the grantee or lessee, as the case may be. (1969, No. 229 (Adj. Sess.), § 5.)

§ 6305. Exchanges of land

In exercising its authority to acquire property by exchange, a department may accept real property and rights and interests therein, and may convey to the grantor of such real property or rights and interests therein any state-owned property under the jurisdiction of the department, but only with the favorable advice and recommendation of the interagency committee on natural resources. In effecting such exchanges, the department may also utilize for exchange purposes any privately-owned land and rights and interests therein donated or made available to it for such purpose of an exchange. The land and rights and interests thus exchanged shall be approximately equal in fair market value, provided that the department may accept cash from or pay cash to the grantor in such an exchange, in order to equalize the value of the property and rights and interests therein being exchanged. Notwithstanding any other provisions of law and with the approval of the interagency committee on natural resources, state real property and rights and interests therein may, with the authorization of the department or other agency

having custody thereof, be transferred without consideration, to the jurisdiction of a department designated under section 6302 of this title for use in carrying out the provisions of this chapter. (1969, No. 229 (Adj. Sess.), § 6.)

§ 6306. Exemption from taxation

(a) The rights and interests in real property acquired by a municipality or state agency under the authority of this chapter shall be considered as municipal or state-owned land, as the case may be, with respect to taxation and state reimbursement in lieu of taxes.

(b)

(1) The commissioner of the department of taxes may certify that real property acquired by a qualified organization under this chapter is being held and maintained for the purposes expressed in section 6301 of this title. As a condition of that certification, the commissioner may require that the qualified organization provide adequate assurances that the property is being so held and maintained, including but not limited to written agreements with the department of taxes, deeds, covenants or other conveyances. Property which is so certified:

(A) if in the nature of an interest in fee simple, shall be assessed on the basis of its actual use, or may be enrolled by the qualifying organization in a current use program under chapter 124 of Title 32; or

(B) shall be exempt from assessment and taxation, if in the nature of an interest other than fee simple.

(2) For purposes of this section, where a qualified organization holds a lease in the property for a term greater than ten years, including renewal terms, or holds such other interests as the commissioner shall determine to be substantially equivalent to an interest in fee simple, the organization shall be deemed to hold an interest in fee simple.

(c) After acquisition by a municipality, state agency or qualified organization of a right or interest in real property under the authority of this chapter, the owner of any remaining right or interest therein not so acquired shall be taxed, under the applicable provisions of chapter 123 of Title 32, only upon the value of those remaining rights or interests to which he retains title. The state agency or qualified organization, and the department of taxes, shall cooperate with that owner, and with the town assessing such tax, in the determination of the fair market value of any such remaining right or interest.

(d) Property held by a qualified organization and taxed or exempted under subsection (b) of this section shall be subject to a conversion tax if the commissioner determines that it is no longer being held and maintained for the purposes expressed in section 6301 of this title. The amount of the conversion tax shall be five times the amount of the taxes avoided by reason of the exemption in the most recent year. The conversion tax shall be paid to the municipality in which the property is located. (Added 1969, No. 229 (Adj. Sess.), § 7; amended 1987, No. 200 (Adj. Sess.), § 45; 1997, No. 60, § 68c.)

§ 6307. Enforcement

(a) Injunction. In any case where rights and interests in real property are held by a municipality, state agency or qualified organization under the authority of this chapter, the legislative body of the municipality, the state agency or the qualified organization may institute injunction proceedings to enforce the rights of the municipality, state agency or qualified organization, in accordance with the provisions of this chapter, and may take all other proceedings as are available to an owner of real property under the laws of this state to protect and conserve its right or interest.

(b) Liquidated damages. Any contract or deed establishing or relating to the sale or transfer of rights or interests in real property under the authority of this chapter may provide for specified liquidated damages, actual damages, costs and reasonable attorney fees in the event of a violation of the rights of the municipality, state agency or qualified organization thereunder. (1969, No. 229 (Adj. Sess.), § 8; amended 1987, No. 200 (Adj. Sess.), § 46.)

§ 6308. Termination of rights

(a) If the legislative body of a municipality in the case of municipal rights or interests, or a state agency, in the case of state-owned rights or interests, finds that the retention of the rights or interests is no longer needed to carry out the purposes of this chapter, the rights or interests may be released and conveyed to the co-owner, to another public agency, to another party holding other rights or interests in the land, or to a third party. Where the conveyance is to a party other than another public agency or qualified organization, the municipality or state agency shall receive adequate compensation from that party for the conveyance of the rights or interests.

(b) Wherever possible, in order to promote the interests of the state, municipalities, qualified organizations, or private landowners involved, agreements for the conveyance of rights or interests in real property less than fee simple, entered into under the authority of this chapter, shall contain a provision limiting the agreement to a specified number of years except where both parties agree, such agreements may provide for the conveyance of rights and interests in perpetuity. (1969, No. 229 (Adj. Sess.), § 9; amended 1975, No. 186 (Adj. Sess.); 1987, No. 200 (Adj. Sess.), § 47.)

§ 6309. Agency of agriculture, food and markets; leases

In the event that real property acquired by the agency of agriculture, food and markets is leased to a lessee other than a governmental entity of the state of Vermont, the lessee shall be taxed on the fair market value or the use value under the provisions of chapter 124 of Title 32 of the property by the municipality in which it is located. (Added 1983, No. 71, § 2; amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 2003, No. 42, § 2, eff. May 27, 2003.)

Title 24: Municipal and County Government

Chapter 36: MUNICIPAL ADMINISTRATIVE PROCEDURE ACT

§ 1201. Definitions

As used in this chapter:

(1) "Contested hearing" means one of the following:

(A) A case in which an applicant for a land use permit under 10 V.S.A. chapter 151 is required to obtain local Act 250 review of municipal impacts by a municipality that has taken steps required under section 4420 of this title to allow it to conduct that local review.

(B) A hearing, under chapter 117 of this title, which will be subject to review on the record, as determined under procedures established in that chapter.

(C) A hearing which a provision of law requires to be heard according to procedures established in this chapter.

(D) A hearing by a municipal body which is not required by law to be conducted according to procedures established in this chapter, but which the municipality elects to conduct in accordance with this chapter.

(2) "Directly or indirectly interested" means a financial or personal involvement in the contested hearing or with any party.

(3) "Local board" means the entity authorized to conduct a contested hearing.

(4) "Party," for purposes of proceedings under chapter 117 of this title, other than those related to local Act 250 review of municipal impacts, means "interested person," as defined by subsection 4465(b) of this title. "Party," for purposes of local Act 250 review of municipal impacts, means a person whose interests, under relevant provisions of 10 V.S.A. § 6086(a) being reviewed at the municipal level, may be affected by a proposed development or subdivision, as those terms are defined in 10 V.S.A. chapter 151. "Party" for purposes of other proceedings under this chapter, shall have the meaning established under statutes controlling those proceedings. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995; amended 2003, No. 115 (Adj. Sess.), § 76, eff. Jan. 31, 2005.)

§ 1202. Application

(a) This chapter shall be used by local boards conducting contested hearings, where required by law, and may be used by local boards conducting contested hearings, even where not required by law. Local determinations to use this chapter, unless otherwise provided by law, shall be made by majority vote of those voting at a duly warned special or annual municipal meeting, or may be made on behalf of the municipality by the legislative body.

(b) This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes.

(c) This chapter provides the minimum due process rights of parties in contested hearings. A local board may grant additional rights to parties so long as the rights of other parties are not substantially prejudiced.

(d) A local board may adopt additional procedural rules not inconsistent with this chapter governing its hearings. The ordinance adoption process established by chapter 59 of this title shall be used for this purpose. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995.)

§ 1203. Conflicts of interest

Local boards shall comply with the provisions of 12 V.S.A. § 61(a) when they conduct contested hearings and make findings under this chapter. For purposes of this section, prohibitions referring to those within the fourth degree of consanguinity or affinity shall refer to the person's spouse, as well as to the person's and the spouse's: parent, child, brother, sister, grandparent, or grandchild. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995.)

§ 1204. Notice

(a) Initial public notice of any hearing under this chapter shall be provided in accordance with applicable statutes. All parties and interested persons shall be given an opportunity for hearing after reasonable notice.

(b) At any hearing held under this chapter, opportunity shall be given to all parties to respond and present evidence and argument on all issues involved.

(c) If a hearing is to reconvene at a later date, it shall be deemed sufficient to constitute proper notice of that later session, if an announcement made before adjournment of the previous session of the hearing specifies the time, date and place of that later session. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995.)

§ 1205. Procedure at hearing

(a) The chair or vice-chair of the local board shall preside at the hearing. If neither is available, the board shall elect a temporary chair.

(b) The presiding officer may conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in, hear, and, if technically feasible, to see the entire proceeding as it is taking place.

(c) The presiding officer shall cause the proceeding to be recorded. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995.)

§ 1206. Evidence

(a) All testimony of parties and witnesses must be made under oath or affirmation.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.

(c) When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form, to expedite the presentation of direct testimony of a witness, provided the witness is available for direct testimony and cross-examination at the hearing on this evidence.

(d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995.)

§ 1207. Ex parte communications

(a) A presiding officer shall not communicate, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, on any issue in the proceeding, while the proceeding is pending, without notice and opportunity for all parties to participate.

(b) No other members of a local board sitting in a contested hearing shall communicate on any issue in the proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, while the proceeding is pending.

(c) A presiding officer who receives an ex parte communication on any issue relating to the proceeding and a member who receives any ex parte communication shall place on the record all written communications received, all written responses to those communications, and a memorandum stating

the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995.)

§ 1208. Qualification of members

(a) Members of a local board in a contested hearing shall not participate in the decision unless they have heard all testimony and reviewed all other evidence submitted for the board's decision.

(b) Members who have not attended every session of the board in a contested hearing may participate in the decision if they have listened to the recording of the testimony they have missed (or read transcripts of this testimony) and reviewed all exhibits and other evidence, prior to deliberation. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995.)

§ 1209. Decisions

(a) A final decision in a contested hearing shall be in writing and shall separately state findings of fact and conclusions of law.

(b) Findings of fact shall explicitly and concisely restate the underlying facts that support the decision. They shall be based exclusively on evidence of the record in the contested hearing.

(c) Conclusions of law shall be based on the findings of fact.

(d) The final decision in any case involving local Act 250 review of municipal impacts shall include notice that it constitutes a rebuttable presumption under the provisions of 10 V.S.A. chapter 151, and notice that presumption may be overcome in proceedings under 10 V.S.A. chapter 151.

(e) The presiding officer shall cause copies of the decision to be delivered to each party.

(f) Transcriptions of the proceedings of contested hearings shall be made upon the request and upon payment of the reasonable costs of transcription by any party. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995.)

§ 1210. Appeals

Appeals under this chapter shall be taken in the manner established for the underlying proceedings to which this chapter is applied. (Added 1993, No. 232 (Adj. Sess.), § 44, eff. March 15, 1995.)

Chapter 59: ADOPTION AND ENFORCEMENT OF ORDINANCES AND RULES

§ 1971. Authority to adopt

(a) A municipality may adopt, amend, repeal and enforce ordinances or rules for any purposes authorized by law.

(b) An ordinance or rule adopted or amended by a municipality under this chapter or under its municipal charter authority shall be designated as either criminal or civil, but not both. (Added 1969, No. 170 (Adj. Sess.), § 8, eff. March 2, 1970; amended 1971, No. 14, § 10, eff. March 11, 1971; 1993, No. 237 (Adj. Sess.), § 2, eff. Nov. 1, 1994.)

§ 1972. Procedure

(a) (1) The legislative body of a municipality desiring to adopt an ordinance or rule may adopt it subject to the petition set forth in section 1973 of this title and shall cause it to be entered in the minutes of the municipality and posted in at least five conspicuous places within the municipality. The legislative body shall arrange for one formal publication of the ordinance or rule or a concise summary thereof in a newspaper circulating in the municipality on a day not more than 14 days following the date when the proposed provision is so adopted. Information included in the publication shall be the name of the municipality; the name of the municipality's website, if the municipality actively updates its website on a regular basis; the title or subject of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer questions and receive comments on the proposal; and where the full text may be examined. The same notice shall explain citizens' rights to petition for a vote on the ordinance or rule at an annual or special meeting as provided in section 1973 of this title.

(2)Unless a petition is filed in accordance with section 1973 of this title, the ordinance or rule shall become effective 60 days after the date of its adoption, or at such time following the expiration of 60 days from the date of its adoption as is determined by the legislative body. If a petition is filed in accordance with section 1973 of this title, the taking effect of the ordinance or rule shall be governed by subsection 1973(e) of this title.

(b) All ordinances and rules adopted by a municipality shall be recorded in the records of the municipality.

(c) The procedure herein provided shall apply to the adoption of any ordinance or rule by a municipality unless another procedure is provided by charter, special law or particular statute. (Added 1969, No. 170 (Adj. Sess.), § 8, eff. March 2, 1970; amended 1971, No. 14, § 11, eff. March 11, 1971; 1979, No. 180 (Adj. Sess.), § 1, eff. May 5, 1980; 2011, No. 155 (Adj Sess.) § 7.)

§ 1973. Permissive referendum

(a) An ordinance or rule adopted by a municipality may be disapproved by a vote of a majority of the qualified voters of the municipality voting on the question at an annual or special meeting duly warned for the purpose, pursuant to a petition signed and submitted in accordance with subsection (b) of this section.

(b) A petition for a vote on the question of disapproving an ordinance or rule shall be signed by not less than five per cent of the qualified voters of the municipality, and presented to the legislative body or the clerk of the municipality within 44 days following the date of adoption of the ordinance or rule by the legislative body.

(c) When a petition is submitted in accordance with subsection (b) of this section, the legislative body shall call a special meeting within 60 days from the date of receipt of the petition, or include an article in the warning for the next annual meeting of the municipality if the annual meeting falls within the 60-day period, to determine whether the voters will disapprove the ordinance or rule.

(d) Not less than two copies of the ordinance or rule shall be posted at each polling place during the hours of voting, and copies thereof made available to voters at the polls on request. It shall be sufficient to refer to the ordinance or rule in the warning by title.

(e) If a petition for an annual or a special meeting is duly submitted in accordance with this section, to determine whether an ordinance or rule shall be disapproved by the voters of the municipality, the ordinance or rule shall take effect on the conclusion of the meeting, or at such later date as is specified in the ordinance or rule, unless a majority of the qualified voters voting on the question at the meeting vote to disapprove the ordinance or rule in which event it shall not take effect. (Added 1969, No. 170 (Adj. Sess.), § 8, eff. March 2, 1970; amended 1971, No. 14, § 12, eff. March 11, 1971.)

§ 1974. Enforcement of criminal ordinances

(a) The violation of a criminal ordinance or rule adopted by a municipality under this chapter shall be a misdemeanor. The criminal ordinance or rule may provide for a fine or imprisonment, but no fine may exceed $500.00, nor may any term of imprisonment exceed one year. Each day the violation continues shall constitute a separate offense.

(b) The presiding judge of the superior court, on application of the legislative body of a municipality, shall have jurisdiction to enjoin the violation of an ordinance or rule but the election of a municipality to proceed under this subsection shall not prevent prosecutions under subsection (a) of this section.

(c) Prosecutions of criminal ordinances shall be brought before the superior court pursuant to 4 V.S.A. § 441.

(d) Prosecutions of criminal ordinances may be brought on behalf of the municipality by the municipal attorney, grand juror or other person designated by the legislative body of the municipality. (Added 1969, No. 170 (Adj. Sess.), § 8, eff. March 2, 1970; amended 1993, No. 237 (Adj. Sess.), § 3, eff. Nov. 1, 1994; 2009, No. 154 (Adj. Sess.), § 182)

§ 1974a. Enforcement of civil ordinance violations

(a) A civil penalty of not more than $800.00 may be imposed for a violation of a civil ordinance. Each day the violation continues shall constitute a separate violation.

(b) All civil ordinance violations, except municipal parking violations, and all continuing civil ordinance violations, where the penalty is $800.00 or less, shall be brought before the judicial bureau pursuant to Title 4 and this chapter. If the penalty for all continuing civil ordinance violations is greater than $800.00, or injunctive relief, other than as provided in subsection (c) of this section, is sought, the action shall be brought in the criminal division of the superior court, unless the matter relates to enforcement under chapter 117 of this title, in which instance the action shall be brought in the environmental division of the superior court.

(c) The judicial bureau, on application of a municipality, may order that a civil ordinance violation cease.

(d) Civil enforcement of municipal zoning violations may be brought as a civil ordinance violation pursuant to this section or in an enforcement action pursuant to the requirements of chapter 117 of this title.

(e)

(1) When filed in court as an enforcement action by the municipality, municipal parking violations shall be brought as civil violations. The right to trial by jury shall not apply in such cases.

(2) A person who received a criminal conviction in district court for a municipal parking violation committed before January 1, 2005 may petition the court to seal all records in the matter. The person shall provide a copy of the petition to the state or municipal official who was the prosecuting authority on the matter in district court. The court shall grant the petition if, after providing the prosecuting authority with an opportunity to respond, the court finds that sealing the records would serve the interests of justice. (Added 1993, No. 237 (Adj. Sess.), § 4, eff. Nov. 1, 1994; amended 1997, No. 121 (Adj. Sess.), § 17; 2003, No. 115 (Adj. Sess.), § 77, eff. Jan. 1, 2005; No. 146 (Adj. Sess.), § 5, eff. Jan. 1, 2005; 2009, No. 154 (Adj. Sess.), § 236; 2011, No. 155 (Adj Sess.) § 2.)

§ 1975. Evidence of adoption

A certificate of the clerk of a municipality showing the publication, posting, recording and adoption of an ordinance or rule, or any of the foregoing, shall be presumptive evidence of the facts so stated in any action or proceeding in court or before any board, commission or other tribunal. (Added 1969, No. 170 (Adj. Sess.), § 8, eff. March 2, 1970; amended 1971, No. 14, § 13, eff. March 11, 1971.)

§ 1976. Amendments and repeals

An ordinance or rule adopted in accordance with the procedures provided for in this chapter may be amended or repealed in accordance with the procedure herein set forth relating to adoption of ordinances and rules, and the provisions of this chapter, including the right of petition and referendum contained in

section 1973 of this title, shall apply to the amendment or repeal of an ordinance or rule adopted under this chapter as well as to its enactment. (Added 1969, No. 170 (Adj. Sess.), § 8, eff. March 2, 1970.)

11. MISCELLANEOUS REGULATORY POWERS

§ 2291. Enumeration of powers

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

(1) To set off portions of public highways of the municipality for sidewalks and bicycle paths and to regulate their use.

(2) To provide for the removal of snow and ice from sidewalks by the owner, occupant or person having charge of abutting property.

(3) To provide for the location, protection, maintenance and removal of trees, plants and shrubs, and buildings or other structures on or above public highways, sidewalks, or other property of the municipality.

(4) To regulate the operation and use of vehicles of every kind including the power: to erect traffic signs and signals; to regulate the speed of vehicles subject to 23 V.S.A. chapter 13; subchapter12; to regulate or exclude the parking of all vehicles; and to provide for waiver of the right of appearance and arraignment in court by persons charged with parking violations by payment of specified fines within a stated period of time.

(5) To establish rules for pedestrian traffic on public highways and to establish crosswalks.

(6) To regulate the location, installation, maintenance, repair and removal of utility poles, wires and conduits, water pipes or mains, gas mains and sewers, upon, under or above public highways or public property of the municipality.

(7) To regulate or prohibit the erection, size, structure, contents and location of signs, posters or displays on or above any public highway, sidewalk, lane or alleyway of the municipality and to regulate the use, size, structure, contents and location of signs on private buildings or structures.

(8) To regulate or prohibit the use or discharge, but not possession of, firearms within the municipality or specified portions thereof, provided that an ordinance adopted under this subdivision shall be consistent with section 2295 of this title and shall not prohibit, reduce, or limit discharge at any existing sport shooting range, as that term is defined in 10 V.S.A. § 5227.

(9) To license or regulate itinerant vendors, peddlers, door-to-door salesmen, and those selling goods, wares, merchandise or services who engage in a transient or temporary business, or who sell from an automobile, truck, wagon or other conveyance, excepting persons selling fruits, vegetables or other farm produce.

(10) To regulate the keeping of dogs, and to provide for their leashing, muzzling, restraint, impoundment, and destruction.

(11) To regulate, license, tax or prohibit circuses, carnivals and menageries, and all plays, concerts, entertainments or exhibitions of any kind for which money is received.

(12) To regulate or prohibit the storage or dumping of solid waste, as defined in 10 V.S.A. § 6602. These regulations may require the separation of specified components of the waste stream.

(13) To compel the cleaning or repair of any premises which in the judgment of the legislative body is dangerous to the health or safety of the public.

(14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety or welfare may require.

(15) To provide for penalties for violation of any ordinance or rule adopted under the authority of this section.

(16) To name and rename streets and to number and renumber lots pursuant to section 4421 of this title.

(17) To regulate or prohibit possession of open or unsealed containers of alcoholic beverages in public places.

(18) To regulate or prohibit consumption of alcoholic beverages in public places.

Subdivision (19) effective until July 1, 2014; see also subdivision (19) effective July 1, 2014 set out below.

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town, or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities. These regulations are not intended to prohibit seamless coverage of wireless telecommunications services. With respect to the construction or alteration of wireless telecommunications facilities subject to regulation granted in this section, the town, city, or incorporated village shall vest in its local regulatory authority the power to determine whether the installation of a wireless telecommunications facility, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development, and if the local regulatory authority, originally or on appeal, determines that the facility will impose no impact or a de minimis impact, it shall issue a permit. No ordinance authorized by this section, except to the extent structured to protect historic landmarks and structures listed on the state or national register of historic places may have the purpose or effect of limiting or prohibiting a property owner's ability to place or allow placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more than 12 feet above the roof of that portion of the building to which they are attached. No ordinance under this section may regulate an improvement that is exempt from regulation under subdivision 4413(h) (telecommunications; ancillary improvements of 300 square feet or less; improvements associated with communications lines) of this title.

Subdivision (19) effective July 1, 2014; see also subdivision (19) effective until July 1, 2014 set out above.

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town, or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities. These regulations are not intended to prohibit seamless coverage of wireless telecommunications services. With respect to the construction or alteration of wireless telecommunications facilities subject to regulation granted in this section, the town, city, or incorporated village shall vest in its local regulatory authority the power to determine whether the installation of a wireless telecommunications facility, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development, and if the local regulatory authority, originally or on appeal, determines that the facility will impose no impact or a de minimis impact, it shall issue a permit. No ordinance authorized by this section, except to the extent structured to protect historic landmarks and structures listed on the state or national register of historic places may have the purpose or effect of limiting or prohibiting a property owner's ability to place or allow placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more than 12 feet above the roof of that portion of the building to which they are attached.

(20) To establish a conflict of interest policy to apply to all elected and appointed officials of the town, city, or incorporated village.

(21) To regulate, by means of a civil ordinance adopted pursuant to chapter 59 of this title, subject to the limitations of 13 V.S.A. § 351b and the requirement of 13 V.S.A. § 354(a), and consistent with the rules adopted by the secretary of agriculture, food and markets, pursuant to 13 V.S.A. § 352b(a), the welfare of animals in the municipality. Such ordinance may be enforced by humane officers as defined in 13 V.S.A. § 351, if authorized to do so by the municipality.

(22) To regulate the sale and conveyance of sewage capacity to users, including phasing provisions and other conditions based on the impact of residential, commercial, or industrial growth within a town, in accord with principles in a duly adopted town plan.

(23) Acting individually or in concert with other towns, cities, or incorporated villages and pursuant to subchapter 2 of chapter 87 of this title, to incur indebtedness for or otherwise finance by any means permitted under chapter 53 of this title projects relating to renewable energy, as defined in 30 V.S.A. § 8002(2), or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

(24) Upon the determination by a municipal building inspector, health officer, or fire marshal that a building within the boundaries of the town, city, or incorporated village is uninhabitable, to recover all expenses incident to the maintenance of the uninhabitable building with the expenses to constitute a lien on the property in the same manner and to the same extent as taxes assessed on the grand list, and all procedures and remedies for the collection of taxes shall apply to the collection of those expenses; provided, however, that the town, city, or incorporated village has adopted rules to determine the habitability of a building, including provisions for notice in accordance with 32 V.S.A. § 5252(3) to the building's owner prior to incurring expenses and including provisions for an administrative appeals

process. (Added 1969, No. 170 (Adj. Sess.), § 9, eff. March 2, 1970; amended 1977, No. 61, § 2; 1987, No. 70, eff. June 2, 1987; 1991, No. 108, § 1; 1993, No. 211 (Adj

. Sess.), § 15, eff. June 17, 1994; 1997, No. 94 (Adj. Sess.), § 2, eff. April 15, 1998; 1999, No. 82 (Adj. Sess.), § 1; 2001, No. 82 (Adj. Sess.), § 1; 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 63, § 51, eff. June 11, 2003; 2005, No. 173 (Adj. Sess.), § 3, eff. May 22, 2006; 2007, No. 79, § 14, eff. June 9, 2007; 2007, No. 121 (Adj. Sess.), § 19; 2009, No. 45, § 15g; 2009, No. 160 (Adj. Sess.), § 9, eff. June 4, 2010; 2011, No. 53, §§ 14a, 14d(2), eff. May 27, 2011; 2011, No. 155 (Adj Sess.) § 2.)

§ 2291a. Renewable energy devices

Notwithstanding any provision of law to the contrary, no municipality, by ordinance, resolution, or other enactment, shall prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

HISTORY**:** Added 2009, No. 45, § 15b, eff. May 27, 2009.

Title 24: Municipal and County Government

Chapter 76A: HISTORIC DOWNTOWN DEVELOPMENT

§ 2790. Legislative policy and purpose

(a) The general assembly finds that economically strong downtowns are critical to the health and well-being of Vermont's communities; that downtowns are the natural location for both small businesses, which represent the largest growth sector in Vermont's economy, and other uses that together constitute the diverse fabric of communities that define Vermont's quality of life; that downtowns enable residents and visitors to access services and business with minimal transportation needs, and thus benefit the environment. The general assembly further finds that downtowns represent a long-term investment of public and private infrastructure, and that our scenic and historic downtowns are a natural attraction for tourists and contribute greatly to Vermont's overall quality of life. The general assembly further finds that a major factor inhibiting the vitality of downtown areas is lack of reasonable access to them by workers, residents and visitors, and that by this act it is the specific intent of the general assembly to improve access to downtown areas by providing assistance to municipalities for downtown transportation infrastructure, particularly parking facilities.

(b) It is therefore the intent of the general assembly, by this act, to preserve and encourage the development of downtown areas of municipalities of the state; to encourage public and private investment in infrastructure, housing, historic preservation, transportation including parking facilities, and human services in downtown areas; and to reflect Vermont's traditional settlement patterns, and to minimize or avoid strip development or other unplanned development throughout the countryside on quality farmland or important natural and cultural landscapes.

(c) While it is the intent of the general assembly by this act to rehabilitate and preserve the vitality of historic downtown areas of the state, the general assembly also recognizes the equal importance of providing incentives to communities with no historic downtown areas in order to assist those communities to plan and develop their emerging downtowns. Accordingly, the commissioner of housing and community affairs is directed to consult with municipal officials in such communities and recommend to the general assembly on or before January 1, 1999 appropriate means and incentives to encourage the development and planning of emerging downtown centers which serve the purpose of a central district of the community and the center for socio-economic interaction, with a cohesive core of commercial and mixed use buildings, with appropriate density to minimize or avoid strip development.

(d) The general assembly finds that Vermont's communities face challenges as they seek to accommodate growth and development while supporting the economic vitality of the state's downtowns, village centers, and new town centers and maintaining the rural character and working landscape of the surrounding countryside. While it is the intention of the general assembly to give the highest priority to facilitating development and growth in downtowns and village centers whenever feasible, when that is not feasible, the general assembly further finds that:

> (1) A large percentage of future growth should occur within duly designated growth centers that have been planned by municipalities in accordance with smart growth principles and Vermont's planning and development goals pursuant to section 4302 of this title.
>
> (2) Designated growth centers, if properly located and scaled, will serve to support the state's downtowns, village centers, and new town centers by encouraging new residential neighborhoods

and compatible civic, commercial, and industrial uses to locate within proximity to historic community centers.

(3) Designated growth centers will provide a cost-effective means of allocating and targeting limited municipal and state resources to those areas specifically planned to accommodate and support concentrated development and a large percentage of future growth.

(4) Designated growth centers will provide a mechanism for concentrating private investment in those areas targeted for growth and development through public investments and incentives, and by establishing a process that will effectively reduce cost and delay in the permitting and approval of development.

(5) Designated growth centers will accomplish these goals if they are economically viable, they are appropriately planned to accommodate future growth needs and a mix of uses, they originate at the municipal or regional level, and they are recognized by the state under state planning, financing, and permitting programs. (Added 1997, No. 120 (Adj. Sess.), § 1; amended 2005, No. 183 (Adj. Sess.), § 1.)

§ 2791. Definitions

As used in this chapter:

(1) "Community reinvestment agreement" means an agreement among municipal government officials, business leaders, and community groups pursuant to subdivision 2793(b)(2) of this title.

(2) "Design review district" means a district created pursuant to subdivision 4414(1)(E) of this title.

(3) "Downtown" means the traditional central business district of a community, that has served as the center for socio-economic interaction in the community, characterized by a cohesive core of commercial and mixed use buildings, often interspersed with civic, religious, and residential buildings and public spaces, typically arranged along a main street and intersecting side streets and served by public infrastructure.

(4) "Downtown development district" or "downtown district" means a district delineated by the municipality and designated by the downtown development board under section 2793 of this title.

(5) "Local downtown organization" means either a nonprofit corporation, including a nonprofit corporation established by the Vermont Economic Development Authority, or a board, council, or commission created by the legislative body of the municipality, whose primary purpose is to administer and implement the community reinvestment agreement and other matters regarding the revitalization of the downtown district under subdivision 2793(b)(2) of this title.

(6) "Historic district" means a district created pursuant to subdivision 4414(1)(F) of this title.

(7) "Certified historic structure" means a certified historic structure as defined in the Internal Revenue Code, 26 U.S.C. § 47(c).

(8) "Special assessment" means a tax assessment pursuant to chapter 87 of this title or a municipal charter, among all commercial owners, or a significant portion thereof, within a downtown development

district to impose an incremental tax assessment above the amount otherwise assessed, for the purposes of supporting downtown interests.

(9) "Tax stabilization agreement" means a contract executed pursuant to either section 2741 of this title or 32 V.S.A. § 5404a to provide a stable and predictable tax rate or assessment on properties in a downtown development district.

(10) "Village center" means a traditional center of the community, typically comprised of a cohesive core of residential, civic, religious, and commercial buildings, arranged along a main street and intersecting streets. Industrial uses may be found within or immediately adjacent to these centers.

(11) "New town center" means the area planned for or developing as a community's central business district, composed of compact, pedestrian-friendly, multistory, and mixed use development that is characteristic of a traditional downtown, supported by planned or existing urban infrastructure, including curbed streets with sidewalks and on-street parking, stormwater treatment, sanitary sewers and public water supply.

(12)

(A) "Growth center" means an area of land that contains the characteristics specified in subdivision (B) of this subdivision (12) and that is located in one or a combination of the following:

(i) A designated downtown, village center, or new town center;

(ii) An area of land that is in or adjacent to a designated downtown, village center, or new town center, with clearly defined boundaries that have been approved by one or more municipalities in their municipal plans to accommodate a majority of growth anticipated by the municipality or municipalities over a 20-year period. Adjacent areas shall include those lands which are contiguous to the designated downtown, village center, or new town center. In situations where contiguity is precluded by natural or physical constraints to growth center development, adjacent areas may include lands lying close to and not widely separated from the majority of the lands within the designated growth center. Noncontiguous land included as part of a growth center must exhibit strong land use, economic, infrastructure, and transportation relationships to the designated downtown, village center, or new town center; be planned to function as a single, integrated growth center; and be essential to accommodate a majority of growth anticipated by the municipality or municipalities over a 20-year period.

(B) A growth center contains the following characteristics:

(i) It incorporates a mix of uses that typically include or have the potential to include the following: retail, office, services, and other commercial, civic, recreational, industrial, and residential uses, including affordable housing and new residential neighborhoods, within a densely developed, compact area;

(ii) It incorporates existing or planned public spaces that promote social interaction, such as public parks, civic buildings (e.g., post office, municipal offices), community gardens, and other formal and informal places to gather.

(iii) It is organized around one or more central places or focal points, such as prominent buildings of civic, cultural, or spiritual significance or a village green, common, or square.

(iv) It promotes densities of land development that are significantly greater than existing and allowable densities in parts of the municipality that are outside a designated downtown, village center, growth center, or new town center, or, in the case of municipalities characterized predominately by areas of existing dense urban settlement, it encourages in-fill development and redevelopment of historically developed land.

(v) It is supported by existing or planned investments in infrastructure and encompasses a circulation system that is conducive to pedestrian and other nonvehicular traffic and that incorporates, accommodates, and supports the use of public transit systems.

(vi) It results in compact concentrated areas of land development that are served by existing or planned infrastructure and are separated by rural countryside or working landscape.

(vii) It is planned in accordance with the planning and development goals under section 4302 of this title, and to conform to smart growth principles.

(viii) It is planned to reinforce the purposes of 10 V.S.A. chapter 151.

(13) "Smart growth principles" means growth that:

(A) Maintains the historic development pattern of compact village and urban centers separated by rural countryside.

(B) Develops compact mixed-use centers at a scale appropriate for the community and the region.

(C) Enables choice in modes of transportation.

(D) Protects the state's important environmental, natural and historic features, including natural areas, water quality, scenic resources, and historic sites and districts.

(E) Serves to strengthen agricultural and forest industries and minimizes conflicts of development with these industries.

(F) Balances growth with the availability of economic and efficient public utilities and services.

(G) Supports a diversity of viable businesses in downtowns and villages.

(H) Provides for housing that meets the needs of a diversity of social and income groups in each community.

(I) Reflects a settlement pattern that, at full build-out, is not characterized by:

(i) scattered development located outside of compact urban and village centers that is excessively land consumptive;

(ii) development that limits transportation options, especially for pedestrians;

(iii) the fragmentation of farm and forest land;

(iv) development that is not serviced by municipal infrastructure or that requires the extension of municipal infrastructure across undeveloped lands in a manner that would extend service to lands located outside compact village and urban centers;

(v) linear development along well-traveled roads and highways that lacks depth, as measured from the highway.

(14) "Important natural resources" means headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forest lands, and primary agricultural soils, all of which are as defined in 10 V.S.A. chapter 151.

(15) "Vermont neighborhood" means an area of land that is in a municipality with an approved plan, a confirmed planning process, zoning bylaws, and subdivision regulations, and is in compliance with all the following:

(A) Is located in one of the following:

(i) a designated downtown, village center, new town center, or growth center; or

(ii) an area of land that is within the municipality and outside but contiguous to a designated downtown, village center, or new town center and is not more than 100 percent of the total acreage of the designated downtown, 50 percent of the village center, or 75 percent of the new town center.

(B) Contains substantially all the following characteristics:

(i) Its contiguous land, if any, complements the existing downtown district, village center, or new town center by integrating new housing units with existing residential neighborhoods, commercial and civic services and facilities, and transportation networks, and is consistent with smart growth principles.

(ii) It is served by either a municipal sewer infrastructure or a community or alternative wastewater system approved by the agency of natural resources.

(iii) It incorporates minimum residential densities of no fewer than four units of single-family, detached dwelling units per acre, and higher densities for duplexes and multi-family housing.

(iv) It incorporates neighborhood design standards that promote compact, pedestrian-oriented development patterns and networks of sidewalks or paths for both pedestrians and bicycles that connect with adjacent development areas. (Added 1997, No. 120 (Adj. Sess.), § 1; amended 2001, No. 114 (Adj. Sess.), § 1, eff. May 28, 2002; 2003, No. 115 (Adj. Sess.), § 78, eff. Jan. 31, 2005; 2005, No. 183 (Adj. Sess.), § 2; 2007, No. 176 (Adj. Sess.), § 2, eff. May 28, 2008; 2009, No. 136 (Adj. Sess.), § 1.)

§ 2792. Vermont downtown development board

(a) A "Vermont downtown development board," also referred to as the "state board," is created to administer the provisions of this chapter. The state board shall be composed of the following members or their designees:

(1) the secretary of commerce and community development;

(2) the secretary of transportation;

(3) the secretary of natural resources;

(4) the commissioner of public safety;

(5) the state historic preservation officer;

(6) a person appointed by the governor from a list of three names submitted by the Vermont Natural Resources Council, the Preservation Trust of Vermont, and Smart Growth Vermont;

(7) a person appointed by the governor from a list of three names submitted by the Association of Chamber Executives;

(8) three public members representative of local government, one of whom shall be designated by the Vermont League of Cities and Towns, and two shall be appointed by the governor;

(9) a member of the Vermont planners association (VPA) designated by the association;

(10) the chair of the natural resources board or a representative of the land use panel of the natural resources board designated by the chair; and

(11) a representative of a regional planning commission designated by the Vermont association of regional planning and development agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one of which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote.

(b) In addition to the permanent members appointed pursuant to subsection (a) of this section, there shall also be two regional members from each region of the state on the downtown development board; one shall be designated by the regional development corporation of the region and one shall be designated by the regional planning commission of the region. Regional members shall be nonvoting members and shall serve during consideration by the board of applications from their respective regions. Regional members designated to serve on the downtown development board under this section, may also serve as regional members of the Vermont economic progress council established under 32 V.S.A. § 5930a.

(c) The state board shall elect its chair from among its membership.

(d) The department of economic, housing, and community development shall provide staff and administrative support to the state board.

(e) On or before January 1, 1999, the state board shall report to the general assembly on the progress of the downtown development program.

(f) [Deleted.] (Added 1997, No. 120 (Adj. Sess.), § 1; amended 2005, No. 8, § 6b, eff. April 25, 2005; 2005, No. 183 (Adj. Sess.), § 3; 2007, No. 147 (Adj. Sess.), § 1, eff. May 16, 2008; 2007, No. 176 (Adj. Sess.), § 15, eff. May 28, 2008; 2009, No. 136 (Adj. Sess.), § 2.)

§ 2793. Designation of downtown development districts

(a) A municipality, by its legislative body, may apply to the state board for designation of a downtown area within that municipality as a downtown development district. An application by a municipality shall contain a map that accurately delineates the district. The application shall also include evidence that the regional planning commission and the regional development corporation have been notified of the municipality's intent to apply, evidence that the municipality has published notice of its application in a local newspaper of general circulation within the municipality, and information showing that the district meets the standards for designation established in subsection (b) of this section. Upon receipt of an application, the state board shall provide written notice of the application to the natural resources board. The natural resources board and interested persons shall have 15 days after notice to submit written comments regarding the application before the state board issues a written decision that demonstrates the applicant's compliance with the requirements of this chapter.

(b) Within 45 days of receipt of a completed application, the state board shall designate a downtown development district if the state board finds, in its written decision, that the municipality has:

(1) demonstrated a planning commitment through the adoption of a design review district, an historic district, or through the creation of a development review board authorized to undertake local Act 250 reviews pursuant to section 4420 of this title;

(2) provided a community reinvestment agreement that has been executed by the authorized representatives of the municipal government, business and property owners within the district, and community groups with an articulated purpose of supporting downtown interests, and that contains the following provisions:

(A) a delineation of the area that meets the requirements set forth in subdivision 2791(3) of this title and that is part of or contains a district that is listed or eligible for listing on the National Register of Historic Places pursuant to 16 U.S.C. § 470a;

(B) a capital improvement plan to improve or preserve public infrastructure within the district, including facilities for public transit, parking, pedestrian amenities, lighting and public space;

(C) a source of funding and resources necessary to fulfill the community reinvestment agreement, demonstrated by a commitment by the legislative body of the municipality to implement at least one of the following:

(i) a special assessment district created to provide funding to the downtown district;

(ii) authority to enter into a tax stabilization agreement for the purposes of economic development in a downtown district;

(iii) a commitment to implement a tax incremental financing district pursuant to subchapter 5 of chapter 53 of this title; or

(iv) other multiple-year financial commitments among the parties subject to the approval of the state board;

(D) an organizational structure necessary to sustain a comprehensive long-term downtown revitalization effort, including a local downtown organization as defined under subdivision 2791(5) of this title;

(E) evidence that any private or municipal sewage system and private or public water supply serving the proposed downtown district is in compliance with the requirements of chapters 47 and 56 of Title 10, and that the municipality has dedicated a portion of any unallocated reserve capacity of the sewage and public water supply for growth within the proposed downtown district. Any municipality proposing a municipal sewage system and public water supply to serve the proposed downtown district shall provide evidence to the state board of a commitment to construct or maintain such a system and supply in compliance with requirements of chapters 47 and 56 of Title 10, or a commitment to construct, as applicable, a permittable potable water supply, wastewater system, indirect discharge or public water supply within no more than ten years. A commitment to construct does not relieve the property owners in the district from meeting the applicable regulations of the agency of natural resources regarding wastewater systems, potable water supplies, public water supplies, indirect discharges, and the subdivision of land. In the event that a municipality fails in its commitment to construct a municipal sewage system and public water supply, the state board shall revoke designation, unless the municipality demonstrates to the state board that all good faith efforts were made and continue to be made to obtain the required approvals and permits from the agency of natural resources, and failure to construct was due to unavailability of state or federal matching loan funds;

(3) a planning process confirmed under section 4350 of this title.

(c) The state board shall review a community's designation every five years and may review compliance with the designation requirements at more frequent intervals. If at any time the state board determines that the downtown development district no longer meets the standards for designation established in subsection (b) of this section, it may take any of the following actions:

(1) Require corrective action.

(2) Provide technical assistance through the Vermont downtown program.

(3) Limit eligibility for the benefits established in section 2794 of this chapter without affecting any of the district's previously awarded benefits.

(4) Remove the district's designation without affecting any of the district's previously awarded benefits. (Added 1997, No. 120 (Adj. Sess.), § 1; amended 2001, No. 114 (Adj. Sess.), §§ 1a-3, eff. May 28, 2002; 2003, No. 115 (Adj. Sess.), § 79, eff. Jan. 31, 2005; 2007, No. 147 (Adj. Sess.), § 2, eff. May 16, 2008.)

§ 2793a. Designation of village centers by state board

(a) A town that has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title may apply to the state board for designation of one or more of its village centers. If an incorporated village of a town has an approved municipal plan and a planning process independently confirmed in accordance with section 4350 of this title, the incorporated village shall be the applicant for designation of its village center. An application for designation must include a map that delineates the boundaries of the village center consistent with the definition of "village center" provided in subdivision 2791(10) of this title and evidence that notice has been given to the regional planning commission and the regional development corporation of the intent to apply for this designation.

(b) Within 45 days of receipt of a completed application, the state board shall designate a village center if the state board finds the applicant has met the requirements of subsection (a) of this section.

(c) A village center designated by the state board pursuant to subsection (a) of this section is eligible for the following development incentives and benefits:

(1) Provided the proposal is eligible, priority consideration for municipal planning funds under section 4306 of this title for projects that are related to the designated village center.

(2) Inclusion of a village center, as defined in this chapter, as a priority growth center in the state's consolidated plan for housing and community development programs.

(3) The authority to create a special taxing district pursuant to chapter 87 of this title for the purpose of financing both capital and operating costs of a project within the boundaries established through village center designation.

(4) The following state tax credits for projects located in a designated village center:

(A) A state historic rehabilitation tax credit of ten percent under 32 V.S.A. § 5930cc(a) that meets the requirements for the federal rehabilitation tax credit.

(B) A state facade improvement tax credit of 25 percent under 32 V.S.A. § 5930cc(b).

(C) A state code improvement tax credit of 50 percent under 32 V.S.A. § 5930cc(c).

(5) Whenever the commissioner of the department of buildings and general services or other state officials in charge of selecting a site are planning to lease or construct buildings suitable to being located in a village center after determining that the option of utilizing existing space in a downtown development district pursuant to subdivision 2794(a)(14) of this title is not feasible, the option of utilizing existing space in a designated village center shall be given thorough investigation and priority, in consultation with the community.

(d) The state board shall review a village center designation every five years and may review compliance with the designation requirements at more frequent intervals. If at any time the state board determines that the village center no longer meets the standards for designation established in subsection (a) of this section, it may take any of the following actions:

(1) Require corrective action.

(2) Provide technical assistance through the Vermont downtown program.

(3) Limit eligibility for the benefits pursuant to subsection (c) of this section without affecting any of the village center's previously awarded benefits.

(4) Remove the village center's designation without affecting any of the village center's previously awarded benefits. (Added 2001, No. 114 (Adj. Sess.), § 4, eff. May 28, 2002; amended 2003, No. 164 (Adj. Sess.), § 13, eff. June 12, 2004; 2005, No. 183 (Adj. Sess.), § 14; 2007, No. 147 (Adj. Sess.), § 3, eff. May 16, 2008.)

§ 2793b. Designation of new town center development districts

(a) A municipality, by its legislative body, may apply to the state board for designation of an area within that municipality as a new town center development district, provided no traditional downtown or new town center already exists in that municipality. An application by a municipality shall contain a map delineating the district, evidence that the regional planning commission and the regional development corporation have been notified of the municipality's intent to apply, and information showing the district meets the standards for designation established in subsection (b) of this section.

(b) Within 45 days of receipt of a completed application, the state board shall designate a new town center development district if the state board finds, with respect to that district, the municipality has:

(1) a confirmed planning process under section 4350 of this title, and developed a municipal center plan and regulations to implement the plan, including an official map, and a design review district created under this title; and

(2) provided a community investment agreement that has been executed by authorized representatives of the municipal government, businesses, and property owners within the district, and community groups with an articulated purpose of supporting downtown interests, and contains the following:

(A) A map of the designated new town center. The total area of land encompassed within a designated new town center shall not exceed 125 acres. In a municipality with a population greater than 15,000, the total area of land encompassed within a designated new town center may include land in excess of 125 acres provided that the additional area is needed to facilitate the redevelopment of predominately developed land in accordance with the smart growth principles defined under subdivision 2791(13) of this title and shall not exceed 175 acres.

(B) Regulations enabling high densities that are greater than those allowed in any other part of the municipality.

(C) Regulations enabling multistory and mixed use buildings and mixed uses which enable the development of buildings in a compact manner.

(D) A capital improvement program, or a capital budget and program under this title, showing a clear plan for providing public infrastructure within the center, including facilities for drinking water, wastewater, stormwater, public space, lighting, and transportation, including public transit, parking, and pedestrian amenities.

(E) A clear plan for mixed income housing in the new town center.

(F) Evidence that civic and public buildings do exist, or will exist in the center, as shown by the capital improvement plan or the capital budget and program, and the official map.

(G) [Deleted.]

(H) Evidence that any private or municipal sewage system and private or public water supply serving the proposed new town center are in compliance with the requirements of chapters 47 and 56 of Title 10, and that the municipality has dedicated a portion of any unallocated reserve capacity of the sewage and public water supply necessary to support growth within the proposed new town center. Any municipality proposing a municipal sewage system and public water supply to serve the proposed new town center shall provide evidence to the state board of a commitment to construct or maintain such a system and supply in compliance with requirements of chapters 47 and 56 of Title 10, or a commitment to construct, as applicable, a permittable potable water supply, wastewater system, indirect discharge or public water supply within no more than ten years. A commitment to construct does not relieve the property owners in the new town center from meeting the applicable regulations of the agency of natural resources regarding wastewater systems, potable water supplies, public water supplies, indirect discharges, and the subdivision of land. In the event a municipality fails in its commitment to construct a municipal sewage system or public water supply, or both, the state board shall revoke designation, unless the municipality demonstrates to the state board that all good faith efforts were made and continue to be made to obtain the required approvals and permits from the agency of natural resources, and failure to construct was due to unavailability of sufficient state or federal funding.

(c)

(1) Upon designation by the state board under this section as a new town center, a new town center and projects in a new town center shall be eligible for the authority to create a special taxing district, pursuant to chapter 87 of this title, for the purpose of financing both capital and operating costs of a project within the boundaries established through new town center designation.

(2) Whenever the commissioner of the department of buildings and general services or other state officials in charge of selecting a site are planning to lease or construct buildings suitable to being located in a new town center after determining that the option of utilizing existing space in a downtown development district, pursuant to subdivision 2794(a)(14) of this title, is not feasible, the

option of utilizing existing space in a designated new town center shall be given thorough investigation and priority, in consultation with the community.

(d) The state board shall review a new town center designation every five years and may review compliance with the designation requirements at more frequent intervals. If at any time the state board determines the new town center no longer meets the standards for designation established in subsection (b) of this section, it may take any of the following actions:

(1) Require corrective action.

(2) Provide technical assistance through the Vermont downtown program.

(3) Limit eligibility for the benefits pursuant to subsection (c) of this section without affecting any of the new town center's previously awarded benefits.

(4) Remove the new town center's designation without affecting any of the town center's previously awarded benefits. (Added 2001, No. 114 (Adj. Sess.), § 4a, eff. May 28, 2002; amended 2003, No. 115 (Adj. Sess.), § 80, eff. Jan. 31, 2005; 2007, No. 69, § 1; 2007, No. 147 (Adj. Sess.), § 4, eff. May 16, 2008; No. 176 (Adj. Sess.), § 4, eff. May 28, 2008.)

§ 2793c. Designation of growth centers

(a) Regional planning commission technical planning assistance. Regional planning commissions, pursuant to section 4345a of this title, are uniquely positioned to assist municipalities with growth center planning. To this end, at the request of a municipality contemplating growth center designation, the regional planning commission shall provide technical assistance in support of that designation.

(1) Technical support shall include:

(A) preparing population, housing, and employment growth projections for a period of not less than 20 years;

(B) GIS mapping, including identification of development capacity, land use, existing and planned infrastructure and service areas, important natural resources and historic resources, and physical constraints to development and associated features; and

(C) build-out analyses for potential growth centers to document whether the geographic area of proposed growth centers will accommodate a majority of the projected growth over a 20-year period in a manner that is consistent with the definition under subdivision 2791(12) of this title.

(2) These projections and build-out analyses may be prepared on a municipal or regional basis.

(b) Growth center designation application assistance.

(1) A subcommittee of the state board, to be known as the growth center subcommittee, shall develop and maintain a coordinated preapplication review process in accordance with this

subdivision (1). The members of the growth center subcommittee shall be the members of the state board described under subdivisions 2792(a)(1), (6), (7), (9), and (10) of this title and the member designated by the Vermont League of Cities and Towns under subdivision 2792(a)(8) of this title. The growth center subcommittee shall elect a chair from among its members. In carrying out its duties, the growth center subcommittee shall have the support of the staff of the department of economic, housing, and community development and of the natural resources board.

(A) The purpose of the growth center subcommittee is to:

(i) ensure consistency between regions and municipalities regarding growth centers designation and related planning;

(ii) provide municipalities with a preapplication review process early in the local planning process;

(iii) encourage coordination of state agency review on matters of agency interest; and

(iv) provide the state board with ongoing, coordinated support and expertise in land use, community planning, and natural resources protection.

(B) Under the preapplication review process, a municipality shall submit a preliminary application to the growth center subcommittee, consisting of a draft growth center map and a brief explanation of planning and implementation policies that the municipality anticipates it will enact prior to submission of an application under subsection (d) of this section in order to guide development inside the growth center and maintain the rural character of the surrounding area, to the extent that it exists. This preapplication review process shall be required prior to filing of an application under subsection (d) of this section. The growth center subcommittee shall solicit comments from state agencies regarding areas of respective agency interest; evaluate the preliminary application for conformance with the requirements of this section; identify potential issues related to the growth center's boundary and implementation tools; and provide recommendations for addressing those issues through adjustment to the growth center's boundary, revisions to planned implementation tools, or consideration of alternative implementation tools. Preliminary review shall be available to municipalities while they are engaged in the municipal planning process so that recommendations may be considered prior to the adoption of the municipal plan and associated implementation measures.

(2) After consultation with the growth center subcommittee and the land use panel of the natural resources board, the commissioner of economic, housing and community development or designee shall prepare a "municipal growth centers planning manual and implementation checklist" to assist municipalities and regional planning commissions to plan for growth center designation. The implementation manual shall identify state resources available to assist municipalities and shall include a checklist indicating the issues that should be addressed by the municipality in planning for growth center designation. The manual shall address other relevant topics in appropriate detail, such as: methodologies for conducting growth projections and build-out analyses; defining appropriate boundaries that are not unduly expansive; enacting plan policies and implementation bylaws that accommodate reasonable densities, compact settlement patterns, and an appropriate mix of uses within growth centers; planning for infrastructure,

transportation facilities, and open space; avoiding or mitigating impacts to important natural resources and historic resources; and strategies for maintaining the rural character and working landscape outside growth center boundaries.

(3) In consultation with the growth center subcommittee, the commissioner of economic, housing and community development or designee shall provide ongoing assistance to the state board to review applications for growth center designation, including coordinating review by state agencies on matters of agency interest and evaluating applications and associated plan policies and implementation measures for conformance with the definition under subdivision 2791(12) of this title and any designation requirements established under subsection (e) of this section.

(4) The Vermont municipal planning grant program shall make funding for activities associated with growth centers planning a priority funding activity, and the Vermont community development program shall make funding for activities associated with growth centers planning a priority funding activity under the planning grant program.

(c) Public involvement and review. Any decision to apply for growth center designation shall be made by vote of the municipal legislative body, subject to the process established under sections 1972 and 1973 of this title.

(d) Application and designation requirements. Any application for designation as a growth center shall be to the state board and shall include a specific demonstration that the proposed growth center meets each provision of subdivisions (e)(1)(A) through (J) of this section. In addition to those provisions, each of the following shall apply:

(1) In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the application shall contain an explanation of the unique circumstances that prevent the growth center from possessing that characteristic and why, in the absence of that characteristic, the proposed growth center will comply with the purposes of this chapter and all other requirements of this section.

(2) Any demonstration that an application complies with subdivision (e)(1)(C) of this section shall include an analysis, with respect to each existing designated downtown or village or new town center located within the applicant municipality, of current vacancy rates, opportunities to develop or redevelop existing undeveloped or underdeveloped properties and whether such opportunities are economically viable, and opportunities to revise zoning or other applicable bylaws in a manner that would permit future development that is at a higher density than existing development.

(3) A map and a conceptual plan for the growth center.

(4) A build-out analysis and needs study that demonstrates that the growth center meets the provisions of subdivision (e)(1)(J) of this section.

(5) An explanation of all measures the applicant has undertaken to encourage a majority of growth in the municipality to take place within areas designated under this chapter. In the case of a growth center that is associated with a designated downtown or village center, the applicant shall also explain the manner in which the applicant's bylaws and policies will encourage growth to take place first in its designated downtown or village center and second in its proposed growth center.

(e) Designation decision.

(1) Within 90 days of the receipt of a completed application, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard, the state board formally shall designate a growth center if the state board finds, in a written decision, that the growth center proposal meets each of the following:

(A) The growth center meets the definition of a growth center established in subdivision 2791(12) of this title, including planned land uses, densities, settlement patterns, infrastructure, and transportation within the center and transportation relationships to areas outside the center. In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the state board shall not approve the growth center proposal unless it finds that the absence of that characteristic will not prevent the proposed growth center from complying with the purposes of this chapter and all other requirements of this section. This subdivision (A) does not confer authority to approve a growth center that lacks more than one characteristic listed in subdivision 2791(12)(B) of this title.

(B) The growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses that are consistent with the anticipated demand for those uses within the municipality and region.

(C) The growth that is proposed to occur in the growth center cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality.

(D) In the case of a growth center that is associated with a designated new town center, the applicable municipal bylaws provide that areas within the growth center that will be zoned predominantly for retail and office development will be located within the new town center.

(E) In the case of a growth center that is associated with a designated downtown or village center:

(i) the applicant has taken all reasonable measures to ensure that growth is encouraged to take place first in the designated downtown or village center and second in the proposed growth center; and

(ii) the applicable municipal bylaws provide that, with respect to those areas within the growth center that will be located outside the designated downtown or village center and will be zoned predominantly for retail and office development:

(I) such areas will serve as a logical expansion of the designated downtown or village center through such means as sharing of infrastructure and facilities and shared pedestrian accessibility; and

(II) such areas will be subject to enacted land use and development standards that will establish a development pattern that is compact, oriented to pedestrians, and consistent with smart growth principles.

(F) The applicant has identified important natural resources and historic resources within the proposed growth center and the anticipated impacts on those resources, and has proposed mitigation.

(G) The approved municipal plan and the regional plan both have been updated during any five-year plan readoption that has taken place since the date the secretary of agriculture, food and markets has developed guidelines in compliance with 6 V.S.A. § 8, have been used to identify areas proposed for agriculture, and have been designed so as to avoid the conversion of primary agricultural soils, wherever possible.

(H)

(i) The applicant has a regionally confirmed planning process and an approved municipal plan, pursuant to section 4350 of this title;

(ii) The approved plan contains provisions that are appropriate to implement the designated growth center proposal;

(iii) The applicant has adopted bylaws in conformance with the municipal plan that implement the provisions in the plan that pertain to the designated growth center, including:

(I) bylaw provisions that ensure that land development and use in the growth center will comply with smart growth principles; and

(II) with respect to residential development in the growth center, bylaw provisions that allow a residential development density that is: (aa) at least four dwelling units per acre; and (bb) a higher development density if necessary to conform with the historic densities and settlement patterns in residential neighborhoods located in close proximity to a designated downtown or village center which the growth center is within or to which the growth center is adjacent under subdivision 2791(12)(A)(i) or (ii) of this title; and

(iv) The approved plan and the implementing bylaws further the goal of retaining a more rural character in the areas surrounding the growth center, to the extent that a more rural character exists, and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center.

(I) The applicant has adopted a capital budget and program in accordance with section 4426 of this title, and that existing and planned infrastructure is adequate to implement the growth center.

(J) The growth center: (i) is of an appropriate size sufficient to accommodate a majority of the projected population and development over a 20-year planning period in a manner that is consistent with the definition under subdivision 2791(12) of this title; (ii) does not encompass an excessive area of land that would involve the unnecessary extension of infrastructure to service low-density development or result in a scattered or low-density pattern of development at the conclusion of the 20-year planning period; and (iii) using a 20-year planning period commencing with the year of the application, is sized to accommodate each of the following: p0;0(I) an amount of residential development that is no more than 150 percent of the projected residential growth in the municipality; and p0;0(II) an amount of commercial or industrial development, or both, that does not exceed 100 percent of the projected commercial and industrial growth in the municipality.

(2) The board, as a condition of growth center designation, may require certain regulatory changes prior to the effective date of designation. In addition, the growth center designation may be modified, suspended, or revoked if the applicant fails to achieve the required regulatory changes within a specified period of time. As an option, municipalities applying for growth center designation may make certain regulatory changes effective and contingent upon formal designation.

(3) Within 21 days of a growth center designation under subdivision (1) of this subsection, a person or entity that submitted written or oral comments to the state board during its consideration of the application for the designated growth center may request that the state board reconsider the designation. Any such request for reconsideration shall identify each specific finding of the state board for which reconsideration is requested and state the reasons why each such finding should be reconsidered. The filing of such a request shall stay the effectiveness of the designation until the state board renders its decision on the request. On receipt of such a request, the state board shall promptly notify the applicant municipality of the request if that municipality is not the requestor. The state board shall convene at the earliest feasible date to consider the request and shall render its decision on the request within 90 days of the date on which the request was filed.

(4) Except as otherwise provided in this section, growth center designation shall extend for a period of 20 years. The state board shall review a growth center designation no less frequently than every five years, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard. For each applicant, the state board may adjust the schedule of review under this subsection so as to coincide with the review of the related and underlying designation of a downtown, village center, or new town center. If, at the time of the review, the state board determines that the growth center no longer meets the standards for designation in effect at the time the growth center initially was designated, it may take any of the following actions:

(A) require corrective action;

(B) provide technical assistance through the coordinated assistance program; or

(C) remove the growth center's designation, with that removal not affecting any of the growth center's previously awarded benefits.

(5) At any time a municipality shall be able to apply to the state board for amendment of a designated growth center or any related conditions or other matters, according to the procedures that apply in the case of an original application.

(f) Review by land use panel and issuance of Act 250 findings of fact and conclusions of law. Subsequent to growth center designation by the state board, an applicant municipality may submit a request for findings of fact and conclusions of law under specific criteria of 10 V.S.A. § 6086(a) to the land use panel of the natural resources board for consideration in accordance with the following:

(1) In requesting findings of fact, the applicant municipality shall specify any criteria for which findings and conclusions are requested and the nature and scope of the findings that are being requested.

(2) The panel shall notify all landowners of land located within the proposed growth center, entities that would be accorded party status before a district commission under 10 V.S.A. § 6085(c)(1)(C) and (D), and all owners of land adjoining the proposed growth center of a hearing on the issue. The panel may fashion alternate and more efficient means of providing adequate notice to persons potentially affected under this subdivision. Persons notified may appear at the hearing and be heard, as may any other person who has a particularized interest protected by 10 V.S.A. chapter 151 that may be affected by the decision.

(3) The panel shall review the request in accordance with and shall issue findings of fact and conclusions of law under the applicable criteria of 10 V.S.A. § 6086(a) which are deemed to have been satisfied by the applicant's submissions during the formal designation process, any additional submissions, as well as associated municipal plan policies, programs, and bylaws. Findings and conclusions of law shall be effective for a period of five years, unless otherwise provided. The panel, before issuing its findings and conclusions, may require specific changes in the proposal, or regulatory changes by the municipality, as a condition for certain findings and conclusions. These findings and conclusions shall be subject to appeal to the environmental division pursuant to 10 V.S.A. chapter 220 within 30 days of issuance.

(4) During the period of time in which a growth center designation remains in effect, any findings and conclusions issued by the panel or any final adjudication of those findings and conclusions shall be applicable to any subsequent application for approval by a district commission under chapter 151 of Title 10 and shall be binding upon the district commission and the persons provided notice in the land use panel proceeding, according to the rules of the land use panel, provided the proposed development project is located within the designated growth center.

(5) In any application to a district commission under chapter 151 of Title 10 for approval of a proposed development or subdivision to be located within the designated growth center, the district commission shall review de novo any relevant criteria of 10 V.S.A. § 6086(a) that are not subject to findings of fact and conclusions of law issued by the land use panel pursuant to this section.

(6) The decision of the state board pursuant to this section shall not be binding as to the criteria of 10 V.S.A. § 6086(a) in any proceeding before the panel or a district commission.

(g) Review by district commission. In addition to its other powers, in making its determinations under 10 V.S.A. § 6086, a district commission may consider important resources within a proposed growth center that have been identified in the designation process and the anticipated impacts on those resources, and may require that reasonable mitigation be provided as an alternative to permit denial.

(h) Concurrent designation. A municipality may seek designation of a growth center concurrently with the designation of a downtown pursuant to section 2793 of this title, the designation of a village center

pursuant to section 2793a of this title, or the designation of a new town center pursuant to section 2793b of this title.

(i) Benefits from designation. A growth center designated by the state board pursuant to this section is eligible for the following development incentives and benefits:

(1) Financial incentives.

(A) A municipality may use tax increment financing for infrastructure and improvements in its designated growth center pursuant to the provisions of Title 32 and this title. A designated growth center under this section shall be presumed to have met any locational criteria established in Vermont statutes for tax increment financing. The state board may consider project criteria established under those statutes and, as appropriate, may make recommendations as to whether any of those project criteria have been met.

(B) Vermont economic development authority (VEDA) incentives shall be provided to designated growth centers.

(2) State assistance and funding for growth centers.

(A) It is the intention of the general assembly to give the highest priority to facilitating development and growth in designated downtowns and village centers whenever feasible. The provisions in this section and elsewhere in law that provide and establish priorities for state assistance and funding for designated growth centers are not intended to take precedence over any other provisions of law that provide state assistance and funding for designated downtowns and village centers.

(B) On or before January 15, 2007, the secretary of administration, in consultation with the secretaries of natural resources, transportation, commerce and community development, and agriculture, food and markets, shall report to the general assembly on the priorities and preferences for state assistance and funding granted in law to downtown centers, village centers, and designated growth centers, and the manner in which such priorities are applied.

(3) State infrastructure and development assistance.

(A) With respect to state grants and other state funding, priority should be given to support infrastructure and other investments in public facilities located inside a designated growth center to consist of the following:

(i) Agency of natural resources funding of new, expanded, upgraded, or refurbished wastewater management facilities serving a growth center in accordance with the agency's rules regarding priority for pollution abatement, pollution prevention, and the protection of public health and water quality.

(ii) Technical and financial assistance for brownfields remediation under the Vermont brownfields initiative.

(iii) Community development block grant (CDBG) program implementation grants.

(iv) Technical, financial, and other benefits made available by statute or rule.

(B) Whenever the commissioner of the department of buildings and general services or other state officials in charge of selecting a site are planning to lease or construct buildings suitable to being located in a designated growth center after determining that the option of utilizing existing space in a downtown development district pursuant to subdivision 2794(a)(13) of this title or within a designated village center pursuant to subdivision 2793a(c)(6) of this title or within a designated new town center pursuant to subdivision 2793b(c)(2) of this title is not feasible, the option of locating in a designated growth center shall be given thorough investigation and priority in consultation with the legislative body of the municipality.

(4) State investments. The state shall:

(A) Expand the scope of the downtown transportation fund, as funds are available, to include access to downtowns with the first priority being projects located in designated downtowns, the second priority being projects located in designated village centers, and the third priority being projects located in designated growth centers.

(B) Extend priority consideration for transportation enhancement improvements located within or serving designated downtowns, village centers, and growth centers.

(C) Grant to projects located within designated growth centers priority consideration for state housing renovation and affordable housing construction assistance programs.

(5) Regulatory incentives.

(A) Master plan permit application. At any time while designation of a growth center is in effect, any person or persons who exercise ownership or control over an area encompassing all or part of the designated growth center or any municipality within which a growth center has been formally designated may apply for a master plan permit for that area or any portion of that area to the district commission pursuant to the rules of the land use panel. Municipalities making an application under this subdivision are not required to exercise ownership of or control over the affected property. The district commission shall be bound by any conclusions or findings of the land use panel, or any final adjudication of those findings and conclusions, pursuant to subsection (f) of this section but shall consider de novo any of the criteria of 10 V.S.A. § 6086(a) that were not subject to the final issuance of findings and conclusions by the land use panel pursuant to that subsection. In approving a master permit, the district commission may set forth specific conditions that an applicant for an individual project permit will be required to meet.

(B) Individual project permits within a designated growth center. The district commission shall review individual Act 250 permit applications in accordance with the specific findings of fact and conclusions of law issued by the land use panel under this section, if any, and in accordance with the conditions, findings, and conclusions of any applicable master plan permit. Any person proposing a development or subdivision within a designated growth center where no master plan permit is in effect shall be required to file an application with the district environmental commission for review under the criteria of 10 V.S.A. § 6086(a). (Added 2005, No. 183 (Adj. Sess.), § 4; amended 2009, No. 136 (Adj. Sess.), § 3; No. 154 (Adj. Sess.), § 236.)

§ 2793d. Designation of Vermont neighborhoods

(a) The Vermont downtown development board may designate a Vermont neighborhood in a municipality that has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title, has adopted zoning bylaws and subdivision regulations in accordance with section 4442 of this title, and has a designated downtown district, a designated village center, a designated new town center, or a designated growth center served by municipal sewer infrastructure or a community or alternative wastewater system approved by the agency of natural resources. An application for designation may be made by a municipality or by a landowner who meets the criteria under subsection (f) of this section. An application by a municipality or a landowner shall be made after at least one duly warned public hearing by the legislative body. If the application is submitted by a landowner, the legislative body shall duly warn a joint public hearing with the appropriate municipal panel, which hearing shall be held concurrently with the local permitting process. Designation pursuant to this subsection is possible in two different situations:

(1) Per se approval. If a municipality or landowner submits an application in compliance with this subsection for a designated Vermont neighborhood that would have boundaries that are entirely within the boundaries of a designated downtown district, designated village center, designated new town center, or designated growth center, the downtown board shall issue the designation.

(2) Designation by downtown board in towns without growth centers. If an application is submitted in compliance with this subsection by a municipality or a landowner in a municipality that does not have a designated growth center and proposes to create a Vermont neighborhood that has boundaries that include land that is not within its designated downtown, village center, or new town center, the downtown board shall consider the application. This application may be for approval of one or more Vermont neighborhoods that are outside but contiguous to a designated downtown district, village center, or new town center. The application for designation shall include a map of the boundaries of the proposed Vermont neighborhood, including the property outside but contiguous to a designated downtown district, village center, or new town center and verification that the municipality or landowner has notified the regional planning commission and the regional development corporation of its application for this designation.

(b) Designation Process. Within 45 days of receipt of a completed application, the downtown board, after opportunity for public comment, shall designate a Vermont neighborhood if the board determines the applicant has met the requirements of subsections (a) and (c) of this section. When designating a Vermont neighborhood, the board may change the boundaries that were contained in the application by reducing the size of the area proposed to be included in the designated neighborhood, but may not include in the designation land that was not included in the application for designation. A Vermont neighborhood decision made by the board is not subject to appeal. Any Vermont neighborhood designation shall terminate when the underlying downtown, village center, new town center, or growth center designation terminates.

(c) Designation Standards. The board shall determine that the applicant has demonstrated all of the following:

(1) The municipality has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title, and has adopted zoning bylaws and subdivision regulations in accordance with section 4442 of this title.

(2) The cumulative total of all Vermont neighborhood land located within the municipality but outside a designated downtown district, designated village center, or designated new town center is not more than 100 percent of the total acreage of the designated downtown district, 50 percent of the village center, or 75 percent of the new town center.

(3) The contiguous land of the Vermont neighborhood complements the existing designated downtown district, village center, or new town center by integrating new housing units with existing residential neighborhoods, commercial and civic services and facilities, and transportation networks, and the contiguous land, in combination with the designated downtown development district, village center, or new town center, is consistent with smart growth principles established under subdivision 2791(13) of this title;

(4) The Vermont neighborhood shall be served by one of the following:

(A) a municipal sewer infrastructure; or

(B) a community or alternative wastewater system approved by the agency of natural resources.

(5) The municipal zoning bylaw requires the following for all land located within the Vermont neighborhood:

(A) Minimum residential densities shall require all the following:

(i) No fewer than four units of single-family, detached dwelling units per acre, exclusive of accessory apartments.

(ii) Higher density for duplexes and multi-family housing.

(B) Neighborhood design standards that promote compact, pedestrian-oriented development patterns that include the following:

(i) Pedestrian scale and orientation of development. Networks of sidewalks or paths, or both, are provided and available to the public to connect the Vermont neighborhood with adjacent development areas, existing and planned adjacent sidewalks, paths, and public streets and the designated downtown, village center, or new town center.

(ii) Interconnected and pedestrian-friendly street networks. Street networks are designed to safely accommodate both pedestrians and bicycles through the provisions of sidewalks on at least one side of the street, on-street parking, and traffic-calming features.

(6) Residents hold a right to utilize household energy conserving devices.

(d) Vermont Neighborhood Incentives for Municipalities and Developers.

(1) The agency of natural resources shall charge no more than a $50.00 fee for wastewater applications under 3 V.S.A. § 2822(j)(4) where the applicant has received an allocation for sewer

capacity from an approved municipal system. This limitation shall not apply in the case of fees charged as part of a duly delegated municipal program.

(2) Act 250 fees under 10 V.S.A. § 6083a for residential developments in Vermont neighborhoods shall be 50 percent of the fee otherwise applicable. Fifty percent of the reduced fees shall be paid upon application, and 50 percent shall be paid within 30 days of the issuance or denial of the permit.

(3) No land gains tax under chapter 236 of Title 32 shall be levied on a transfer of undeveloped land in a Vermont neighborhood which is the first transfer of that parcel following the original designation of the Vermont neighborhood.

(e) Length of Designation. Initial designation of a Vermont neighborhood shall be for a period of five years, after which, the state board shall review a Vermont neighborhood concurrently with the next periodic review conducted of the underlying designated downtown, village center, new town center or growth center, even if the underlying designated entity was originally designated by the downtown board and not by the state board. However, the board, on its motion, may review compliance with the designation requirements at more frequent intervals. If at any time the state board determines that the designated Vermont neighborhood no longer meets the standards for designation established in this section, it may take any of the following actions:

(1) require corrective action within a reasonable time frame;

(2) remove the Vermont neighborhood designation, with that removal not retroactively affecting any of the benefits already received by the municipality or land owner in the designated Vermont neighborhood; and

(3) prospectively limiting benefits authorized in this chapter, with the limitation not retroactively affecting any of the benefits already received by the municipality or land owner in the designated Vermont neighborhood.

(f) Alternative designation in towns without density or design standards. If a municipality has not adopted either the minimum density requirements or design standards, or both, set out in subdivision (c)(5) of this section in its zoning bylaw, a landowner within a proposed Vermont neighborhood may apply to the downtown board for designation of a Vermont neighborhood that meets the standards set out in subdivision (c)(5) of this section by submitting:

(1) a copy of the plans and necessary municipal permits obtained for a project; and

(2) a letter of support for the project issued to the landowner from the municipality within 30 days of the effective date of a final municipal permit. (Added 2007, No. 176 (Adj. Sess.), § 3, eff. May 28, 2008; amended 2009, No. 136 (Adj. Sess.), § 4; 2011, No. 52, § 23a, eff. May 27, 2011.)

§ 2794. Incentives for program designees

(a) Upon designation by the Vermont downtown development board under section 2793 of this title, a downtown development district and projects in a downtown development district shall be eligible for the following:

(1) Priority consideration by any agency of the state administering any state or federal assistance program providing funding or other aid to a municipal downtown area with consideration given to such factors as the costs and benefits provided and the immediacy of those benefits, provided the project is eligible for the assistance program.

(2) The following state tax credits:

(A) A state historic rehabilitation tax credit of 10 percent under 32 V.S.A. § 5930cc(a) that meets the requirements for the federal rehabilitation tax credit.

(B) A state facade improvement tax credit of 25 percent under 32 V.S.A. § 5930cc(b).

(C) A state code improvement tax credit of 50 percent under 32 V.S.A. § 5930cc(c).

(3) A planning grant, in an amount not to exceed $8,000.00 per site, for an initial site assessment of a suspected contaminated site, if the site otherwise qualifies under the community development block grant program in chapter 29 of Title 10.

(4) Financing of transportation projects under the state infrastructure bank, created under chapter 12 of Title 10.

(5) Assistance from the secretary of the agency of natural resources for current owners and prospective purchasers who otherwise qualify under the redevelopment of contaminated sites program under 10 V.S.A. § 6615a(f), or in the case of current owners, who are innocent owners. For the purposes of this subsection, an "innocent owner" is an owner who did not do any of the following:

(A) Hold an ownership interest in the property or in any related fixtures or appurtenances, excluding a secured lender's holding indicia of ownership in the property primarily to assure the repayment of a financial obligation at the time of any disposal of hazardous materials on the property.

(B) Directly or indirectly cause or contribute to any releases or threatened releases of hazardous materials at the property.

(C) Operate, or control the operation, at the property of a facility for the storage, treatment, or disposal of hazardous materials at the time of the disposal of hazardous materials at the property.

(D) Dispose of, or arrange for the disposal of hazardous materials at the property.

(E) Generate the hazardous materials that were disposed of at the property.

(6) Technical assistance by the department of housing and community affairs with regard to planning and coordination issues, including but not limited to, adaptive reuse of buildings within the district, development of a marketing plan for the downtown district that includes a heritage tourism component, development of a program to encourage merchants and building owners to rehabilitate, restore, and improve building facades, and, in coordination with the agency of transportation, planning for multi-modal transportation needs of the community.

(7) Hospitality training to be arranged by the department of tourism and marketing.

(8) Promotion of the downtown development district by the department of tourism and marketing as part of the department's integrated marketing and promotion program.

(9) Consistent with the department's available resources and subject to the department's priority for ensuring public safety, technical support from the department of public safety for the rehabilitation of older and historic buildings.

(10) A rebate of the cost of a qualified sprinkler system in an amount not to exceed $2,000.00 for building owners or lessees. Rebates shall be paid by the department of public safety. To be qualified, a sprinkler system must be a complete automatic fire sprinkler system installed in accord with department of public safety rules in an older or historic building that is certified for a state tax credit under 32 V.S.A. § 5930cc(a) or (b) and is located in a downtown development district. A total of no more than $40,000.00 of rebates shall be granted in any calendar year by the department. If in any year applications for rebates exceed this amount, the department shall grant rebates for qualified systems according to the date the building was certified for a state tax credit under 32 V.S.A. § 5930cc(a) or (b) with the earlier date receiving priority.

(11) Participation in the downtown transportation and related capital improvement fund program established by section 2796 of this title.

(12) Priority for locating proposed state functions by the commissioner of buildings and general services or other state officials, in consultation with the legislative body of a municipality and based on the suitability of the state function to a downtown location.

(13) A reallocation of receipts related to the tax imposed on sales of construction materials as provided in 32 V.S.A. § 9819.

(14) The authority to create a special taxing district pursuant to chapter 87 of this title for the purpose of financing both capital and operating costs of a project within the boundaries of a downtown development district.

(b) Prior to designation of a downtown as a downtown development district by the Vermont downtown development board under section 2793 of this title, the board may deem eligible any otherwise qualified owners or lessees of buildings within a downtown for the tax credits under subchapter 11F and subchapter 11G of chapter 151 of Title 32 if the board finds that the legislative body of the municipality in which the property is located is intending to seek designation of the downtown as a downtown development district and has taken substantial actions and made substantial commitments in furtherance of that intent. (Added 1997, No. 120 (Adj. Sess.), § 1; amended 2001, No. 114 (Adj. Sess.), § 5, eff. May 28, 2002; 2005, No. 183 (Adj. Sess.), § 15.)

§ 2795. Considerations for competitive-based incentives

In awarding competitive-based financial incentives under section 2794 of this title, including but not limited to a rebate and tax incentives, or in awarding grants or other assistance from the downtown transportation and related capital improvement fund under section 2796 of this title, the Vermont downtown development board shall give consideration to the following factors:

(1) the vacancy rate for existing buildings in the downtown district;

(2) the current or projected unemployment rate for the labor market area in which the municipality is located;

(3) ordinances or bylaws adopted by the municipality that support the preservation of the downtown's vitality, including, but not limited to:

> (A) an ordinance or bylaw requiring that new construction in the downtown development district shall be compatible with the buildings that contribute to the integrity of the district, in terms of materials, features, size, scale and proportion, and massing of buildings, and that exterior rehabilitation shall respect the historic and architectural significance and its exterior features; and
>
> (B) a conditional use provision in a town zoning ordinance that supports adaptive reuse of historic properties;

(4) the integration of the proposed improvements with any coordinated plan for the downtown district and surrounding area;

(5) the degree of any deficiency in the downtown district of transportation infrastructure including parking facilities;

(6) the vulnerability of the downtown district to economic decline due to competing development in adjacent areas;

(7) the immediacy of the benefits provided and the desirability of prompt action to secure those benefits for a downtown district;

(8) the amount of investment from individual Vermont taxpayers that has been committed to projects in the downtown district. In considering this factor, the board shall recognize the value of individuals participating in downtown projects by giving preference to applications for incentives from individual Vermont taxpayers, and projects coordinated by developers who have encouraged the participation of such investors. (Added 1997, No. 120 (Adj. Sess.), § 1; amended 1999, No. 159 (Adj. Sess.), § 33.)

§ 2796. Downtown transportation and related capital improvement fund

(a) There is created a downtown transportation and related capital improvement fund, to be also known as the fund, which shall be a special fund created under subchapter 5 of chapter 7 of Title 32, to be administered by the Vermont downtown development board in accordance with this chapter to aid

municipalities with designated downtown districts in financing capital transportation and related improvement projects to support economic development.

(b) The fund shall be comprised of the following:

(1) such state or federal funds as may be appropriated by the general assembly;

(2) any gifts, grants or other contributions to the fund;

(3) proceeds from the issuance of general obligation bonds.

(c) Any municipality with a designated downtown development district may apply to the Vermont downtown development board for financial assistance from the fund for capital transportation and related improvement projects within or serving the district. The board may award to any municipality grants in amounts not to exceed $250,000.00 annually, loans, or loan guarantees for financing capital transportation projects, including but not limited to construction or alteration of roads and highways, parking facilities, and rail or bus facilities or equipment, or for the underground relocation of electric utility, cable and telecommunications lines, but shall not include assistance for operating costs. Grants awarded by the board shall not exceed 50 percent of the overall cost of the project. The approval of the board may be conditioned upon the repayment to the fund of some or all of the amount of a loan or other financial benefits and such repayment may be from local taxes, fees or other local revenues sources. The board shall consider geographical distribution in awarding the resources of the fund.

(d) Each fiscal year, $40,000.00 of the fund shall be available to the department of housing and community affairs for costs of administering the fund. (Added 1997, No. 120 (Adj. Sess.), § 1; amended 2003, No. 66, § 237b; 2005, No. 6, § 64, eff. March 26, 2005.)

§ 2797. Property assessment fund; brownfields and redevelopment; competitive program

(a) There is created a property assessment fund pursuant to subchapter 5 of chapter 7 of Title 32 to be administered by the department of housing and community affairs for the purpose of providing financing, on a competitive basis, to municipalities that demonstrate a financial need in order to determine and evaluate a full assessment of the extent and the cost of remediation of property, or in the case of an existing building, an assessment that supports a clear plan, including the associated costs of renovation to bring the building into compliance with state and local building codes.

(b) The fund shall be composed of the following:

(1) State or federal funds that may be appropriated by the general assembly.

(2) Any gifts, grants, or other contributions to the funds.

(3) Proceeds from the issuance of general obligation bonds.

(c) A municipality deemed financially eligible may apply to the fund for the assessment of property and existing buildings proposed for redevelopment, provided the department finds that the property or building:

(1) Is not likely to be renovated or improved without the preliminary assessment.

(2) When renovated or redeveloped, will integrate and be compatible with any applicable and approved regional development, capital, and municipal plans; is expected to create new property tax if developed by a taxable entity; and is expected to reduce pressure for development on open or undeveloped land in the local community or in the region.

(d) The department shall distribute funds under this section in a manner that provides funding for assessment projects of various sizes in as many geographical areas of the state as possible and may require matching funds from the municipality in which an assessment project is conducted. (Added 2003, No. 121 (Adj. Sess.), § 49, eff. June 8, 2004.)

Title 24: Municipal and County Government

Chapter 118: CONSERVATION COMMISSIONS

§ 4501. Creation of conservation commissions

A conservation commission may be created at any time when a municipality votes to create one, or, if the charter of a municipality permits it, when the legislative body of the municipality votes to create one. (Added 1977, No. 250 (Adj. Sess.), § 1.)

§ 4502. Membership; appointment; terms

(a) A conservation commission shall have not less than three nor more than nine members. All members shall serve without compensation, but may be reimbursed by the municipality for necessary and reasonable expenses. All members shall be residents of the municipality.

(b) Members of the conservation commission shall be appointed, and any vacancy filled, by the legislative body of the municipality. The term of each member shall be for four years, except for those first appointed, whose terms shall be varied in length so that in the future the number whose terms expire in each successive year shall be minimized. (Added 1977, No. 250 (Adj. Sess.), § 1.)

§ 4503. Removals; vacancies

(a) Any member of a conservation commission may be removed at any time for just cause by vote of the legislative body, for reasons given to him or her in writing and after a public hearing thereon if he or she so requests.

(b) Any appointment to fill a vacancy shall be for the unexpired term. (Added 1977, No. 250 (Adj. Sess.), § 1.)

§ 4504. Rules

(a) At its organizational meeting a conservation commission shall adopt by majority vote of those present and voting such rules as it deems necessary and appropriate for the performance of its functions. It shall annually elect a chair, a treasurer, and a clerk.

(b) Times and places of meetings of a conservation commission shall be publicly posted in the municipality, and its meetings shall be open to the public.

(c) A conservation commission shall keep a record of its transactions, which shall be filed with the town clerk as a public record of the municipality. (Added 1977, No. 250 (Adj. Sess.), § 1.)

§ 4505. Powers and duties of conservation commissions

Any conservation commission created under this chapter may:

(1) make an inventory and conduct continuing studies of the natural resources of the municipality including but not limited to:

(A) air, surface and ground waters, and pollution thereof;

(B) soils and their capabilities;

(C) mineral and other earth resources;

(D) streams, lakes, ponds, wetlands, and floodplains;

(E) unique or fragile biologic sites;

(F) scenic and recreational resources;

(G) plant and animal life, especially the rare and endangered species;

(H) prime agricultural and forest land, and other open lands;

(2) make and maintain an inventory of lands within the municipality which have historic, educational, cultural, scientific, architectural, or archaeological values in which the public has an interest;

(3) recommend to the legislative body of the municipality the purchase or the receipt of gifts of land or rights thereto, or other property, for the purposes of this chapter;

(4) receive appropriations for operating expenses including clerical help by appropriation through the budget of the legislative body;

(5) receive money, grants or private gifts from any source, for the purposes of this chapter. Grants and gifts received by the trustee of public funds shall be carried in a conservation fund from year to year to be expended only for purposes of this chapter;

(6) receive gifts of land or other property for the purposes of this chapter, by consent of the legislative body or by the affirmative vote of the municipality;

(7) administer the lands, properties and other rights which have been acquired by the municipality for the purposes of this chapter;

(8) assist the local planning commission or zoning board of adjustment or the district environmental commission, by providing advisory environmental evaluations where pertinent to applications made to those bodies, for permits for development;

(9) cooperate with the local legislative body, planning commission, zoning board of adjustment, road committee, or other municipal or private organizations on matters affecting the local environment or the natural resources of the municipality;

(10) prepare, collect, publish, advertise and distribute relevant books, maps and other documents and maintain communication with similar organizations; and encourage through educational activities the public understanding of local natural resources and conservation needs;

(11) make a brief annual report to the municipality of its finances and transactions for the year just passed, and its plans and prospects for the ensuing year. (Added 1977, No. 250 (Adj. Sess.), § 1.)

§ 4506. Disposition of property

Land, rights, or other property acquired by a municipality under this chapter shall not be sold or diverted to uses other than conservation or recreation except after approval by an affirmative vote of the voters of the town at the annual meeting. (Added 1977, No. 250 (Adj. Sess.), § 1.)

Chapter 131: IMPACT FEES

§ 5200. Purpose

It is the intent of this chapter to enable municipalities to require the beneficiaries of new development to pay their proportionate share of the cost of municipal and school capital projects which benefit them and to require them to pay for or mitigate the negative effects of construction. (Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.)

§ 5201. Definitions

As used in this chapter:

(1) "Municipality" means a town, a city, or an incorporated village or an unorganized town or gore.

(2) "Capital project" means:

(A) any physical betterment or improvement including furnishings, machinery, apparatus or equipment for such physical betterment or improvement;

(B) any preliminary studies and surveys relating to any physical betterment or improvement;

(C) land or rights in land; or

(D) any combination of these.

(3) "Impact fee" means a fee levied as a condition of issuance of a zoning or subdivision permit which will be used to cover any portion of the costs of an existing or planned capital project that will benefit or is attributable to the users of the development or to compensate the municipality for any expenses it incurs as a result of construction. The fee may be levied for recoupment of costs for previously expended capital outlay for a capital project that will benefit the users of the development.

(4) "Offsite mitigation" means permanent protection of land not necessarily adjacent to the development site and which compensates for the impact of the development. (Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.)

§ 5202. Authorization

(a) A municipality may levy an impact fee in accordance with this chapter.

(b) A municipality may accept offsite mitigation in lieu of an impact fee or as compensation for damage to important land such as prime agricultural land or important wildlife habitat. (Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.)

§ 5203. Procedure

(a) A municipality may levy an impact fee on any new development within its borders provided that it has:

(1) been confirmed under section 4350 of this title and, after July 1, 1992, adopted a capital budget and program pursuant to chapter 117 of this title. The plan or capital budget and program may include:

(A) indication of locations proposed for development with a potential to create the need for new capital projects;

(B) standards for level of service for the capital projects to be fully or partially funded with impact fees;

(C) proposed locations and project lists, cost estimates and funding sources;

(D) timing or sequence of development in the identified locations; and

(2) developed a reasonable formula that will be used to assess a developer's impact fee. The formula shall reflect the level of service for the capital project to be funded and a means of assessing the impact associated with the development such as square footage or number of bedrooms. The level of service shall be either:

(A) an existing level of service;

(B) a state or federal standard; or

(C) a standard adopted as part of a town plan or capital budget.

(b) The amount of an impact fee used to fund a capital project shall be determined according to a formula developed under subsection (a) of this section. The fee shall be equal to or less than the portion of the capital cost of a capital project which will benefit or is attributable to the development and shall not include costs attributable to the operation, administration or maintenance of a capital project. The municipality may require a fee for the entire cost of a capital project that will initially be used only by the beneficiaries of the development so assessed. In this case, if the project will be used by beneficiaries of future development the municipality shall establish a formula consistent with the formula developed under subsection (a) of this section to require that beneficiaries of future development pay an impact fee to the owners of the development on which the impact fee has already been levied.

(c) In determining the amount of a fee that will be used to fund a capital project, the municipality may account for:

(1) the cost of the existing or proposed facility;

(2) the means, including state or federal grants and fees paid by other developers, by which the facility has been or will be financed;

(3) the extent, if any, to which impact fees should be offset to account for other taxes or fees paid by the developer that will cover the cost of the capital project;

(4) extraordinary costs incurred by the municipality in serving the new development;

(5) the time-price differential inherent in fair comparisons of amounts paid at different times.

(d) In determining the amount of the impact fee to compensate the municipality for expenses incurred as a result of construction, the municipality shall project the expenses that will be incurred. If the actual expense incurred is less than the fee collected from the developer, the municipality shall refund the unexpended portion of the fee within one year of the termination of construction of the project.

(e) The municipality shall provide an annual accounting for each impact fee showing the source, amount of each fee collected and project that was funded with the fee. The municipality must spend the fee on the capital project, for which the fee was intended, within six years of when the fee was paid. If it fails to do this, the owner of the property at the expiration of the six-year period may apply for and receive a refund of his or her proportionate share of that fee during the year following the date on which the right to claim the refund began.

(f) The municipality shall establish the formula and procedure for levying an impact fee by an ordinance or bylaw adopted under chapter 59 or 117 of this title. Such ordinance or bylaw shall include a provision for administrative appeal of the impact fee assessed. (Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989; amended 1989, No. 106; 1989, No. 280 (Adj. Sess.), § 11c.)

§ 5204. Payment of fees

(a) An impact fee or obligation for offsite mitigation shall be a lien upon all property and improvements within land development for which the fee is assessed in the same manner and to the same effect as taxes are a lien upon real estate under section 5061 of Title 32.

(b) A municipality may require payment of an impact fee or accept offsite mitigation before issuance of a zoning or subdivision permit.

(c) A municipality may accept fees on installment at a reasonable rate of interest.

(d) A municipality may require a letter of credit to guarantee future payment of an impact fee or offsite mitigation. (Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.)

§ 5205. Exemptions

A municipality may exempt certain types of development from any part or all of the impact fee assessed, provided that the exemption achieves other policies or objectives clearly stated in the municipal plan. The policies or objectives may include, but are not limited to, the provision of affordable housing and the retention of existing employment or the generation of new employment. (Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.)

§ 5206. Construction of chapter

Nothing in this chapter shall be construed as prohibiting a municipality from adopting ordinances otherwise authorized by law. (Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.)

Title 32: Taxation and Finance

Chapter 231: PROPERTY TRANSFER TAX

[Section 9610 shall apply to transfers occurring on or after January 1, 2011; see note set out below.]

§ 9610. Remittance of return and tax; inspection of returns

(a) Not later than 30 days after the receipt of any property transfer return, a town clerk shall file the return in the office of the town clerk and electronically forward a copy of the acknowledged return to the commissioner; provided, however, that with respect to a return filed in paper format with the town, the commissioner shall have the discretion to allow the town to forward a paper copy of that return to the department.

(b) The copies of property transfer returns in the custody of the town clerk may be inspected by any member of the public.

Subsection (c) effective until July 1, 2016; see also subsection (c) effective July 1, 2016 set out below.

(c) Prior to distributions of property transfer tax revenues under 10 V.S.A. § 312, 24 V.S.A. § 4306(a), and 32 V.S.A. § 435(b)(10), two percent of the revenues received from the property transfer tax shall be deposited in a special fund in the department of taxes for property valuation and review administration costs. Up to one-half of the funds deposited in a special fund under this subsection shall be used for the purpose of administering the current use value program electronically.

Subsection (c) effective July 1, 2016; see also subsection (c) effective until July 1, 2016 set out above.

(c) Prior to distributions of property transfer tax revenues under 10 V.S.A. § 312, 24 V.S.A. § 4306(a), and 32 V.S.A. § 435(b)(10), one percent of the revenues received from the property transfer tax shall be deposited in a special fund in the department of taxes for property valuation and review administration costs.

(d) [Repealed.] (Added 1967, No. 146, § 1, eff. Jan. 1, 1968; amended 1969, No. 291 (Adj. Sess.), § 17, eff. 60 days after April 9, 1970; 1971, No. 73, § 39, eff. April 16, 1971; 1987, No. 200 (Adj. Sess.), § 3; 1989, No. 119, § 27, eff. June 22, 1989; 1993, No. 210 (Adj. Sess.), § 275a, eff. June 30, 1995; No. 210 (Adj. Sess.), § 275b, eff. Oct. 1, 1994; 1995, No. 5, § 56, eff. March 3, 1995; 1995, No. 63, § 281(d), eff. June 30, 1996; 1999, No. 152 (Adj. Sess.), § 271e; 2009, No. 160 (Adj. Sess.), § 20; 2011, No. 45, § 34, eff. May 24, 2011; No. 45, § 35, eff. July 1, 2016.)