The Vermont Statutes Online

Title 24: Municipal and County Government

Chapter 117: MUNICIPAL AND REGIONAL PLANNING AND DEVELOPMENT

§ 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.)

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

§ 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.

(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.)

§ 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) of this section.

(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. (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.)

§ 4303. Definitions

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

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

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

(2) "Legislative body" means the selectmen in the case of a town, the trustees in the case of an incorporated village, and the mayor and aldermen in the case of a city, and the supervisor in the case of an unorganized town or gore.

(3) "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.

(4) "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.

(5) "Person" means an individual, a corporation, a partnership, an association, and any other incorporated

or unincorporated organization or group.

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

(7) "Public notice" means the form of notice prescribed by section 4447 of this title.

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

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

(10) "Rural town" means a town having, as at the date of the most recent United States census, a population of less than 2500 persons, as evidenced by that census, or a town having 2500 or more but less than 5000 persons which has voted by Australian ballot to be considered a rural town.

(11) "Structure" means an assembly of materials for occupancy or use, including, but not limited to, a building, mobile home or trailer, billboard, sign, wall or fence, except a wall or fence on an operating farm.

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

(13) "Bylaws" means zoning regulations, subdivision regulations, or the official map adopted under the authority of this chapter.

(14) "Planned unit development" means an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, and commercial and industrial uses, if any; the plan for which does not correspond in lot size, bulk or type of dwelling, commercial or industrial use, density, lot coverage and required open space to the regulations established in any one or more districts created, from time to time, under the provisions of a municipal zoning ordinance adopted under the authority of this chapter.

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

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

(17) "Should" means that a requirement is encouraged but not mandated.

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

(19) "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 but are not limited to 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.

(20) "Capacity study" means an inventory of available natural and human-made resources, based on

detailed data collection, which 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.

(21) "Approved plan," prior to January 1, 1996, includes a plan that is conditionally approved under the provisions of this chapter, unless specifically provided otherwise.

(22) "Transit pass" means any pass, token, farecard, 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 (IRC) § 132(f).

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

(24) "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, which has received final approval from the applicable board, commission or officer of the municipality; or

(B) a septic or sewage system permit issued under any municipal ordinance adopted pursuant to chapter 102 of this title; or

(C) final official minutes of meetings which relate to the permits or approvals described in subdivision (24)(A) or (B) of this section which serve as the sole evidence of such permit or approval; or

(D) a certificate of occupancy, certificate of compliance or similar certificate which relates to the permits or approvals described in subdivision (24)(A) or (B) of this section; or

(E) an amendment of any of the documents listed in subdivisions (24)(A) through (D) of this section.

(25) "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 state median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes and insurance, 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 65 percent of the state median income, 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.

(26) "Affordable housing development" means a housing development of which at least 50 percent of the units are affordable housing units. (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.)

§ 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. Council of regional commissions; reviews of state agency and regional plans; reviews of confirmation and approval opinions by regional planning commissions

(a) A council of regional commissions is hereby created. The council membership shall include a representative from each regional planning commission established under section 4341 of this title, three members who are state agency or department heads appointed by the governor and two members representing the public appointed by the governor. Each regional planning commission shall appoint its representative, or replacement in case of a vacancy, from among the commission's municipal representatives. The council shall annually elect one of its members as chairperson and another member as vice-chairperson. The powers and duties of these officers shall be determined by the council. A majority of members shall constitute a quorum. Members of the council, other than state officials, are entitled to the per diem and expenses authorized under 32 V.S.A. § 1010.

(b) The council shall provide, on request, an impartial mediator to help resolve disagreements between and among municipalities and regional planning commissions, and between and among regional planning commissions and state agencies, with respect to the compatibility of their plans with each other, and related matters.

(c)(1) The council shall review proposed regional plans or amendments, after public notice, and determine the following:

(A) whether the plan, as amended, contains the elements required by law;

(B) whether the plan is compatible with the plans of adjoining regions; and

(C) whether the plan, as amended, is consistent with the goals established in section 4302 of this title.

(2) If a municipality requests that a proposed regional plan or amendment be reviewed for compatibility with an approved municipal plan, the council shall conduct that review.

(3) Upon completion of a review under this subsection, one or more representatives of the council shall appear before the regional planning commission and present the council's comments and recommendations.

(d)(1) The council shall review state agency plans or amendments proposed under 3 V.S.A. chapter 67, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in this chapter, and determine the following:

(A) whether the plan or amendment is compatible with the plans of other state agencies;

(B) whether it is consistent with the goals established in 24 V.S.A. § 4302;

(C) whether it is compatible with regional plans; and

(D) whether it is compatible with approved municipal plans of municipalities that have requested review by the council.

(2) Upon completion of a review under subdivision (1) of this subsection, one or more representatives of the council shall appear before the state agency and present the council's comments and recommendations.

(3) After the agency has adopted a plan or amendment, the council, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in this chapter, shall review the plan, as amended or adopted, and shall prepare a written evaluation of the plan's compliance with the criteria established in subdivision (1) of this subsection. The written evaluation shall be sent to all persons who request a copy in writing, to the governor, to the speaker of the house and president of the senate, who shall forward them to appropriate legislative committees. If the council determines that the plan or amendment as adopted is not compatible with a regional plan or is not compatible with the approved municipal plan of a municipality that has requested review by the council, the evaluation shall be sent also:

(A) to the regional planning commission,

(B) to the legislative body and planning commission of the relevant municipality and to the state

representatives that represent that municipality, and

(C) to state senators who represent the relevant region or municipality.

(e) The council shall establish, by rule adopted according to 3 V.S.A. chapter 25, a process to conduct formal review of the sufficiency of an adopted regional plan or amendment and formal review of regional planning commission decisions with respect to the confirmation of municipal planning efforts, and the approval or disapproval of municipal plans or amendments. Formal review shall be conducted by a three-person regional review panel composed of council members, including at least two representatives of regional planning commissions, all assigned by the council in a manner established by rule. A representative of a regional planning commission shall not participate in formal review of the actions of the regional planning commission which the person represents. Council members who participate in the review of a regional plan under subsection (c) of this section shall not participate in a formal regional review panel proceeding on the same matter.

(f) The council shall adopt rules, according to the provisions of 3 V.S.A. chapter 25, that are necessary for the performance of its functions under this chapter.

(g) The council shall receive administrative support from the department of housing and community affairs. (Added 1987, No. 200 (Adj. Sess.), § 32, eff. July 1, 1989; amended 1989, No. 280 (Adj. Sess.), § 16; 2003, No. 115 (Adj. Sess.), § 86.)

§ 4305. Council of regional commissions; reviews of state agency and regional plans; reviews of confirmation and approval opinions by regional planning commissions.

(a) A council of regional commissions is hereby created. The council membership shall include a representative from each regional planning commission established under section 4341 of this title, three members who are state agency or department heads appointed by the governor and two members representing the public appointed by the governor. Each regional planning commission shall appoint its representative, or replacement in case of a vacancy, from among the commission's municipal representatives. The council shall annually elect one of its members as chairperson and another member as vice-chairperson. The powers and duties of these officers shall be determined by the council. A majority of members shall constitute a quorum. Members of the council, other than state officials, are entitled to the per diem and expenses authorized under 32 V.S.A. § 1010.

(b) The council shall provide, on request, an impartial mediator to help resolve disagreements between and among municipalities and regional planning commissions, and between and among regional planning commissions and state agencies, with respect to the compatibility of their plans with each other, and related matters.

(c)(1) The council shall review proposed regional plans or amendments, after public notice, and determine the following:

(A) whether the plan, as amended, contains the elements required by law;

(B) whether the plan is compatible with the plans of adjoining regions; and

(C) whether the plan, as amended, is consistent with the goals established in section 4302 of this title.

(2) If a municipality requests that a proposed regional plan or amendment be reviewed for compatibility

with an approved municipal plan, the council shall conduct that review.

(3) Upon completion of a review under this subsection, one or more representatives of the council shall appear before the regional planning commission and present the council's comments and recommendations.

(d)(1) The council shall review state agency plans or amendments proposed under 3 V.S.A. chapter 67, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in section 4447 of this title, and determine the following:

(A) whether the plan or amendment is compatible with the plans of other state agencies;

(B) whether it is consistent with the goals established in 24 V.S.A. § 4302;

(C) whether it is compatible with regional plans; and

(D) whether it is compatible with approved municipal plans of municipalities that have requested review by the council.

(2) Upon completion of a review under subdivision (1) of this subsection, one or more representatives of the council shall appear before the state agency and present the council's comments and recommendations.

(3) After the agency has adopted a plan or amendment, the council, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in section 4447 of this title, shall review the plan, as amended or adopted, and shall prepare a written evaluation of the plan's compliance with the criteria established in subdivision (1) of this subsection. The written evaluation shall be sent to all persons who request a copy in writing, to the governor, to the speaker of the house and president of the senate, who shall forward them to appropriate legislative committees. If the council determines that the plan or amendment as adopted is not compatible with a regional plan or is not compatible with the approved municipal plan of a municipality that has requested review by the council, the evaluation shall be sent also:

(A) to the regional planning commission,

(B) to the legislative body and planning commission of the relevant municipality and to the state representatives that represent that municipality, and

(C) to state senators who represent the relevant region or municipality.

(e) The council shall establish, by rule adopted according to 3 V.S.A. chapter 25, a process to conduct formal review of the sufficiency of an adopted regional plan or amendment and formal review of regional planning commission decisions with respect to the confirmation of municipal planning efforts, and the approval or disapproval of municipal plans or amendments. Formal review shall be conducted by a three-person regional review panel composed of council members, including at least two representatives of regional planning commissions, all assigned by the council in a manner established by rule. A representative of a regional planning commission shall not participate in formal review of the actions of the regional planning commission which the person represents. Council members who participate in the review of a regional plan under subsection (c) of this section shall not participate in a formal regional review panel proceeding on the same matter.

(f) The council shall adopt rules, according to the provisions of 3 V.S.A. chapter 25, that are necessary for the performance of its functions under this chapter.

(g) The council shall receive administrative support from the department of housing and community affairs.

Added 1987, No. 200 (Adj. Sess.), § 32, eff. July 1, 1989; amended 1989, No. 280 (Adj. Sess.), § 16.

§ 4305. Council of regional commissions; reviews of state agency and regional plans; reviews of confirmation and approval opinions by regional planning commissions

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) A council of regional commissions is hereby created. The council membership shall include a representative from each regional planning commission established under section 4341 of this title, three members who are state agency or department heads appointed by the governor and two members representing the public appointed by the governor. Each regional planning commission shall appoint its representative, or replacement in case of a vacancy, from among the commission's municipal representatives. The council shall annually elect one of its members as chairperson and another member as vice-chairperson. The powers and duties of these officers shall be determined by the council. A majority of members shall constitute a quorum. Members of the council, other than state officials, are entitled to the per diem and expenses authorized under 32 V.S.A. § 1010.

(b) The council shall provide, on request, an impartial mediator to help resolve disagreements between and among municipalities and regional planning commissions, and between and among regional planning commissions and state agencies, with respect to the compatibility of their plans with each other, and related matters.

(c)(1) The council shall review proposed regional plans or amendments, after public notice, and determine the following:

(A) whether the plan, as amended, contains the elements required by law;

(B) whether the plan is compatible with the plans of adjoining regions; and

(C) whether the plan, as amended, is consistent with the goals established in section 4302 of this title.

(2) If a municipality requests that a proposed regional plan or amendment be reviewed for compatibility with an approved municipal plan, the council shall conduct that review.

(3) Upon completion of a review under this subsection, one or more representatives of the council shall appear before the regional planning commission and present the council's comments and recommendations.

(d)(1) The council shall review state agency plans or amendments proposed under 3 V.S.A. chapter 67, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in section 4447 of this title, and determine the

following:

(A) whether the plan or amendment is compatible with the plans of other state agencies;

(B) whether it is consistent with the goals established in 24 V.S.A. § 4302;

(C) whether it is compatible with regional plans; and

(D) whether it is compatible with approved municipal plans of municipalities that have requested review by the council.

(2) Upon completion of a review under subdivision (1) of this subsection, one or more representatives of the council shall appear before the state agency and present the council's comments and recommendations.

(3) After the agency has adopted a plan or amendment, the council, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in section 4447 of this title, shall review the plan, as amended or adopted, and shall prepare a written evaluation of the plan's compliance with the criteria established in subdivision (1) of this subsection. The written evaluation shall be sent to all persons who request a copy in writing, to the governor, to the speaker of the house and president of the senate, who shall forward them to appropriate legislative committees. If the council determines that the plan or amendment as adopted is not compatible with a regional plan or is not compatible with the approved municipal plan of a municipality that has requested review by the council, the evaluation shall be sent also:

(A) to the regional planning commission,

(B) to the legislative body and planning commission of the relevant municipality and to the state representatives that represent that municipality, and

(C) to state senators who represent the relevant region or municipality.

(e) The council shall establish, by rule adopted according to 3 V.S.A. chapter 25, a process to conduct formal review of the sufficiency of an adopted regional plan or amendment and formal review of regional planning commission decisions with respect to the confirmation of municipal planning efforts, and the approval or disapproval of municipal plans or amendments. Formal review shall be conducted by a three-person regional review panel composed of council members, including at least two representatives of regional planning commissions, all assigned by the council in a manner established by rule. A representative of a regional planning commission shall not participate in formal review of the actions of the regional planning commission which the person represents. Council members who participate in the review of a regional plan under subsection (c) of this section shall not participate in a formal regional review panel proceeding on the same matter.

(f) The council shall adopt rules, according to the provisions of 3 V.S.A. chapter 25, that are necessary for the performance of its functions under this chapter.

(g) The council shall receive administrative support from the department of housing and community affairs.

Added 1987, No. 200 (Adj. Sess.), § 32, eff. July 1, 1989; amended 1989, No. 280 (Adj. Sess.), § 16.

§ 4305. Council of regional commissions; reviews of state agency and regional plans; reviews of confirmation and approval opinions by regional planning commissions

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) A council of regional commissions is hereby created. The council membership shall include a representative from each regional planning commission established under section 4341 of this title, three members who are state agency or department heads appointed by the governor and two members representing the public appointed by the governor. Each regional planning commission shall appoint its representative, or replacement in case of a vacancy, from among the commission's municipal representatives. The council shall annually elect one of its members as chairperson and another member as vice-chairperson. The powers and duties of these officers shall be determined by the council. A majority of members shall constitute a quorum. Members of the council, other than state officials, are entitled to the per diem and expenses authorized under 32 V.S.A. § 1010.

(b) The council shall provide, on request, an impartial mediator to help resolve disagreements between and among municipalities and regional planning commissions, and between and among regional planning commissions and state agencies, with respect to the compatibility of their plans with each other, and related matters.

(c)(1) The council shall review proposed regional plans or amendments, after public notice, and determine the following:

(A) whether the plan, as amended, contains the elements required by law;

(B) whether the plan is compatible with the plans of adjoining regions; and

(C) whether the plan, as amended, is consistent with the goals established in section 4302 of this title.

(2) If a municipality requests that a proposed regional plan or amendment be reviewed for compatibility with an approved municipal plan, the council shall conduct that review.

(3) Upon completion of a review under this subsection, one or more representatives of the council shall appear before the regional planning commission and present the council's comments and recommendations.

(d)(1) The council shall review state agency plans or amendments proposed under 3 V.S.A. chapter 67, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in section 4447 of this title, and determine the following:

(A) whether the plan or amendment is compatible with the plans of other state agencies;

(B) whether it is consistent with the goals established in 24 V.S.A. § 4302;

(C) whether it is compatible with regional plans; and

(D) whether it is compatible with approved municipal plans of municipalities that have requested review by the council.

(2) Upon completion of a review under subdivision (1) of this subsection, one or more representatives of the council shall appear before the state agency and present the council's comments and recommendations.

(3) After the agency has adopted a plan or amendment, the council, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in section 4447 of this title, shall review the plan, as amended or adopted, and shall prepare a written evaluation of the plan's compliance with the criteria established in subdivision (1) of this subsection. The written evaluation shall be sent to all persons who request a copy in writing, to the governor, to the speaker of the house and president of the senate, who shall forward them to appropriate legislative committees. If the council determines that the plan or amendment as adopted is not compatible with a regional plan or is not compatible with the approved municipal plan of a municipality that has requested review by the council, the evaluation shall be sent also:

(A) to the regional planning commission,

(B) to the legislative body and planning commission of the relevant municipality and to the state representatives that represent that municipality, and

(C) to state senators who represent the relevant region or municipality.

(e) The council shall establish, by rule adopted according to 3 V.S.A. chapter 25, a process to conduct formal review of the sufficiency of an adopted regional plan or amendment and formal review of regional planning commission decisions with respect to the confirmation of municipal planning efforts, and the approval or disapproval of municipal plans or amendments. Formal review shall be conducted by a three-person regional review panel composed of council members, including at least two representatives of regional planning commissions, all assigned by the council in a manner established by rule. A representative of a regional planning commission shall not participate in formal review of the actions of the regional planning commission which the person represents. Council members who participate in the review of a regional plan under subsection (c) of this section shall not participate in a formal regional review panel proceeding on the same matter.

(f) The council shall adopt rules, according to the provisions of 3 V.S.A. chapter 25, that are necessary for the performance of its functions under this chapter.

(g) The council shall receive administrative support from the department of housing and community affairs.

Added 1987, No. 200 (Adj. Sess.), § 32, eff. July 1, 1989; amended 1989, No. 280 (Adj. Sess.), § 16.

§ 4306. Municipal and regional planning fund

(a) 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. 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. Of the revenues in the fund, each year

10 percent shall be disbursed to the Vermont center for geographic information; 70 percent shall be disbursed to regional planning commissions and 20 percent shall be disbursed to municipalities.

(b) Disbursement to regional planning commissions shall be 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. The rules shall give due consideration to the region's progress in adopting a regional plan. Disbursement to municipalities shall be 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:

(1) Shall be confirmed under section 4350 of this title; or

(2)(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.

(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.)

§ 4306. Municipal and regional planning fund

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) 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. 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. Of the revenues in the fund, each year 10 percent shall be disbursed to the Vermont center for geographic information; 70 percent shall be disbursed to regional planning commissions and 20 percent shall be disbursed to municipalities.

(b) Disbursement to regional planning commissions shall be 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. The

rules shall give due consideration to the region's progress in adopting a regional plan. Disbursement to municipalities shall be 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 shall be confirmed under section 4350 of this title. 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 7 of 24 V.S.A. chapter 117; and

(3) acquiring development rights, conservation easements, or title to those lands, areas and structures 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.)

§ 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 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 chairman 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.)

§ 4325. Powers and duties of planning commissions

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

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 subchapter 6 of 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 4426 of this title, for action by the legislative body, as set forth under section 4404a 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.)

§ 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 unorganized 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.)

§ 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.)

§ 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 the results of studies jointly carried out by representatives of the municipalities and the agency of commerce and community development to determine whether the municipalities involved constitute a logical geographic and a coherent socio-economic planning area. Evidence must be shown that local, state, and federal funding will be adequate to satisfy current requirements and to provide a continuing planning program of a scope sufficient for comprehensive and functional area wide planning. All municipalities within a designated region shall be considered members of the regional planning commission. Such area shall be referred to herein as a region, and may include municipalities located in a neighboring state.

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

§ 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 shall elect a chairman 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 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.)

§ 4344. Existing commissions

The representatives of any existing regional planning or regional development commission or bodies having similar powers and functions established under sections 2771 through 2779 and sections 2923 through 2931 of Title 24 shall continue in office until the end of their term so established. New representatives 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 regional planning commission created under this chapter. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4345. Optional powers and duties of regional planning commissions

Any regional planning commission created under this chapter may:

(1)-(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, 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;

(11) Undertake comprehensive planning, including related preliminary planning 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) 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.

§ 4345. Optional powers and duties of regional planning commissions

Any regional planning commission created under this chapter may:

(1)-(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, 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;

(11) Undertake comprehensive planning, including related preliminary planning 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) 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.

§ 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 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 housing and community affairs, 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 housing and community affairs, 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 five 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 review by the council of regional commissioners or the services of a mediator pursuant to section 4305 of this title, 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.)

§ 4346. Appropriations

(a) 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.

(b) In order to qualify for financial aid from the agency of commerce and community development, a regional planning commission shall have been created in accordance with section 4341 of this title, shall represent a region as therein defined, and shall comply with rules and standards prescribed by the agency of commerce and community development for determination of eligibility for the assistance. (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).)

§ 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 housing and community affairs within the agency of commerce and community development;

(4) the council of regional commissions; and

(5) 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 sixty 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. A plan or amendment that has become effective or has been rejected shall be transmitted promptly to the council of regional commissions.

(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) By December 31, 1992 and at least every five years thereafter, all regional planning commissions shall submit regional plans adopted under this section to the council of regional commissions for review. The council shall make recommendations to the regional planning commissions with respect to appropriate amendments for consideration by the commissions. (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).)

§ 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; and

(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 section 4382(c) of this title. If no such data has been gathered, the regional planning commission shall gather it.

(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.)

§ 4348b. Readoption of regional plans

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

§ 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 five 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) 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:

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

(2) is compatible with its regional plan;

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

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

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 housing and community affairs 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 housing and community affairs under section 4351 of this title.

(2) State agency plans adopted under 3 V.S.A. chapter 67 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.)

§ 4350. Review and consultation regarding municipal planning effort

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(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 five 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) 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 as provided in section 4447 of this title which notice shall also include 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:

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

(2) is compatible with its regional plan;

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

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

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 housing and community affairs 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 housing and community affairs under section 4351 of this title.

(2) State agency plans adopted under 3 V.S.A. chapter 67 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.)

§ 4351. Review by commissioner of housing and community affairs

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) The commissioner of the department of housing and community affairs 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 housing and community affairs, 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 as provided in section 4447 of this title which notice shall also include 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.)

§ 4351. Review by commissioner of housing and community affairs

(a) The commissioner of the department of housing and community affairs 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 housing and community affairs, 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.)

§ 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).)

§ 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.

(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 section 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.)

§ 4382. The plan for a municipality

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(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 section 4348a(a)(9) of this title. The program may include provisions for conditionally permitted 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.

(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 section 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.)

§ 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. 200 (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 thirty 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 2500 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 2500 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.)

§ 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.)

§ 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.)

§ 4401. Authorization

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a)(1) Any municipality which 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 bylaws or the capital budget and program provided for in this chapter. All such bylaws and the capital budget and program shall have the purpose of implementing the plan, and shall be in accord with the policies set forth therein.

(2) If a municipality establishes a development review board, and appoints members to that board, under the provisions of section 4461 of this title, 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 bylaws provided by this chapter are authorized as follows:

(1) Zoning Regulations. Within the jurisdiction of a municipality, except as specifically limited herein, the municipality may adopt zoning regulations to permit, prohibit, restrict, regulate, and determine land development, including specifically, without limitation, the following:

(A) Specific uses of land, water courses and other bodies of water;

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

(C) Areas and dimensions of land and bodies of water 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;

(D) Density of population and intensity of use.

(2) Subdivision Regulations. A municipality may authorize its planning commission or its development review board to approve, modify or disapprove all plats of land as prescribed below, and approve the development of such plats previously filed in the office of the clerk of such municipality if such plats are entirely or partially undeveloped, under the subdivision regulations of such municipality. Within the jurisdiction of such municipality, except as specifically limited herein, such municipality may adopt subdivision regulations setting forth the procedures, requirements and specifications for the submission, processing and design of plats. Such subdivision regulations must be adopted prior to the exercise of any authority by a planning commission or a development review board under this subdivision (b)(2).

(3) Official Map. Except as limited by this chapter, a municipality may adopt and amend an official map showing the location and widths of the existing and proposed rights-of-way of all streets or drainageways and the location of all existing and proposed parks, schools, and other public facilities. Except as set forth herein, no building or improvement may be constructed within the lines of any existing and proposed rights-of-way of all streets or drainageways, parks, schools, and other public facilities shown or laid out on such official map.

(4) Shoreland bylaws. A municipality may adopt shoreland bylaws under section 4411 of this title.

(5) Flood Hazard Area Bylaws. A municipality may adopt flood hazard area bylaws under section 4412 of this title.

(c) Within the jurisdiction of a municipality, except as specifically limited herein, a municipality may adopt and amend an annual capital budget and a capital program for a period of not less than five years.

(d) As part of zoning or subdivision regulations enacted pursuant to subsection (b) of this section, or pursuant to action by the voters of the municipality at a duly warned meeting, a municipality that has a duly adopted plan, subdivision bylaws, zoning bylaws, and a development review board may authorize its development review board to undertake local Act 250 review of municipal impacts caused by a development or subdivision, or both (as those terms are defined in 10 V.S.A. chapter 151), according to the process specified in section 4449 of this title. (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.)

§ 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.)

§ 4402. Purposes

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

All by-laws adopted under this chapter shall be enacted for the purposes set forth in section 4302 of this title. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4403. Preparation of bylaws, hearings by planning commission

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(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. 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 (f) as if it had been prepared by the commission.

(c) When considering an amendment to a bylaw, the planning commission may prepare 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) concerning plan amendments. If the proposal would alter the zoning designation of any land area, the report should be prepared and 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 bylaw, amendment or repeal.

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

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

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

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

Any of the foregoing bodies, 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.

(f) The planning commission may make revisions to a proposed bylaw, amendment or repeal and to any written report, and shall thereafter submit the proposed bylaw, amendment or repeal 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 bylaw, amendment or repeal, and any written report, for public review. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1973, No. 108; 1981, No. 132 (Adj. Sess.), § 12; 1995, No. 190 (Adj. Sess.), § 1(a).)

§ 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. Adoption, amendment or repeal of bylaws

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

(a) Not less than thirty nor more than 120 days after a proposed bylaw, amendment or repeal is submitted to the legislative body of a municipality under section 4403, the legislative body shall hold the first of one or more public hearings, after public notice, on the proposed amendment or repeal, and shall make copies of the proposal and any 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) The legislative body may change the proposed bylaw, amendment, or repeal, 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 bylaw, amendment or repeal, it shall warn a new public hearing or hearings under subsection (a). 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 and with the planning commission. The planning commission may submit a report thereon to the legislative body at or prior to the public hearing.

(c) Routine adoption in urban municipalities. A bylaw, amendment or repeal of an urban municipality shall be adopted by a majority of the members of its legislative body at a meeting which is held after the final public hearing, and shall be effective 21 days after adoption.

(d) Routine adoption in rural towns.

(1) A proposed bylaw, amendment or repeal of a rural town shall be adopted or rejected by the vote of that town by Australian ballot at the next regular or at a special meeting duly warned and held after the final public hearing. The adoption or rejection shall be effective immediately.

(2) Notwithstanding subdivision (1), a rural town may, at a regular or special meeting duly warned and held, elect to follow the provisions and procedures of chapter 59 for the adoption, amendment and repeal of bylaws. The election shall be effective immediately and shall remain in effect unless rescinded by the vote of the town by Australian ballot at a regular or special meeting, duly warned and held.

However, in no case shall the provisions of chapter 59 of this title relating to enforcement of municipal ordinances apply to the enforcement of bylaws adopted under this chapter.

(e) [Deleted.]

(f) Popular vote in urban municipalities. Notwithstanding subsection (c), in an urban municipality a vote

on a bylaw or amendment shall not take effect if five percent of the voters of the municipality petition for a meeting of the municipality to consider the bylaw or amendment, and the petition is filed within twenty days of the vote. In that case a meeting of the municipality shall be duly warned for the purpose of acting upon the bylaw or amendment by Australian ballot.

(g) 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, subject to the vote of a rural town, and a capital budget and program in the same proceedings. However, all of the provisions of this chapter applicable to each such purpose of the hearing shall be complied with.

(h) A bylaw, amendment or repeal 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.

(i) If the proposed bylaw, amendment or repeal is not approved or rejected under subsections (c) or (d) 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 or amendment, 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 or amendment by Australian ballot. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 288 (Adj. Sess.), eff. April 9, 1970; 1971, No. 257 (Adj. Sess.), §§ 11, 22, 24, eff. April 11, 1972; 1973, No. 188 (Adj. Sess.), § 2, eff. July 1, 1974; 1975, No. 164 (Adj. Sess.), § 6; 1981, No. 132 (Adj. Sess.), § 13; 1987, No. 161 (Adj. Sess.), § 2; 2001, No. 111 (Adj. Sess.), § 1.)

§ 4404a. Adoption, amendment, or repeal of capital budget and program

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

(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 section 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 fifteen 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 thereon to the legislative body prior to the public hearing.

(b) The capital budget and program, or amendment or repeal thereof, 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 1975, No. 164 (Adj. Sess.), § 11; amended 1993, No. 232 (Adj. Sess.), § 46, eff. March 15, 1995.)

§ 4405. Zoning; zoning districts

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was

repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

(a) All zoning regulations shall apply to all lands within the municipality other than as specifically limited or exempted herein. The provisions of such regulations may be classified so that different provisions may be applied to different classes of situations, uses and structures and to such different and separate districts of the municipality as may be described by a zoning map made part of the regulations. The plan map of any municipality may be designated as the zoning map except in such cases where such districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the plan map. All provisions shall be uniform for each class of uses or structures within each district, except that additional classifications may be made within any district:

(1) For the purpose of making transitional provisions at and near the boundaries of districts;

(2) For the purpose of regulating, reducing and eliminating certain nonconforming uses or structures; and

(3) For the regulation, restriction or prohibition of uses of structures at or near:

(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 historical or patriotic interest or value or located within design control districts;

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

(b) As among several classes of districts, the provisions for permitted uses may be mutually exclusive, in whole or in part. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4406. Required regulations

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

No municipality may adopt zoning regulations which do not provide for the following:

(1) Existing small lots. Any lot in individual and separate and non-affiliated ownership from surrounding properties in existence on the effective date of any zoning regulation, including an interim zoning regulation, may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot size requirements, if such lot is not less than one-eighth acre in area with a minimum width or depth dimension of forty feet.

(A) If such lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot for purposes of this chapter. However, such lot shall not be deemed merged and may be separately conveyed, if:

(i) the lots are conveyed in their preexisting, nonconforming configuration; and

(ii) on the effective date of any zoning regulations, each lot had been developed with a water supply and wastewater disposal system; and

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

(iv) the deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems in case a wastewater system fails, which means the system functions in a manner:

(I) that allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure unless the approved design of the system specifically requires the system to function in such a manner;

(II) so that a potable water supply is contaminated or rendered not potable;

(III) that presents a threat to human health; or

(IV) that presents a serious threat to the environment.

(B) If, subsequent to separate conveyance, as authorized under subdivision (1)(A) of this section, a wastewater system fails, the owner shall be required to obtain from the secretary of natural resources a wastewater permit as required under the subdivision regulations or a certification that the wastewater system has been modified or replaced, with the result that it no longer constitutes a failed system.

(2) Required frontage on, or access to, public roads or public waters.

frontage on a public road or public waters or, with the approval of the planning commission, access to such a road or waters by a permanent easement or right-of-way at least twenty feet in width.

(3) Protection of home occupations. No regulation may infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not change the character thereof.

(4) Equal treatment of housing.

(A) Except as provided in section 4407(6) of this title, no zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded.

(B) No zoning regulation shall have the effect of excluding from the municipality housing to meet the needs of the population as determined in section 4382(c) of this title.

(C) No provision of this chapter shall be construed to prevent the establishment of mobile home parks pursuant to chapter 153 of Title 10.

(D) Except as provided in subdivision 4407(2) of this title, no zoning regulation shall have the effect of excluding for review as a conditional use one dwelling unit constructed within or attached to a primary single family residence located in a district in which single family residences are a permitted or conditional use. These accessory units shall satisfy the following requirements:

(i) occupancy is restricted to not more than two persons, one of whom is related by blood or marriage to the owner of the single family residence, is disabled as defined in subdivision 251(2) of Title 18 or is at least 55 years of age;

(ii) floor space shall not exceed 30 percent of the floor space of the existing living area of the single family residence or 400 square feet, whichever is greater; and

(iii) the primary single family residence is occupied by the owner. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 6; 1975, No. 236 (Adj. Sess.), § 1; 1991, No. 130 (Adj. Sess.), § 3; 1997, No. 125 (Adj. Sess.), § 6, eff. April 27, 1998.)

§ 4407. Permitted types of regulations

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

Any municipality may adopt zoning regulations that may include, but shall not be limited to, any of the following provisions:

(1) Agricultural and rural residential, forest, and recreational districts. Where, for the purposes set forth in section 4302 of this title, it is deemed necessary to safeguard certain areas from urban or suburban development and to encourage such development in other areas of the municipality or region, the following districts may be created:

(A) Agricultural and rural residential districts, permitting all types of agricultural uses, and prohibiting all other land development except for residential lots of not less than twenty-five acres each;

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

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

(2) Conditional uses. In any district, certain uses may be permitted only by approval of the board of adjustment or the development review board, if general and specific standards to which each permitted use must conform are prescribed in the appropriate bylaws and if the board of adjustment or development review board after public notice and public hearing determines that the proposed use will conform to such standards. Such general standards shall require that the proposed conditional use shall not adversely affect:

(A) The capacity of existing or planned community facilities;

(B) The character of the area affected;

(C) Traffic on roads and highways in the vicinity;

(D) Bylaws then in effect; or

(E) Utilization of renewable energy resources.

Such specific standards may include requirements with respect to:

(A) Minimum lot size;

(B) Distance from adjacent or nearby uses;

(C) Performance standards, as under subdivision (7) of this section;

(D) Minimum off-street parking and loading facilities;

(E) Landscaping and fencing;

(F) Design and location of structures and service areas;

(G) Size, location, and design of signs;

(H) Such other factors as the zoning regulations may include.

In granting such conditional use, the board of adjustment or the development review board may attach such additional reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the zoning regulations. The board of adjustment or the development review board shall act to approve or disapprove any such requested conditional use within sixty days after the date of the final public hearing held under this section, and failure to so act within such period shall be deemed approval.

(3) Planned residential development. Any municipality may adopt zoning regulations providing for planned residential development to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities, and to preserve the natural and scenic qualities of the open lands of this state. The modification of zoning regulations by the planning commission or the development review board may be permitted simultaneously with the approval of a subdivision plan, subject to the following conditions:

(A) The submission of a site plan to the planning commission or the development review board showing the location, height and spacing of buildings, open spaces and their landscaping, streets, driveways and off-street parking spaces and all other physical features, accompanied by a statement setting forth the nature of all proposed modifications, changes or supplementations of existing zoning regulations;

(B) If authorized in the bylaw the permitted number of dwelling units may include a density increase of as much as 25 percent, or 50 percent in the case of an affordable housing development, beyond the number which could be permitted in the planning commission's or the development review board's judgment, if the land were subdivided into lots in conformance with the zoning regulations for the districts in which such land is situated, giving due consideration to site conditions limiting development, such as shallow depth of soil, wetness and steep slopes. When a bylaw authorizes a density increase, no person shall be required to apply for or accept a density increase. In granting a density increase, the planning commission or the

development review board shall consider the capacities of community facilities and services and the character of the area affected;

(C) The dwelling units permitted may, at the discretion of the planning commission or the development review board, be of varied types including one-family, two-family or multi-family construction;

(D) If the application of this procedure results in lands available for park, recreation, open space or other municipal purposes, the planning commission or the development review board as a condition of its approval may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes;

(E) Any modification of the zoning regulations approved under this section shall be specifically set forth in terms of standards and criteria for the design, bulk and spacing of buildings and the sizes of lots and open spaces which shall be required, and these shall be noted or appended to the plat.

(4) Parking and loading facilities. 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. Such regulations may also include provisions covering the location, size, design, access, landscaping and screening of such facilities. In determining the number and size of parking spaces required under such regulations, the municipal planning commission may take into account the existence of "transit passes," and other evidence that employers will save parking spaces because employees commute to and from work in carpools, in van pools, by bicycle, or by foot. The actual number of parking spaces saved may be substituted for parking facilities on a one-for-one basis, provided the number of parking spaces saved becomes a condition of the permit that the employer receives from the municipal planning commission.

(5) Site plan approval. As prerequisite to the approval of any use other than one- and two-family dwellings, the approval of site plans by the planning commission or the development review board may be required. In reviewing site plans, the planning commission or the development review board may impose appropriate conditions and safeguards with respect to: the adequacy of traffic access, circulation and parking; landscaping and screening; the protection of the utilization of renewable energy resources; and other matters specified in the bylaws. The planning commission or the development review board shall act to approve or disapprove any such site plan within 60 days after the date upon which it receives the proposed plan, and failure to so act within such period shall be deemed approval. The zoning regulations shall specify the maps, data and other information to be presented with applications for site plan approval.

(6) Design control districts. Zoning regulations may contain provisions for the establishment of design control 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 such report. After such hearing, the planning commission may recommend to the legislative body such design control district. A design control district can 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. Such areas may include townscape areas which 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 nineteenth century. Within such a designated design control 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 therefor by the planning commission or the development review board. A design review board may be appointed by the legislative body of the

municipality to advise any development review board and the planning commission, which design review board shall have such term of office, and such procedural rules, as the legislative body determines.

(7) Performance standards. As an alternative or supplement to the listing of specific uses permitted in districts specifically in, but not limited to, manufacturing or industrial districts, zoning regulations may specify acceptable standards or levels of performance which will be required in connection with any use. Such regulations shall specifically describe the levels of operation which 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 regulations manual 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 which requests aid in the adoption or enforcement of such regulations.

(8) Bonds to assure restoration of sites. Regulations governing the operation of sand and gravel excavations or soil removal may contain provisions requiring the submission of an acceptable plan for the rehabilitation of the site at the conclusion of the operations and a bond, escrow account, or other surety acceptable to the legislative body of the municipality to assure the rehabilitation. However, this provision does not apply to mining or quarrying.

(9) Flood plain areas, special control. Within any area designated by the department of environmental conservation as subject to periodic flooding, the permitted uses, type of construction, and height of floor levels above ground may be regulated in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters.

(10) Airport hazard area. Any municipality may adopt special zoning regulations 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 such airport elsewhere. The designation of such area and the zoning regulations therein shall be approved by the Vermont transportation board.

(11) [Repealed.]

(12) Planned unit development. Planned unit development. Any municipality may adopt zoning regulations providing for planned unit developments to encourage new communities, innovation in design and layout, and more efficient use of land. The modification of zoning regulations by the planning commission or the development review board may be permitted simultaneously with the approval of a subdivision plat subject to the conditions set forth in this subdivision. Any local zoning regulations containing provisions for planned unit development shall describe the standards and conditions by which a proposed planned unit development shall be evaluated. The planning commission or the development review board may prescribe, from time to time, rules and regulations to supplement the standards and conditions set forth in the zoning regulations, provided the rules and regulations are not inconsistent with the zoning regulations. The planning commission or the development review board shall hold a public hearing after public notice as required by section 4447 of this title, prior to the establishment of any supplementary rules and regulations. Permitted uses may include and shall be limited to:

(A) dwelling units in detached, semi-detached, or multi-storied structures, or any combination thereof, and may include for an affordable housing development a density increase of as much as 50 percent beyond the number which could be permitted in the judgment of the planning commission or the development review

board if the land were subdivided into lots in conformance with the zoning regulations for the districts in which the land is situated, giving due consideration to site conditions that limit development, including shallow soil depth, wetness and steep slopes. When a bylaw authorizes a density increase, no person shall be required to apply for or accept a density increase. In granting a density increase, the planning commission or the development review board shall consider the capacities of community facilities and services and the character of the area affected;

(B) any nonresidential use;

(C) public and private educational facilities; and

(D) industrial uses and buildings.

The zoning regulations may authorize the planning commission or the development review board to allow for a greater concentration of density, of intensity of residential land use, within some section or sections of the development than upon others. The zoning regulations may require that the approval by the planning commission or the development review board of a greater concentration of density or intensity of residential land use for any section to be developed be offset by a lesser concentration in any other section or by an appropriate reservation of common open space on the remaining land by a grant of easement or by covenant to the municipality.

(13) Access to renewable energy resources. Any municipality may adopt zoning and subdivision regulations to encourage protection and access to renewable energy resources.

(14) Time-share projects.

(A) For purposes of this section a time-share project means a project involving real property containing an interest acquired by means of a time-share estate or a time-share license. A "time-share estate" is a right to occupy a unit or any of several units during separated time periods coupled with a freehold estate or an estate for years in a time-share property or a specified portion thereof. A "time-share license" means a right to occupy a unit or any of several units during separate time periods, including renewal options, not coupled with a freehold estate or an estate for years.

(B) A municipality may vote to declare projects consisting of five or more time-share estates or licenses to be subject to this chapter, and by so doing is authorized to provide for such projects in the municipal plan and zoning regulations in the same manner as other uses.

(15) Historic districts and landmarks.

(A) Zoning regulations 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. A report prepared under section 4403(c) of this title with respect to the establishment of an historic district or the designation of an historic landmark should contain an analysis of and recommendations concerning the factors mentioned above that make the district or landmark significant.

(B) 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 planning commission or the development review board. The commission or the board 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 which the commission or the board deems to be pertinent.

(C) When a commission or the development review board is reviewing an application relating to an historic district, the following shall apply:

(i) the commission or the board shall be strict in its judgment of plans for those structures deemed to be valuable under subdivision (15)(A) of this section. A commission or a board 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 (15)(A), the commission or the board shall meet with the owner of the structure to devise an economically feasible plan for the preservation of the structure;

(iii) an application shall be approved only when the commission or the board 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 (15)(A), the commission or the board may approve the proposed alteration despite subdivision (15)(A)(iii) of this section if:

(I) the structure is a deterrent to a major improvement program which will be of clear and substantial benefit to the municipality; or

(II) retention of the structure would cause undue financial hardship to the owner.

(D) This subdivision, and zoning regulation issued pursuant to it, shall apply to designation of individual landmarks as well as to designation of historic districts. A landmark is any individual building, structure, or site having by itself a special historic, architectural, or cultural value.

(E) The provisions of this subdivision 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.

(16) Transfer of development rights.

(A) In order to accomplish the purposes of 10 V.S.A. § 6301, the zoning regulations may contain provisions for the transfer of development rights. The regulations shall:

(i) specify one or more sending areas for which development rights may be acquired;

(ii) specify one or more receiving areas in which those development rights may be used;

(iii) define the amount of the density increase allowable in receiving areas, and the quantity of development rights necessary to obtain those increases;

(iv) 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;

(v) 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 the land uses in the sending area solely to specified purposes, but including at a minimum, agriculture and forestry.

(B) Upon approval by the planning commission or the development review board, a zoning permit may be granted for land development based in part upon a density increase, provided:

(i) 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;

(ii) the applicant has obtained development rights from a sending area which are sufficient under the regulations for the density increase sought; and

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

(iv) 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:

(i) ensure that the instruments transferring the conservation easements and the development rights are recorded; and

(ii) 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.

Failure to record an instrument or mark a map does not invalidate a transfer of development rights.

(D) 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.

(17) Technical review. A bylaw enacted under this chapter may include procedures to require an applicant to pay for reasonable costs of an independent technical review of the application.

(18) Moratorium relating to the siting of wireless telecommunications facilities and ancillary improvements. If a municipality has begun a process to adopt or amend regulations relating to the siting of wireless telecommunications facilities, a municipality may adopt a regulation that establishes a moratorium on issuing permits to allow the siting and construction of wireless telecommunications facilities and ancillary improvements, and, if necessary, that requires that such permits be obtained.

(A) This moratorium may be adopted by vote of the municipality's legislative body, subject to disapproval by the voters under section 1973 of this title, or it may be adopted by vote of a majority of the voters of the municipality present and voting at a duly warned meeting of the voters of the municipality.

(B) A moratorium adopted under this subdivision shall run for no more than 180 consecutive days, covering dates which shall be identified in the regulation adopting the moratorium, and which shall fall between the effective date of this act and July 1, 1999.

(C) A moratorium adopted under this subdivision shall terminate upon the effective date of new regulatory provisions relating to the siting of wireless telecommunications facilities and ancillary improvements, upon expiration of 180 days from the effective date of the moratorium, or upon June 30, 1999, whichever comes first.

(D) When a moratorium is adopted under this subdivision, any telecommunications facility-related application pending as of the date of the adoption of the moratorium shall be entitled to a permit only when the applicant meets the requirements of the regulations as they exist at the termination of the moratorium.

(19) Provision for the decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements. Regulations regarding the decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities.

(20) Stormwater management and control. Any municipality may adopt zoning and subdivision regulations as necessary to implement stormwater management and control consistent with the program developed by the secretary of natural resources pursuant to 10 V.S.A. § 1264. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 7; 1971, No. 257 (Adj. Sess.), §§ 21, 22, eff. April 11, 1972; 1975, No. 236 (Adj. Sess.), § 4; 1977, No. 268 (Adj. Sess.), § 1; 1979, No. 174 (Adj. Sess.), §§ 10-12; 1981, No. 132 (Adj. Sess.), § 14; 1983, No. 98 (Adj. Sess.); 1985, No. 243 (Adj. Sess.), §§ 4-6; 1993, No. 232 (Adj. Sess.), § 2, eff. March 15, 1995; 1995, No. 122 (Adj. Sess.), § 3, eff. Apr. 25, 1996; No. 190 (Adj. Sess.), § 1(a); 1997, No. 94 (Adj. Sess.), § 4, eff. April 15, 1998; 1999, No. 114 (Adj. Sess.), § 4, eff. May 19, 2000; No. 161 (Adj. Sess.), § 8.)

§ 4408. Nonconforming uses and noncomplying structures

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

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

(1) "Nonconforming use" means a use of land or a structure which does not comply with all zoning regulations where such use conformed to all applicable laws, ordinances and regulations prior to the

enactment of such regulations.

(2) "Noncomplying structure" means a structure or part thereof not in conformance with the zoning regulations covering building bulk, dimensions, height, area, yards, density or off-street parking or loading requirements, where such structure conformed to all applicable laws, ordinances and regulations prior to the enactment of such zoning regulations.

(b) 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 nonconforming uses. Specifically, a municipality may control:

(1) Changes of nonconforming uses to another nonconforming use;

(2) Extension or enlargement of nonconforming uses;

(3) Resumptions of nonconforming uses, by prohibiting such resumption if such use is abandoned for any period of time or if discontinued for six calendar months regardless of evidence of intent to resume such use; and

(4) Movement or enlargement of a structure containing a nonconforming use.

(c) Notwithstanding any other provision of this section, with respect to a mobile home park that is a nonconforming use, subsection 6204(e) of Title 10 shall apply. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1979, No. 174 (Adj. Sess.), § 18; 1999, No. 161 (Adj. Sess.), § 4.)

§ 4409. Limitations

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

(a) Unless reasonable provision is made for the location of any of the following in a bylaw adopted pursuant to subchapter 6 of this title, the following uses may only be regulated with respect to size, height, bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities and landscaping or screening requirements:

(1) Public utility power generating plants and transmission lines.

(2) State or community owned and operated institutions and facilities.

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

(4) Churches, convents, and parish houses.

(5) Public and private hospitals.

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

(7) Hazardous waste management facilities for which a notice of intent to construct has been received under section 6606a of Title 10.

(b) If any by-law is enacted with respect to any land development subject to regulation under state statutes, the more stringent or restrictive regulation applicable shall apply.

(c) No zoning permit for the development of land of the following types or located within the following designated areas may be granted by any municipality prior to the expiration of a period of 30 days following the submission of a report to the state agency designated in each case, describing the proposed use, the location requested and an evaluation of the effect of such proposed use on the plan of the municipality and on the regional plan, if any:

(1) Forests, parks and recreation department. Any use in or within 1000 feet of any state owned or leased property under the jurisdiction of the department of forests, parks and recreation, but not including any state owned railroad corridor leased to the department for interim trail use. This provision does not apply within any incorporated village or city.

(2) Department of environmental conservation. Any of the following uses or activities affecting ground or surface water resources:

(A) Any area designated as a flood plain or wetland.

(B) The damming of streams so as to form an impounding area of five acres or more for reservoir or recreational purposes.

(C) The drilling of wells deeper than 50 feet or with a potential yield greater than 25,000 gallons per day, except this shall not apply to a well drilled by the owner of a farm or residence for his own use, or the use of the farm.

(3) Fish and wildlife department. Game lands and stream bank area owned or leased by the state.

(4) Vermont transportation board. Airports.

(5) Forests, parks and recreation department. The following recreational areas:

(A) Ski areas with lifts or other equipment other than tows, with total capacity of more than 500 persons per hour.

(B) Camps with accommodations for more than 50 persons.

(C) Marinas with accommodations for 20 or more boats with lengths in excess of 20 feet.

(D) Public beaches, or lands within 1,000 feet thereof.

(E) Natural areas as defined in section 2010 of Title 10.

(6) Agency of transportation. Any use within 500 feet of the intersection of any entrance or exit ramp providing access to any limited access highway.

(d) A state licensed or registered residential care home or group home, serving not more than six persons

who are developmentally disabled or physically handicapped, 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 locates within 1,000 feet of another such home.

(e) Unless a zoning regulation specifically provides to the contrary, limitations on permissible heights of structures shall not apply to antenna structures, to windmills with blades less than 20 feet in diameter or to rooftop solar collectors less than 10 feet high which are mounted on complying structures.

(f) A state registered or licensed family child care home serving six or fewer children shall be considered by right to constitute a permitted single-family residential use of property. A state registered or licensed family child care home serving no more than six full-time children and four part-time children, as defined in subdivision 4902(3)(A) of Title 33, shall be considered to constitute a permitted use of property but may require site plan approval based on local zoning requirements. A state registered or licensed 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 zoning bylaws.

(g) 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 department of forests, parks and recreation, and protect specific natural, conservation, esthetic, or wildlife features in properly designated zoning districts. Such changes also must be compatible with 32 V.S.A. § 3755. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 8; 1971, No. 257, (Adj. Sess.), § 12, eff. April 11, 1972; 1977, No. 140 (Adj. Sess.), § 2, eff. March 24, 1978; 1979, No. 174 (Adj. Sess.), § 13; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1985, No. 143 (Adj. Sess.); No. 151 (Adj. Sess.), § 17; No. 188 (Adj. Sess.), § 12; 1987, No. 76, § 18; No. 110; 1989, No. 281 (Adj. Sess.), § 7, eff. June 22, 1990; No. 282 (Adj. Sess.), § 15, eff. June 22, 1990; 1995, No. 60, § 28a, eff. April 25, 1995; 1999, No. 37, § 1, eff. May 20, 1999; 1999, No. 98 (Adj. Sess.), § 1.)

§ 4410. Interim bylaws

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) If a municipality is conducting, or has taken action to conduct studies within a reasonable time, 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 such bylaw or plan, the legislative body may adopt interim zoning regulations, interim subdivision regulations, interim shoreland zoning regulations, interim flood hazard area regulations or an interim official map 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. Such interim bylaws shall be adopted, reenacted or extended or amended by the legislative body of the municipality after public hearing upon public notice as an emergency measure which regulations shall be limited 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 regulation adopted under this section may be repealed after public hearing, upon public notice by the legislative body. The legislative body shall, upon petition of 5 percent of the legal voters filed with the clerk of the municipality, hold a public hearing for consideration of amendment or repeal of the interim regulations.

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

authorized by permanent zoning, shoreland zoning, flood hazard area regulations, subdivision regulations, or official map bylaws 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 zoning bylaw may be authorized as provided for in subsection (d) of this section.

(d) Under interim zoning 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 4447 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:

(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, the regional planning commission of the region in which the municipality is located and to the agency of commerce and community development. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 9; 1971, No. 61, §§ 1, 2, eff. April 14, 1971; 1973, No. 12, eff. March 12, 1973; 1973, No. 261 (Adj. Sess.), § 5, 1975, No. 50, § 1, eff April 15, 1975; 1995, No. 190 (Adj. Sess.), § 1(a).)

§ 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. Regulation of shorelands

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) Purpose. The purpose of this section is to allow municipalities to regulate shorelands as defined in section 1422 of Title 10 to:

(1) prevent and control water pollution;

(2) preserve and protect wetlands and other terrestrial and aquatic wildlife habitat;

(3) conserve the scenic beauty of shorelands;

(4) minimize shoreline erosion;

(5) reserve public access to public waters; and

(6) achieve other municipal, regional or state shoreland conservation and development objectives.

(b) Authority to adopt bylaws. A municipality may adopt shoreland regulations. Shoreland regulations may be adopted as part of a zoning bylaw or through a separate bylaw which is either in a municipality without a zoning bylaw or which is an overlay to a zoning bylaw map.

(c) Contents of bylaws. Shoreland regulations may:

(1) regulate the design and maintenance of sanitary facilities;

(2) regulate filling of and other adverse alterations to wetlands and other wildlife habitat areas;

(3) control building location;

(4) require the provision and maintenance of vegetation;

(5) require provisions for access to public waters for all residents and owners of the development; and

(6) impose other requirements authorized by this chapter.

(d) Effect on zoning bylaws. Shoreland regulations may alter the uses otherwise permitted, prohibited or conditional in a shoreland area under a zoning bylaw, as well as the applicability of other provisions of that zoning bylaw. Where a zoning bylaw and a separate shoreland bylaw both apply, compliance with the shoreland bylaw shall be prerequisite to the granting of a zoning permit. Where a shoreland bylaw but not a zoning bylaw applies, the shoreland bylaw shall be administered in the same manner as are zoning bylaws, and a shoreland permit shall be required for land development covered under the bylaw. (Added 1969, No. 281 (Adj. Sess.), § 14; amended 1973, No. 147 (Adj. Sess.), § 6; 1983, No. 249 (Adj. Sess.), § 1.)

§ 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.

(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.

(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.)

§ 4412. Regulation of flood hazard areas

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in

this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) Purpose. The purpose of this section is to:

(1) 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; and

(2) ensure that the design and construction of development in flood hazard areas is accomplished in a manner that minimizes or eliminates the potential for flood damage; and

(3) encourage municipalities to manage all flood hazard areas designated pursuant to 10 V.S.A. § 753; and

(4) maintain wise use of agricultural land in flood-prone areas; and

(5) make the state and municipalities eligible for federal flood insurance.

(b) Definitions. As used in this section:

(1) "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

(2) "Flood hazard area" means the land subject to flooding from the base flood.

(3) "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.

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

(5) "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.

(6) "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:

(A) any project or improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

(B) any alteration of a structure listed on the national register of historic places or a state inventory of historic places.

(c) Authority to adopt bylaws. Whether or not it has a municipal plan or other bylaws, a municipality may adopt flood hazard area regulations. Flood hazard area regulations may be adopted as part of a zoning

bylaw or through a separate bylaw which is either in a municipality without a zoning bylaw or which is an overlay to a zoning bylaw map. Within a municipality, flood hazard area provisions shall apply to all flood hazard areas designated under 10 V.S.A. § 753, and may apply to other flood hazard areas. No flood hazard area bylaw shall prohibit reasonable and customary agricultural practice on open lands.

(d) Contents of bylaws. Flood hazard area regulations may:

(1) contain standards and criteria for uses which prohibit the placement of damaging obstructions;

(2) require flood protection through elevation, floodproofing or other techniques;

(3) require adequate provisions for flood drainage;

(4) require provision of adequate water and sewage facilities; and

(5) establish other restrictions to promote the sound management and use of designated flood hazard areas.

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

(f) Mandatory provisions. All flood area regulations shall provide that no permit for new construction, substantial improvement, filling or installation of a residential structure shall be granted for a flood hazard area until:

(1) a copy of the application is mailed or delivered by the zoning administrator or by the board of adjustment or development review board to the agency of natural resources; and

(2) either 30 days elapse following the mailing or the agency delivers comments on the application.

(g) Temporary bylaws. Instead of adopting interim flood hazard area bylaws under section 4410 of this title, a rural town may temporarily adopt flood hazard bylaws using bylaw adoption procedures for urban municipalities. Those adopted bylaws shall take effect immediately and shall remain in effect until the next regular or special town meeting. At that meeting a vote shall be taken by Australian ballot on whether the bylaws shall remain in effect, and the decision on that question shall take effect immediately.

(h) Variances. The board of adjustment or the development review board, after public hearing, may approve the repair, relocation, replacement or enlargement of a nonconforming structure within a regulated flood hazard area, subject to compliance with applicable federal laws and regulations, and provided that the following criteria are met:

(1) The board of adjustment or the development review board finds that the repair, relocation, or enlargement of the nonconforming structure is required for the continued economically feasible operation of a nonresidential enterprise.

(2) The board of adjustment or the development review board finds that the repair, relocation, or

enlargement of the nonconforming structure will not increase flood levels in the regulatory floodway, threaten the health, safety, and welfare of the public or other property owners.

(3) The permit so granted states that the repaired, relocated, or enlarged nonconforming structure is located in a regulated flood hazard area, does not conform to the bylaws pertaining thereto, and will be maintained at the risk of the owner.

(4) A copy of such a permit granted by the board of adjustment or the development review board shall be affixed to the copy of the deed of the concerned property on file in the municipal clerk's office. (Added 1973, No. 263 (Adj. Sess.), § 3, eff. 30 days from April 16, 1974; amended 1977, No. 200 (Adj. Sess.), § 4, eff. April 5, 1978; 1983, No. 249 (Adj. Sess.), § 2; 1987, No. 76, § 18; 1993, No. 232 (Adj. Sess.), §§ 3, 4, eff. March 15, 1995.)

§ 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 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.

(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 or public waters. Land development may be permitted on lots that do not have frontage either on a public road 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 certain structures. The height of antenna structures, wind turbines with blades less than 20 feet in diameter, or rooftop solar collectors less than 10 feet high, any of which are mounted on complying structures, shall not be regulated unless the bylaws provide specific standards for regulation.

(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. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 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 subsections 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6.

(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 subdivision 6001(22) of Title 10, 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. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4413. Subdivision regulations

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) Any subdivision regulation shall contain:

(1) Procedures and requirements for the submission and processing of plats.

(2) Standards for the design and layout of streets, curbs, gutters, street lights, fire hydrants, shade trees, water, sewage and drainage facilities, public utilities and other necessary public improvements.

(b) Such regulations may provide, however, that the planning commission or the development review board may waive or vary, 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 which in its judgment are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

(c) Subdivision regulations may include specific development standards to promote the conservation of energy or to permit the utilization of renewable energy resources or both. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1979, No. 174 (Adj. Sess.), § 14; 1993, No. 232 (Adj. Sess.), § 5, eff. March 15, 1995.)

§ 4414. Approval of plats

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

Before any plat is approved, a public hearing on such plat shall be held by the planning commission or the development review board after public notice. A copy of such notice shall be sent to the regional planning commission, if any, of which such municipality is a member, and to the clerk of an adjacent municipality in the case of a plat located within five hundred feet of a municipal boundary at least fifteen days prior to the public hearing. Before holding such public hearing on a plat, the planning commission or the

development review board may hold one or more preliminary hearings and grant preliminary approval to authorize the preparation of the plat for such public hearing. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1993, No. 232 (Adj. Sess.), § 6, eff. March 15, 1995.)

§ 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, and new town center districts. The definition or purpose stated for local downtown, village center, or new town center zoning districts should conform with the applicable definitions in section 2791 of this title. Municipalities may adopt downtown, village center, or new town center districts without seeking state designation under section 2793 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. Where, for the purposes set forth in section 4302 of this title, it is 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 section 1422 of Title 10 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 that 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.

(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 (6) 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. A municipality may adopt bylaws to regulate wireless telecommunications facilities and ancillary improvements in a manner consistent with 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. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 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.)

§ 4415. Decisions

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

The planning commission or the development review board shall within forty-five days after the public hearing held under section 4414 of this title approve, modify and approve, or disapprove, such plat. Failure so to act within such forty-five days shall be deemed approval. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1993, No. 232 (Adj. Sess.), § 7, eff. March 15, 1995.)

§ 4416. Plat, record

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute,

please see the version that immediately precedes this section.]

The approval of the planning commission or the development review board, or certification by the clerk of the municipality of its failure to act within forty-five days, shall expire ninety days from such approval or certification unless, within such ninety-day period, such plat shall have been duly filed or recorded in the office of the clerk of the municipality. 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 planning commission or the development review board and such approval is endorsed in writing on such plat, or the certificate of the clerk of the municipality showing the failure of the planning commission or the development review board to take action within the forty-five day period is attached thereto and filed or recorded with said plat. After such filing or recording, the plat shall be a part of the official map of the municipality. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1993, No. 232 (Adj. Sess.), § 8, eff. March 15, 1995.)

§ 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 subdivision (c)

(3) 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.)

§ 4417. Requirements by planning commission or the development review board

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

A planning commission or a development review board may require as a condition to the approval of any plat:

(1) That the streets and highways shall be of sufficient width and suitable grade and shall be so located to facilitate fire protection and coordinated so as to compose a convenient system properly related to the plan;

(2) That where zoning regulations are in effect, the plots shown on said plat shall comply with the requirements thereof;

(3) That the land shown on such plats shall be of such a character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace;

(4) That suitable monuments have been placed at street intersections and other necessary points as may be

required, and the location thereof is shown on the map of such plat;

(5) That where indicated by the plan, the plat shall show a park or parks suitably located for playground or other recreation purposes, if the areas so required do not exceed more than fifteen percent of the area of the plat.

(6) That streets be laid out, buildings oriented, and vegetation controlled so as to promote the conservation of energy and to permit the utilization of renewable energy resources. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1979, No. 174 (Adj. Sess.), § 15; 1987, No. 200 (Adj. Sess.), § 38, eff. July 1, 1989; 1993, No. 232 (Adj. Sess.), § 9, eff. March 15, 1995.)

§ 4418. Conditions to plat approval

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

No plat may be approved unless the streets and other required public improvements have been satisfactorily installed in accordance with the plat and the subdivision regulations. In lieu of the completion of the required public improvements, the planning commission or the development review board 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 said new streets and required improvements on or in said streets or highways and their maintenance for a period of two years after completion as is estimated by the planning commission or the development review board or such municipal departments or officials as the commission or the board may designate. Such bond or other security shall provide for, and secure to the public, the completion of any improvements which may be required within the period fixed in the subdivision regulations for such completion, and for the maintenance thereof for a period of two years after completion. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1993, No. 232 (Adj. Sess.), § 10, eff. March 15, 1995.)

§ 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.)

§ 4419. Bond term and forfeiture

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

The performance bond required by section 4418 of this title shall run for a term to be fixed by the planning commission, but in no case for a longer term than three years. However, the term of such bond may, with the consent of the owner, 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 such performance bond, such bond shall be forfeited to the municipality and upon receipt of the proceeds thereof the municipality shall install or maintain such improvements as are covered by such performance bond. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4420. Fees

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

For the administration of subdivision review, the legislative body may establish reasonable fees which may include the cost of publishing notices and holding public hearings and for periodic inspections during the installation of public improvements. Such fees shall be payable by the applicant upon submission of the application for plat approval. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 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.)

§ 4421. Acceptance of streets; improvements

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

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 such time as it has been formally accepted by the municipality as a public street or highway by ordinance or resolution of the legislative body of such 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 herein provided. 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. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1977, No. 61, § 1.)

§ 4422. Official map

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

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 act which 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, which may by resolution of the legislative body become a part of the official map. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 13, eff. April 11, 1972.)

§ 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.)

§ 4423. Effect of approved plats on official map

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

After adoption of the official map, the recordation of plats which have been approved as provided by this chapter, or the adoption of any urban renewal plan under chapter 85 of Title 24, shall, without further action, modify the official map in accordance therewith. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4424. Status of mapped streets, drainageways, parks, schools and other public facilities

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

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. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 14, eff. April 11, 1972.)

§ 4424. Shorelands; flood or hazard area; special or freestanding bylaws

Any municipality may adopt freestanding bylaws under this chapter to address particular areas in conformance with the plan, 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 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 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.

(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 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 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 and other hazard areas.

(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) 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 delivers comments on the application.

(E) Special exceptions. The appropriate municipal panel, after public hearing, may approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a regulated flood or other hazard area, subject to compliance with applicable federal and state laws and regulations, and provided that the following criteria are met:

(i) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure is required for the continued economically feasible operation of a nonresidential enterprise.

(ii) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure will not increase flood levels in the regulatory floodway, increase the risk of other hazard in the area, or threaten the health, safety, and welfare of the public or other property owners.

(iii) The permit so granted states that the repaired, relocated, or enlarged nonconforming structure is located in a regulated flood or other hazard area, does not conform to the bylaws pertaining to that area, and will be maintained at the risk of the owner. (Added 2003, No. 115 (Adj. Sess.), § 95.)

§ 4425. Building in mapped streets, drainageways, parks, schools and other public facilities

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

No zoning permit may be issued for any structure within the lines of any street, drainageway, park, school or other public facility shown on the official map, except as specifically provided in section 4469 of this title. No person shall recover any damages for the taking for public use of any structure constructed within the lines of any proposed street, drainageway, park, school, or other public facility after they have been included in the official map, and any such structure shall be removed at the expense of the owner. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 15, eff. April 11, 1972.)

§ 4426. Capital budget and program

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

(a) A capital budget shall list and describe the capital projects to be undertaken during the coming fiscal year, the estimated cost thereof, 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 thereof and the proposed method of financing. A capital project is:

(1) any physical betterment or improvement including furnishings, machinery, apparatus or equipment for such physical betterment or improvement when first constructed or acquired; or

(2) any preliminary studies and surveys relating to any physical betterment, or improvement; or

(3) land or rights in land; or

(4) any combination of paragraphs (1), (2), and (3) of this subsection.

(b) The capital budget and program shall be arranged in such manner as to indicate the order of priority of each capital project, and to state for each project:

(1) a description of the proposed project and the estimated total cost thereof;

(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; and

(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, which shall be in conformance with the municipal development plan. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1975, No. 164 (Adj. Sess.), § 12; 1989, No. 280 (Adj. Sess.), § 11b.)

§ 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.)

§ 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.)

§ 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 commissionshall 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.)

§ 4441. Bylaws; effect of adoption

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

Within the jurisdiction of any municipality which has adopted any of the by-laws authorized by this

chapter, no land development may be undertaken or effected except in conformance with those by-laws. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4442. Appointment and powers of administrative officer

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) An administrative officer, who may hold any other office in the municipality, shall be appointed for a term of three years by the planning commission, with the approval of the legislative body, promptly after the adoption of the first of such 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 which is not in conformance with such 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 appoint, with the approval of the legislative body, an acting administrative officer who shall have the same duties and responsibilities as the administrative officer in his absence.

(c) The administrative officer should provide an interested person 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 the 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. (1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 16, eff. April 11, 1972; 1983, No. 179 (Adj. Sess.); 1985, No. 7, § 1, eff. March 14, 1985; 1993, No. 232 (Adj. Sess.), § 11, eff. March 15, 1995.)

§ 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, amendment, or 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.

(2) However, a rural town, by action of the legislative body or by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that bylaw amendments or 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 unorganized 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.)

§ 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.)

§ 4443. Zoning permits, certificates of occupancy, and municipal land use permits

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

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

(1) No land development may be commenced within the area affected by such zoning regulations without a permit therefor issued by the administrative officer. No zoning permit may be issued by the administrative officer except in conformance with such zoning regulations.

(2) If the zoning regulations 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 such zoning regulations, 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 such zoning regulations.

(3) No zoning permit issued pursuant to this section shall take effect until the time for appeal in section 4464(a) of this title has passed, or in the event that a notice of appeal is properly filed, such permit shall not take effect until final adjudication of said appeal.

(b) Each zoning permit issued under this section shall contain a statement of the period of time within which an appeal may be taken. Within three days following the issuance of a zoning 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) of this title; 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 4404(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, then 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 4464 of this title. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 17, eff. April 11, 1972; 1973, No. 261 (Adj. Sess.), § 6; 1997, No. 125 (Adj. Sess.), § 3; 1999, No. 46, § 5, eff. May 26, 1999; 2001, No. 44, § 1.)

§ 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.)

§ 4444. Enforcement; penalties

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(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 $100.00 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, such person, the members of any partnership, or the principal officers of such corporation shall each pay double the amount of such 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 such subdivision or land development or otherwise, or erects any structure thereon, 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 herein, shall be fined not more than $100.00 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 such violations shall be paid over to the municipality whose regulation 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 such penalties or from the remedies herein provided. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1987, No. 161 (Adj. Sess.), § 1; 1999, No. 46, § 6, eff. May 26, 1999.)

§ 4445. Enforcement; remedies

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

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 such construction or use, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 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. Challenges to housing provisions in bylaws

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

The attorney general or his designee may investigate and may hold a public hearing when there is a complaint that a bylaw or its manner of administration violates subdivision 4406(4) or subsection (d) of § 4382 or subsection (b) of § 4383 relating to mobile homes, mobile home parks and adequate housing. Upon determining after hearing that a violation has occurred, the attorney general may file an action to challenge the validity of the bylaw or its manner of administration in the superior court in the county where the municipality lies. In any such 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 above provisions. 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 of occupancy for housing relating to the area of continuing violation. (Added 1981, No. 132 (Adj. Sess.), § 14a.)

§ 4446. Administration; finance

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

Appropriations may be made by any municipality to finance the work of planning commissions, regional planning commissions, administrative officers, boards of adjustment or development review boards and other officials in the preparation, adoption, administration and enforcement of development plans, bylaws, and capital budgets and programs, and to support or oppose, upon appeal to the courts, decisions of the board of adjustment or the development review board. 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. The legislative body may prescribe reasonable fees to be charged with respect to the administration of bylaws. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1975, No. 164 (Adj. Sess.), § 7; 1993, No. 232 (Adj. Sess.), § 12, eff. March 15, 1995.)

§ 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.)

§ 4447. Public hearing notice

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) Any public notice required for public hearing under this chapter 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 publication in the municipality affected;

(2) the posting of the same information in one or more public places within the municipality; and

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

(b) Where a hearing is called concerning a plan or bylaw adoption, amendment, or repeal or to any capital budget and program or amendment thereof, the municipality shall also either:

(1) publish and post, as provided in subsection (a), either the full text of the proposed material, or a notice including:

(A) a statement of purpose;

(B) the geographic areas affected;

(C) a table of contents or list of section headings; and

(D) a description of a place within the municipality where the full text may be examined; or

(2) make reasonable effort to mail or deliver copies of the full text, or a concise summary of the text as provided for in subdivision (b)(1), 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.

(c) 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 subdivision (b)(1), or if the defect was the result of a deliberate or intentional act. (Added

1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1975, No. 164 (Adj. Sess.), § 8; 1981, No. 132 (Adj. Sess.), § 15.)

§ 4448. Availability of documents

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

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 such plans, bylaws or capital budgets or programs have been adopted. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1975, No. 164 (Adj. Sess.), § 9.)

§ 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 court has passed without an appeal being taken. If an appeal is taken to the environmental court, the permit shall not take effect until the environmental court 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. (Added 2003, No. 115 (Adj. Sess.), § 100.)

§ 4449. Local Act 250 review of municipal impacts

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(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 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, in accordance with the provisions of subsection 4401(d) of this title, 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 applications for local Act 250 review of municipal impacts. Once a municipality has determined to conduct reviews under this section, all applicants for Act 250 permits for developments or subdivisions located within the municipality shall go through this process, unless all of 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 environmental 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 environmental 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 or not 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) Educational services. Will not cause an unreasonable burden on the ability of the municipality to provide educational services.

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

(3) Town plan. 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 1993, No. 232 (Adj. Sess.), § 47, eff. March 15, 1995.)

§ 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 $100.00 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 $100.00, 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.)

§ 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 environmental court, or as appropriate, before the judicial bureau, as provided under section 1974a of this title. (Added 2003, No. 115 (Adj. Sess.), § 101.)

§ 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 court 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 of occupancy for housing relating to the area of continuing violation. (Added 2003, No. 115 (Adj. Sess.), § 101.)

§ 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 sections 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. 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.)

§ 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.)

§ 4461. Board of adjustment or development review board

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) 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 such 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.

(b) 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.

(c) 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 such participating municipalities shall consist of such persons who would have been the members of the board of adjustment or development review board of each such municipality. 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. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 10; 1993, No. 232 (Adj. Sess.), § 13, eff. March 15, 1995.)

§ 4462. Procedure

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) A board of adjustment or a development review board shall elect its own officers and adopt rules of procedure, subject to this section. Meetings of the board of adjustment or the development review board shall be held at the call of the chairman and at such times as the board may determine. The officers of the board may administer oaths and compel the attendance of witnesses and the production of material germane to any issue under appeal. All meetings of the board shall be open to the public. The board 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 immediately filed 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 board, and any action thereof shall be taken by the concurrence of a majority of the board. The legislative body may set such reasonable fees for filing of notices of appeal and other acts as it deems proper, the payment of which shall be a condition to the validity of such filing or act under this chapter.

(b) A board of adjustment or a development review board 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 such 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 such matters. Any of the powers granted to a board of adjustment or a development review board 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. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1993, No. 232 (Adj. Sess.), § 14, eff. March 15, 1995.)

§ 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. (Added 2003, No. 115 (Adj. Sess.), § 104.)

§ 4463. Expenditures for service

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

A board of adjustment or a development review board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. All members of the board of adjustment or the development review board may be compensated for the performance of their duties, and may be reimbursed by their municipality for necessary and reasonable expenses. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1993, No. 232 (Adj. Sess.), § 15, eff. March 15, 1995.)

§ 4464. Appeals

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(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 the development review board of that municipality or with the clerk of that municipality if no such secretary has been elected. If the appeal is taken with respect to a decision or act of an administrative officer, such notice of appeal must be filed within fifteen days of the date of such decision or act, and a copy of the notice of appeal shall be filed with such officer. If the administrative officer fails to act with regard to an application for a permit, within thirty days, a permit shall be deemed issued on the 31st day.

(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 such regulation imposes on such property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.

(2) The municipality in which the plan or a bylaw of which is at issue in an appeal brought under this chapter or any municipality which adjoins such municipality.

(3) A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act taken under this chapter, 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 owning real property within a municipality listed in subdivision (2) of this subsection who, by signed petition to the board of adjustment or the development review board 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.

(5) Any department and administrative subdivision of this state owning property or any interest therein within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state.

(6) The municipal conservation commission if there be one for the municipality in which the plan or a bylaw of which is at issue.

(c) In the exercise of its functions hereunder, a board of adjustment or a 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 enforcement of a bylaw;

(2) To hear and grant or deny a request for a variance under section 4468 of this title;

(3) To hear and grant or deny a request for a zoning permit under section 4469 of this title. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 196 (Adj. Sess.), eff. July 1, 1970; 1971, No. 257 (Adj. Sess.),§§ 18, 22, eff. April 11, 1972; 1977, No. 250 (Adj. Sess.), § 2; 1979, No. 174 (Adj. Sess.), § 17; 1991, No. 109, § 6, eff. June 28, 1991; 1993, No. 232 (Adj. Sess.), § 16, eff. March 15, 1995; 1995, No. 190 (Adj. Sess.), § 1(a).)

§ 4464. Hearing and notice requirements; decisions and conditions; administrative review; role of advisory commmissions 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, without regard to any public right-of-way. 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, without regard to right-of-way. 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 court 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)(1) Decisions. 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.)

§ 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.)

§ 4465. Notice of appeal

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

Such 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 such requested relief is believed proper under the circumstances. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4466. Stay of enforcement

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

If a notice of appeal includes a request for a stay of enforcement, and states the grounds for such request with a statement under oath by the appellant that irremediable damage will directly result if such stay is not granted, the board of adjustment or the development review board may grant a stay of enforcement of the regulatory provisions referred to in the notice of appeal, under such terms and conditions, including, without limitation, a bond to be furnished by the appellant, as the board of adjustment or the development review board deems in its judgment and discretion appropriate under the circumstances. Any stay of enforcement granted under this section shall expire upon the expiration of the time to appeal to the superior court. The grant or denial of a request for a stay shall be given in writing by the board of adjustment or the development review board, and shall be sent by registered or certified mail, or delivered, to the appellant within fifteen days of the filing of the notice of appeal with the board of adjustment or the development review board. Whenever practicable, the board of adjustment or the development review board shall conduct a hearing before deciding on a request for a stay. Any hearing under this section shall be held after publication of notice thereof in a newspaper of general daily or weekly circulation in the municipality, in two public places within the municipality, and by mail to the appellant, at least five days prior to the hearing date. However, the board of adjustment or the development review board may give abbreviated notice where in its judgment circumstances require prompt action. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1981, No. 132 (Adj. Sess.), § 16; 1993, No. 232 (Adj. Sess.), § 17, eff. March 15, 1995.)

§ 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. Hearing on appeal

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

The board of adjustment or the development review board shall set a date and place for a public hearing of an appeal under this chapter, which shall be within sixty days of the filing of the notice of such appeal under section 4464 of this title. The board of adjustment or the development review board shall give public notice of the hearing, and shall mail to the appellant a copy of such notice at least fifteen days prior to the hearing date. Any person or body empowered by section 4464 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 agent or attorney at such

hearing. Any hearing held under this section may be adjourned by the board of adjustment or the development review board 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 such 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. section 810. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1973, No. 255 (Adj. Sess.), § 1; 1993, No. 232 (Adj. Sess.), § 18, eff. March 15, 1995.)

§ 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.)

§ 4468. Appeal; variances

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) On an appeal under section 4464 or section 4471 of this title wherein a variance from the provisions of a zoning regulation 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 court 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) That 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 such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located;

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

(3) That the unnecessary hardship has not been created by the appellant;

(4) That 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, nor be detrimental to the public welfare;

and

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

(b) On an appeal under section 4464 or section 4471 of this title wherein a variance from the provisions of a zoning regulation is requested for a structure that is primarily a renewable energy resource structure, the board of adjustment or the development review board or the environmental court may grant such 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) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the regulations; and

(2) That the hardship was not created by the appellant; and

(3) That 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, nor be detrimental to the public welfare; and

(4) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

(c) In rendering a decision in favor of an appellant under this section, a board of adjustment or a development review board or the environmental court may attach such conditions to such 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 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.), § 2, eff. April 4, 1974; 1979, No. 174 (Adj. Sess.), § 16; 1993, No. 232 (Adj. Sess.), § 19, eff. March 15, 1995.)

§ 4469. Official map; permits

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

If a permit for any structure within the lines of any proposed street, drainageway, park, school or other public facility shown on an official map is denied, the legislative body shall have one hundred twenty days from the date of the denial of the permit to institute proceedings to acquire such land or interest therein, 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. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1971, No. 257 (Adj. Sess.), § 19, eff. April 11, 1972.)

§ 4469. Appeal; variances

(a) 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 not primarily a renewable energy resource structure, the board of adjustment or the development review board or the environmental court 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 court 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 court 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.)

§ 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 ten 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, or the environmental court 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.)

§ 4470. Decisions on appeal

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) The board of adjustment or the development review board shall render its decision, which shall include findings of fact, within forty-five days after completing the hearing, and shall within that period send to the appellant, by certified mail, a copy of the decision. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing, and a copy thereof shall be filed with the administrative officer and the clerk of the municipality as a part of the public records thereof. If the board of adjustment or the development review board does not render its decision within the period prescribed by this chapter, the board shall be deemed to have rendered a decision in favor of the appellant and granted the relief requested by the applicant on the last day of such period.

(b) A board of adjustment or a development review board may reject an appeal without hearing and render a decision, which shall include findings of fact within ten days of the date of filing of the notice of appeal, if the board of adjustment or the development review board considers the issues raised by the appellant in his or her appeal have been decided in an earlier appeal or the same in substantially or materially the same facts by or on behalf of that appellant, such decision shall be rendered, on notice given, as in the case of a decision under subsection (a) of this section, and shall constitute a decision of the board of adjustment or the development review board for the purpose of section 4471 of this title.

(c) A municipality shall enforce all decisions of the board of adjustment or the development review board of that municipality, and further, the superior court, district court, or the environmental court (which in this instance is not bound by Rule 76 of the Rules of Civil Procedure) 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.)

§ 4471. Appeal to environmental court

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) An interested person may appeal a decision of a board of adjustment, a planning commission, or a development review board to the environmental court. An appeal from a decision of the board of adjustment, the planning commission, or a development review board shall be taken in such manner as the supreme court may by rule provide for appeals from state agencies governed by sections 801 through 816 of Title 3, unless the decision is a development review board, board of adjustment, or planning commission decision which the municipality has elected to be subject to review on the record. If the municipal legislative body has determined (or been instructed by the voters) to provide that appeals of certain development review board, board of adjustment, or planning commission determinations, or both board of adjustment and planning commission 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 development review board, board of adjustment, or planning commission and has provided that the municipal administrative procedure act shall apply in these instances, then an appeal from such a decision of a development review board, board of adjustment, or planning commission shall be taken on the record in accordance with Rules 74 and 75 of the Rules of Civil Procedure. Notice of the appeal shall be sent by mail to every interested person appearing and having been heard at the hearing before the planning commission, board of adjustment, or the development review board, 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.

(b) Notwithstanding the provisions of subsection (a) of this section, decisions of a development review board under section 4449 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. (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.)

§ 4471. Appeal to environmental court

(a) 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 court. 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 sections 801 through 816 of Title 3, unless the decision is an appropriate municipal panel decision which the municipality has elected to be subject to review on the record.

(b) 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 of the appeal shall be filed by certified mailing, with fees, to the environmental court 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) 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. (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.)

§ 4472. Exclusivity of remedy; finality

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. For the current statute, please see the version that immediately precedes this section.]

(a) Except as provided in subsection (b) and (c) hereof, 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 board of adjustment or the development review board under section 4464 of this title, and the appeal to the environmental court from an adverse decision upon such appeal under section 4471 of this title. The appeal to the environmental court, 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 court. If the appeal to the environmental court is on the record, according to the provisions of section 4471 of this title, it shall be governed by Rules 74 and 75 of the 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 in a proceeding under Rule 75 of the Vermont Rules of Civil Procedure.

(b) The remedy of an interested person with respect to the constitutionality of any one or more of the provisions of any bylaw or development plan shall be governed by the Vermont rules of civil procedure with a de novo trial in the superior court. In such cases hearings before the zoning board of adjustment shall not be required.

(c) The provisions of this section shall not be construed as preventing appeals to the supreme court from decisions of the superior courts 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 a board of adjustment under section 4464 of this title, or to appeal to a superior court under section 4471 of this title, all interested persons affected shall be bound by such decision or act of such officer, such provisions, or such decisions of the board, as the case may be, and shall not thereafter contest, either directly or indirectly, such decision or act, such provision, or such decision of the board in any proceeding, including, without limitation, 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.)

§ 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 court from an adverse decision upon such

appeal under section 4471 of this title. The appeal to the environmental court, 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 court. If the appeal to the environmental court 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 court. 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 court 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 court 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.)

§ 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. Appeals; planning commission decisions

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

Notwithstanding any other provisions of this chapter appeals from the decision of a planning commission shall be in the same manner as provided for appeals from a decision of a board of adjustment or a development review board. (Added 1973, No. 261 (Adj. Sess.), § 10; amended 1993, No. 232 (Adj. Sess.), § 22, eff. March 15, 1995.)

§ 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).)

§ 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. Construction of chapter

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was

repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

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 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4491. Saving clause

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

(a) The passage of this chapter and the repeal by it of prior enabling laws relating to zoning ordinances, subdivision regulations, or any ordinance or regulation similar to a bylaw authorized by this chapter shall not invalidate any zoning ordinance, subdivision regulation or any such ordinance or regulation enacted under such prior enabling laws. However, any previously enacted zoning ordinance, subdivision regulation, or such ordinance or regulation, shall be amended to conform with the provisions of this chapter within a period of seven years following the effective date of this chapter and unless so amended shall expire and be null and void at the end of such period.

(b) Any municipality which has adopted zoning ordinances, subdivision regulations, or any ordinance or regulation similar to a bylaw authorized by this chapter may continue to enforce such regulations and ordinances and exercise such powers for a period of seven years following the effective date of this chapter. On the expiration of such period, such municipality shall no longer enforce any regulation or ordinance or exercise such powers unless a plan has been adopted and a planning commission has been appointed in accordance with the provision of this chapter.

(c) Any municipality which at the time of the adoption of this act has appointed a zoning commission and is preparing a zoning ordinance under 24 V.S.A. chapter 81 and which adopts a zoning ordinance prior to July 1, 1970 may continue to enforce such ordinance for a period of seven years from its adoption. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 11; 1973, No. 6, eff. Feb. 21, 1973; 1973, No. 271 (Adj. Sess.), § 2, eff. March 15, 1974.)

§ 4492. Severability

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and for this purpose the provisions of this chapter are severable. (Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.)

§ 4493. Applicability of subdivision regulations

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

The subdivision regulations adopted under sections 102, 1203 and 1218 of Title 18, known as the Vermont health regulations, chapter 5, subchapter 10, shall not apply in any municipality which has adopted bylaws under subchapter 6 of this chapter provided that those bylaws provide substantially the same controls as provided in the Vermont health regulations and further provided that the commissioner of health has certified to the clerk of the municipality that those bylaws provide substantially the same controls. In case of the transfer of property by a municipality pursuant to a public sale for delinquent taxes, such subdivision regulations shall be deferred with respect to the municipality, but shall be applicable to any purchaser from the municipality at the public sale, and shall be made a term of any sale or lease of the property and recited in any deed conveyed by the municipality. (Added 1973, No. 261 (Adj. Sess.), § 11, eff. July 1, 1974; amended 1975, No. 104, § 2; 1975, No. 225 (Adj. Sess.), § 1.)

§ 4494. Construction; limitation

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

(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 1981, No. 132 (Adj. Sess.), § 17, eff. Oct. 1, 1982.)

§ 4495. Accepted agricultural and silvicultural practices; exemption from municipal regulation

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

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

(b) No plan or bylaw adopted under this chapter shall restrict accepted agricultural or farming practices, or accepted silvicultural practices, including the construction of farm structures, as such practices are defined by the secretary of agricultural, food and markets or the commissioner of forests, parks, and recreation,

respectively, under sections 1021(f) and 1259(f) of Title 10, and section 4810 of Title 6.

(c) 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. (Added 1987, No. 200 (Adj. Sess.), § 31, eff. May 19, 1988; amended 1993, No. 233 (Adj. Sess.), § 92, eff. June 21, 1994; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4496. Enforcement; limitations

[The following section appears in the form in which it existed on June 30, 2004, and may be relevant in this form to municipal regulations, ordinances or bylaws that existed on that date, but are to be superseded by September 1, 2011 according to the schedule appearing in 24 V.S.A. § 4481. However, this section was repealed by 2003, No. 115 (Adj. Sess.), § 119(c)]

(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, 4444, or 4445 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. 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 which 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 4443(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, but not limited to, 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:

(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; or

(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, 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;

(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 1997, No. 125 (Adj. Sess.), § 4; amended 1999, No. 46, § 7, eff. May 26, 1999; 1999, No. 83 (Adj. Sess.), § 1, eff. April 19, 2000.)

The Vermont Statutes Online

Title 1: General Provisions

Chapter 5: COMMON LAW; GENERAL RIGHTS

§ 271. Common law adopted

So much of the common law of England as is applicable to the local situation and circumstances and is not repugnant to the constitution or laws shall be laws in this state and courts shall take notice thereof and govern themselves accordingly.

§ 272. Equality of privilege

In cases proper for the cognizance of the civil authority and the courts of judicature in this state, citizens of the United States shall be equally entitled to the privileges of law and justice with citizens of this state.

§ 273. Eligibility to hold office

A person shall not be debarred on account of sex from holding any office or position of trust or responsibility under the state, including United States senator and representative to congress or any county, town, city, village, town school district or incorporated fire, lighting or school district office.

§ 310. Definitions

As used in this subchapter:

(1) "Deliberations" means weighing, examining and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

(2) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.

(3) "Public body" means any board, council or commission of the state or one or more of its political subdivisions, any board, council or commission of any agency, authority or instrumentality of the state or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils or commissions, except that "public body" does not include councils or similar groups established by the governor for the sole purpose of advising the governor with respect to policy.

(4) "Publicly announced" means that notice is given to an editor, publisher or news director of a newspaper or radio station serving the area of the state in which the public body has jurisdiction, and to any editor, publisher or news director who has requested under section 312(c)(5) of this title to be notified of special meetings.

(5) "Quasi-judicial proceeding" means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority. (Added 1987, No. 256 (Adj. Sess.), § 1.)

§ 311. Declaration of public policy; short title

(a) In enacting this subchapter, the legislature finds and declares that public commissions, boards and councils and other public agencies in this state exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont constitution.

(b) This subchapter may be known and cited as the Vermont open meeting law. (Amended 1979, No. 151 (Adj. Sess.), § 1, eff. April 24, 1980.)

§ 312. Right to attend meetings of public agencies

(a) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under section 313(a)(2) of this title. A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met. A public body shall record by audio tape, all hearings held to provide a forum for public comment on a proposed rule, pursuant to section 840 of Title 3. The public shall have access to copies of such tapes as described in section 316 of this title.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) All members of the public body present;

(B) All other active participants in the meeting;

(C) All motions, proposals and resolutions made, offered and considered, and what disposition is made of same; and

(D) The results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution or other determining authority of the public body and this information shall be available to any person upon request.

(2) The time, place and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other public places in the municipality, at least 24 hours

before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) An editor, publisher or news director of any newspaper, radio station or television station serving the area of the state in which the public body has jurisdiction may request in writing that a public body notify the editor, publisher or news director of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d) The agenda for a regular or special meeting shall be made available to the news media or concerned persons prior to the meeting upon specific request.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the judicial branch of the government of Vermont or of any part of the same or to the public service board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this state.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the parole board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility. (Amended 1973, No. 78, § 1, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 2; 1987, No. 281 (Adj. Sess.), § 2; 1997, No. 148 (Adj. Sess.), § 64, eff. April 29, 1998; 1999, No. 146 (Adj. Sess.), § 7.)

§ 313. Executive sessions

(a) No public body described in section 312 of this title may hold an executive session from which the

public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of state government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title. A public body may not hold an executive session except to consider one or more of the following:

(1) Contracts, labor relations agreements with employees, arbitration, mediation, grievances, civil actions, or prosecutions by the state, where premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage;

(2) The negotiating or securing of real estate purchase options;

(3) The appointment or employment or evaluation of a public officer or employee;

(4) A disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

(5) A clear and imminent peril to the public safety;

(6) Discussion or consideration of records or documents excepted from the access to public records provisions of section 317(b) of this title. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

(7) The academic records or suspension or discipline of students;

(8) Testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person;

(9) Information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c).

(b) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

(c) The senate and house of representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, section 8 of the Constitution. (Amended 1973, No. 78, § 2, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 3, eff. April 24, 1980; 1987, No. 256 (Adj. Sess.), §§ 3, 4; 1997, No. 148 (Adj. Sess.), § 65, eff. April 29, 1998; 2005, No. 71, § 308a, eff. June 21, 2005.)

§ 314. Penalty and enforcement

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter or who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting for which provision is herein made, shall be guilty of a misdemeanor and shall be fined not more than $500.00.

(b) The attorney general or any person aggrieved by a violation of the provisions of this subchapter may apply to the superior court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section and appeals therefrom, 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. (Amended 1979, No. 151 (Adj. Sess.), § 4, eff. April 24, 1980; 1987, No. 256 (Adj. Sess.), § 5.)

§ 315. Statement of policy

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy. (Added 1975, No. 231 (Adj. Sess.), § 1.)

§ 316. Access to public records and documents

(a) Any person may inspect or copy any public record or document of a public agency, on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and twelve o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made during customary office 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) 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.

Subsection (i) effective July 1, 2004 and expires June 30, 2006 and reverts to the content that existed before the amendment to this subsection; see also subsection (i) set out below.

(i) If an agency maintains public records in an electronic format, all nonexempt public records, except the data, records, or documents used by a town to develop the information required by section 4152 of Title 32, 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 the public records in a nonstandard format, to create a public record or to convert paper public records to electronic format. The data, records, or documents used by a town to develop the information required by section 4152 of Title 32 shall be available to the public in a standard paper format and shall not be removed from the office of a public agency in an electronic format.

Subsection (i) effective June 30, 2006; see also subsection (i) set out above.

(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.)

§ 317. Definitions; public agency; public records and documents

(a) As used in this subchapter, "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.

Subsection (b) effective until June 30, 2006; see also subsection (b) set out below.

(b) As used in this subchapter, "public record" or "public document" means all papers, documents, machine readable materials, computer databases, or any other written or recorded matters, regardless of their physical form or characteristics, that are produced or acquired in the course of 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.

Subsection (b) effective June 30, 2006; see also subsection (b) set out above.

(b) As used in this subchapter, "public record" or "public document" means all papers, documents, machine readable materials or any other written or recorded matters, regardless of their physical form or characteristics, that are produced or acquired in the course of 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;

(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, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of a person and the charge 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 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, but not limited to, 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;

(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 section 1923 of Title 20;

(19) records relating to the identity of library patrons or the identity of library patrons in regard to the circulation of library materials;

(20) information which would reveal the location of archeological sites and underwater historic properties, except as provided in section 762 of Title 22;

(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 section 2154 of Title 17;

(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 section 662 of Title 15 and Rule 4 of the Vermont Rules for Family Proceedings.

Subdivision (c)(35) expires June 30, 2006.

(35) Social Security numbers or other governmentally assigned personal identification numbers contained in one of the following: the records of a computerized assessment, generally known as the computer assisted mass appraisal system (CAMA), as provided in section 3465 of Title 32; the grand list as defined by section 4152 of Title 32; or property transfer tax returns. However, any party in a legal transaction or proceeding related to a specific parcel of property shall have access to any court-required data. (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.)

§ 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, he shall so certify in writing stating his reasons for denial of access to the record. Such certification shall be made within two business days, unless otherwise provided in subdivision (5) of this subsection. The custodian shall also notify the person of his 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 days, excepting Saturdays, Sundays, and legal public holidays, 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 him 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 working days. 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 his 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. (Added 1975, No. 231 (Adj. Sess.), § 1.)

§ 319. Enforcement

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the superior court in the county in which the complainant resides, or has his personal place of business, or in which the public records are situated, or in 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 is on the agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section, and appeals therefrom, 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) The court may 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. (Added 1975, No. 231 (Adj. Sess.), § 1.)

§ 320. Penalties

(a) Whenever the court orders the production of any public agency records, improperly withheld from the complainant and assesses against the agency reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether the agency personnel acted arbitrarily or capriciously with respect to the withholding, the department of human resources if applicable to that employee, shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The department, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the department recommends.

(b) In the event of noncompliance with the order of the court, the superior court may punish for contempt

the responsible employee or official, and in the case of a uniformed service, the responsible member. (Added 1975, No. 231 (Adj. Sess.), § 1; 2003, No. 156 (Adj. Sess.), § 15.)

§ 331. Definitions

As used in this subchapter:

(1) "Hearing impaired person" means any person who has such difficulty hearing, even with amplification, that he or she cannot rely on hearing for communication.

(2) "Proceeding" means any judicial proceeding, contested case under chapter 25 of Title 3, or other hearing before an administrative agency not included under chapter 25 of Title 3.

(3) "Qualified interpreter" means an interpreter for a hearing impaired person who meets standards of competency established by the national or Vermont Registry of Interpreters for the Deaf as amended, by rule, by the Vermont commission of the deaf and hearing impaired. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 332. Right to interpreter; assistive listening equipment

(a) Any hearing impaired person who is a party or witness in any proceeding shall be entitled to be provided with a qualified interpreter for the duration of the person's participation in the proceeding.

(b) Any hearing impaired person shall be entitled to be provided with a qualified interpreter upon five working days' notice that the person has reasonable need to do any of the following:

(1) Transact business with any state board or agency.

(2) Participate in any state-sponsored activity including public hearings, conferences and public meetings.

(3) Participate in any official state legislative activities.

(c) If a hearing impaired person is unable to use or understand sign language, the presiding officer or state board or agency or state legislative official shall, upon five working days' notice, make available appropriate assistive listening equipment for use during the proceeding or activity. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 333. Appointment of interpreter

(a) The presiding officer in a proceeding shall appoint an interpreter after making a preliminary determination that the interpreter is able to readily communicate with the hearing impaired person, to accurately interpret statements or communications from the hearing impaired person, and to interpret the proceedings to the hearing impaired person.

(b) The presiding officer shall make findings when appointing an interpreter not designated as a qualified interpreter.

(c) It shall be a rebuttable presumption that the requirements of this section are met if the interpreter proposed for appointment is a qualified interpreter. It shall also be a rebuttable presumption that the requirements of this section are not met if the interpreter proposed for appointment is not a qualified

interpreter. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 334. Waiver

No privilege recognized by law may be deemed waived or made inapplicable by reason that a communication was made through an interpreter. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 335. Compensation

An interpreter appointed under section 332 of this title is entitled to receive a reasonable fee for services, together with reimbursement of actual and necessary expenses, including travel and lodging expenses. In civil proceedings, the court may order that costs of the interpreter be paid by a party, as justice may require, or it may order that the costs be paid by the state. In criminal proceedings, costs of the interpreter shall be paid by the state. An interpreter used in connection with administrative proceedings, transacting state business or state-sponsored activities shall be provided at the expense of the agency involved. An interpreter used in connection with official state legislative activities shall be provided at the expense of the legislature. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 336. Rules; information; list of interpreters

(a) The Vermont commission of the deaf and hearing impaired shall, by rule, establish factors to be considered by the presiding officer under section 333 of this title before appointing an interpreter who is not a qualified interpreter. Such factors shall encourage the widest availability of interpreters in Vermont while at the same time ensuring that the interpreter:

(1) is able to readily communicate with the hearing impaired person;

(2) is able to accurately interpret statements or communications by the hearing impaired person;

(3) is able to interpret the proceedings to the hearing impaired person;

(4) shall maintain confidentiality;

(5) shall be impartial with respect to the outcome of the proceeding;

(6) shall not exert any influence over the hearing impaired person; and

(7) shall not accept assignments the interpreter does not feel competent to handle.

(b) Rules established by the Vermont commission of the deaf and hearing impaired pursuant to section 331 (a)(3) of this title amending the standards of competency established by the national or Vermont Registry of the Deaf shall be limited to the factors set forth in subsection (a) of this section.

(c) The Vermont commission of the deaf and hearing impaired shall prepare an explanation of the provisions of this subchapter which shall be distributed to all state agencies and courts.

(d) The department of social and rehabilitation services shall maintain a list of qualified interpreters in Vermont and, where such information is available, in surrounding states. The list shall be distributed to all state agencies and courts. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 337. Review

(a) A decision, order or judgment of a court or administrative agency may be reversed on appeal if the court or agency finds that a hearing impaired person who was a party or a witness in the proceeding was deprived of an opportunity to communicate effectively and that the deprivation was prejudicial.

(b) Any person denied a qualified interpreter under subsection 332(b) of this title, may appeal the denial through the administrative appeals process for the agency involved or, where no such administrative appeals process exists, through the superior court in the county in which the denial occurred or in Washington superior court. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 338. Admissions; confessions

(a) An admission or confession by a hearing impaired person made to a law enforcement officer or any other person having a prosecutorial function may only be used against the person in a criminal proceeding if:

(1) The admission or confession was made knowingly, voluntarily and intelligently and is not subject to alternative interpretations resulting from the person's habits and patterns of communication.

(2) The admission or confession, if made during a custodial interrogation, was made after reasonable steps were taken, including but not limited to the appointment of a qualified interpreter, to ensure that the defendant understood his or her constitutional rights.

(b) The provisions of subsection (a) of this section supplement the constitutional rights of the hearing impaired person. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 339. Communications made to interpreters; prohibition on disclosure

(a) An interpreter, whether or not the interpreter is a qualified interpreter, shall not disclose or testify to:

(1) a communication made by a person to an interpreter acting in his or her capacity as an interpreter for a hearing impaired person; or

(2) any information obtained by the interpreter as a result of serving as an interpreter for a hearing impaired person.

(b) There is no prohibition on disclosure under this section if the services of the interpreter were sought or obtained to enable or aid anyone to commit or plan to commit what the hearing impaired person knew or reasonably should have known to be a crime or fraud.

(c) This section shall not be construed to limit or expand the effect of section 334 of this title. (Added 2003, No. 142 (Adj. Sess.), § 1.)

The Vermont Statutes Online

Title 3: Executive

Chapter 67: AGENCY PLANNING

§ 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. All

proposed, adopted and readopted state agency plans and amendments, including interim plans and amendments, shall be submitted to the council of regional commissions for review pursuant to the procedures set out in 24 V.S.A. § 4305. 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.)

The Vermont Statutes Online

Title 10: Conservation and Development

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

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

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

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

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

(v) Construction of 10 or more units of mixed income housing or a mixed use project with 10 or more housing units where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the state or national register of historic places.

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

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

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

(iii) All housing units constructed by a person within a designated downtown development district within any continuous period of five years, commencing on or after the effective date of this subdivision, shall be counted together.

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

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

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

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under section 30 V.S.A. § 248 or a natural gas facility as defined in subdivision 30 V.S.A. § 248(a)(3).

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs 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.

(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.

(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.

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

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

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

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

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

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

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

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

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

migratory periods.

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

(14)(A) "Person":

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

(ii) means a municipality or state agency;

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

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

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

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

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

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

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

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

(17) "Shoreline" means the land adjacent to the waters of lakes, ponds, reservoirs and rivers. Shorelines

shall include the land between the mean high water mark and the mean low water mark of such surface waters.

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

(19) "Subdivision" means a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same district commission, within any continuous period of five years. In determining the number of lots, a lot shall be counted if any portion is within five miles or within the jurisdictional area of the same district commission. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a qualified organization, as defined under section 6301a of this title, if the land to be transferred includes and will preserve a segment of the Long Trail. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a "qualified holder" of "conservation rights and interest," as those terms are defined in section 821 of this title. "Subdivision" shall also mean a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into six or more lots, within a continuous period of five years, in a municipality which does not have duly adopted permanent zoning and subdivision bylaws.

(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 production of fuel or power from agricultural products or wastes 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, in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes.

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

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

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

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

(B) Rental housing in which the renter's gross annual household income does not exceed 80 percent of the county median household income, and for which the annual housing costs, which include rent and utilities expenses, are not more than 30 percent of the gross annual household income. (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. Sess.), §§ 75, 76, eff. June 8, 2004.)

§ 6001a. Public auctions

As used in this chapter "development" shall also mean the sale of any interest in a tract or tracts of land, owned or controlled by a person, which have been partitioned or divided for the purpose of resale into five or more separate parcels of any size within a radius of five miles of any point on any such parcel, and within any period of ten years, by public auction; and "public auction" means any auction advertised or publicized in any manner, or to which more than ten persons have been invited. However, if the sales described under this section are of interests that, when sold by means other than public auction, are exempt from the provisions of this chapter under the provisions of subsection 6081(b) of this title, the fact that these interests are sold by means of a public auction shall not, in itself, create a requirement for a permit under this chapter. (Added 1973, No. 256 (Adj. Sess.), eff. April 11, 1974; amended 1991, No. 111, § 4, eff. June 28, 1991.)

§ 6001b. Low-level radioactive waste disposal facility

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

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

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

§ 6002. Procedures

The provisions of chapter 25 of Title 3 shall apply unless otherwise specifically stated. (1969, No. 250

(Adj. Sess.), § 26, eff. April 4, 1970.)

§ 6003. Penalties

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

§ 6007. Act 250 disclosure statement; jurisdictional determination

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

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

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

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

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

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

(A) within the preceding five years;

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

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

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

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

(c) With respect to the partition or division of land, or with respect to an activity which might or might not constitute development, any person may submit to the district coordinator an "Act 250 Disclosure Statement" and other information required by the rules of the board, and may request a jurisdictional opinion from the district coordinator concerning the applicability of this chapter. If a requestor wishes a final determination to be rendered on the question, the district coordinator, at the expense of the requestor and in accordance with rules of the board shall publish notice of the issuance of the opinion in a local newspaper generally circulating in the area where the land which is the subject of the opinion is located, and shall serve the opinion on all persons listed in subdivision 6085(c)(1)(A) through (D) of this title. In addition, the requestor who is seeking a final determination shall consult with the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be notified by the district coordinator because they are adjoining property owners or other persons who would be likely to be able to demonstrate a particularized interest protected by this chapter that may be affected by an act or decision by a district commission. A jurisdictional opinion of a district coordinator shall be subject to a request for reconsideration in accordance with rules of the board and may be appealed to the environmental court pursuant to chapter 220 of this title. (Added 1987, No. 64, § 3; amended 1991, No. 111, § 3, eff. June 28, 1991; No. 111, § 7, eff. Oct. 1, 1991; 1993, No. 232 (Adj. Sess.), § 25, eff. March 15, 1995; 1999, No. 49, § 155; 2003, No. 115 (Adj. Sess.), § 47, eff. Jan. 31, 2005.)

§ 6021. Board; vacancy, removal

(a) A natural resources board is created with a land use panel and a water resources panel. The board shall consist of nine members appointed by the governor, with the advice and consent of the senate, so that one appointment on each panel expires in each odd numbered year. In making appointments, the governor and the senate shall give consideration to experience, expertise, or skills relating to the environment or land use. The governor shall appoint a chair of the board, a position that shall be a full-time position. The other eight members shall be appointed by the governor, four to the water resources panel of the board and four others to the land use panel of the board. The chair shall serve as chair on each panel of the board. Following initial appointments, the members, except for the chair, shall be appointed for terms of four years. The governor shall appoint up to five persons, with preference given to former environmental board, water resources board, natural resources board or district commission members, with the advice and consent of the senate, to serve as alternates for board members. Alternates shall be appointed for terms of four years, with initial appointments being staggered. The board chair may assign alternates to sit on specific matters before the panels of the board, in situations where fewer than five panel members are available to serve. No person who receives or, during the previous two years, has received a significant portion of the person's income directly or indirectly from permit holders or applicants for one or more permits under chapter 47 of this title may be a member of the water resources panel.

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

(c) Notwithstanding the provisions of 3 V.S.A. § 2004, members shall be removable for cause only, except the chair, who shall serve at the pleasure of the governor.

(d) The chair, upon request of the chair of a district commission, may appoint and assign former commission members to sit on specific commission cases when some or all of the regular members and

alternates are disqualified or otherwise unable to serve. (1969, No. 250 (Adj. Sess.), § 3, eff. April 4, 1970; amended 1989, No. 234 (Adj. Sess.), § 2; 1991. No. 111, § 1, eff. June 28, 1991; 1993, No. 82, § 1; amended 1993, No. 232 (Adj. Sess.), § 26, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 48, eff. Jan. 31, 2005.)

§ 6022. Personnel

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

§ 6023. Grants

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

§ 6024. Intragovernmental cooperation

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

§ 6025. Rules

(a) The board may adopt rules of procedure for the panels, the district commissions, and the board itself.

(b) The land use panel may adopt substantive rules, in accordance with the provisions of chapter 25 of Title 3, that interpret and carry out the provisions of this chapter that pertain to land use regulated under section 6086 of this title. These rules shall include provisions that establish criteria under which applications for permits under this chapter may be classified in terms of complexity and significance of impact under the standards of subsection 6086(a) of this chapter. In accordance with that classification the rules may:

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

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

(3) provide a procedure by which a district commission may authorize a district coordinator to issue a permit that the district commission has determined under land use panel rules is a minor application with no undue adverse impact.

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

(A) that were created as part of a subdivision owned or controlled by a person who may have been required

to obtain a permit under this chapter; and

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

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

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

(3) [Deleted.]

(d) The water resources panel may adopt rules, in accordance with the provisions of chapter 25 of Title 3, in the following areas:

(1) Rules governing surface levels of lakes, ponds, and reservoirs that are public waters of Vermont.

(2) Rules regarding classification of the waters of the state, in accordance with chapter 47 of this title.

(3) Rules regarding the establishment of water quality standards, in accordance with chapter 47 of this title.

(4) Rules regulating the surface use of public waters, and rules pertaining to the designation of outstanding resource waters, in accordance with chapter 49 of this title.

(5) Rules regarding the identification of wetlands which are so significant that they merit protection. Any determination that a particular wetland is significant will result from an evaluation of at least the following functions which a wetland serves:

(A) provides temporary water storage for flood water and storm runoff;

(B) contributes to the quality of surface and groundwater through chemical action;

(C) naturally controls the effects of erosion and runoff, filtering silt and organic matter;

(D) contributes to the viability of fisheries by providing spawning, feeding, and general habitat for freshwater fish;

(E) provides habitat for breeding, feeding, resting, and shelter to both game and nongame species of wildlife;

(F) provides stopover habitat for migratory birds;

(G) provides for hydrophytic vegetation habitat;

(H) provides for threatened and endangered species habitat;

(I) provides valuable resources for education and research in natural sciences;

(J) provides direct and indirect recreational value and substantial economic benefits; and

(K) contributes to the open-space character and overall beauty of the landscape.

(6) Rules regarding the ability to reclassify wetlands, in general, or on a case-by-case basis.

(7) Rules protecting wetlands that have been determined under subdivision (5) or (6) of this subsection to be significant, including rules that provide for the issuance or denial of conditional use determinations by the department of environmental conservation; provided, however, that the rules may only protect the values and functions sought to be preserved by the designation. The panel shall not adopt rules that restrain agricultural activities without the consent of the secretary of the agency of agriculture, food and markets and shall not adopt rules that restrain silvicultural activities without the consent of the commissioner of the department of forests, parks and recreation.

(8) Rules implementing 29 V.S.A. chapter 11, relating to management of lakes and ponds.

(e) Except for subsection (a) of this section, references to rules adopted by the board shall be construed to mean rules adopted by the appropriate panel of the board, as established by this section. (1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 2; 1979, No. 123 (Adj. Sess.), § 4, eff. April 14, 1980; 1985, No. 52, § 3, eff. May 15, 1985; 1987, No. 186 (Adj. Sess.), eff. May 5, 1988; 1991, No. 111, § 5, eff. June 28, 1991; 2003, No. 115 (Adj. Sess.), § 49, eff. Jan. 31, 2005.)

§ 6026. District commissioners

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

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

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

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

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

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

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

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

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

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

(b) A district environmental commission is created for each district. Each district commission shall consist of three members from that district appointed in the month of February by the governor so that two appointments expire in each odd numbered year. Two of the members shall be appointed for a term of four years, and the chair (third member) of each district shall be appointed for a two-year term. In any district, the governor may appoint not more than four alternate members from that district whose terms shall not exceed two years, who may hear any case when a regular member is disqualified or otherwise unable to serve.

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

(d) Any vacancy shall be filled by the governor for the unexpired period of the term. (1969, No. 250 (Adj. Sess.), § 5, eff. April 4, 1970; amended 1971, No. 74, § 1; 1973, No. 54; 1985, No. 107 (Adj. Sess.), eff. March 14, 1986; 1993, No. 232 (Adj. Sess.), § 27, eff. March 15, 1995.)

§ 6027. Powers

(a) The panels of the board and district commissions each shall have the power, with respect to any matter within its jurisdiction, to:

(1) Administer oaths, take depositions, subpoena and compel the attendance of witnesses, and require the production of evidence.

(2) Allow parties to enter upon lands of other parties for the purposes of inspecting and investigating conditions related to the matter before the panel or commission.

(3) Enter upon lands for the purpose of conducting inspections, investigations, examinations, tests, and site evaluations as it deems necessary to verify information presented in any matter within its jurisdiction.

(4) Apply for and receive grants from the federal government and from other sources.

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

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

(d) At the request of a district commission, if the board chair determines that the workload in the requesting district is likely to result in unreasonable delays or that the requesting district commission is disqualified to hear a case, the chair may authorize the district commission of another district to sit in the requesting district to consider one or more applications.

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

(f) The board may publish or contract to publish annotations and indices of the decisions of the environmental court, and the text of those decisions. The published product shall be available at a reasonable rate to the general public and at a reduced rate to libraries and governmental bodies within the

state.

(g) The land use panel shall manage the process by which land use permits are issued under section 6086 of this title, may initiate enforcement on related matters, under the provisions of chapter 201 and 211 of this title, and may petition the environmental court for revocation of land use permits issued under this chapter. Grounds for revocation are:

(1) noncompliance with this chapter, rules adopted under this chapter, or an order that is issued that relates to this chapter;

(2) noncompliance with any permit or permit condition;

(3) failure to disclose all relevant and material facts in the application or during the permitting process;

(4) misrepresentation of any relevant and material fact at any time;

(5) failure to pay a penalty or other sums owed pursuant to, or other failure to comply with, court order, stipulation agreement, schedule of compliance, or other order issued under Vermont statutes and related to the permit; or

(6) failure to provide certification of construction costs, as required under subsection 6083a(a) of this title, or failure to pay supplemental fees as required under that section.

(h) The land use panel may hear appeals of fee refund requests under section 6083a of this title.

(i) The chair, subject to the direction of the board, shall have general charge of the offices and employees of the board and the offices and employees of the district commissions.

(j) The land use panel may participate as a party in all matters before the environmental court that relate to land use permits issued under this chapter.

(k) The water resources panel may participate as a party in all matters before the environmental court that relate to rules adopted by the panel under the authority of section 6025 of this title. (1969, No. 250 (Adj. Sess.), § 25, eff. April 4, 1970; amended 1973, No. 85, § 3; 1979, No. 123 (Adj. Sess.), § 8, eff. April 14, 1980; 1991, No. 111, § 6 eff. June 28, 1991; 1993, No. 232 (Adj. Sess.), § 28, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 50, eff. Jan. 31, 2005.)

§ 6028. Compensation

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

§ 6029. Act 250 permit fund

There is hereby established a special fund to be known as the Act 250 permit fund for the purposes of implementing the provisions of this chapter. Revenues to the fund shall be those fees collected in accordance with section 6083a of this title, gifts, appropriations, and copying and distribution fees. The board shall be responsible for the fund and shall account for revenues and expenditures of the board. At the commissioner's discretion, the commissioner of finance and management may anticipate amounts to be

collected and may issue warrants based thereon for the purposes of this section. Disbursements from the fund shall be made through the annual appropriations process to the board, and to the agency of natural resources to support those programs within the agency that directly or indirectly assist in the review of Act 250 applications. This fund shall be administered as provided in subchapter 5 of chapter 7 of Title 32. (Added 1989, No. 279 (Adj. Sess.), § 2, eff. June 30, 1990; amended 1993, No. 70, § 1; 1997, No. 59, § 41, eff. June 30, 1997; 2003, No. 115 (Adj. Sess.), § 51; No. 163 (Adj. Sess.), § 25.)

§ 6030. Map of wireless telecommunications facilities

The board shall maintain a map that shows the location of all wireless telecommunications facilities in the state. (Added 1997, No. 94 (Adj. Sess.), § 1, eff. April 15, 1998.)

§ 6041. Omitted.

§ 6042. Capability and development plan

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

§ 6044. Public hearings

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

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

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

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

§ 6046. Approval of governor and legislature

(a) Upon approval of a capability and development or interim land capability plan by the board, it shall submit the plan to the governor for approval. The governor shall approve the plan, or disapprove the plan or any portion of a plan, within 30 days of receipt. If the governor fails to act, the plan shall be deemed approved by the governor. This section shall also apply to any amendment of a plan.

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

§ 6047. Changes in the capability and development plan

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

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

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

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

§ 6081. Permits required; exemptions

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

(b) Subsection (a) of this section shall not apply to a subdivision exempt under the regulations of the department of health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the board of health regulations, or has pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plats on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Subsection (a) of this section shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971. Subsection (a) of this section shall not apply to a state highway on which a hearing pursuant to section 222 of Title 19 has been held prior to June 1, 1970. Subsection (a) of this section shall not apply to any telecommunications facility in existence prior to July

1, 1997, unless that facility is a "development" as defined in subdivision 6001(3) of this title. Subsection (a) of this section shall apply to any substantial change in such excepted subdivision or development.

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

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

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

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

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

(4) essential municipal building reconstruction or expansion that does not expand the floor space of the building by more than 10 percent.

(e) For purposes of this section, the replacement of water and sewer lines, as part of a municipality's regular maintenance or replacement of existing facilities, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the capacity of the relevant facility by more than 10 percent.

(f) A permit application for a development for which a certificate of need pursuant to section 6606a of this title is required shall be accompanied by such certificate.

(g) The owners or operators of earth removal sites associated with a landfill closing, other than the landfill site itself, shall obtain a municipal zoning permit in lieu of a permit under this chapter, unless the municipality chooses to refer the matter to the district environmental commission having jurisdiction. At the district commission level, the matter will be treated as a minor application. If municipal zoning bylaws do not exist, the excavation application shall be subject to the provisions of this chapter as a minor application.

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

under this section.

(i) The repair or replacement of railroad facilities used for transportation purposes, as part of a railroad's maintenance, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement or repair does not result in the physical expansion of the railroad's facilities.

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

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

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

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

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

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

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

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

(m) No permit is required for the replacement of a preexisting telecommunications facility, in existence prior to July 1, 1997, provided the facility is not a development as defined in subdivision 6001(3) of this

title, unless the replacement would constitute a substantial change to the telecommunications facility being replaced, or to improvements ancillary to the telecommunications facility, or both. No permit is required for repair or routine maintenance of a preexisting telecommunications facility or of those ancillary improvements associated with the telecommunications facility.

(n) No permit amendment is required for the replacement of a permitted telecommunications facility unless the replacement would constitute a material or substantial change to the permitted telecommunications facility to be replaced, or to improvements ancillary to the telecommunications facility, or both. No permit is required for repair or routine maintenance of a permitted telecommunications facility or of those ancillary improvements associated with the telecommunications facility.

(o) If a downtown development district designation pursuant to 24 V.S.A. § 2793 is removed, subsection (a) of this section shall apply to any subsequent substantial change to a project that was originally exempt pursuant to subdivision 6001(3)(B) of this title.

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

(q) For the purposes of reviewing any combination of electrical distribution and communications lines and subsidiary facilities that, standing alone, constitutes a development for purposes of this chapter, the actual and potential impacts considered by the board or district commission under subsection 6086(a) of this title shall not include actual or potential impacts of the construction of other improvements to be served by those lines and subsidiary facilities.

(r) In situations in which the construction of improvements for any combination of electrical distribution and communications lines and subsidiary facilities, standing alone, constitutes a development subject to the jurisdiction of the board or district commission under this chapter, subsequent construction of improvements for any combination of electrical distribution and communications lines and subsidiary facilities not identified or reasonably identifiable at the time construction commences, standing alone, shall be considered new construction of improvements and shall not be considered a material or substantial change to that previously permitted development. (Added 1969, No. 250 (Adj. Sess.), §§ 6, 7, subsec. (a), eff. June 1, 1970, subsec. (b), eff. April 4, 1970; amended 1989, No. 218 (Adj. Sess.), § 2; No. 276 (Adj. Sess.), §§ 17a, 17b, eff. June 20, 1990; No. 282 (Adj. Sess.), § 7, eff. June 22, 1990; 1991, No. 256 (Adj. Sess.), § 30, eff. June 9, 1992; 1993, No. 200 (Adj. Sess.), § 2; No. 208 (Adj. Sess.), § 4; 1995, No. 30, § 2, eff. April 13, 1995; 1999, No. 93 (Adj. Sess.), §§ 1, 2; 2001, No. 114 (Adj. Sess.), § 7c, eff. May 28, 2002; No. 133 (Adj. Sess.), § 1.)

§ 6082. Approval by local governments and state agencies

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

§ 6083. Applications

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

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

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

(3) The fee prescribed by section 6083a of this title.

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

(b) An applicant or petitioner shall grant the appropriate panel of the board or district commission, or their agents, permission to enter upon the applicant's or petitioner's land for these purposes.

(c) Where an application concerns the extraction or processing of fissionable source material, before the application is considered the district commission shall obtain the express approval of the general assembly by act of legislation stating that extraction or processing of fissionable source material will promote the general welfare. The district commission shall advise the general assembly of any application for extraction or processing of fissionable source material by delivering written notice to the speaker of the house of representatives and to the president of the senate, and shall make available all relevant material. The procedural requirements and deadlines applicable to permit applications under this chapter shall be suspended until the approval is granted. Approval by the general assembly under this subsection shall not be construed as approval of any particular application or proposal for development.

(d) The panels of the board and commissions shall make all practical efforts to process matters before the board and permits in a prompt manner. The land use panel shall establish time limits for the processing of land use permits issued under section 6086 of this title as well as procedures and time periods within which to notify applicants whether an application is complete. The land use panel shall report annually by February 15 to the house and senate committees on natural resources and energy and government operations. The annual report shall assess the performance of the board and commissions in meeting the limits; identify areas which hinder effective performance; list fees collected for each permit; summarize changes made to improve performance; and describe staffing needs for the coming year.

(e) The district commissions shall give priority to municipal projects that have been mandated by the state through a permit, enforcement order, court order, enforcement settlement agreement, statute, rule or policy.

(f) In situations where the party seeking to file an application is a state agency, municipality, solid waste management district empowered to condemn the involved land or an interest in it, the application need only be signed by that party.

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

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

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

(2) Any decision under this subsection to issue a stay may be subject to review by the environmental court, as provided by rule of the supreme court.

(3) If the same violation is the subject of an enforcement action under chapter 201 of this title, then jurisdiction over the issuance of a stay shall remain with the environmental court and shall not reside with the district commission. (1969, No. 250 (Adj. Sess.), §§ 8, 15, eff. April 4, 1970; amended 1979, No. 123 (Adj. Sess.), § 6, eff. April 14, 1980; 1987, No. 76, § 10; 1989, No. 276 (Adj. Sess.), § 17, eff. June 20, 1990; No. 279 (Adj. Sess.), § 3; 1991, No. 109, § 7, eff. June 28, 1991; 1995, No. 186 (Adj. Sess.), § 35, eff. May 22, 1996; 1997, No. 155 (Adj. Sess.), § 26; 2001, No. 40, § 4; 2003, No. 151 (Adj. Sess.), § 1; No. 115 (Adj. Sess.), § 52, eff. Jan. 31, 2005.)

§ 6083a. Act 250 fees

(a) All applicants for a land use permit under section 6086 of this title shall be directly responsible for the costs involved in the publication of notice in a newspaper of general circulation in the area of the proposed development or subdivision and the costs incurred in recording any permit or permit amendment in the land records. In addition, applicants shall be subject to the following fees for the purpose of compensating the state of Vermont for the direct and indirect costs incurred with respect to the administration of the Act 250 program:

(1) For projects involving construction, $4.75 for each $1,000.00 of the first $15,000,000.00 of construction costs, and $2.25 for each $1,000.00 of construction costs above $15,000,000.00.

(2) For projects involving the creation of lots, $100.00 for each lot.

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

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

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

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

(b) Notwithstanding the provisions of subsection (a) of this section, there shall be a minimum fee of $150.00 for original applications and $50.00 for amendment applications, in addition to publication and recording costs. These costs shall be in addition to any other fee established by statute, unless otherwise expressly stated.

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

(d) [Deleted.]

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

(1) In the event that an application is withdrawn prior to the convening of a hearing, the district commission shall, upon request of the applicant, refund 50 percent of the fee paid between $100.00 and $5,000.00, and all of that portion of the fee paid in excess of $5,000.00 except that the district commission may decrease the amount of the refund if the direct and indirect costs incurred by the state of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the district commission.

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

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

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

(5) For the purposes of this section, a "hearing" is a duly warned meeting concerning an application convened by a quorum of the district commission, at which parties may be present. However, a hearing does not include a prehearing conference.

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

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

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

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

(h) The costs of republishing a notice due to a scheduling change requested by a party shall be borne by the party requesting the change. (Added 1997, No. 155 (Adj. Sess.), § 27; amended 2003, No. 163 (Adj. Sess.), § 26; No. 115 (Adj. Sess.), § 53, eff. Jan. 31, 2005.)

§ 6084. Notice of application; hearings, commencement of review

(a) On or before the date of filing of an application with the district commission, the applicant shall send notice and a copy of the initial application to the owner of the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a municipal or regional boundary. The applicant shall furnish to the district commission the names of those furnished notice by affidavit, and shall post a copy of the notice in the town clerk's office of the town or towns wherein the project lies. The applicant shall also provide a list of adjoining landowners to the district commission. Upon request and for good cause, the district commission may authorize the applicant to provide a partial list of adjoining landowners in accordance with board rules.

(b) Upon an application being ruled complete, the district commission shall determine whether to process the application as a major application with a required public hearing or process the application as a minor application with the potential for a public hearing in accordance with board rules.

(1) For major applications, the district commission shall provide notice not less than ten days prior to any scheduled hearing or prehearing conference to: the applicant; the owner of the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a municipal or regional boundary; adjoining landowners as deemed appropriate by the district commission pursuant to the rules of the board, and any other person the district commission deems appropriate.

(2) For minor applications, the district commission shall provide notice of the commencement of application review to the persons listed in subdivision (1) of this subsection.

(3) For both major and minor applications, the district commission shall also provide such notice and a copy of the application to: the board and any affected state agency ; the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title; and any other municipality, state agency, or person the district commission deems appropriate.

(c) Anyone required to receive notice of commencement of minor application review pursuant to subsection (b) of this section may request a hearing by filing a request within the public comment period specified in the notice pursuant to board rules. The district commission, on its own motion, may order a hearing within 20 days of notice of commencement of minor application review.

(d) Any hearing or prehearing conference for a major application shall be held within 40 days of receipt of a complete application; or within 20 days of the end of the public comment period specified in the notice of minor application review if the district commission determines that it is appropriate to hold a hearing for a minor application.

(e) Any notice for a major or minor application, as required by this section, shall also be published by the district commission in a local newspaper generally circulating in the area where the development or subdivision is located not more than ten days after receipt of a complete application.

(1) Notice of any hearing for a major application shall be published, as required by this section, not less than ten days before the hearing or prehearing conference.

(2) If the district commission determines that it is appropriate to hold a hearing for an application that was originally noticed as a minor application, then the application shall be renoticed as a major application in accordance with the requirements of this section and board rules, except that there shall be no requirement to publish the second notice in a local newspaper. Direct notice of the hearing to all persons listed in subdivisions (b)(1) and (3) of this section shall be deemed sufficient. (1969, No. 250 (Adj. Sess.), § 9, eff. April 4, 1970; amended 1991, No. 109, § 2 eff. June 28, 1991; 1993, No. 232 (Adj. Sess.), § 29, eff. March 15, 1995; 1995, No. 189 (Adj. Sess.), § 10, eff. May 22, 1996; 2003, No. 115 (Adj. Sess.), § 54.)

§ 6085. Hearings; party status

(a), (b) [Deleted.]

(c)(1) Party status. In proceedings before the district commissions, the following persons shall be entitled to party status:

(A) The applicant;

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

(C) The municipality in which the project site is located, and the municipal and regional planning commissions for that municipality; if the project site is located on a boundary, any Vermont municipality adjacent to that border and the municipal and regional planning commissions for that municipality; and the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title;

(D) Any state agency affected by the proposed project;

(E) Any adjoining property owner or other person who has a particularized interest protected by this chapter that may be affected by an act or decision by a district commission.

(2) Content of Petitions. All persons seeking to participate in proceedings before the district commission as parties pursuant to subdivision (c)(1)(E) of this section must petition for party status. Any petition for party status may be made orally or in writing to the district commission. All petitions must include:

(A) A detailed statement of the petitioner's interest under the relevant criteria of the proceeding, including, if known, whether the petitioner's position is in support of or in opposition to the relief sought by the permit applicant, or petitioner.

(B) In the case of an organization, a description of the organization, its purposes, and the nature of its membership.

(C) A statement of the reasons the petitioner believes the district commission should allow the petitioner party status in the pending proceeding.

(D) In the case of a person seeking party status under subdivision (c)(1)(E) of this section:

(i) If applicable, a description of the location of the petitioner's property in relation to the proposed project, including a map, if available;

(ii) A description of the potential effect of the proposed project upon the petitioner's interest with respect to

each of the relevant criteria or subcriteria under which party status is being requested.

(3) Timeliness. A petition for party status pursuant to subdivision (c)(1)(E) of this section must be made at or prior to an initial prehearing conference held pursuant to board rule or at the commencement of the hearing, whichever shall occur first, unless the district commission directs otherwise. The district commission may grant an untimely petition if it finds that the petitioner has demonstrated good cause for failure to request party status in a timely fashion, and that the late appearance will not unfairly delay the proceedings or place an unfair burden on the parties.

(4) Conditions. Where a person has been granted party status pursuant to subdivision (c)(1)(E) of this section, the district commission shall restrict the person's participation to only those issues in which the person has demonstrated an interest, and may encourage the person to join with other persons with respect to representation, presentation of evidence, or other matters in the interest of promoting judicial efficiency.

(5) Friends of the commission. The district commission, on its own motion or by petition, may allow nonparties to participate in any of its proceedings, without being accorded party status. Participation may be limited to the filing of memoranda, proposed findings of fact and conclusions of law, and argument on legal issues. However, if approved by the district commission, participation may be expanded to include the provision of testimony, the filing of evidence, or the cross examination of witnesses. A petition for leave to participate as a friend of the commission shall identify the interest of the petitioner and the desired scope of participation and shall state the reasons why the participation of the petitioner will be beneficial to the district commission. Except where all parties consent or as otherwise ordered by the district commission or by the chair of the district commission, all friends of the commission shall file their memoranda, testimony, or evidence within the times allowed the parties.

(6) Re-examination of party status. A district commission shall re-examine party status determinations before the close of hearings and state the results of that re-examination in the district commission decision. In the re-examination of party status coming before the close of district commission hearings, persons having attained party status up to that point in the proceedings shall be presumed to retain party status. However, on motion of a party, or on its own motion, a commission shall consider the extent to which parties continue to qualify for party status. Determinations made before the close of district commission hearings shall supersede any preliminary determinations of party status.

(d) If no hearing has been requested or ordered within the prescribed period no hearing need be held by the district commission. In such an event a permit shall be granted or denied within 60 days of receipt; otherwise, it shall be deemed approved and a permit shall be issued.

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

(f) A hearing shall not be closed until a commission provides an opportunity to all parties to respond to the last permit or evidence submitted. Once a hearing has been closed, a commission shall conclude deliberations as soon as is reasonably practicable. A decision of a commission shall be issued within 20

days of the completion of deliberations. (1969, No. 250 (Adj. Sess.), §§ 10, 11, eff. April 4, 1970; amended 1973, No. 85, § 9; 1989, No. 234 (Adj. Sess.), § 3; 1993, No. 82, § 4; 1993, No. 232 (Adj. Sess.), §§ 30, 31, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 55, eff. Jan. 31, 2005.)

§ 6085a. Repealed. .

§ 6086. Issuance of permit; conditions and criteria

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

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

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

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

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

(iii) above 1,500 feet elevation; or

(iv) watersheds of public water supplies designated by the agency of natural resources; or

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

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

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

(D) 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 sections 7(a)(1) through 7(a)(19) of this act shall not be used as criteria in the consideration of applications by a district commission.

(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 or the board shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.

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

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

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

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

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

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

(i) the applicant can realize a reasonable return on the fair market value of his land only by devoting the

forest or secondary agricultural soils to uses which will significantly reduce their forestry or agricultural potential; and

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

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

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

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

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

(ii) upon approval by the district commission 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 (1) through (10) of subsection (a), including but not limited to those set forth in sections 4414(4), 4424(2), 4414(1)(D)(i), 4463(b), and 4464 of Title 24, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule 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 (1) through (5) of subsection (a) or a permit or permits of a specified municipal government with respect to (1) through (7) and (9) and (10) of subsection (a), or a combination of such permits or approvals, in lieu of evidence by the applicant. 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 court. 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 court 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. (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.)

§ 6086a. Generators of radioactive waste

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

§ 6087. Denial of application

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

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

(c) A denial of a permit shall contain the specific reasons for denial. A person may, within 6 months, apply for reconsideration of his permit which application shall include an affidavit to the district commission and all parties of record that the deficiencies have been corrected. The district commission shall hold a new hearing upon 25 days notice to the parties. The hearing shall be held within 40 days of receipt of the request for reconsideration. (1969, No. 250 (Adj. Sess.), § 12, eff. April 4, 1970; amended 2003, No. 115 (Adj. Sess.), § 57, eff. Jan. 31, 2005.)

§ 6088. Burden of proof

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

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

§ 6089. Appeals

Appeals of any act or decision of a district coordinator or a district commission under this chapter shall be made to the environmental court in accordance with chapter 220 of this title. (1969, No. 250 (Adj. Sess.), § 14, eff. April 4, 1970; amended 1973, No. 85, § 12; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1985, No. 52, § 1, eff. May 15, 1985; 1987, No. 76, § 10a; 1993, No. 232 (Adj. Sess.), § 34, eff. March 15, 1995; 1997, No. 155 (Adj. Sess.), § 28; 2003, No. 115 (Adj. Sess.), § 58, eff. Jan. 31, 2005.)

§ 6090. Recording; duration and revocation of permits

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

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

(2) Expiration dates contained in permits issued before July 1, 1994 (involving developments that are not for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet) are extended for an indefinite term, as long as there is compliance with the conditions of the permits.

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

§ 6091. Renewals and nonuse

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

(b) Nonuse of permit. Nonuse of a permit for a period of three years following the date of issuance shall constitute an abandonment of the development or subdivision and the permit shall be considered expired. For purposes of this section, for a permit to be considered "used," construction must have commenced and substantial progress toward completion must have occurred within the three-year period, unless construction is delayed by litigation or proceedings to secure other permits or to secure title through foreclosure, or unless, at the time the permit is issued or in a subsequent proceeding, the district commission provides that substantial construction may be commenced more than three years from the date the permit is issued.

(c) Extensions. If the application is made for an extension prior to expiration the district commission may grant an extension and may waive the necessity of a hearing.

(d) Completion dates for developments and subdivisions. Permits shall include dates by which there shall be full or phased completion. The land use panel, by rule, shall establish requirements for review of those portions of developments and subdivisions that fail to meet their completion dates, giving due consideration to fairness to the parties involved, competing land use demands, and cumulative impacts on the resources involved. If completion has been delayed by litigation, proceedings to secure other permits, proceedings to secure title through foreclosure, or because of market conditions, the district commission shall provide that the completion dates be extended for a reasonable period of time. (1969, No. 250 (Adj. Sess.), § 17, eff. April 4, 1970; amended 1991, No. 111, § 2 eff. June 28, 1991; 1993, No. 232 (Adj. Sess.), § 36, eff. June 21, 1994; 2003, No. 115 (Adj. Sess.), § 59, eff. January 31, 2005.)

§ 6092. Construction

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

The Vermont Statutes Online

Title 10: Conservation and Development

Chapter 155: ACQUISITION OF INTERESTS IN LAND BY PUBLIC AGENCIE

§ 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; and 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. (1969, No. 229 (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 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 section 132 of Title 1.

(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) Option to purchase. The acquisition of 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.)

§ 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 section 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) 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:

(1) 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

(2) shall be exempt from assessment and taxation, if in the nature of an interest other than fee simple.

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.)

The Vermont Statutes Online

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.)

The Vermont Statutes Online

Title 24: Municipal and County Government

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) 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 full text of the ordinance or rule, or a concise summary of it including a statement of purpose, principal provisions, and table of contents or list of section headings, shall be published 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. Along with the concise summary shall be published a reference to a place within the municipality where the full text may be examined. When the text or concise summary of an ordinance is published, 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, and shall also contain the name, address and telephone number of a person with knowledge of the ordinance or rule who is available to answer questions about it.

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 section 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.)

§ 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 district court pursuant to section 441 of Title 4.

(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.)

§ 1974a. Enforcement of civil ordinance violations

(a) A civil penalty of not more than $500.00 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 $500.00 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 $500.00,

or injunctive relief, other than as provided in subsection (c) of this section, is sought, the action shall be brought in superior court, unless the matter relates to enforcement under chapter 117 of this title, in which instance the action shall be brought in environmental 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.)

§ 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.)

§ 1977. Complaint for municipal civil ordinance violations

(a) The complaint in a municipal civil case shall be signed by the issuing municipal official. The original copy shall be filed with the judicial bureau, a copy shall be retained by the issuing municipal official and two copies shall be given to the defendant.

(b) The municipal official may void or amend the municipal complaint issued by that official by so marking the complaint and sending it to the judicial bureau.

(c) The court administrator shall approve an appropriate summons and complaint form, pursuant to subsection 1105(a) of Title 4, to implement the assessment of the full and waiver penalty provisions of this section. (Added 1993, No. 237 (Adj. Sess.), § 5, eff. Nov. 1, 1994; amended 1997, No. 121 (Adj. Sess.), § 18; 1999, No. 58, § 4, eff. Sept. 1, 1999; 1999, No. 160 (Adj. Sess.), § 28.)

§ 1979. Procedure

(a) Municipal ordinance violations shall be heard by the bureau and the procedure shall be as provided in chapter 29 of Title 4.

(b) At the hearing, the municipal attorney, grand juror or designee of the legislative body of the municipality may dismiss or amend the complaint, subject to the approval of the hearing officer.

(c) Upon entry of default judgment pursuant to 4 V.S.A. § 1105(f), the hearing officer shall assess the full penalty provided for in the ordinance that was found to have been violated.

(d) Upon entry of judgment against the defendant after a contested hearing, the hearing officer shall assess a civil penalty in an amount not less than the waiver penalty and not more than the full penalty provided for in the ordinance that was found to have been violated. (Added 1993, No. 237 (Adj. Sess.), § 5, eff. Nov. 1, 1994; amended 1997, No. 121 (Adj. Sess.), § 19; 1999, No. 58, § 5, eff. Sept. 1, 1999.)

§ 1981. Enforcement of order from judicial bureau

(a) Upon entry of a judgment after hearing or entry of default by the hearing officer, subject to any appeal pursuant to 4 V.S.A. § 1107, the person found in violation shall have up to 30 days to pay the penalty to the judicial bureau. Upon the expiration of the period to pay the penalty, the person found in violation shall be assessed a surcharge of $10.00 for the benefit of the municipality. All the civil remedies for collection of judgments shall be available to enforce the final judgment of the judicial bureau.

(b) In addition to any other civil remedies available by law, a final judgment of the judicial bureau that has not been satisfied within 30 days shall, upon due recordation in the land records of the town in which any real or personal property of the defendant is located, constitute a lien upon that real or personal property, except for motor vehicles as defined by 23 V.S.A. § 4(21), and may be enforced within the time and in the manner provided for the collection of taxes pursuant to subchapter 8, chapter 133 of Title 32.

(c) The supreme court shall establish rules which provide for an expedited process in small claims court for the collection of judgments to enforce the orders of the judicial bureau.

(d) Upon motion of the municipal attorney, grand juror or other person designated by the legislative body of the municipality and proof by affidavit that the person found in violation has not paid the penalty, in the time set forth in subsection (a) of this section, the bureau shall send to the person found in violation a notice that the penalty must be paid within 20 days of receipt of notice. The notice shall include a warning that failure to pay the penalty within 20 days of the notice will result in a proceeding for contempt before the district court, and a $10.00 surcharge has been added to the penalty.

(e) If the penalty is not paid within the 20 days the bureau shall send a notice to the district court in the county in which the violation occurred. The clerk of the district court shall forthwith provide notice to the person of a hearing for civil contempt proceedings pursuant to 12 V.S.A. § 122 for the failure to pay the penalty imposed by the bureau. A finding of contempt for failure to pay the penalty shall include an order that a nonpayment surcharge of an additional $10.00 shall be added to the penalty and surcharge set forth in subsection (a) of this section for the benefit of the municipality. (Added 1993, No. 237 (Adj. Sess.), § 5, eff. Nov. 1, 1994; amended 1997, No. 121 (Adj. Sess.), § 20; No. 122 (Adj. Sess.), § 1; 1999, No. 58, § 6; 2003, No. 62, § 3; see effective date note below.)

§ 1982. Reports

The court administrator shall prepare audits, records and reports relating to the enforcement of municipal ordinance complaints in the judicial bureau. (Added 1993, No. 237 (Adj. Sess.), § 5, eff. Nov. 1, 1994; amended 1997, No. 121 (Adj. Sess.), § 21.)

§ 1983. Identification to law enforcement officers required

(a) A law enforcement officer is authorized to detain a person if:

(1) the officer has reasonable grounds to believe the person has violated a municipal ordinance; and

(2) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

(b) The person may be detained only until the person identifies himself or herself satisfactorily to the officer. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a district court judge for that purpose. A person who refuses to identify himself or herself to the court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122. (Added 1997, No. 122 (Adj. Sess.), § 2.)

§ 1984. Conflict of interest prohibition

(a) A town, city, or incorporated village, by majority vote of those present and voting at an annual or special meeting warned for that purpose, may adopt a conflict of interest prohibition for its elected and appointed officials which shall contain:

(1) A definition of "conflict of interest."

(2) A list of the elected and appointed officials covered by such prohibition.

(3) A method to determine whether a conflict of interest exists.

(4) Actions that must be taken if a conflict of interest is determined to exist.

(5) A method of enforcement against individuals violating such prohibition.

(b) Unless the prohibition adopted pursuant to subsection (a) of this section contains a different definition of "conflict of interest," for the purposes of a prohibition adopted under this section, "conflict of interest" means a direct personal or pecuniary interest of a public official, or the official's spouse, household member, business associate, employer, or employee, in the outcome of a cause, proceeding, application, or any other matter pending before the official or before the agency or public body in which the official holds office or is employed. "Conflict of interest" does not arise in the case of votes or decisions on matters in which the public official has a personal or pecuniary interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision. (Added 1999, No. 82 (Adj. Sess.), § 2.)