STATE OF VERMONT
NATURAL RESOURCES BOARD
District Environmental Commissions

ACT 250 RULES
Effective October 1, 2013

Section A General Provisions

Section B Procedures before the District Environmental Commissions

Section C Land Use Permits

Section D Court Orders and Stays

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SECTION A GENERAL PROVISIONS

Rule 1 Scope and Applicability; Citation

These rules are adopted pursuant to 10 V.S.A. § 6025(b). They shall apply to all Act 250 proceedings and shall be cited as "Act 250 Rule ___"

—Adopted April 7, 2006, eff. May 1, 2006; amended June 25, 2009, eff. July 10, 2009; amended September 13, 2013, eff. October 1, 2013.

History

Amendments - 2013. Subsections (A) and (B): Repealed; Subsection (C): Amended

Amendments - 2009 . Subsection (C): Added.

The Act 250 Rules adopted in 2006 were based on the former Environmental Board Rules.

Rule 2 Development; Subdivision; Definitions

Rule 2(A) Development

The term "development," relating to Act 250 jurisdiction, is defined at 10 V.S.A. §§ 6001(3)(A), 6001a, 6001b, and 6001c. Jurisdiction also attaches to any substantial change to a pre-existing development - 10 V.S.A § 6081(b).

Rule 2(B) Counting of lots and cessation of a subdivision

The term "subdivision," relating to Act 250 jurisdiction, is defined at 10 V.S.A. § 6001(19). Jurisdiction also attaches to any substantial change to a pre-existing subdivision - 10 V.S.A. § 6081(b).

(1) *Counting of lots for the purpose of resale*. In order to determine the number of lots created by a person, a lot shall be deemed to have been created for the purpose of resale with the first of the following events:

(a) the filing of a plot plan in the town land records depicting the subdivided lot or lots;

(b) the issuance of any required municipal approval for the subdivided lot or lots that becomes final;

(c) the issuance of a waste water system and potable water supply permit for the subdivided lot or lots by the Agency of Natural Resources or delegated municipality;

(d) in the absence of any of the above, the conveyance of a lot or lots created by a person.

(2) *Cessation of a subdivision*. A subdivision shall cease to exist if it is found, in a final jurisdictional opinion issued pursuant to Rule 3, to have been retracted or revised below jurisdictional levels at any time prior to the construction of improvements on the subdivision. A demonstration of such action shall include:

(a) the official retraction or abandonment of all state and local permits which originally approved the subdivision; and

(b) the filing of a revised plot plan in town land records depicting the final retraction or revision of a subdivision below jurisdictional levels.

Rule 2(C) Definitions

(1) "*Person*" means:

(a) For the purposes of a “development,” person means an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership; a municipality or state agency; and, individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the “development” of land.

(b) For the purposes of a “subdivision,” person is defined at 10 V.S.A. § 6001(14)(A).

(2) "*Commencement of construction*" means the construction of the first improvement on the land or to any structure or facility located on the land including work preparatory to construction such as clearing, the staking out or use of a right-of-way or in any way incidental to altering the land according to a plan or intention to improve or to divide land by sale, lease, partition, or otherwise transfer an interest in the land.

(3) "*Construction of improvements*" means any physical change to a project site except for:

(a) any activity which is principally for preparation of plans and specifications that may be required and necessary for making application for a permit, such as test wells and pits (not including exploratory oil and gas wells), percolation tests, and line-of-sight clearing for the placement of survey markers, provided that no permanent improvements to the land will be constructed and no significant impact under any of the criteria of 10 V.S.A. § 6086(a)(1) through (10) will result; a district commission may approve more extensive exploratory work prior to issuance of a permit after complying with the notice and hearing requirements of Rule 51 of these Rules for minor applications

(b) construction for a home occupation as defined in these Rules; or

(c) construction which the person seeking the exemption demonstrates (i) is de minimis and (ii) will have no potential for significant adverse impact under any of the criteria of 10 V.S.A. § 6086(a)(1) through (10) directly attributable to such construction or to any activity associated with such construction.

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

(5) "*Involved land*" includes:

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

(b) Those portions of any tract or tracts of land to be physically altered and upon which construction of improvements will occur for state, county, or municipal purposes including land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings, bearing some relationship to the land which is actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that the project is incidental to or a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction.

(c) With respect to “stormwater” offset projects” required in “impaired watersheds” pursuant to 10 V.S.A. § 1264a, involved land shall include only that portion of the tract of land owned or controlled by the applicant which is actually to be used for the offset project.

(6) "*Material change*" means any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10).

(7) "*Substantial change*" means any change in a pre-existing development or subdivision which may result in significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10).

(8) "*Pre-existing development*" mean any development in existence on June 1, 1970 and any development which was commenced before June 1, 1970 and completed by March 1, 1971. “Pre-existing development” also means any telecommunications facility in existence on July 1, 1997, unless that facility is already subject to jurisdiction pursuant to 10 V.S.A. § 6001(3)(A).

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

(10) "*Dwelling*" means a place which is intended for human habitation including:

(a) any building, structure, or part thereof, which is used as a conventional residence, including but not limited to, single family homes, duplex or multiplex homes, and apartment buildings;

(b) any commercial residential building, including but not limited to, a hotel, motel, rooming house, nursing home group home, residential care facility, or dormitory which is usually occupied in exchange for the periodic payment of a fee, contribution, donation or other object or service having value.

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

(12) “*Tract of land*” means one or more physically contiguous parcels of land owned or controlled by the same person or persons.

(13) “*Lot*” means: any undivided interest in land, whether freehold or leasehold, including but not limited to an interests created by a trust, partnership, corporation, cotenanc or contract.

(14) "*Municipality*" means:

(a) For the purposes of 10 V.S.A. §§ 6084 and 6085, "municipality" means any city, town or incorporated village wherein the land is located.

(b) For the purposes of 10 V.S.A. § 6001(3), "municipal purpose" means any project proposed by an entity enumerated in 1 V.S.A. § 126.

(15) "*State, county or municipal purposes*" means the construction of improvements which are undertaken by or for the state, county or municipality and which are to be used by the state, county, municipality, or members of the general public.

(16) "*Emergency replacement of a communication support structure*" means the emergency replacement of a communication support structure to protect the health and safety of the public. Persons may take whatever action, without notice, hearing or a permit, necessary and appropriate to meet such an emergency and a permit will not be required prior to the emergency replacement. Upon cessation of such emergency, the work performed to meet the emergency shall be evaluated in accordance with the provisions of this rule and, if such work requires a land use permit, the person shall apply for such permit as soon as reasonably possible.

(17) "*Home occupation*," solely for purposes of Rule 2(C)(3), means the use, by a resident, of a minor portion of the residence, including ancillary buildings, for an occupation or business:

(a) that is customary in residential areas; and

(b) that does not have a potential for significant impact under the criteria of 10 V.S.A. §§ 6086(a)(1) through (10).

(18) "*The farm*" For purposes of 10 V.S.A. § 6001(22)(E), "*the farm*" means lands which are used for any purpose stated in 10 V.S.A. § 6001(22), which are owned or leased by a person engaged in the activities stated in 10 V.S.A. § 6001(22), if the lessee controls the leased lands to the extent that they would be considered to be the lessee's own farm. Indicia of such control include whether the lessee makes the day-to-day decisions concerning the cultivation of the leased lands, subject to incidental conditions of the lessor, and whether the lessee works the leased lands during the lease period.

(19) "*Principally produced"*

(a) for purposes of 10 V.S.A. § 6001(3)(D)(vii)(II), that more than 50% (either by volume or weight) of the ingredients or materials contributing to the compost, which is stored, prepared or sold at the farm, is grown or produced on the farm; or

(b) for purposes of 10 V.S.A. § 6001(a)(22)(E), that more than 50% (either by volume or weight) of the ingredients or materials contributing to a final agricultural product which results from the activities stated in 10 V.S.A. § 6001(22)(A) - (D), and which is stored, prepared or sold at the farm, is grown or produced on the farm.

(20) "*Shoreline*" For purposes of 10 V.S.A. § 6086(a)(1)(F), a project involves the "*development or subdivision of shorelines*," if

(a) the project involves construction on or the use of "the land between the mean high water mark and the mean low water mark of such surface waters." 10 V.S.A. § 6001(17), or

(b) the project, or an element of the project which is adjacent to the

shoreline, has the potential for significant impact on any of the subcriteria specified in 10 V.S.A. § 6086(a)(1)(F)(i)-(iv).

(21) "*Of necessity*" For purposes of 10 V.S.A. § 6086(a)(1)(F), "*of necessity*" means that the project or a portion of the project must serve a water-related purpose and that the project's location on the shoreline serves as such an integral part of the developmental scheme that the inability to locate the project, or a portion of the project, on the shoreline would make the project impossible.

(22) "*Rural growth areas*" For purposes of 10 V.S.A. § 6086(a)(9)(L), a "*rural growth a*rea" means an area or areas within a rural tract proposed for development or subdivision where the natural resources referred to in 10 V.S.A. §§ 6086(a)(1)(A) - (F), (8)(A), (9)(B) - (9)(E), and (9)(K) are either not present or minimally present. For purposes of this definition, "rural" means sparsely settled country, or open, farmed, forested or undeveloped country, even if contiguous to an existing settlement. Consistent with appropriate densities, development and subdivision should be concentrated within "rural growth areas" in order to lessen growth pressures on adjacent natural resources.

(23) "*Unit*" means an individual and discrete residence within a dwelling, condominium or cooperative project, including but not limited to an apartment within an apartment building, each separate residence of a duplex or multiplex home, or a room or suite of rooms within a hotel, motel, rooming house, nursing home, group home, residential care facility or dormitory. With respect to single family homes within housing projects, each home shall be counted as a unit.

In order to determine the number of units attributable to a person under 10 V.S.A. § 6001 (3)(A)(iv), the date that a unit is deemed to be "constructed" shall be the date of the first occurrence of any of the following events:

(i) the issuance of a state water supply/wastewater permit;
(ii) the issuance of a municipal zoning or building permit**;** or
(iii) the commencement of construction of improvements on the project.

(24) "*Principally used*" means, for purposes of 10 V.S.A. § 6001(3)(D)(vi)(III), that more than 50% (either by volume or weight) of the compost produced on the farm is physically and permanently incorporated into the native soils on the farm as a soil enhancement and is and not removed or sold at any time thereafter.

(25) "Construction costs" means all costs associated with the construction of the development or subdivision, including the costs of:

(a) materials and labor;
(b) site work;
(c) stormwater**,** water and wastewater systems;
(d) landscaping;
(e) utilities; and
(f) equipment that

(i) is a fixture, or integral to the building or structure or project with which it is associated,

(ii) is so fitted and attached as to be a part of a building or structure and kept and used as such, or

(iii) is so affixed to real property as to have become a part thereof and therefore not severable or removable without material injury to the real property.

Construction costs do not include the cost to acquire the real estate for the development or subdivision or the costs of professional services, such as architectural and engineering services. In order to provide incentives for the use of, for a period of five years from October 1, 2013, construction costs shall not include the cost of solar or thermal panels, geothermal systems, heat pumps, wind turbines, or electric vehicle charging stations.

-—Adopted April 7, 2006, eff. May 1, 2006; amended Sept. 17, 2007, eff. Oct. 3, 2007; amended June 25, 2009, eff. July 10, 2009; amended September 13, 2013, eff. October 1, 2013.

HISTORY

Amendments – 2013. Subsection (C)(1)(b): Substituted "10 V.S.A. §6001(14)(A)" for "10 V.S.A. §(14)(iii)" to correct the reference to statute.

Subsection (C)(3))(a): Substituted "change to" for "action on;" deleted "which initiates development for any purpose enumerated in Rule 2(A);" deleted "may be undertaken without a permit;" substituted "of these Rules" for "herein."

Subsection (C)(10)(b): Changed plural nouns to singular

Subsection (C)(13): Changed plural nouns to singular

Subsection (C)(19): Deleted "For purposes of 10 V.S.A. §6001(a)(22)(E), '*principally produced*';" deleted "that more than 50% (by volume or weight) of the;" added subsection (a); added subsection (b); added "for purposes of 10 V.S.A. §6001(a)(22)(E), that more than 50% (either by volume or weight) of the ingredients or materials contributing to a final;" substituted "product" for "products" and "is" for "are."

Subsection (C)(23): Added subdivision (a).

Subsection (C)(24): Added.

Subsection (C)(25): Added.

Amendments – 2009. Subsection (B)(1): Substituted "lots for the purpose of resale" for "subdivided lots" in the title; substituted "In order to determine" for "for the purpose of determining" in the first sentence; deleted "under this statutory provision" from the first sentence; substituted "a lot shall be deemed to have been created for the purpose of resale" for "the continuous five-year period shall begin" in the first sentence; substituted "first" for "latest of any" in the first sentence.

Subsection (B)(1)(a): Inserted "land" before "records"; deleted "following the issuance of any local or state approval" after "records; inserted "depicting the subdivided lot or lots" after "records."

Subsection (B)(1)(b): Substituted "required municipal approval for the subdivided lot or lots that becomes final" for "municipal subdivision or zoning permit approving the subdivision."

Subsection (B)(1)(c): Deleted “state subdivision permit or a potable water supply and wastewater system permit”; substituted “waste water system and potable water supply permit for the subdivided lot or lots by the Agency of Natural Resources or delegated municipality.”

Subsection (B)(1)(d): Substituted “the conveyance of a lot or lots created by a person” for “the five-year period will commence upon the legal conveyance of the lot.”

Subsection (B)(2): Former subsection (B)(3): Cessation of a subdivision redesignated Subsection (B)(2); former subsection (B)(2) deleted; substituted “jurisdictional opinion” for “jurisdictional determination” in the first sentence; substituted “A demonstration of such action shall include” for “Examples of activities or events that may justify a determination that a retraction or revision of a subdivision below jurisdictional levels has occurred may include, but are not limited to the following” in the second sentence.

Subsection (B)(2)(a): Substituted “the official retraction or abandonment of all state and local permits which originally approved the subdivision” for “the filing of a complete application or subsequent revision to an application for a municipal subdivision or zoning permit, showing the revision or retraction, or the withdrawal of a subdivision.”

Subsection (B)(2)(b): Former subsection (B)(2)(c) redesignated as (B)(2)(b); Former subsection (B)(2)(b) deleted; inserted “revised” before “plot plan”; substituted “depicting the final retraction or revision of a subdivision below jurisdictional levels” for “showing the revision or retraction of a subdivision following a rescission of conveyed lots.”

Subsection (C)(3)(a): Redesignated “activity which is principally for preparation of plans and specifications that may be required and necessary for making application for a permit, such as test wells and pits (not including exploratory oil and gas wells), percolation tests, and line-of-sight clearing for the placement of survey markers may be undertaken without a permit, provided that no permanent improvements to the land will be constructed and no significant impact on any of the 10 criteria will result. A district commission may approve more extensive exploratory work prior to issuance of a permit after complying with the notice and hearing requirements of Rule 51 herein for minor applications“ as Subsection (C)(3)(a); added “any” before “activity” in the first sentence; substituted “criteria of 10 V.S.A. §§6086(a)(1) through (10) for “10 criteria” in the second sentence.

Subsection (C)(3)(b): Substituted “construction for a home occupation as defined in these rules” for “the construction of improvements for a home occupation” and redesignated as subsection (C)(3)(b).

Subsection (C)(3)(c): Added.

Subsections (C)(6) and (C)(7): Inserted “adverse.”

Amendments—2007. Subsection (C)(3): Inserted “except for the construction of improvements for a home occupation” following “any purpose enumerated in Rule 2(A)” in the first sentence; substituted “the placement of survey markers” for “surveys” in the second sentence; and substituted “significant” for “substantial” in the second sentence.

Subsection (C)(17): Added.

Subsection (C)(18): Added.

Subsection (C)(19): Added.

Subsection (C)(20): Added.

Subsection (C)(21): Added.

Subsection (C)(22): Added.

Rule 3 Jurisdictional Opinions

(A) Any person seeking a ruling as to whether an activity constitutes a development or a subdivision subject the jurisdiction of 10 V.S.A. Ch. 151 (Act 250) may request a jurisdictional opinion from a district coordinator or an assistant district coordinator in the environmental district where the potential development or subdivision is located pursuant to the provisions of 10 V.S.A. § 6007(c).

(B) Persons who qualify as parties pursuant to 10 V.S.A. § 6085(c)(1)(A) through (E) may request reconsideration from the district coordinator or the assistant district coordinator within 30 days of the mailing of the jurisdictional opinion. The running of the time for filing a request with the Natural Resources Board pursuant to 10 V.S.A. § 6007(d) is terminated by a timely request for reconsideration by the district coordinator or assistant district coordinator. A district coordinator or an assistant district coordinator may reconsider, or accept a request for reconsideration of, a jurisdictional opinion at any time upon an adequate showing of a failure to disclose material facts or fraud. — Adopted April 7, 2006, eff. May 1, 2006; amended Sept. 17, 2007, eff. Oct. 3, 2007; amended September 12, 2013, eff. October 1, 2013.

HISTORY

Amendments—2013. Subsections (A) and (B): Added “or an assistant district coordinator” following “a district coordinator “ in all instances.

Subsection (B): Added “jurisdictional” before “opinion;” deleted “The filing of a timely request for reconsideration shall stop the period for appeal. A new full period for appeal shall begin on the date of a refusal to reconsider or, if reconsideration is accepted, on the date the reconsidered opinion is mailed; added “The running of the time for filing a notice of appeal is terminated as to all parties by a timely request for reconsideration.”

Amendments—2007. Subsection (B): Former Subsection (C) redesignated as Subsection (B), and former Subsection (B) repealed.

Rule 4 Subpoenas

The chair of a district commission, or a licensed attorney representing a party before a district commission, may compel, by subpoena, the attendance and testimony of witnesses and the production of books and records. A party not represented by a licensed attorney may submit a written request for a subpoena stating the reasons therefore and representing that reasonable efforts have been made to obtain voluntary compliance with its requests. In response to a request from a party not represented by an attorney the district commission may issue subpoenas for the attendance of witnesses or the production of documents. Costs of service, fees, and compensation shall be paid in advance by the party requesting the subpoena. The district commission may issue subpoenas for the attendance of witnesses or the production of documents on its own motion. A petition to modify, vacate, or quash a subpoena may be heard by the district commission. Applicable provisions of the Vermont Rules of Civil Procedure and the Administrative Procedures Act shall apply and are incorporated herein.—Adopted April 7, 2006, eff. May 1, 2006; amended June 25, 2009, eff.

July 10, 2009.

History

Amendments – 2009. Substituted “Any” for “A” at the beginning of the sixth sentence; substituted “may be heard by the district commission” for “shall be heard in superior court, pursuant to 3 V.S.A. §§ 809a and 809b, 12 V.S.A. §§1623 and 1624, and V.R.C.P. 45, as applicable” in the sixth sentence; deleted “in all other respects” in the last sentence.

Rule 6 Computation of Time

(A) In computing any period of time prescribed or allowed by these Rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless this day is a Saturday, Sunday, state or federal legal holiday, or a day on which the office is officially closed due to weather or other circumstances, in which event the period runs until the end of normal office hours the next day which is not a Saturday, Sunday, state or federal legal holiday, or other day on which the office is officially closed. When the period of time prescribed or allowed, not including any calendar days added in accordance with subdivision (B) of this rule, is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. The day that a decision or order is issued shall be that date on which it has been certified that the decision or order has been placed in the U.S. Mail for delivery to interested persons or petitioners. The term “day” refers to calendar day.

(B) Whenever a person has the right or is required to file a document within a prescribed period after the service of a paper on the person by another party in the proceeding, and the paper is served on the person by mail, the date of service shall be three days after the date on which the paper was postmarked, unless the Commission or the Board sets a specific date by which the person must file.

(C) The District Commission, the Chair, Vice Chair or Acting Chair, for good cause upon written motion, may enlarge the time prescribed by these Rules or by its order for doing any act, or may permit an act to be done after the expiration of such time provided that such enlargement will not result in undue delay or disruption of the District Commission’s docket. — Adopted April 7, 2006, eff. May 1, 2006; amended June 25, 2009, effective July 10, 2009.

History

Amendments – 2009. Subsection (A): Deleted “such as the day after Thanksgiving” in the second sentence; inserted ” When the period of time prescribed or allowed, not including any calendar days added in accordance with subdivision (B) of this rule, is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.” between the second and third sentences.

Subsection (B): Substituted “Commission” for “Board”; substituted “Board” for “Panel,” in accordance with Act 11 of 2013.

Subsection (C): Substituted “Vice Chair or Acting Chair” for “or a hearing officer appointed to hear the matter”.

SECTION B PROCEDURE BEFORE THE DISTRICT ENVIRONMENTAL COMMISSIONS

Rule 10 Permit Applications

(A) An application shall be signed by the applicant and any co-applicant, or an officer or duly-appointed agent thereof. The record owner(s) of the tract(s) of involved land shall be the applicant(s) or co-applicant(s) unless good cause is shown to support waiver of this requirement. Good cause may include a demonstration that the applicant effectively controls a tract or a portion of a tract, to be used in the development or subdivision or upon which the construction of improvements will occur, through permanent easement, right-of-way, or access agreement which will allow the imposition of appropriate permit conditions by the district commission to mitigate adverse impacts under the criteria of the Act. When the applicant is a state agency, municipality or a solid waste management district empowered to condemn the involved land or an interest in it, then the application need only be signed by that party. The application shall list the name or names of all persons who have a substantial property interest, such as through title, lease, purchase or lease option, right-of-way or easement, in the tract or tracts of involved land by reason of ownership or control and shall describe the extent of their interests. The district commission may, upon its own motion or upon the motion of a party, find that the property interest of any such person is of such significance, therefore demonstrating a lack of effective control by the applicant, that the application cannot be accepted or the review cannot be completed without their participation as co-applicants.

(B) The board shall from time to time issue guidelines for the use of commissions and applicants in determining the information and documentation that is necessary or desirable for thorough review and evaluation of projects under applicable criteria. Applications shall be on forms provided by the board. The commission may require such additional information or supplementary information as the commission deems necessary to fairly and properly review the application. If the applicant submits or intends to submit permits or certifications as evidence under Rule 19, the applicant shall, upon request of the commission or upon challenge of a party under Rule 19, submit copies of all materials relevant to such permit or certification.

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

(D) An application that is incomplete in substantial respects shall not be accepted for filing by the district coordinator, and therefore shall not initiate the time and notice

requirements of the Act and these rules. A coordinator's decision that an application is substantially incomplete shall be treated as a jurisdictional opinion pursuant to 10 V.S.A. § 6007(c). A coordinator's decision that an application is complete will initiate the time and notice requirements for processing of the application.

(E) The applicant shall file an original and three copies of the application, and the fee prescribed by 10 V.S.A. § 6083a with the appropriate district commission. In addition, the applicant shall file an electronic copy of the application, using media and file formats specified on the application forms, unless the district coordinator waives this requirement because it creates an undue burden for the applicant. All subsequent filings by the applicant and any other party to a permit application shall also be submitted in electronic format unless the district coordinator waives this requirement because it creates an undue burden for the applicant or a party. The district coordinator may provide for alternate electronic filing methods. The applicant shall certify by affidavit in the application that the applicant has forwarded notice and copies of the application to the municipality, the municipal and regional planning commissions wherein the land is located and any adjacent Vermont municipality, municipal or regional planning commission if the land is located on a municipal or regional boundary; and the owner of the land if the applicant is not the owner; and that the applicant has either posted or caused to be posted a copy of the notice of application in the town clerk's office of the town or towns wherein the land lies. See 10 V.S.A. § 6084(a).

(F) The applicant shall file with the application a list of adjoining property owners to the tract or tracts of land proposed to be developed or subdivided unless this requirement is waived by the district coordinator, in consultation with the chair of the district commission. Provision of personal notice of the hearing or public comment period to adjoining property owners and persons not listed in section (E) of this Rule by the district commission shall be solely within the discretion and responsibility of the chair of the district commission. The chair of the district commission may authorize a waiver of personal notice of the hearing or public comment period to adjoining property owners by the district commission. Any waiver must be based on a determination that the adjoining property owners subject to the waiver reasonably could not be affected by the proposed development or subdivision and that service to each and every property owner by the district commission would constitute a significant administrative burden without corresponding public benefit. However, personal notice of the hearing or public comment period shall be provided by the district commission to any adjoining property owner who has requested such notice. See 10 VSA § 6084(b).

(G) The applicant shall be responsible for the cost of publication of notice of the application in a local newspaper generally circulated in the area where the land is located. The district commission shall be responsible for the publication of this notice, and publication shall occur not more than seven days after the district commission has received the completed application. The notice shall contain the name of the applicant and his or her address; the location of the proposed development or subdivision, and if a subdivision, the number of lots proposed; the location of the district commission where the application was filed; and the date of filing. The project location specified in the notice shall be sufficiently precise so that a person generally familiar with the area can approximately locate the tract or tracts of land on an official town highway map. The district commission shall provide notice of the application and the date of hearing or public comment deadline to all those listed in 10

V.S.A. § 6084(b), except that provision of personal notice to adjoining property owners by the district commission may be waived by the chair of the district commission as specified in subdivision (F) of this rule.

(H) If, in the course of reviewing an application, the district commission determines that a project has changed from the project that has been noticed to the extent that such change may have a significant adverse impact under any of the criteria or may affect any person under any of the criteria, the commission shall stay the proceedings and provide new notice of the changed project, pursuant to this rule. —Adopted April 7, 2006, eff. May 1, 2006; amended June 25, 2009, eff. July 10, 2009. Amended September 13, 2013, eff. October 1, 2013.

History

Amendments – 2013. Subsection (E): Substituted “three” for “four” in the first sentence. Subsection (H): Added. Subsection (B): Substituted “Board” for “Panel,” in accordance with Act 11 of 2013.

Amendments – 2009. Subsection (E): Inserted the following sentences after the first sentence: “In addition, the applicant shall file an electronic copy of the application, using media and file formats specified on the application forms, unless the district coordinator waives this requirement because it creates an undue burden for the applicant. All subsequent filings by the applicant and any other party to a permit application shall also be submitted in electronic format unless the district coordinator waives this requirement because it creates an undue burden for the applicant or party. The district coordinator may provide alternate electronic filing methods.”

Rule 11 Fees

(A) Fees shall be assessed pursuant to10 V.S.A. § 6083a.

(B) All improvements constructed in a subdivision shall be subject to fees. If an applicant proposes, as part of a subdivision, to construct dwellings in the subdivision, the fee for such construction shall be paid by the applicant at the time the application is filed.

History

Amendments – 2013. Subsection (A): Substituted “assessed pursuant to” for “as provided for in”; Subsection (B): Added.

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

(A) All applications, notices, petitions, entries of appearance and other documents filed with the district commissions shall be deemed to have been filed when the document is received by the district commission, except that applications which do not contain information

required by the application forms and guidelines issued by the board shall be considered filed on the date that all required information is received, as provided for in Rule 10 of these rules.

(B) Any document initiating a case before a district commission shall be signed by the petitioner or an agent thereof. The requirements for content and service of initial documents are specified in these rules as follows:

Applications for permits: Rule 10

Applications for permit amendments: Rule 34

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

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

(C) Each of the following types of documents should be double-spaced: initial legal memoranda and briefs, reply memoranda and briefs, proposed findings of fact and conclusions of law, petitions for party status, prefiled testimony, and any pleading filed with the district commission.

(D) Documents should comply with the following page limits:

(1) Motions: no more than five pages.

(2) Petitions for party status; memoranda; briefs; and other pleadings: no more than 25 pages.

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

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

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

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

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

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

(H) Every document filed by any party subsequent to the initial document filed in a case shall be served upon the attorneys or other representatives of record for all other parties and upon all parties who have appeared for themselves, and shall be accompanied by a certificate of service certifying that the document was served in accordance with these rules, stating the date and method of service, and listing the name and address of each person served. Service within this subsection of the rule shall be made upon a representative or a party by delivering a copy in person or by mailing a copy to the last known address of the individual.

(I) The district commission may, on its own motion or on motion by a party, require or authorize the electronic filing and service of any document.— Adopted April 7, 2006, eff. May 1, 2006; amended September 13, 2013, eff. October 1, 2013.

History

Amendments – 2013. Subsection (A): Substituted "Board" for "Panel," in accordance with Act 11 of 2013; Subsection (B): Substituted "fist class" for "certified"; Subsection (I): Added

Rule 13 District Environmental Commissions: Hearing Schedules

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

(B) *Recesses*. Any time prior to adjournment of a hearing by the district commission, the district commission may, on petition of a party or on its own motion, recess a hearing pending the convening of further hearings, receipt of submissions from parties, conduct of investigations, review of evidence in the record, completion of final zoning or subdivision review, deliberation or other similar reason. During such period, the applicant may, with due notice to all parties to the application, move to reopen the hearing on any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10) for the purpose of offering further relevant evidence or testimony.

(C) *Order of hearings*. To the extent reasonable, the initial hearings on applications and appeals shall be scheduled in the order that completed applications and appeals are filed, unless an applicant waives this priority right.—Adopted April 7, 2006, eff. May 1, 2006.

Rule 14 Parties and Appearances

(A) "*Party status*" in Act 250 proceedings is established pursuant to 10 V.S.A.

§ 6085(c).

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

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

(D) *Notice for information only*. The district commission may provide notice for information only to such additional persons as it deems appropriate.

(E) *Preliminary determinations*, re-examinations, and final determinations of party status for adjoining landowners and other interested persons by the district commissions pursuant to 10 V.S.A. § 6085(c)(6).

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

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

(3) 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. 10 V.S.A. § 6085(c)(6). —Adopted April 7, 2006, eff. May 1, 2006.

Rule 15 Joint Hearings

In order to avoid duplication of testimony and avoid unnecessary expense, the district commissions may hold a hearing with another affected governmental agency if the agency communicates its agreement to or request for a joint hearing to a district commission at least

ten days before the scheduled hearing date. The communication must be in writing signed by a representative of the agency but can be sent through any party to the proceedings or directly from the affected agency. Any party may petition, in writing, to the district commission to request a joint hearing with another affected governmental agency. —Adopted April 7, 2006, eff. May 1, 2006.

Rule 16 Prehearing Conferences and Preliminary Rulings

(A) *Prehearing Conferences*. Upon request of an applicant or upon its own motion, a district commission, acting through a duly authorized delegate, may conduct such prehearing conferences, upon due notice, as the commission determines will be useful in providing full information to all parties and in expediting its proceedings. Such prehearing conferences may include the following:

(1) Determine preliminary party status in accordance with Rule 14(E) and 10 V.S.A. § 6085(c)(6);

(2) Clarify the issues in controversy and set a schedule for future proceedings;

(3) Identify evidence, documents, witnesses, stipulations, and other offers of proof to be presented at a hearing by any party;

(4) Promote expeditious, informal and nonadversarial resolution of issues, require the timely exchange of information concerning the application, and encourage participants to settle differences; and

(5) Conduct such other business that the district commission deems necessary and appropriate.

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

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

(D) *Informal and non-adversarial resolution of issues*. In the normal course of their duties, the district commissions shall promote expeditious, informal and non-adversarial resolution of issues, require the timely exchange of information concerning an application and encourage participants to settle differences in any Act 250 proceeding. The district commissions may require the timely exchange of information regardless of whether parties are involved in informal resolution of issues. See 10 V.S.A. § 6085(e). —Adopted April 7, 2006, eff. May 1, 2006.

Rule 17 Evidence in Contested Case Proceedings

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

(B) *Documents submitted for the record*. Permit applications, permits, approvals, certifications, and related documents accompanying applications submitted by a party shall be entered into the record of a case when they are accepted for filing by the district coordinator or the district commission.

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

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

(1) *Notice and distribution*. A party intending to utilize prefiled testimony must notify the commission and all other parties of the issues to be addressed and the witnesses to be used at least 14 days prior to the hearing at which this testimony will be offered. At least 7 days prior to the hearing, the offering party must submit a copy of the testimony to each party of record, to the district coordinator, and to each commission member who will be reviewing the testimony. These time requirements may be waived by the district commission upon a showing of good cause.

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

accordance with this Rule, the district commission may require that cross-examination proceed immediately.

(E) *Prehearing submissions*. The district commission may direct, by way of a prehearing conference order or otherwise, that all parties to a contested case submit to the district commission in advance of any scheduled hearing date, a copy of all proposed exhibits, a list of all proposed witnesses, a summary of all proposed testimony, memoranda concerning any issue in controversy, prefiled testimony, or such other information as the district commission deems appropriate. —Adopted April 7, 2006, eff. May 1, 2006.

Rule 18 Conduct of Hearings

(A) *Quorum and deadlocks*. Unless waived by all parties, a quorum of a district commission to conduct business, including holding a hearing, shall consist of two members. In the event that a tie vote results during the conduct of any business, conduct of business will be recessed until an uneven number of members can meet and break the tie. In the event of a hearing decision over which a deadlock exists, a rehearing will either be held or decided on the transcript or recording thereof; the decision to rehear will be made by a majority of those members of the district commission who convene to break the deadlock.

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

(C) *District Commission Chair, Vice Chair and Acting Chair*

(1) The chair shall have the power to administer oaths to witnesses; and, unless a party objects, rule on questions of evidence and offers of proof, order depositions to be taken, rule on the validity of service of subpoenas and other notices, and do whatever is necessary and proper to conduct the hearing in a judicious, fair and expeditious manner.

(2) Each district commission shall annually elect a vice chair from its members who shall serve until his or her successor is elected. In the absence or recusal of the chair, the vice chair shall perform all duties and exercise all powers of the chair relating to the business of the district commission.

(3) In the absence or recusal of both the chair and the vice chair, the commission members present at any commission meeting or hearing shall elect an acting chair, who shall perform all duties and exercise all powers of the chair at that meeting or hearing.

(D) *Dismissal*. A district commission may, on its own motion or at the request of a party, consider the dismissal, in whole or in part, of any matter before it for reasons provided by these rules, by statute, by law, or for failure to comply with an order of the district

commission, or the chair of the district commission. At the request of a party or on its own motion, the district commission will entertain oral argument prior to considering any such dismissal; such argument shall be preceded by notice to the parties unless dismissal is considered at a regularly convened hearing on the matter. A decision to dismiss shall include a statement of reasons for the dismissal and shall be made within 20 days of the final hearing at which dismissal is considered.

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

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

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

(3) When the commission deems appropriate.

Any party intending to stenographically record a hearing shall so notify the commission not less than one working day prior to the hearing. The party requesting this method of recording shall be responsible for arranging the appearance of, and payment to, the stenographer. A copy of any transcript shall be provided to the district commission without cost; other parties wishing a copy shall reimburse the requesting party on a pro rata basis. Disputes over sharing of costs shall be resolved by the district commission.

(F) *Completion of deliberations*. A hearing shall not be closed until a district commission has provided an opportunity for all parties under the relevant criteria to respond to the last permit or evidence submitted. Once a hearing has been closed, a commission 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. 10 V.S.A. § 6085(f).

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

(H) *Waiver of requirements*. The district commission may waive any filing requirement upon a showing of good cause, unless such waiver would unfairly prejudice the rights of other parties. —Adopted April 7, 2006, eff. May 1, 2006; amended Sept. 17, 2007, eff. Oct. 3, 2007.

HISTORY

Amendments—2007. Subsection (B): Inserted "or vice chair" following "chair" in the first sentence and following "At the request of the chair" in the second sentence; and inserted

“from that district commission” following “alternate commissioner” at the end of the first sentence.

Subsection (C): Added, after deletion of the former Subsection (C).

Rule 19 Compliance with Other Laws – Presumptions

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

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

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

(3) With the approval of the district commission, an Act 250 application may be filed first, with an intention to satisfy certain substantive criteria of the Act with independent evidence of compliance (See (D) below). In addition, an applicant may file an application for partial findings under the appropriate criteria in accordance with Rule 21.

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

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

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

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

(E) *Permits creating presumptions*. In the event a subdivision or development is also subject to standards of or requires one or more permits, approvals or certifications from another state agency, such permits, approvals or certifications of compliance, when entered in the record pursuant to Rule 17(B), will create the following presumptions:

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

(a) A wastewater system and potable water supply permit - Agency of Natural Resources under 10 V.S.A. Ch. 64 and rules adopted thereunder. (Note: Permits, approvals, or certifications issued by the Agency of Natural Resources for potable water supplies and wastewater systems prior to June 14, 2002 are deemed to be permits, approvals, or certifications issued under 10 V.S.A. Ch. 64 pursuant to § 15(c) of Act 133 of the 2002 Legislative Session.)

(b) An individual discharge permit; an approval for coverage under a general discharge permit; or a discharge permit for a wastewater treatment facility owned or controlled by the applicant and to be used by the project issued by the Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder.

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

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

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

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

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

(2) *That no undue air pollution will result*:

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

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

(a) A wastewater system and potable water supply permit - Agency of Natural Resources under 10 V.S.A. Ch. 64 and rules adopted thereunder. (Note: Permits, approvals, or certifications issued by the Agency of Natural Resources for potable water supplies and wastewater systems prior to June 14, 2002 are deemed to be permits, approvals, or certifications issued under 10 V.S.A. Ch. 64 pursuant to §15(c) of Act 133 of the 2002 Legislative Session.)

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

(c) Municipal permit - Local water authority.

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

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

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

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

(5) *That the development or subdivision will not violate the rules of the agency of natural resources relating to significant wetlands*:

(a) A conditional use determination, permit, or approval under a general permit with respect to activities in a Class I or Class II wetland or its associated buffer zone, issued by the Agency of Natural Resources under 10 V.S.A. Ch. 37, and rules adopted thereunder.

(6) *That stormwater runoff during construction will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water*:

(a) An individual construction discharge permit, or an approval for coverage by a general permit for stormwater runoff from construction sites, issued by the Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder.

(F) *Effect of presum*ptions. A permit, approval or certification filed under this rule shall create a rebuttable presumption that the portion of the development or subdivision subject to the permit, approval or certification is not detrimental to the public health and welfare with respect to the criteria specified in these rules. However, the district commission may on its own motion question the applicant, the issuing agency, or other witnesses concerning the permit, approval or certification, and any party may challenge the presumption. If a party challenges the presumption, it shall state the reasons therefor and offer evidence at a hearing to support its challenge. Upon the rebuttal of the presumption, the applicant shall have the burden of proof under the relevant criteria and the permit, approval or certification shall serve only as evidence of compliance.

(1) In the case of permits, approvals or certifications issued by the Agency of Natural Resources, technical determinations of the Agency shall be accorded substantial deference by the district commission.

(2) In the case of presumptions provided in Rule 19(E), if the district commission concludes, following the completion of its own inquiry or the presentation of the challenging party's witnesses and exhibits, that undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the agency of natural resources relating to significant wetlands is likely to result, then the district commission shall rule that the presumption has been rebutted. Technical non-compliance with the applicable health, water resources and Agency of Natural Resources' rules shall be insufficient to rebut the presumption without a showing that the non-compliance will likely result in, or substantially increase the risk of, undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the agency of natural resources relating to significant wetlands.

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

(H) *Approvals*. As used in this rule, the terms "*permit*," "*approval*," and "*certification*" shall refer to any written document issued by the appropriate state agency attesting to a project's compliance with the regulations or statutes listed in section (E) of this rule. With respect to approvals identified in section (E)(1) of this rule, a commission may accept a "site and foundation approval" as establishing presumption if it determines that said

approval is based upon an evaluation by the Agency of Natural Resources of site characteristics and a specific waste disposal system plan.

(I) *Municipal presumptions*. The district commissions shall accept determinations issued by a development review board under the provisions of section 4420 of Title 24 with respect to municipal impacts under criteria 6, educational services; 7, municipal services; and 10, conformance with the municipal plan (10 V.S.A. § 6086(a)). These decisions must include findings of fact and conclusions of law demonstrating compliance or non-compliance with the relevant criteria of Act 250. Such determinations of a development review board, either positive or negative, under the provisions of section 4420 of Title 24, shall create a rebuttable presumption only to the extent that the impacts under the criteria are limited to the municipality issuing the decision. A development review board decision involving local Act 250 review of municipal impacts must include a notice that it constitutes a rebuttable presumption under the relevant criteria and that the presumption may be challenged in proceedings under 10 V.S.A. Chapter 151. See 10 V.S.A. § 6086(d). — Adopted April 7, 2006, eff. May 1, 2006; amended Sept. 17, 2007, eff. Oct. 3, 2007; amended September 13, 2013, eff. October 1, 2013.

HISTORY

Amendments—2013. Subsection (E)(1)(a): Substituted “wastewater system and potable water supply” for “potable water supply and wastewater system.”
Subsection (E)(3)(a): Substituted “wastewater system and potable water supply” for “potable water supply and wastewater system.”
Subsection (E)(5)(a): Added “permit, or approval under a general permit;” substituted “activities” for “uses;” substituted “I” for “One”; substituted “II” for Two;” substituted “wetland” for “wetlands;” substituted “or its associated buffer zone” for “or their buffer zones;” added “issued by the.”
Subsection (F)(2): Updated references to the Water Resources Panel to refer to the Agency of Natural Resources, in accordance with Act 138 of 2012.

Amendments—2007. Subsection (I): Substituted “4420” for “4449” following “provisions of Section” in the first and second sentences.

Rule 20 Information Required

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

(B) *Investigation*.

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

(2) The district commission may make reasonable inquiry as it finds necessary to make findings and conclusions as required; in this event the district commission may recess the proceedings or require such investigations, tests, certifications, witnesses, or other assistance as it deems necessary to evaluate the effects of the project under the criteria in question or any other issues before it. —Adopted April 7, 2006, eff. May 1, 2006.

Rule 21 Order of Evidence - Partial Review

(A) To avoid unnecessary or unreasonable costs, an applicant, upon notice and approval of a district commission, may offer evidence in support of or have the project reviewed with respect to any appropriate issue under the criteria or sub-criteria of the Act in any sequence approved by the district commission. However, such procedure shall not be permitted by the district commission if it works a substantial hardship or inequity upon other parties to the proceedings, will unduly delay final action on the application, or make comprehensive review of an application under applicable criteria impractical or unduly difficult. An applicant seeking to use this procedure shall notify the district commission and all parties entitled to receive notice, of his or her petition and the sequence and timing under which he or she intends to offer evidence or submit the project for review with respect to any appropriate issue under specified criteria or sub-criteria.

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

(C) In any proceeding under sections (A) or (B) of this rule, the district commission, shall, within 20 days of the completion of deliberations of appropriate issues under the criteria or subcriteria that are the subject of the proceeding, either issue its findings of fact, conclusions of law, and decision thereon, or proceed to a consideration of appropriate issues under the remaining criteria. The decision to issue a decision or proceed to the remaining criteria shall be in the sole discretion of the district commission. If the district commission first issues a partial decision under this rule, the decision must state which findings of fact support conclusions of law under the applicable criteria, and which findings of fact are preliminary in nature and thus do not support a conclusion of law.

(D) If the district commission decides to issue a partial decision and insofar as the applicant sustains his or her burden of proof or a party opposing the application fails to sustain its burden of proof as provided for in the Act under the applicable criteria, the district commission shall make findings of fact and conclusions of law including any conditions or terms to be imposed by the district commission. If the district commission is unable to make such findings of fact supporting a conclusion of law by reasons of inadequate evidence or information, it shall inform the applicant and all parties. Such findings of fact, conclusions of

law and any conditions or limitations shall remain in effect, pending issuance or denial of a permit under the Act, for a reasonable and proper term as determined by the district commission. Such findings of fact and conclusions of law may be subject to timely application for extension pursuant to Rule 35.

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

(F) A permit shall not be granted under this rule until the applicant has fully complied with all criteria and positive findings of fact and conclusions of law have been made by the district commission as required by the Act. If a master plan application has been presented and reviewed for an industrial park or other large project, the district commission may issue a master permit to the extent that the district commission has made positive findings of fact and conclusions of law under all criteria for any element or phase approved for construction and has imposed conditions as required by 10 V.S.A. Chapter 151. Subsequent phases may be reviewed and approved as amendments to the master permit in accordance with board rules and statutory provisions.

(G) These procedures are intended to minimize costs and inconvenience to applicants and shall be applied liberally by the district commission for that purpose consistent with the right of other parties and the requirements of law and any pertinent regulations. — Adopted April 7, 2006, eff. May 1, 2006; amended June 25, 2009, eff. July 10, 2009.

History

Amendments – 2009. Subsection (D): Added “Such findings of fact and conclusions of law may be subject to timely application for extension pursuant to Rule 35” after the last sentence.

SECTION C LAND USE PERMITS

Rule 30 Approval or Denial of Applications; Stay of Permit Issuance; Successive Applications

(A) *Issuance of decision*. The district commission shall, within 20 days of the completion of deliberations on an application, issue a decision approving, conditionally approving, or denying the application. The date of completion for deliberations shall be governed by 10 V.S.A. § 6085(f) and Rule 18(F). The decision on the application shall contain findings of fact and conclusions of law specifying the reasons for the decisions reached on all issues for which sufficient evidence was offered. If the application is approved, the decision shall also contain a land use permit in the name of the applicant, enabling the applicant to proceed with the development or subdivision in accordance with any stated terms and conditions.

(B) *Stay of permit issuance due to non-compliance*.

(1) Pursuant to 10 V.S.A. § 6083(g), a district commission, pending resolution of noncompliance, may stay the issuance of a permit or permit amendment if it finds, by clear and convincing evidence, that a person who is an applicant: 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 pending application; or, has one or more current violations of this chapter, or any rules, permits, assurances of discontinuance, court orders, or administrative orders related to Act 250.

(2) The permit or permit amendment may be stayed for an indefinite period of time, pending resolution of noncompliance, if the noncompliance is substantial and significantly affects the values that are to be protected under the criteria of Act 250. Any decision to issue a stay must follow a ten day comment period with written notice to the applicant and all parties. The final decision to issue a stay shall be in writing and may be subject to a motion to alter or appeal to the environmental court in accordance with the rules of the supreme court.

(C) *Successive Applications.* The district commission shall dismiss any application that involves substantially the same project as an earlier application that has been denied, when there has been no significant change in other facts or law that addresses all the grounds for denial. —Adopted April 7, 2006, eff. May 1, 2006; amended September 13, 2013, eff. October 1, 2013.

History

Amendments – 2013. Subsection (C): Added.

Rule 31 Reconsideration of Decisions (See also, Rule 3(B), for Reconsideration of Jurisdictional Opinions)

(A) *Motions to alter decisions*. Any party, or person denied party status, may file within 15 days from the date of a decision of the district commission one and only one motion to alter with respect to the decision, or with respect to the denial of party status. Within 15 days of the filing, parties may file a response to any motion to alter which has been timely filed. No party, or person denied party status, may file a motion to alter a district commission decision concerning or resulting from a motion to alter.

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

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

(3) The district commission shall act upon motions to alter promptly. The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion to alter. It is entirely within the discretion of the district commission whether or not to hold a hearing on any motion.

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

(B) *Application for reconsideration of permit denial.*

(1) *Procedure*. An applicant for a permit who has received a final denial of an Act 250 permit application from a district commission or a court may, within six months of the date of that decision, apply to the district commission for reconsideration pursuant to 10 V.S.A. § 6087(c).

(2) Scope of review.

(a) Review shall be limited to those aspects of the project which have been physically modified to address the grounds for denial noted in the prior permit decision. Relitigation of issues is not permitted, nor are changes in statute or regulation or other facts grounds for reconsideration.

(b) The district commission may expand its review beyond those aspects of the project which have been physically modified to address the grounds for denial noted in the prior permit decision where a change in circumstances that has occurred since the date of the prior permit decision may have a significant impact on any finding, conclusion, term or condition of the project's permit or may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10).

(c) The findings of the district commission in the original permit proceeding shall be entitled to a presumption of validity in the reconsideration proceeding, insofar as those findings are not affected by proposed modifications in the project or other relevant change in circumstances.

History

Amendments – 2013. Subsection (A)(3): Substituted “The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion to alter” for “The running of any applicable time in which to appeal to the environmental court or supreme court shall be terminated by a timely motion filed under this rule. The full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion. “

Subsection (B)(1): Substituted “who” for “which”

Subsection (B)(2)(a): Added

Subsection (B)(2)(b): Substituted “expand” for “but need not necessarily, limit;;” deleted “scope of;” added “beyond;” added “physically;” substituted “address the grounds for denial noted in the prior permit decision where a change in circumstances that has occurred since the date of” for “correct deficiencies noted in;” added “may have a significant impact on any finding, conclusion, term or condition of the project's permit or may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§6086(a)(1) through (a)(10).”

Amendments – 2009. Subsection (A): Substituted “or with respect to the denial of party status” for “or denial of party status in the first sentence; inserted “Within 15 days of the filing, parties may file a response to a motion to alter which has been timely filed” after the first sentence.

Subsection (B)(1): Substituted “received a final denial of an Act 250 permit application” for “been denied” in the first sentence; inserted “or a court” after district commission in the first sentence; substituted “pursuant to 10 V.S.A. § 6087(c)” for “of the application.” and “The applicant for reconsideration shall certify by affidavit in the application that notice and copies of the application have been forwarded to all parties of record, and that the deficiencies in the application which were the basis of the permit denial have been corrected. The district commission shall hold a new hearing upon 25 days notice to the parties. The hearing shall be held within 40 days of receipt of the request for reconsideration which has been deemed complete.”

Subsection (B)(2): Deleted “or application” after “the project” in the first sentence; substituted “or other relevant changes” for “However, those presumptions may be rebutted by the district commission or by any party upon a showing that the circumstances of the application have changed, or upon a review of evidence not previously presented” in the second sentence.

Rule 32 Duration and Conditions of Permits

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

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

The board or district commission may, as it finds necessary and appropriate, may require a permittee to file affidavits of compliance with respect to specific conditions of a permit at reasonable intervals. Failure to submit such affidavits shall be cause for a petition for revocation of the permit to be filed with the environmental court by the board.

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

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

(1) *Project completion date*. In determining the dates for phased or full completion of construction of improvements for development or subdivision, the district commission shall consider the impacts of project development under the criteria of the Act, and shall give due regard to the economic considerations attending the proposed development or subdivision (such as the type and terms of financing, and the cost of development or subdivision) and the period of time over which the development or subdivision will take place. If a project, or portion of a project, is not completed by the specified date, such project or portion may be reviewed for continuing compliance with the criteria of 10 V.S.A. § 6086(a). In any such review, due consideration shall be given to fairness to the parties involved, competing land use demands for available infrastructure, and cumulative impacts on the resources involved. If completion has been delayed by litigation, proceedings to secure other permits, proceedings to secure title through foreclosure, or because of market conditions, the district commission shall provide that the completion dates be extended for a reasonable period of time during which construction can be completed. 10 V.S.A. § 6090(b)(1).

(2) *Permit expiration date*. When an expiration date is to be issued, the duration of a permit shall be for a specified period designated as a reasonable projection of time during which the land will remain suitable for the use as contemplated in the application and shall at a minimum extend through that time period over which the permit holder or

successors in interest will be responsible and accountable for compliance with time-specific permit conditions, including proper and timely completion of the project**,** and any reclamation of the project lands including post closure monitoring of impacts under the criteria of the Act. During its term, a permit shall run with the land. —Adopted April 7, 2006, eff. May 1, 2006.

Rule 33 Recording of Permits

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

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

(C) *Permit transfers*.

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

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

(3) Notwithstanding the provisions of paragraphs (C)(1) and (2), above, all permits shall run with the land, and shall be enforceable against the permit holder and all successors in interest, whether or not the permit has been recorded in the land records. —Adopted April 7, 2006, eff. May 1, 2006.

Rule 34 New Permit Applications and Permit Amendments: Substantial and Material Change

A) *Material change to a permitted development or subdivision.* A permit amendment shall be required for any material change to a permitted development or subdivision, or administrative change in the terms and conditions of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited. Applications for amendments shall be on forms provided the board, and shall be filed with the district commission having jurisdiction over the project. Upon request, the district coordinator will expeditiously review a proposed change and determine whether it would constitute a material change to the project, or whether it involves administrative changes that may be subject to simplified review procedures pursuant to 10 V.S.A. § 6025(b)(1). Continuing jurisdiction over all development and subdivision permits is vested in the district commissions.

(B) *Substantial change to a pre-existing development or subdivision*. If a change to a pre-existing development or subdivision involves a substantial change thus implicating Act 250 jurisdiction, it shall be subject to a new application process including the notice and hearing provisions of 10 V.S.A. §§ 6083, 6083a, 6084 and 6085 and the related provisions of these rules.

(C) *Material change to a permitted project or existing permit*. If, in the judgment of the district coordinator, a proposed amendment involves a material change to a permitted project or permit, it may be subject to a new application process including the notice and hearing provisions of 10 V.S.A. §§ 6083, 6083a, 6084 and 6085 and related provisions of these rules or the following simplified review procedures, at the discretion of district commission:

(1) *Applications*. Minor amendment applications shall be processed in accordance with Rule 10 and Rule 51. The applicant shall file an original and three copies of the application, along with the fee prescribed by 10 V.S.A. § 6083a with the appropriate district commission.

(2) *Review procedures*. Applications processed under this section shall be subject to the distribution, posting and publication requirements of 10 V.S.A. § 6084.

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

(4) *Effective date*. If no hearing is requested or ordered on a material change amendment subject to Rule 51, the proposed amendment will become effective when

all necessary certifications or other permits specified in the findings of fact are obtained, and the amendment is recorded in the land records of the municipality.

(D) *Administrative amendments to a permit*.

(1) A district commission may authorize a district coordinator to amend a permit without notice or hearing when an amendment is necessary for record-keeping purposes or to provide authorization for minor revisions to permitted projects raising no likelihood of impacts under the criteria of the Act. Applications processed under this section shall be exempt from the distribution, posting and publication requirements of 10 V.S.A. § 6084 and sections (E) through (G) of Rule 10 except that all parties of record and current adjoining landowners shall receive a copy of any administrative amendment. The chair of the district commission may authorize a waiver of personal notice of the issuance of the administrative amendment to adjoining property owners by the district commission provided that such waiver is based on a determination that the adjoining property owners subject to the waiver reasonably could not be affected by the proposed administrative amendment and that service to each and every property owner by the district commission would constitute a significant administrative burden without corresponding benefit.

(2) In particular, administrative amendments may be authorized to transfer a previously unrecorded permit to a new landowner, to incorporate a revision in a certification of compliance, or approve minor changes to a permitted project when such revisions will not have any impact on the criteria of the Act or any finding, term, conclusion or condition of prior permits. Prior to the filing of an appeal to the environmental court pursuant to Chapter 220 of Title 10, any party, affected adjoining landowner, or prospective party shall file a motion to alter relating to any contested administrative amendment pursuant to Rule 31(A). Denial of a motion to alter an administrative amendment may be appealed to the court pursuant to Chapter 220 of Title 10.

(E) *Balancing Flexibility and Finality of Permit Conditions: (Stowe Club Highlands Analysis)*

(1) In reviewing any amendment application, the district commission shall first determine whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit. This determination shall be made on a case-by-case basis.

(a) If the applicant does not propose to amend a permit condition that was included to resolve an issue critical to the issuance of the permit, the district commission's inquiry under this rule shall end, and it shall not weigh finality and flexibility pursuant to this rule or prior case precedent.

(b) An application which seeks to amend project plans, exhibits, representations by the applicant for the applicable permit, findings, or conclusions which have been incorporated into the permit through a specific or general condition, may constitute an application to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.

(2) In reviewing an application seeking to amend a condition that was included to resolve an issue critical to the issuance of the applicable permit, the district commission shall consider whether the permittee is merely seeking to relitigate the permit condition or to undermine its purpose and intent.

(3) If the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of a permit and is not merely seeking to relitigate the permit condition, the district commission shall apply the balancing test set forth in subsection (4) below. If the district commission finds that the need for finality outweighs the need for flexibility, the district commission shall deny the permit amendment application. In the alternative, the district commission may rule in the favor of flexibility.

(4) In balancing flexibility against finality, the district commission shall consider the following, among other relevant factors:

(a) changes in facts, law or regulations beyond the permittee's control;

(b) changes in technology, construction, or operations which necessitate the need for the amendment;

(c) other factors including innovative or alternative design which provide for a more efficient or effective means to mitigate the impact addressed by the permit condition;

(d) other important policy considerations, including the proposed amendment's furtherance of the goals and objectives of duly adopted municipal plans;

(e) manifest error on the part of the district commission, the environmental board, or the environmental court in the issuance of the permit condition; and

(f) the degree of reliance on prior permit conditions or material representations of the applicant in prior proceeding(s) by the district commission, the environmental board, the environmental court, parties, or any other person who has a particularized interest protected by 10 V.S.A. Ch. 151 that may be affected by the proposed amendment. —Adopted April 7, 2006, eff. May 1, 2006; amended Sept. 17, 2007, eff. Oct. 3, 2007; amended, September 13, 2013, eff. October 1, 2013.

HISTORY

Amendments—2013. Subsection (A): Added “A permit” to the first sentence; added the second sentence; deleted references to the Land Use Panel, which was eliminated by Act 11 of 2013.

Subsection (C)(1): Moved the phrase “with the appropriate district commission” to the end of the second sentence; substituted “three” for “five” in the second sentence.

Amendments—2007. Subsection (E): Amended generally.

Rule 35 Renewal of Permits

(A) *Renewal required*. For any permit, or partial findings of fact and conclusions of law, which are scheduled to expire under Rule 32(B) or Rule 21 of these rules, renewal shall be required for any extension beyond the expiration date.

(B) *Permit renewal applications*. Applications for permit renewals shall be on forms provided by the board, and shall be filed with the district commission having jurisdiction over the project. The district commission will expeditiously review a proposed renewal and determine whether it would involve significant impacts under the criteria and upon the values sought to be preserved by the Act. Factors taken into consideration will include: whether the project has been constructed, operated, and maintained in conformance with the terms and conditions of the permit; whether the extension also involves other amendments to the project; whether the project involves continuing operations that are likely to have demonstrable impacts under the criteria of the Act beyond those considered during previous review of the project; and whether the project is one for which a strictly limited term of operation was anticipated in the original permit. —Adopted April 7, 2006, eff. May 1, 2006, amended June 25, 2009; eff. July 10, 2009.

History

Amendments – 2009. Added “or Findings of Fact” to title.
Subsection (A): Inserted “or partial findings of fact and conclusions of law”; substituted “which are scheduled to expire” for “expires”; inserted “or Rule 21” after “Rule 32(B)”; deleted “of the permitted use”.
Subsection (B): Deleted reference to the land use panel, which was eliminated effective July 1, 2013 by Act 11 of 2013.

Rule 37 Certification of Compliance

Any person holding a permit may at any time petition the district commission issuing the permit for a certification of compliance with the terms and conditions that may be imposed by the permit. Under usual circumstances, a person may petition for a certification upon completion of the construction of a development or division of land that completion or division has been accomplished in compliance with the permit. Thereafter, if the permit establishes terms and conditions regarding operation and/or maintenance of a development or subdivision, the person holding the permit may from time to time petition the district commission for certification of compliance. A certification shall be a matter of public record and shall estop any claim that the construction of a development or division of land or the operation and/or maintenance thereof do not comply with the provisions of the permit unless fraud or misrepresentation is shown. The notice and hearing requirements of the act shall be complied with when a petition for certificate of compliance is filed with the district commission. —Adopted April 7, 2006, eff. May 1, 2006.

Rule 38 Abandonment of Permits

(A) *Involuntary*. A permit shall be considered to have been abandoned, unless construction has commenced and substantial progress toward completion has occurred within the three year period following the date of issuance, unless construction is delayed by litigation or proceedings to secure other permits or to secure title through foreclosure. In the initial proceeding or in subsequent proceedings on an application, the district commission may provide for a period longer than three years. See, 10 V.S.A. § 6091(b).

(B) *Voluntary.* A permittee may voluntarily abandon a permit for a project at any time prior to the commencement of construction on the project. A permit cannot be abandoned once commencement of construction has occurred.

(C) *Initiation of proceeding*. A petition to declare a permit abandoned may be filed by the permittee, by any person who was a party to the application proceedings, or by any person entitled to party status under 10 V.S.A. § 6085(c). The district commission having jurisdiction over a permit may also, on its own motion, initiate an abandonment proceeding.

(D) *Procedure*. Abandonment determinations will be made by the district commission retaining jurisdiction over the permit. The proceeding will be treated as a contested case. Petitions shall be heard and disposed of promptly. The district commission shall provide at least 20 days' notice of the proceeding to the permit holder, to all persons who were parties to the permit proceedings, and to the governmental statutory parties listed in Rule 14(A). If the permittee does not request the right to be heard, the district commission may declare the permit void without a hearing.

(E) *Effect of abandonment.* The abandonment of a permit or permit amendment shall lift Act 250 jurisdiction that attached to any land as a result of such permit . Act 250 jurisdiction that exists on such land by virtue of another permit is not lifted because of such abandonment.

(F) *Recording.* In the case of an action for voluntary abandonment under subsection (B) if this rule or an action for involuntary abandonment under subsection (C) if this rule, the person who initiated the action shall file any decision which results in the abandonment of a permit in the land records in accordance with Rule 33(A) of these Rules. —Adopted April 7, 2006, eff. May 1, 2006; amended, September 13, 2013, eff. October 1, 2013.

History

Amendments – 2013. Subsection (A); Added "*Involuntary"* to the section description; deleted "Non-use of a permit for a period of three years shall constitute an abandonment of the development or subdivision and the associated land use permit. For the permit to be "used" in the first sentence; added "A permit shall be considered to have been abandoned, unless;" substituted "has' for "must have" in two instances in the first sentence; added "following the date of issuance" to the first sentence; added "on an application" and deleted "in which a permit must be used" in the third sentence.

Subsection (B): Added

Subsection (C) [formerly Subsection (A)(1)]: substituted "abandoned" for "void for non-use" in the first sentence; added "the permittee" and "or by any person entitled to party status under 10 V.S.A. § 6085(c)" and deleted "by a local or regional planning commission, or by any municipality or state agency having an interest potentially affected by the development or subdivision" in the first sentence; substituted "an abandonment proceeding" for "a review of its use " in the second sentence..

Subsection (D) [formerly Subsection (A)(2)]: Substituted "abandonment determinations" for "Determinations of use or abandonment" in the first sentence; substituted "permitee" for "permit holder" in the last sentence.

Subsection (E): Added

Subsection (F): Added

SECTION D COURT ORDERS AND STAYS

Rule 40 Filing of Stipulations and Court Orders

A permittee shall file with the district commission any stipulation, administrative decision or court order resulting from the appellate review. The district commission shall incorporate, through an administrative amendment, any such court document disposing of the issues on appeal relating to the criteria of Act 250 or the underlying district commission decision. There shall be no cost associated with the issuance of the administrative amendment but the permittee shall be responsible for municipal recording costs. —Adopted June 25, 2009, eff. July 10, 2009.

Rule 42 Stay of Decisions

(A) *Filing of Stay Petition: District Commission*. Prior to the filing of a motion to alter or an appeal of a district commission decision, any aggrieved party may file a petition for a preliminary, interim or permanent stay of a district commission decision pursuant to 10 V.S.A. § 6086(f). Following any appeal of the district commission decision, such jurisdiction for granting or continuing a stay transfers to the environmental court. Any such petition filed with the district commission must be filed with the court following the appeal. Any stay request submitted to the district commission must include a written motion identifying the order or portion thereof for which a stay is sought and state in detail the grounds for the request. The chair of the district commission may act on behalf of the district commission in issuing a preliminary stay which shall be effective for a period not to exceed 30 days. Any preliminary stay shall be reviewed by the district commission, as appropriate, within that 30 day period. A party may file a motion to dissolve a preliminary stay within 10 days of its issuance.

(B) *Seven (7) Day Automatic Stay of District Commission Decision*. Upon the filing of a petition for a stay with a district commission, along with a certificate of service certifying the date that a copy of the stay petition was served on the permittee and a declaration of intent to file a motion to alter with the district commission or appeal the permit to environmental court, the decision of the district commission is automatically stayed for a period of seven (7) days. The first day of the automatic seven (7) day stay is the day of service to the permittee, that being the day the permittee or permittee's agent receives the

petition for stay. Following the receipt of a request for stay, associated certificate of service, and declaration of intent to file a motion to alter or appeal, the district commission shall send notice of such petition to all parties to the proceeding. The automatic seven (7) day stay shall not extend beyond the 30-day appeal period unless a valid appeal has been filed with the environmental court. The automatic seven (7) day stay petition may only be filed once during the 30-day appeal period. A district commission shall not stay construction authorized by a permit processed under the board's minor application procedures.

(C) *Merit Review and Terms of Interim or Permanent Stay Petition as Determined by the District Commission*. In deciding whether to grant or deny an interim or permanent stay beyond the automatic seven (7) day stay, the district commission shall consider the hardship to the parties, the impact, if any, on the values sought to be protected by Act 250, and any effect upon public health, safety or general welfare. The district commission may issue an interim or permanent stay containing such terms and conditions, including the filing of a bond or other security, as it deems just.—Adopted April 7, 2006, eff. May 1, 2006.

SECTION E SUBSTANTIVE REVIEW - SPECIAL PROCEDURES

Rule 51 Minor Application Procedures

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

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

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

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

(4) the extent to which the district commission is able to draft proposed permit conditions addressing potential areas of concern; and

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

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

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

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

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

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

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

(c) any person as defined in 10 V.S.A. § 6085(c)(1) may request a hearing; and

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

(e) any hearing request by a person eligible for party status pursuant to 10 V.S.A. § 6085(c)(1)(E) must include a petition for party status under these rules.

C) *No hearing requested*. If no hearing is requested by a party by right or a person eligible for party status pursuant to 10 V.S.A. § 6085 (c)(1), the proposed permit may be issued with any necessary modifications unless the district commission determines to schedule a hearing, on its own motion. The district commission may delegate the authority to sign minor permits which have been approved by the district commission to the district coordinator or the assistant district coordinator;

(D) *Hearing requested*. Upon receipt of a request for a hearing, the district commission shall determine whether or not substantive issues have been raised under the criteria and shall convene a hearing if it determines that substantive issues have been raised. If the district commission determines that substantive issues have not been raised, the district commission may proceed to issue a decision without convening a hearing. If a hearing is convened, it shall be limited to those criteria or sub-criteria identified by those afforded party status pursuant to 10 V.S.A. § 6085(c)(1), or by the district commission unless the district commission, at its discretion, determines before or during the hearing, that additional criteria or subcriteria should be addressed.

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

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

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

(G) *Material representations*. Upon issuance of a land use permit under minor application procedures, the permit application and material representations relied on during the review and issuance of a district commission decision shall provide the basis for determining future material changes to the approved project and for initiating enforcement actions. – Adopted April 7, 2006, eff. May 1, 2006; amended June 25, 2009, eff. July 10, 2009; amended September 13, 2013, eff. October 1, 2013.

HISTORY

Amendments – 2013. Subsection (B)(3)(e): Substituted "6085" for "8085".
Subsection (C): Substituted "6085" for "8085".
Subsection (D): Substituted "6085" for "8085".
Subsection (G): Deleted "substantial and"

Amendments – 2009. Subsection (B)(3): Substituted "any person as defined in 10 V.S.A. § 6085(c)(1)" for "statutory parties, adjoiners, potential parties under Rule 14(B) and the district commission, on its own motion" in subsection (c); substituted "person eligible for party status pursuant to 10 V.S.A.§ 6085(c)(1)(E)" for "non-statutory party" in subsection (e); substituted "these rules" for "the rules of the board" in subsection (e).

Subsection (C): Substituted "a party by right or a person eligible for party status pursuant to 10 V.S.A. § 6085(c)(1)" for "a statutory party, adjoining property owner or potential party under Rule 14(A)(6), or by the district commission on its own motion" in the first sentence; inserted "unless the district commission determines to schedule a hearing on its own motion" in the first sentence.

Subsection (D): Substituted "those afforded party status pursuant to 10 V.S.A. § 6085(c)(1) for "a statutory party, successful petitioner for party status" in the third sentence.

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

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

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

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

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

(C) *Jurisdictional Opinion*. Prior to submission of an application, a qualified purchaser must obtain a jurisdictional opinion from the appropriate district coordinator in order to determine if the subdivided lot in question is subject to Act 250 jurisdiction. The potential applicant must provide the district coordinator with all relevant information including signed affidavits on forms prepared by the board. If the opinion concludes that Act 250 jurisdiction does exist and one or more qualified purchasers have been identified, pre-application assistance will then be provided by the district coordinator.

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

(E) *Application Procedure*.

(1) For the sake of expedient review and an equitable sharing of costs associated with preparing application materials, all purchasers seeking relief within a subdivision may be required to become co-applicants by the district commission.

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

(3) The district coordinator will review the application for completeness within five working days of receipt of the application. The applicant will be notified if there are deficiencies that need to be corrected. Once the application has been accepted by the district coordinator, procedural requirements for notice and hearings will be followed as set forth in 10 V.S.A. Chapter 151 and these rules. —Adopted April 7, 2006, eff. May 1, 2006, amended June 25, 2009, eff. July 10, 2009.

Rule 70 Utility Line Jurisdiction, Installations and Applications

(A) "*Electrical lines, natural gas distribution lines, communication lines, and related facilities, directly associated and ancillary to those lines,"* means any wire, conduit, and physical structure or equipment, whether above, below, or on ground, used for the purpose of transmitting, distributing, storing, or consuming of electricity, natural gas**,** or communications, but shall not include: (1) a line or facility that requires a certificate of public good pursuant to 30 V.S.A. § 248; or, (2) a "broadcast or communication support structure" and any improvements ancillary to the support structure subject to the jurisdiction of Act 250 pursuant to 10 V.S.A. § 6001c or 10 V.S.A. § 6001(26).

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

(1) Acreage shall be calculated by aggregating the total area of all sections of new corridor, including all sections of existing corridor to be substantially changed, which area shall be calculated by multiplying the length of each section by the width of the associated right(s) of way in that section. For the purpose of calculating project acreage, right-of-way width shall be: twenty (20) feet for electrical distribution lines or projects involving both electrical and communication lines, ten (10) feet for natural gas distribution lines, ten (10) feet for lines to be used exclusively for communications, or the maximum width of the area to be physically altered, whichever is greater. Jurisdiction will apply if a project exceeds the acreage thresholds set forth above.

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

(b) "*Existing corridor"* shall mean a right-of-way cleared and in use for electrical distribution, communication lines, natural gas distribution lines and related facilities.

(c) "Substantial change" shall be as defined in Rule 2(C**)**(7) of these rules and shall include, but not be limited to, the addition above the ground of more than ten feet in height to a pole, including the length of any apparatus attached to the pole to the extent such apparatus extends vertically above the pole.

(d) Lines, facilities or portions thereof to be constructed underground shall not be used for acreage calculation, provided that: the underground line or facility is to be reseeded or reforested; no portion of the underground line is located above the elevation of 2,500 feet; and no portion of the underground line or facility is located in a rare or irreplaceable natural area, or land which is or contains a natural resource referred to in 10 V.S.A. § 6086(a)(1)(E) (streams), (1)(F) (shorelines), (1)(G) (Class One or Class Two wetlands), (8)(A) (necessary wildlife habitat or endangered species), or (9)(B) (primary agricultural soils). In addition, a line or facility or portion thereof to be constructed underground in a scenic area shall be used for acreage calculation to the extent that such line or facility will be located on land not already cleared prior to commencement of construction of the line or facility. For purposes of this subparagraph, "scenic area" means an area formally designated as scenic by the State of Vermont or the applicable regional or municipal plan.

*(*e) In the event that a project is, or is to be, completed in stages, all new corridor and all existing corridor to be substantially changed that is involved in the entire project shall be included for the purpose of determining jurisdiction. As used in Rule 70(B), the term "project" shall mean adjacent lines, facilities, or portions thereof to be constructed in accordance with a plan to achieve one or more objectives identified or reasonably identifiable by the utility at the time construction is commenced. Other construction, not identified or reasonably identifiable at the time the project is commenced, shall not be considered part of such project.

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

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

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

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

(3) All utilities undertaking the construction of improvements for electrical distribution, communication lines, natural gas distribution line or related facilities which improvements are considered to be in an existing corridor, or to be exempt under subdivision Rule 70(B)(2), shall notify the district environmental commission in which district the project predominates and provide sufficient information so that a jurisdictional opinion may be rendered if deemed necessary by the district coordinator. However, notification shall be required only if the construction considered to be in an existing corridor or to be exempt under subdivision Rule 70(B)(2) exceeds the applicable acreage threshold. Prior notification of projects considered exempt under subdivision Rule 70(B)(2)(b) shall not be required; however, the notification required by this rule shall be made upon cessation of the emergency.

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

(C) *Installations.*

(1) Underground installation should be installed whenever feasible.

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

(3) Installation shall be such as to not have an undue adverse effect on the scenic and aesthetic qualities and character of the area. In the district commission's analysis of 10 V.S.A. § 6086(a)(8)(aesthetics), due consideration shall be given to making the line or facility inconspicuous; screening it from view; lines of sight from public highways, and residential and recreational areas; height, number, color, type, and material of poles, wires, cable, and other apparatus; width and degree of clearance of natural growth and cover; encroachment on open spaces, historic sites, rare and irreplaceable natural areas, and conspicuous natural out-cropping on hillsides and ridgelines of exposed natural features of the countryside.

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

or utilities proposing to construct or use such line, facility or facilities shall be identified in the application.

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

(2) Plan showing:

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

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

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

(3) Specifications:

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

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

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

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

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

(4) New corridor: for projects involving the construction in, or relocation of a line or facility to, new corridor as defined in Rule 70(B)(1)(a), an explanation of why existing corridor cannot or should not be used.

(5) Description: a description of the area adjacent to the line or facility, including the type and size of existing buildings and the height and extent of forest cover and open space, and what measures, if any, have been or will be taken to minimize cutting and trimming of forest canopy.

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

(F) *Involved Land*. For the purposes of electrical distribution, communication lines, or natural gas distribution lines and related facilities, only the acreage identified and calculated as set forth in Rule 70(B) shall be considered involved land.

HISTORY

Amendment – 2013. Subsection (B)(1)(c): Amended reference to Act 250 Rule 2(C**)**(7) [former reference Rule 2(G))

Amendment – 2009. Subsection (A): Inserted "directly associated and ancillary to those lines" after "related facilities"; substituted "a 'broadcast or communication support structure' and any improvements ancillary to the support structure subject to the jurisdiction of Act 250 pursuant to 10 V.S.A. § 6001c or 10 V.S.A. § 6001(26)" for "a 'telecommunication facility' as defined at 10 V.S.A. § 6001(26)" after (2).

Subsection (B): Inserted "directly associated and ancillary to those lines" after "related facilities" in the first sentence.

Rule 71 Jurisdiction over Trails

(A) When jurisdiction over a trail has been established pursuant to 10 V.S.A. § 6001((3)(A), such jurisdiction shall extend only to the trail corridor and to any area directly or indirectly impacted by the construction, operation or maintenance of the trail corridor. The width of the corridor shall be ten feet unless the Commission determines that circumstances warrant a wider or narrower corridor width.

(B) Except in the case of construction on state lands which are subject to an independent review of environmental impacts by a state agency, or construction of a trail which is recognized as a trail within the Vermont Trails System pursuant to 10 V.S.A. Ch. 20, when the construction of improvements for a trail is proposed for a project on both private and public land and for both a private and governmental purposes and the portion of the project on private land reaches the threshold for jurisdiction under 10 V.S.A. § 6001(3)(A)(i) or (ii), as applicable, then the portion of the project on public land shall also be subject to jurisdiction under 10 V.S.A. Ch. 151, even if it would otherwise not trigger jurisdiction under 10 V.S.A. § 6001(3)(A)(v) or Rule 2(C)(5)(b) of these Rules. -- Adopted September 13, 2013, eff. October 1, 2013.

Added 2013.

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