ACT 250

Vermont's Land Use and Development Law

ENVIRONMENTAL BOARD RULES

Amended Effective September 1, 1984

APA-4A

VERMONT ADMINISTRATIVE RULE
ADOPTING PAGE

PLEASE DON'T WRITE IN THIS SPACE:

Effective Date:

Expiration Date:

1. TITLE OR SUBJECT: Rules of the Environmental Board

2. AGENCY: Vermont Environmental Board

3. TYPE OF RULE

Proposed Rule

X Adopted Rule

Emergency Rule

4. AGENCY'S REFERENCE NUMBER (If any): 83-B

5. EFFECT ON EXISTING RULES: Current procedural rules are amended generally to: 1) simplify some Act 250 review procedures; 2) reorganize current rules and clarify existing procedures; 3) clarify jurisdiction to reflect statutory changes and court decisions; 4) amend certain existing practices.

6. STATUTORY AUTHORITY:
10 V.S.A. §§6025, 6083, 6086, and 6090
3 V.S.A. §§806, 808 and 831

Action 1. Rule 2(A), "Definitions" - "Development," is amended by changing sections 2(A)(3) and 2(A)(5) and by adding sections 2(A)(7) and 2(A)(8).

Action 2. Rule 2(B), "Definitions" - Subdivision," is amended by changing the initial paragraph and section 2(B)(1).

Action 3. Rule 2(C), "Definitions" - "Commencement of Construction," is amended by adding the word "partition."

Action 4. Rule 2(D), "Definitions" - "Construction of Improvements," is amended by general revision.

Action 5. Rule 2(J), "Definitions" - "Lot" is amended.

Action 6. Rule 2(N), "Definitions" - "Pre-existing subdivision," is added.

Action 7. Rule 2(O), "Definitions" - "Pre-existing Development," is added.

Action 8. Rule 2(P), "Definitions" - "Material Change," is added.

Action 9. Rule 2, "Definitions" is reorganized in alphabetical order.

Action 10. Rule 3, "Rulemaking, Advisory Opinions and Declaratory Rulings," is amended by changing sections 3(C) and 3(D).

Action 11. Rule 10, "Permit Applications," is amended by changing section 10(A).

Action 12. Rule 11, "Fees," is amended by changing sections 11(A) and 11(B).

Action 13. Rule 13, "Hearing Schedules," is amended by changing sections 13(A) and 13(B) and adding section 13(C).

Action 14. Rule 16, "Pre-hearing Conferences," is amended by re-lettering Section 16(B) as Section 16(C) and adding a new Section 16(B).

Action 15. Rule 17, "Evidence at Hearings," is amended by changing Section 17(A), and re-lettering Section 17(B) as 17(C), and adding new Sections 17(B), 17(D) and 17(E).

Action 16. Rule 18, "Conduct of Hearings," is repealed in its entirety and a new Rule 18 with the same title, divided into Sections 18(A) through 18(E), is adopted.

Action 17. Rule 19, "Compliance with Other Statutes - Rebuttable Presumptions," is repealed in it entirety and a new Rule 19 with the same title, divided into sections 19(A) through 19(G), is adopted.

Action 18. Rule 20, "Information Required - Independent Investigations," is amended by changing Sections 20(A), 20(B), and 20(C).

Action 19. Rule 21, "Order of Evidence - Partial Review," is amended by changing Section 21(A), adding a new Section 21(B) and relettering existing Section 21(B) as Section 21(C).

Action 20. Rule 30, "Approval or Denial of Applications," is amended by changing Section 30(A), repealing existing Section 30(B) and adopting a new Section 30(B), and repealing Sections 30(C), 30(D) and 30(E).

Action 21. A new Rule 31, "Reconsideration of Permit Decisions," is adopted, divided into Sections 31(A) and 31(B).

Action 22. Rule 32, "Duration and Conditions of Permits," is amended by changing Section 32(A), adding existing Section 32(B) to Section 32(A), adding a new Section 32(B) and repealing Sections 32(C) and 32(D).

Action 23. Rule 33, "Recording of Permits," is amended by changing the existing Rule and lettering it Section 33(A), and by adding new Sections 33(B) and 33(C).

Action 24. A new Rule 34, "Permit Amendments," is adopted, divided into Sections 34(A) through 34(D).

Action 25. A new Rule 35, "Renewal of Permits," is adopted, divided into Sections 35(A) through 35(D).

Action 26. Rule 38, " Revocation of Permits," is amended by changing the title to "Revocation and Abandonment of Permits," by changing the existing Rule and lettering it Section 38(A), and by adding a new Section 38(B).

Action 27. Rule 40, "Appeals," is amended by changing Section 40(A) and by repealing Section 40(E).

Action 28. A new Rule 42, "Stay of Decisions," is adopted.

Action 29. A new Rule 43, "Appeals to the Board Before Final Decision of District Commissions," is adopted, divided into Sections 43(A) through 43(C).

Action 30. A new Rule 51, "Minor Application Procedures," is adopted, divided into Sections 51(A) and 51(B).

INDEX OF ENVIRONMENTAL BOARD RULES
EFFECTIVE SEPTEMBER 1, 1984

Rule 1. Description of the Organization

(A) The environmental board and district commissions were established by Act 250 of the acts of the adjourned session of the 1969 General Assembly of the state of Vermont (Chapter 151 of Title 10).

(B) For administrative purposes the state is divided into nine districts. Each district has a three member commission, appointed by the governor, which serves as a quasi-judicial body with the authority to determine whether and under what conditions a land use permit may be issued for development or subdivision of land subject to the jurisdiction of Act 250.

(1) Administrative support for the commissions is provided by a district coordinator. The location and telephone number of each administrative office is listed in the telephone directory under "Vermont, State of: ENVIRONMENTAL BOARD, District Environmental Commissions." (Amended, effective March 11, 1982).

(C) The environmental board consists of nine members appointed by the governor. Administrative support for the board consists of the board chairman and an executive officer with offices in Montpelier, Vermont. The board has the following functions:

(1) To serve as a quasi-judicial appellate body to hear appeals from commission decisions, with the authority to determine whether and under what conditions a land use permit may be issued for a development or subdivision of land subject to the jurisdiction of Act 250;

(2) To adopt an interim land capability and development plan, a capability and development plan, and a land use plan;

(3) To prepare and adopt rules to interpret and carry out the provisions of Act 250;

(4) To act upon petitions for declaratory rulings concerning the applicabilities of any statutory provision, or any rule or order of the board (Added, effective March 11, 1982);

(5) To provide for the fair and efficient management of the permit process through the chairman of the board and the executive officer and through the issuance of guidelines for program administration (Added, effective March 11, 1982);

(6) To enter into inter-agecny agreements for the administration and enforcement of the permit process (Added, effective March 11, 1982);

(7) To initiate legal proceedings to prevent, restrain, correct or abate any violation of Act 250, these Rules, or any permit lawfully issued thereunder (Added, effective March 11, 1982).

Rule 2. Definitions

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

(1) Any construction of improvements, for any purpose, above the elevation of 2500 feet;

(2) The construction of improvements for any commercial or industrial purpose, including commercial dwellings, which is located on a tract or tracts of land of more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws, this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres. This jurisdiction does not apply to construction for farming, logging, or forestry purposes below the elevation of 2,500 feet. In determining the amount of land, the area of the entire tract or tracts of involved land owned or controlled by a person will be used (Amended, effective March 11, 1982);

(3) The construction of a housing project or projects such as cooperatives, apartments, condominiums, detached residences, construction or creation of mobile home parks or trailer parks, or commercial dwellings with ten or more units constructed or maintained on a tract or tracts of land owned or controlled by a person within a radius of five miles of any point on any involved land within any period of time after June 1, 1970;

(4) The construction of improvements for state, county or municipal purposes, on a tract or tracts of land

involving more than ten acres of land. The computation of involved land shall include the land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that a project is incidental to or a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction (Amended, effective March 11, 1982);

(5) Any construction of improvements which will be a substantial change of a pre-existing development, and any material change to an existing development over which the board or a district commission has jurisdiction;

(6) The construction of improvements for a road or roads, incidental to the sale or lease of land, to provide access to or within a tract of land of more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws, this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres. For the purpose of determining jurisdiction, any parcel of land which will be provided access by the road is land involved in the construction of the road. This jurisdiction shall not apply unless the road is to provide access to more than five parcels or is to be more than 800 feet in length. For the purpose of determining the length of a road, the length of

all other roads within the tract of land constructed within any continuous period of ten years commencing after the effective date of this rule shall be included (Amended, effective March 11, 1982).

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

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

(B) "Subdivision" means a person's partitioning or dividing a tract or tracts of land into ten or more lots including all other lots which that person has created through subdivision within a five mile radius of any point of subdivided land, within any continuous period of ten years after April 4, 1970. Subdivision shall also mean any material change of an existing subdivision over which a district commission or the board has jurisdiction; and any substantial change to a pre-existing subdivision. A subdivision shall be deemed to have been created with the first of any of the following events:

(1) The sale or offer to sell or lease the first lot within a tract or tracts of land with an intention to sell, offer for sale, or lease 10 or more lots. A person's intention to create a subdivision may be inferred from the existence of a plot plan, the person's statements to financial agents or potential purchasers, or other similar evidence;

(2) The filing of a plot plan on town records;

(3) The sale or offer to sell or lease the tenth lot of a tract or tracts of land, owned or controlled by a person, when the lot is within a radius of five miles of any point on any other lot created by that person within any continuous period of ten years subsequent to April 4, 1970.

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

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

hearing requirements of Rule 51 herein for minor applications.

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

(F) "Involved land" includes:

(1) The entire tract or tracts of land upon which the construction of improvements for commercial or industrial purposes occurs; and

(2) Those portions of any tract or tracts of land within a radius of five miles owned or controlled by the same person or persons, which is incident to the use of the project; and

(3) Those portions of any tract or tracts of land within a radius of five miles owned or controlled by the same person or persons, which bear some relationship to the land 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 event that a 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 (Amended, effective March 11, 1982).

(G) "Substantial change" means any change in a development or subdivision which may result in significant impact with respect to any of the criteria specified in 10 V.S.A. section 6086(a)(1) through (a)(10).

(H) "Person" means an individual, partnership, corporation, association, unincorporated organization, trust or any other legal or commercial entity, including a joint venture or affiliated ownership which owns or controls the tract or tracts of land to be developed or subdivided. The word "person" also means a municipality or state agency.

(I) "Dwelling" means any building or structure or part thereof, including but not limited to hotels, rooming houses, dormitories and other places for the accommodation of people, that is intended to be used and occupied for human habitation.

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

(K) "Party" means any person designated as a party under the act or these rules and includes the applicant.

(L) "Commercial purpose" means the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object having value (Added, effective July 15, 1974).

(M) "Commercial Dwelling" means any building or structure or part thereof, including but not limited to hotels,

motels, rooming houses, nursing homes, dormitories and other places for the accommodation of people, that is intended to be used and occupied for human habitation on a temporary or intermittent basis, in exchange for payment of a fee, contribution, donation or other object having value. The term does not include conventional residences, such as single family homes, duplexes, apartments, condominiums or vacation homes, occupied on a permanent or seasonal basis (Added, effective March 11, 1982).

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

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

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

Rule 3. Rulemaking, Advisory Opinions and Declaratory Rulings

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

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

(C) Any interested party seeking a ruling as to the applicability of any statutory provision or of any rule or order of the board may request an advisory opinion from a district coordinator, or if appropriate, the executive officer of the board. An advisory opinion of a district coordinator may be appealed to the executive officer of the board. An advisory opinion of the executive officer may be appealed to the environmental board by means of a petition for a declaratory ruling. An appeal from an advisory opinion of a district coordinator or the executive officer of the board must be filed within 30 days of mailing of the advisory opinion.

(D) Petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the board shall be filed with the board and shall be accompanied by a $25.00 filing fee. Such petitions will be considered and disposed of promptly. A petition may be

treated as a petition for adoption of rules or as a contested case as may be proper under the circumstances. The chairman may issue preliminary rulings subject to timely objection of any party in interest, in which event the matter shall be considered by the board.

(E) The board shall provide due notice of the filing of a petition for declaratory ruling to each party entitled to service pursuant to 10 V.S.A. section 6084 (Amended, effective March 11, 1982).

Rule 4. Subpoenas

The chairman of the board or the chairman of a district commission may issue a subpoena upon a written request of a party stating the reasons therefor and representing that reasonable efforts have been made to obtain voluntary compliance with its requests. Costs of service, fees, and compensation shall be paid in advance by the party requesting the subpoena. The board or a district commission may issue subpoenas for the attendance of witnesses or the production of documents on its own motion. In all other respects the provisions of the Vermont Rules of Civil Procedure regarding subpoenas shall apply and are incorporated herein (Amended, effective March 11, 1982).

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. The application shall list the name or names of all persons who have a substantial property interest, such as through title, lease, purchase or lease option, right-of-way or easement, in the tract or tracts of involved land by reason of ownership or control and shall describe the extent of their interests. The district commission or board may, upon its own motion or upon the motion of a party, find that the property interest of any such person is of such significance that the application cannot be accepted without their participation as co-applicants.

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

submit copies of all materials relevant to such permit or certification (Amended, effective March 11, 1982).

(C) In order to avoid unnecessary or unreasonable costs for applicants and other parties, the board or a district commission may authorize the sequential filing of information for review under the 10 criteria (Amended, effective March 11, 1982).

(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 is an advisory opinion subject to review as provided for in Rule 3(C) of these Rules. Once a district commission convenes a hearing on the merits of an application, the application is deemed to be complete, and a subsequent appeal may be had only on the merits of the application, not on its sufficiency (Added, effective March 11, 1982).

(E) The applicant shall file an original and up to four copies of the application as specified by the coordinator, and the fee prescribed by Rule 11 with the appropriate district commission. The applicant shall certify by affidavit in the application that he has forwarded notice and copies of the application to the municipality, the municipal and regional planning commissions wherein the land is located and any adjacent Vermont municipality, municipal

or regional planning commission if the land is located on a boundary; and that he 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 (Amended, effective March 11, 1982).

(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. Provision of personal notice to adjoining property owners and other persons not listed in section (E) of this Rule shall be solely within the discretion and responsibility of the district commission (Added, effective March 11, 1982).

(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 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 (Amended, effective March 11, 1982).

(H) Applications for amendments to permits shall be on forms provided by the board. Procedural requirements for notice and hearings are set forth in Rule 34 of these rules (Amended, effective March 11, 1982).

Rule 11. Fees

(A) All applicants shall be subject to a fee to cover costs involved in the publication of notice in a newspaper of general circulation in the area of the proposed development or subdivision and the costs incurred in recording any permit or permit amendment in the land records as provided by Rule 33; and, for the purpose of compensating the state for a portion of the cost of evaluating and reviewing applications:

(1) For projects involving construction, $1.00 for each $1,000 of construction costs, and

(2) For projects involving the creation of lots, $5.00 for each lot, and (Amended, effective March 11, 1982)

(3) For projects involving exploration for or removal of oil, gas and fissionable source materials, a fee as determined under subparagraph (A)(1) or $750 for each day of commission and board hearings required for such projects, whichever is the greater.

Notwithstanding the above, there shall be a minimum fee of $25 in addition to publication and recording costs.

(B) Fees shall not be required for the following projects, except for publication and recording costs in (A) above:

(1) Projects undertaken by governmental agencies; and

(2) Projects undertaken wholly by corporations not for profit, qualified for exemption by ruling of the U.S. Internal Revenue Service.

(C) In the event that an application is withdrawn prior to the convening of a hearing on the merits, the environmental board shall, upon request, refund 50 percent of the fee paid between $50 and $1,000, and all of that portion of the fee paid in excess of $1,000. An application for a refund must be submitted to the board within 90 days of the date of the withdrawal of the application (Amended, effective March 11, 1982).

(D) In the event that an application involves a project or project impacts that previously have been reviewed, the applicant may petition the chairman of the district commission to waive all or part of the application fee. The chairman may waive all or part of the fee if he finds that the impacts of the project have been reviewed in an applicable master permit application, or that the project is not significantly altered from a project previously reviewed, and that there will be substantial savings in the review process due to the scope of review of the previous application (Added, effective March 11, 1982).

Rule 12. Pleadings and Service Thereof

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

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

The requirements for content and service of initial pleadings are specified in these Rules as follows:

Petitions for Rulemaking or Declaratory Rulings:

Rule 3

Applications for permits: Rule 10

Applications for permit amendments: Rule 34

Petitions for permit revocation: Rule 38

Appeals: Rule 40

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

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

(D) Every pleading by any party subsequent to the initial pleading in a case shall be served upon the attorneys or other representatives of record for all other parties and upon all parties who have appeared for themselves. Service within this subsection of the rule shall be made upon a representative or a party by handing a copy to him or by mailing a copy to him at his last known address (Amended, effective March 11, 1982).

Rule 13. Hearing Schedules

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

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

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

Rule 14. Parties and Appearances

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

(1) The municipality in which the project site is located, and the municipal and regional planning commissions for that municipality; and if the project site is located on a boundary, any Vermont municipality adjacent to that border and the municipal and regional planning commissions for that municipality;

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

(3) Any adjoining property owner who requests a hearing, or who requests the right to be heard by entering an appearance on or before the first day of a hearing that has previously been scheduled; and

(4) Any other person who receives official notice of the proceedings from the board or district commission. The board or district commission may provide notice to such additional persons as it deems appropriate. However, the receipt of notice marked "For Information Only" does not confer party status under section 6084(b) or this Rule.

(B) Permitted parties. The board or a district commission may allow as parties to a proceeding individuals or groups not otherwise accorded party status by statute upon written

or oral petition if it finds that the petitioner has adequately demonstrated:

(1) That a proposed development or subdivision may affect his interest under any of the provisions of section 6086(a); or

(2) That his participation will materially assist the board or commission by providing testimony, cross-examining witnesses, and/or offering other evidence relevant to the provisions of section 6086(a).

A petition for party status under this Rule may be made orally or in writing. Any such petition:

(1) must state the details of the petitioner's interest in the proceedings, including whether the petitioner's position is in support of or in opposition to the order sought, if known;

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

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

The board or commission will issue an order, oral or written, granting or denying the petition. The order may

restrict the participation of the petitioner to certain provisions of section 6086(a) or to certain aspects of the project, as may be appropriate under the terms of this Rule.

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

(D) Representatives. A party to a case before the board or a district commission may appear for himself, or may be represented by an attorney or other representative of his choice. The board or district commission shall enter on its docket and certificates of service the name of any representative who has appeared for a party or who has countersigned a party's pleadings. Any notice given to or by a representative of record for a party shall be considered in all respects as notice to or from the party represented (Amended, effective March 11, 1982).

Rule 15. Joint Hearings

In order to avoid duplication of testimony and avoid unnecessary expense, the board and district commissions may hold a hearing with another affected governmental agency if the agency communicates its agreement to or request for a joint hearing to the board or a district commission at least ten days before the scheduled hearing date. The communication must be in writing signed by a representative of the agency but can be sent through any party to the proceedings or directly from the affected agency. Any party may petition, in writing, to the board or district commission to request a joint hearing with another affected governmental agency.

Rule 16. Prehearing Conferences

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

(1) Clarify the issues in controversy;

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

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

(B) Preliminary Rulings. The convening officer, if a member of the board or district commission, may make such preliminary rulings as to matters of notice, scheduling, party status, and other procedural matters, including interpretation of these rules, as are necessary to expedite and facilitate the hearing process. However, any such ruling may be objected to by any interested party, in which case the ruling shall be reviewed and the matter resolved by the board or district commission.

(C) Prehearing Order. The convening officer may prepare a prehearing order stating the results of the prehearing conference. Any such order shall be binding upon all parties to the proceeding who have received notice of the prehearing conference if it is forwarded to the parties at least five days prior to the hearing. However, the time requirement may be waived upon agreement of all parties to the proceeding; and the board or a district commission may waive a requirement of a prehearing order upon a showing of cause, filing a timely objection, or if fairness so requires (Amended, effective March 11, 1982).

Rule 17. Evidence at Hearings

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

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

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

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

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

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

(E) Prehearing submissions. The board or district commission may direct, by way of a prehearing conference order or otherwise, that all parties to a contested case submit to the board or district commission in advance of any

scheduled hearing date, a copy of all proposed exhibits, a list of all proposed witnesses, a summary of all proposed testimony, memoranda concerning any issue in controversy, or such other information as the board or district commission deems appropriate.

Rule 18. Conduct of Hearings
[Note: current Rule 18 to be repealed in its entirety and the following new Rule 18 adopted as a replacement.]

(A) Quorum and deadlocks. Unless waived by all parties, a quorum of the board to conduct business, including holding a hearing, shall consist of more than half of its members, but in no event less than four members. A quorum of a district commission to conduct business, including holding a hearing, shall consist of two members. In the event that a tie vote results during the conduct of any business, conduct of business will be recessed until an uneven number of members can meet and break the tie. In the event of a hearing decision over which a deadlock exists, a rehearing will either be held or decided on the transcript or recording thereof; the decision to rehear will be made by a majority of those members of the board or district commission who convene to break the deadlock.

(B) Substitute Commission Members. In the event that any member of a district commission is unavailable to participate in a hearing or is disqualified, the board chairman may, upon request of the district commission and with the consent of all statutory parties as to such procedure, and if the issues so warrant it, designate a member or members of another district commission to serve with the remaining members. The selection procedure involved shall be based upon preparation of a list of district commission members outside the district involved in

order of the geographic proximity of the town of residence of the commission member to the town in which the project under consideration is located. Commission members will be contacted in the order in which their names appear on the list, with the first individual available on the day of the hearing selected to serve (Amended, effective February 1, 1978).

(C) Chairman. At any hearing the members convened therefor will designate a member as chairman to conduct the hearings if the duly appointed chairman is absent, or for some other reason elects not to chair the hearing. The chairman or acting chairman shall have the power to administer oaths to witnesses; and, unless a party objects, rule on questions of evidence and offers of proof, take depositions or order such to be taken, rule on the validity of service of subpoenas and other notices, and do whatever is necessary and proper to conduct the hearing in a judicious, fair and expeditious manner.

(D) Dismissal. The board may, on its own motion or at the request of a party, consider the dismissal, in whole or in part, of any matter before the board for reasons provided by these rules, by statute, or by law. At the request of a party or on its own motion, the board 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 findings of fact and conclusions of law and shall be made within 20 days of the final hearing at which dismissal is considered.

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

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

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

(3) When the board or commission deems appropriate.

Any request for stenographic recording must be filed in writing at least 10 days prior to the scheduled hearing date and shall be accompanied by a deposit sufficient to cover any appearance fee. Stenographic fees and transcription costs shall be borne by the requesting party. A transcript of an electronic recording will be prepared by the board or district commission on request and upon receipt of a deposit sufficient to cover estimated transcription cost.

A copy of any transcript shall be provided to the board or district commission without cost; other parties wishing a copy shall reimburse the requesting party on a pro rata basis. Disputes over sharing of costs shall be resolved by the board or district commission.

Rule 19 - Compliance with Other Statutes - Rebuttable Presumptions
(Note: current Rule 19 to be repealed in its entirety and the following new Rule 19 adopted as a replacement.)

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

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

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

(3) File the Act 250 application first, with an intention to satisfy all of the substantive criteria of the Act with independent evidence of compliance (See (D) below).

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

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

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

(D) No Reliance on Permit. An applicant may seek to satisfy the burden of proof under applicable criteria of the

Act without submitting permits or certifications from other state agencies by offering affirmative evidence through testimony, exhibits and other relevant material upon which the district commission or board can make findings of fact and conclusions of law. However, if any of the permits or certifications identified in section (E) of this Rule must be obtained prior to construction or use of the project, or portion thereof, the district commission or board may, on its own motion or on motion by a party, defer taking evidence until the necessary permits or certifications are issued and may recess the hearing until they are submitted by the applicant. If action is deferred, the provisions of Section (C) of this Rule shall apply.

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

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

(a) A subdivision permit - Agency of Environmental Conservation, under 18 V.S.A., Chapter 23 and regulations promulgated thereunder.

(b) A public building permit (even if limited to exterior sewer approval only) - Agency of Environmental

Conservation, under 18 V.S.A., Chapter 25 and regulations promulgated thereunder.

(c) A mobile home park permit - Agency of Environmental Conservation, under 10 V.S.A., Chapter 153 and regulations promulgated thereunder.

(d) A trailer camp or tentsite permit - Agency of Environmental Conservation, under 3 V.S.A., Chapter 51 and regulations promulgated thereunder.

(e) A discharge permit for a discharge or for a wastewater treatment facility owned or controlled by the applicant and to be used by the project - Agency of Environmental Conservation, under 10 V.S.A., Chapter 47 and the regulations promulgated thereunder.

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

(g) A sanitary landfill permit - Agency of Environmental Conservation, under 10 V.S.A., Chapter 159 and regulations promulgated thereunder.

(2) That no undue air pollution will result:

(a) Certification of compliance - Agency of Environmental Conservation, under 10 V.S.A., Chapter 23 and regulations promulgated thereunder.

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

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

(b) municipal permit - Local water authority.

(c) Subdivision permit - Agency of Environmental Conservation, under 18 V.S.A., Chapter 23 and regulations promulgated thereunder.

(d) Public buildings permit (even if limited to exterior water approval only) - Agency of Environmental Conservation, under 18 V.S.A., Chapter 25 and regulations promulgated thereunder.

(e) Mobile home park permit - Agency of Environmental Conservation, under 10 V.S.A., Chapter 153 and regulations promulgated thereunder.

(f) Trailer camp or tentsite permit - Agency of Environmental Conservation, under 3 V.S.A., Chapter 51 and regulations promulgated thereunder.

(g) Public water system approval - Department of Health permit under 18 V.S.A. Section 1203.

(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 regulations promulgated thereunder.

(F) Effect of Presumptions. Permits and certifications filed under this Rule shall create a rebuttable presumption

that the development or subdivision is not detrimental to the public health and welfare with respect to the criteria specified in these rules. However, the district commission or board may on its own motion question the applicant, the issuing agency or other witnesses concerning the permit or certification, and any party may challenge the presumption. If a party challenges the presumption, it shall state the reasons therefor and offer evidence at a hearing to support its challenge. If the district commission or board determines that its inquiry has revealed, or that a challenging party has submitted, sufficient evidence upon which it could base a finding that the requirements of the criterion at issue have not been fulfilled, the board or district commission shall rule that the presumption has been rebutted. Thereafter, the applicant shall have the burden of proof under the relevant criteria and the permit or certification shall serve only as evidence of compliance.

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

Rule 20. Information Required

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

(B) Investigation - General. The board or district commission may conduct such investigations, examinations, tests and site evaluations as they deem necessary to verify information contained in the application or otherwise presented in a proceeding.

(C) Investigation - No Party in Opposition. In the event no party enters an appearance having an interest adverse to the application or no party offers evidence on a particular issue in opposition to the application, the board or district commission may make reasonable inquiry as it finds necessary to make findings and conclusions as required; in this event the board or district commission may recess the proceedings and require such investigations, tests, certifications or witnesses as are deemed necessary to evaluate the effects of the project under the criteria in question.

Rule 21. Order of Evidence - Partial Review

(A) In order to avoid unnecessary or unreasonable costs in preparation of detailed specifications for projects that are complex by reason of size, multiplicity of uses, potential impact under the criteria or sub-criteria of the Act or the period of time contemplated for completion, an applicant, upon notice and approval of a district commission or the board and upon filing an application or an appeal to the board, may elect to offer evidence in support of or have the project reviewed under any of the criteria or sub-criteria under the Act in such sequence as the applicant finds most expedient and practicable. However, such procedure shall not be permitted by the board or a district commission if it works a substantial hardship or inequity upon other parties to the proceedings or will unduly delay final action on the application or make comprehensive review of an application under applicable criteria impractical or unduly difficult. If the applicant intends to do so, he shall notify the board or district commission and all parties entitled to receive notice of his intention, and to the best of his knowledge the sequence and timing under which he intends to offer evidence or submit the project for review under specified criteria or sub-criteria.

Insofar as the applicant sustains his burden of proof or a party opposing the application fails to sustain its burden of proof as provided for in the Act under the applicable criteria, the board or district commission shall make affirmative findings of fact and conclusions of law including any conditions or limitations relevant thereto to be imposed by the district commission or board. If the district commission or board is unable to make such findings by reasons of inadequate evidence or information, it shall inform the applicant and all parties. Such affirmative findings, conclusions of law and any conditions or limitations shall remain in effect, pending issuance or denial of a permit under the Act, for a reasonable and proper term as determined by the district commission or board. For the purposes of this section, any findings of fact or conclusions of law made by a district commission based upon criteria 6086(a)(9) and (a)(10) shall be a final decision and subject to appeal to the board as provided for under the law; provided, however, the applicant, and any other party if agreed to by the applicant, may elect to reserve an appeal from findings and conclusions under these criteria until after final action on the application has been made by the district commission.

The findings of fact and conclusions of law made under the terms of this section shall be binding upon all parties

during the period specified by the district commission or board unless it is clearly shown that there was misrepresentation or fraud or that the facts relevant to the matter have so materially changed as to render the findings or conclusions clearly erroneous, contrary to the purposes of the Act and without basis in fact.

A permit shall not be granted under this section until the applicant has fully complied with all criteria and all affirmative findings have been made by the district commission or board as required by the Act.

(B) An applicant or a party may also request that the board or district commission first consider criteria (9) and (10) (10 V.S.A. §6086(a)(9) and (10)). Upon receipt of such a request, the board or district commission shall comply with the requirements of 10 V.S.A. §6086(b).

(C) The procedures authorized under this section are intended to minimize costs and inconvenience to applicants and shall be applied liberally by the board or district commission for that purpose consistent with the right of other parties and the requirements of law and any pertinent regulations (Amended, effective July 15, 1974 and February 1, 1978).

Rule 30. Approval or Denial of Applications

(A) Content of decisions. The board or district commission shall, within 20 days of the day of adjournment of the hearing on an application, issue a decision approving, conditionally approving, or denying the application. The decision 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 him to proceed with the development or subdivision in accordance with any stated terms and conditions.

(B) Corrections. Within 15 days of the date of a final decision, a party may file a motion to correct manifest error in the findings of fact, conclusions of law or permit. The board or district commission shall act upon such motions promptly. The running of the time in which to appeal to the board or supreme court shall be terminated by a timely motion filed under this rule. The full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion. It is entirely within the discretion of the board or district commission whether or not to hold a hearing on a motion for a corrected decision or permit. A board or district commission may on its own motion, within 15 days from the date of a final decision, issue a corrected decision or permit. Corrections shall be limited to instances of manifest error, mistakes, and typographical errors and omissions.

Rule 31. Reconsideration of Permit Decisions

(A) Motions to alter decisions. A party may file within 15 days from the date of the decision such motions as are appropriate with respect to the decision. The board or district commission shall act upon such motions promptly. The running of the time in which to appeal to the board or supreme court shall be terminated by a timely motion filed under this rule. The full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion. It is entirely within the discretion of the board or district commission whether or not to hold a hearing on any motion.

(B) Application for reconsideration of permit denial.

(1) Procedure. An applicant for a permit which has been denied may, within six months of the date of that decision, apply to the district commission for reconsideration of his application. The applicant for reconsideration shall certify by affidavit in the application that he has forwarded notice and copies of the application to all parties of record, and that he has corrected the deficiencies in the application which were the basis of the permit denial. 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.

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

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

Rule 32. Duration and Conditions of Permits

(A) Permit conditions. The board or district commission may attach such conditions to permits as are appropriate to ensure that the development is completed as approved. This may include the posting of a bond or the establishment of an escrow account requiring the board or district commission to certify that permit conditions have been complied with prior to release of the bond or discharge of the escrow account in part or in whole.

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

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

(B) Duration of permits. Permits issued under the Act shall be for land development or subdivision and the resulting land use. Permits shall contain specific dates for project completion and for expiration of the land use permit.

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

project development under the criteria of the Act, and shall give due regard to the economic considerations attending the proposed development or subdivision (such as the type and terms of financing, and the cost of development or subdivision) and the period of time over which the development or subdivision will take place.

(2) Permit expiration date. The duration of a permit may be limited to the economically useful life of the permitted project, but shall at a minimum extend through that time period over which the permit holder or his successors in interest will be responsible and accountable for compliance with time-specific permit conditions, including proper and timely completion of the project. During its term, a permit shall run with the land.

Rule 33 - Recording of Permits

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

(B) Unrecorded permits

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

(C) Permit transfers

(1) A purchasing landowner will assume the rights and obligations of a recorded permit without the necessity of an amendment transferring the permit. The board or district

commission may, however, by explicit permit condition make an exception to this rule upon a finding that the identity of a permit holder is a critical factor in the satisfaction of the terms and conditions of the permit.

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

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

Rule 34. Permit Amendments

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

Continuing jurisdiction over all development and subdivision permits is vested in the district commissions unless the board, in acting on an appeal, has specifically reserved the right to maintain jurisdiction over a development or subdivision in part or in its entirety.

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

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

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

(2) Review Procedures. 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. Such applications shall be processed in the same manner as minor applications under Rule 51(B).

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

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

(D) Administrative amendments to a permit. A district commission may authorize a district coordinator to amend a permit without notice or hearing when an amendment is necessary solely for record-keeping purposes and raises no likelihood of impacts under the criteria of the Act. In particular, administrative amendments are authorized to transfer a previously unrecorded permit to a new landowner, or to incorporate a revision in a certification of compliance when such revisions do not have any impact on the criteria of the Act.

Rule 35. Renewal of Permits

(A) Renewal required. Renewal of a permit issued under the Act shall be required for any extension of the permitted use beyond the expiration date.

(B) Renewal applications. Applications for permit renewals shall be on forms provided by the board, and shall be filed with the district commission having jurisdiction over the project. The permit holder shall affirm on the application that the project has been constructed, operated, and maintained in all respects in conformance with the terms and conditions of the permit. Upon request, the district coordinator 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 operated 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.

(C) Procedures.

(1) If, in the judgment of the district coordinator under section (B) of this rule, a proposed renewal does not involve significant impacts, and the application has been made for renewal prior to expiration of the permit, the renewal shall be

treated as a minor amendment, subject to the simplified review procedures as set out in Rule 34(C)(1)-(5).

(2) If, in the judgment of the district coordinator under section (B) of this rule, a proposed renewal does involve significant impacts, or if the application has been made after the expiration of the permit, the renewal shall be considered as a new application subject to the application, notice and hearing provisions of sections 6083, 6084, 6085 and the related provisions of these Rules.

(D) Early expired permits. A number of land use and development permits issued prior to 1973 have expired, according to their terms, upon completion of the development phase of the project. The board and district commissions will, to the extent that it is feasible, contact holders of such permits, inviting them to apply for their renewal. Such applications will be treated as minor amendments as set out in paragraph (C)(1), above. The permit expiration date for such a project shall reflect its economically useful life, in accordance with the current practice of the board and district commissions, beginning with the date of permit issuance.

Rule 37. Certification of Compliance

Any person holding a permit may at any time petition the board or a district commission issuing the permit for a certification of compliance with the terms and conditions that may be imposed by the permit. Under usual circumstances, a person may petition for a certification upon completion of the construction of a development or division of land that completion or division has been accomplished in compliance with the permit.

Thereafter, if the permit establishes terms and conditions regarding operation and/or maintenance of a development or subdivision, the person holding the permit may from time to time petition the board or district commission for certification of compliance.

A certification shall be a matter of public record and shall estop any claim that the construction of a development or division of land or the operation and/or maintenance thereof do not comply with the provisions of the permit unless fraud or misrepresentation is shown. The notice and hearing requirements of the act shall be complied with when a petition for certificate of compliance is filed with the board or a district commission.

Rule 38. Revocation and Abandonment of Permits

(A) Revocation for violations. A petition for revocation of a permit under 10 V.S.A. §6090(b) may be made to the board by any person who was party to the application, by any adjoining property owner whose property interests are directly affected by an alleged violation, by a municipal or regional planning commission, or any municipal or state agency having an interest which is affected by the development or subdivision. The petition shall consist of an original and 10 copies of the petition which shall include a statement of reasons why the petitioner believes that grounds for revocation exist. A filing fee of $25.00 payable to the State of Vermont shall accompany the petition. The board may also consider permit revocation on its own motion.

(1) Procedure. The board will treat a petition for revocation as an initial pleading in a contested case, in accordance with the notice and hearing procedures of Rule 40 of these Rules.

(2) Grounds for revocation. The board may after hearing revoke a permit if it finds that: (a) The applicant or his representative willfully or with gross negligence submitted inaccurate, erroneous, or materially incomplete information in connection with the permit application, and that accurate and complete information may have caused the

district commission or board to deny the application or to require additional or different conditions on the permit; or (b) the applicant or his successor in interest has violated the terms of the permit or any permit condition, the approved terms of the application, or the Rules of the board; or (c) the applicant or his successor in interest has failed to file an affidavit of compliance with respect to specific conditions of a permit, contrary to a request by the board or district commission.

(3) Opportunity to correct a violation. Unless there is a clear threat of irreparable harm to public health, safety, or general welfare or to the environment by reason of the violation, the board shall give the permit holder reasonable opportunity to correct any violation prior to any order of revocation becoming final. For this purpose, the board shall clearly state in writing the nature of the violation and the steps necessary for its correction or elimination. These terms may include conditions, including the posting of a bond or payments to an escrow account, to assure compliance with the board's order. In the case where a permit holder is responsible for repeated violations, the board may revoke a permit without offering an opportunity to correct a violation.

(4) Judicial action not precluded. Nothing in this rule shall be construed to preclude the board or any other agency of the state from instituting such other action, criminal or civil, as may be permitted by law against the permit holder for any violation.

(B) Abandonment by non-use. Use of a permit within one year as required in 10 V.S.A. §6091(b) shall include but not be limited to actions by the permit holder to arrange financing, obtain other permits or otherwise demonstrate an intention to proceed with the project. However, in any case, substantial construction must occur on a development within two years from the date on which the permit was issued unless construction has been delayed by litigation to secure other necessary permits or approvals.

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

(2) Procedure. Determinations of use or abandonment will be made by the board or the district commission retaining jurisdiction over the permit. The proceeding will be treated as a contested case. Petitions will be heard and disposed of promptly. The board or district commission shall provide at least 20 days' notice of the proceeding to the permit holder, to all persons who were parties to the permit proceedings, and to the governmental statutory parties listed in Rule 14(A)(1) and (2). If the permit holder does not request the right to be heard, the board or district commission may declare the permit void without a hearing.

Rule 40. Appeals

(A) Any party aggrieved by an adverse determination by a district commission may appeal to the board, subject to removal to Superior Court as provided for in 10 V.S.A. section 6089, and will be given a de novo hearing on findings, conclusions and permit conditions issued by the district commission. An appeal shall be filed with the board within 30 days after date of the decision of the commission. The appeal shall consist of the original and 10 copies of the appeal and of the decision of the commission; reasons assigned why the appellant believes the commission was in error, and issues the appellant claims are relevant shall be stated in the appeal. A filing fee of $25 shall accompany the appeal payable to the State of Vermont (Amended, effective February 1, 1978).

(B) The board shall provide notice to parties as required under 10 V.S.A. section 6089(a) by sending copies of the appeal by U.S. mail and by publication of notice of appeal not less than 10 days before the hearing date.

(C) The scope of the appeal hearing shall be limited to those reasons assigned by the appellant why the commission was in error unless substantial inequity or injustice would result from such limitation.

(D) Any party to the application on receiving notice of the appeal under the requirements of 10 V.S.A. section 6089(a) may enter its appearance in the appeal before the board within 10 days after receipt of notice or expiration

of the 30 days allowed for filing appeals, whichever is latest. If timely notice of appeal is filed by a party, any other party entitled to take an appeal under 10 V.S.A. section 6085(c) may file a notice of appeal within 14 days of the date on which the first notice of appeal was mailed to him by the board as provided for in this rule. Such appeal shall comply with the requirements of paragraphs (A) and (B) of this rule, excepting, however, the filing of copies of the decision of the commission with the board is not required.

Rule 41. Administrative Hearing Officer - environmental board

(A) The environmental board may, on the motion of a party, or on its own motion, decide to hear any or all of the issues raised in a proceeding before an administrative hearing officer.

(B) Parties shall be given due notice of the chairman's or the board's intention to appoint a hearing officer and shall have reasonable opportunity to object to the appointment within a stated time. If a party raises an objection, the proceeding will be heard by the full board. Any party not filing an objection by the deadline contained in the notice will be presumed to approve the appointment of a hearing officer. The hearing officer shall be a member of the board. If it appears that any issue should be heard by the board by reason of complexity, necessity to judge credibility or other appropriate reasons, the hearing officer may decline to hear that issue; in which event the matter shall be referred for hearing to the board.

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

(D) The hearing officer shall prepare and transmit to the board recommended findings of fact and conclusions of law.

A record of proceedings shall be prepared and made available to all board members for their review. The board's findings and conclusions shall be based on the record. In addition, parties may request opportunity for oral argument before the board prior to its final decision.

(E) Upon its review of the record and the hearing officer's recommendations, the board shall determine whether the record is complete and whether the hearing should be adjourned. In the case of an appeal, unless otherwise agreed to by the parties, the board shall make a final decision within 20 days after the hearing is adjourned by the board (Amended, effective March 11, 1982).

Rule 42. Stay of Decisions

No decision of the board or a district commission is automatically stayed by the filing of an appeal. Any party aggrieved by a final order of the board or a district commission may request a stay by written motion identifying the order or portion thereof for which a stay is sought and stating in detail the grounds for the request. A stay of a district commission decision must first be requested from the district commission. Upon denial of such request, a motion for a stay may be filed with the board or, in the event of removal of the appeal to superior court, from that court.

In deciding whether to grant or deny a stay, the board or district commission may consider the hardship to parties, the impact, if any, on the values sought to be protected by Act 250, and any effect upon public health, safety or general welfare. The board or district commission may issue a stay containing such terms and conditions, including the filing of a bond or other security, as it deems just.

Rule 43. Appeals to the Board Before Final Decision of District Commissions

(A) Appeals of District Commission Interlocutory Orders. Upon motion of any party, a district commission may permit an appeal to be taken from any interlocutory order or ruling if the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal may materially advance the application process.

The motion shall be made within 10 days after the entry of the order or ruling appealed from. The appeal shall be limited to questions of law. The order permitting appeal shall contain a statement of the grounds upon which appeal has been permitted.

If such motion is denied by the district commission, the moving party may, within five days after the entry of the order of denial, file the motion with the board, together with a statement setting forth the question of law asserted to be controlling, the facts necessary to an understanding of the question, and the reasons why an interlocutory appeal should be permitted. The moving party shall serve copies of the motion and statement on all other parties. Within five days after service, an adverse party may file and serve an answer in opposition to the motion. The matter shall be determined upon the motion and answer without oral argument unless the Board otherwise orders.

(B) Motion to Dismiss Appeal. Any party may file with the board a motion to dismiss an interlocutory appeal which has been permitted by a district commission. The motion shall contain a

statement of reasons why the appeal should not have been granted together with a statement of sufficient facts relevant to the appeal to enable the Board to consider the motion to dismiss. The board may convene a hearing on the motion or defer hearing until the appeal is considered. The board may dismiss the appeal on its own motion, or upon motion under this paragraph, if it finds that no controlling question of law as to which there is substantial ground for difference of opinion has been presented or that a decision on such question would not materially advance the application review process.

(C) Proceedings on Appeal. An order permitting interlocutory appeal shall be filed and served in the manner provided by Rule 40 for notices of appeal. Board proceedings shall be confined to those issues stated in the order permitting appeal. The board may convene such hearings to take evidence and hear oral argument as it deems necessary to dispose of the appeal. Such proceedings shall be conducted as provided by these Rules for appeals to the board.

Rule 51. Minor Application Procedures
(Note: current Rule 51 to be repealed in its entirety and the following new Rule 51 adopted as a replacement.)

(A) Qualified Projects. Any development or subdivision subject to the permit requirements of 10 V.S.A. §6081 and these Rules may be reviewed in accordance with this Rule as a "Minor Application" if the district commission finds that the project appears to present no significant adverse impact under any of the 10 criteria of 10 V.S.A. §6086(a). In making this finding, the district commission may consider:

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

2) whether or not other State permits identified in Rule 19 are required and, if so, whether those permits have been obtained;

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) 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 paragraph (A), the district commission shall:

1) prepare a proposed permit including appropriate conditions;

2) provide published notice as required by 10 V.S.A. §6084; the notice shall state the district commission's intent 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; the notice shall also state that preparation of findings of fact and conclusions of law by the district commission will be waived;

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

4) if no hearing is requested by a party or by the district commission on its own motion, the proposed permit may be issued with any necessary modifications;

5) if a hearing is requested, it shall be limited to those criteria or sub-criteria identified by a party or by the district commission (before or during the hearing) as requiring the presentation of further evidence; any hearing request shall state with specificity why a hearing is required and what additional evidence will be presented; prior to convening a hearing, the district commission shall determine that substantive issues requiring a hearing have been raised; and

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