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RULES OF PROCEDURE

Adopted: March 28, 2006
Effective: May 1, 2006

PART I GENERAL PROVISIONS

Section 1 Scope and Authority

These rules are adopted pursuant to 10 V.S.A. § 6025(a) and apply to the Natural Resources Board, its Land Use Panel, and its Water Resources Panel.

Section 2 Definitions

(A) For the purposes of these rules, the terms below shall have the following meanings unless a different meaning clearly appears from the context:

- (1) **“Agency”** means the Vermont Agency of Natural Resources.
- (2) **“Alternate”** means a person appointed pursuant to 10 V.S.A. § 6021(a) to serve as an alternate to unavailable Board members.
- (3) **“Board”** means the Vermont Natural Resources Board, which consists of a Land Use Panel and a Water Resources Panel.
- (4) **“Chair”** means the Chair of the Board and its Panels, or in the absence or recusal of the Chair, the Vice Chair of the Board or a Panel or the Acting Chair of the Board or a Panel.
- (5) **“Department”** means the Vermont Department of Environmental Conservation.
- (6) **“District Commission”** means a district environmental commission.
- (7) **“Municipality”** means any city, town or village in the State of Vermont.
- (8) **“Normal Office Hours”** means between 7:45 a.m. and 4:30 p.m., Monday through Friday, except for state or federal legal holidays.
- (9) **“Panel”** means the Land Use Panel or the Water Resources Panel of the Board.
- (10) **“Person”** means an individual, partnership, corporation, association, unincorporated organization, trust, joint venture, affiliated

ownership; a federal, state, or municipal department, agency or subdivision; or any other legal or commercial entity.

(11) **“Rulemaking”** means:

(a) a proceeding, initiated by the Board or a Panel, on its own motion or upon the filing of a petition, for the purpose of adopting a Board or Panel statement of general applicability which implements, interprets, or prescribes law or policy within the jurisdiction of the Board or a Panel and;

(b) a proceeding conducted in accordance with the procedures set forth in 3 V.S.A. ch. 25 for the purpose of adopting procedural rules or substantive rules relating to the authority of the Board or a Panel under 10 V.S.A. ch. 151 and such other statutory authorities as may from time to time be delegated to the Board or a Panel.

(12) **“Secretary”** means the Secretary of the Agency.

(13) **“Vice Chair”** means the Vice Chair of the Board or the Vice Chair of a Panel.

(B) Whenever a term is used in the singular form in these rules, the plural form of the term shall also be intended where appropriate.

Section 3 Vice Chairs and Acting Chairs

(A) Board Vice Chair and Acting Chair

(1) In the absence or recusal of the Chair with regard to duties of the Board, the Vice Chair for the Board shall serve as the Acting Chair and perform all duties of the Chair relating to the business of the Board. The Board shall annually elect a Vice Chair for the Board from its members who shall serve until his or her successor is elected.

(2) In the absence or recusal of both the Chair and the Vice Chair for the Board, the Board members present at any Board meeting or hearing shall elect an Acting Chair, who shall perform all duties of the Chair at that meeting or hearing.

(B) Panel Vice Chairs and Acting Chairs

(1) In the absence or recusal of the Chair with regard to duties of a Panel, the Vice Chair for that Panel shall serve as the Acting Chair and

perform all duties of the Chair relating to the business of the Panel. The Land Use Panel shall annually elect a Vice Chair for Land Use from its members who shall serve until his or her successor is elected. The Water Resources Panel shall annually elect a Vice Chair for Water Resources from its members who shall serve until his or her successor is elected.

(2) In the absence or recusal of both the Chair and the Vice Chair for a Panel, the Panel members present at any Panel meeting or hearing shall elect an Acting Chair, who shall perform all duties of the Chair at that meeting or hearing.

Section 4 Committees, Hearing Officers, and Designees

(A) Appointment

(1) The Board or a Panel may designate a committee, a hearing officer, the Chair, a Board member, an alternate, Board legal counsel, or the Board's executive director to hear, act upon, or investigate any matter within the jurisdiction of the Board or the Panel.

(2) The Chair, Board members, alternates, Board legal counsel, and the Board's executive director may serve as hearing officers or committee members.

(3) The Board or a Panel shall designate in writing the committee, hearing officer, or designee and the matters to be heard, acted upon, or investigated.

(B) Conduct of Hearing, Action, or Investigation

(1) In hearing, acting upon, or investigating matters designated, a committee, hearing officer, or designee may exercise the powers of the Board or the Panel with jurisdiction over the matter.

(2) A committee, hearing officer, or designee, sua sponte, or upon objection, may determine at any time that a matter should be referred to the Board or the appropriate Panel for its consideration.

(3) A committee, hearing officer, or designee appointed to hear, act upon, or investigate any matter may prepare a written report for the Board or the Panel with jurisdiction over the matter.

Section 5 Meetings and Actions

(A) Quorum

A quorum must be present before the Board, a Panel, or a committee may convene a meeting or take action.

- (1) A majority (five members) constitutes a quorum of the Board.
- (2) A majority (three members) constitutes a quorum of a Panel.
- (3) A majority of the members appointed to a committee constitutes a quorum of the committee.

(B) Votes Required

A majority vote of the members of the Board (five votes), a Panel (three votes), or a committee is required to take action.

(C) Alternates

The Chair may assign one or more alternates to sit on specific matters before a Panel or the Board in situations where fewer than five Panel members or nine Board members are available to serve on that matter. No more than five Panel members and nine Board members, including alternates, may be assigned to meet and vote on any particular matter.

(D) Tied Vote

(1) Board and Panels

In the event of a tied vote, the Board or its Panels shall recess until at least one absent member is available to vote or the Chair assigns an alternate member to participate in the decision. The Chair may assign an alternate to break a tie only if a regular member is not available to serve on that matter.

(2) Committees

In the event of a tied vote, a committee shall recess until at least one absent member of the committee becomes available to participate in

the committee's decision or until the Chair assigns at least one additional committee member to break a tie.

Section 6 Subpoena Power

Pursuant to 10 V.S.A. § 6027(a)(1), the Board, a Panel, or a committee, hearing officer, or designee may compel by subpoena the attendance and testimony of witnesses and the production of evidence in any matter within its jurisdiction.

Section 7 Information Required in Pending Matters

(A) Supplementary Information

The Board, the Panel, the Chair, or a committee, hearing officer, or designee may require any petitioner or interested person to submit relevant supplementary information for consideration in resolving issues raised in any proceeding under these Rules.

(B) Investigation

The Board, the Panel, or a committee, hearing officer, or designee may conduct or cause to be conducted such investigations, examinations, tests, and site evaluations as may be necessary to verify or supplement information contained in any filing or otherwise presented in any proceeding.

Section 8 Investigation

(A) General

The Board or a Panel may open an investigation and issue such orders as it deems necessary to gather information, identify policy issues, and formulate strategies or means for addressing issues within its jurisdiction. Such investigation may be initiated by the Board or a Panel on its own motion, or in response to a petition.

(B) Notice

The Board or a Panel may initiate an investigation, on its own motion or by petition, by voting to conduct an investigation. The Board or Panel shall specify, and include in the minutes of the meeting at which such vote is taken, the purpose of such investigation and the means by which the Board or Panel will conduct such investigation, including how it will give public notice of such proceeding.

(C) Petition

(1) A petition to initiate an investigation shall be in writing and shall state in detail the purpose of the investigation, the matters to be investigated, and any statutes, rules, decisions or other legal authorities that are or may be at issue. If the petition is related to and in anticipation of a request to adopt, amend or repeal rules of the Board or a Panel, the petition shall so state and shall include any draft rule, policy statement, or proposed standards that the petitioner would like the Board or Panel to consider in the investigation process.

(2) Upon receipt of a complete petition, the Board or Panel shall either initiate the investigation or deny the petition and forward a statement of reasons for the denial to the petitioner. Prior to making this decision, the Board or Panel may hold public hearings to obtain further information relevant to the petition. Petitions to open investigations shall be filed in the same manner as provided in Part II of these Rules.

(D) Outside Facilitator or Mediator

The Board or a Panel, or a committee, hearing officer, or designee with the approval of the Board or a Panel, may retain an outside facilitator or a mediator to assist with an investigation.

(E) Hearings, Comments, and Investigation Report

The Board or a Panel or a committee, hearing officer, or designee may convene one or more hearings in connection with an investigation and may solicit testimony or written comment from any person that may have knowledge of the subject of the investigation. The Board or a Panel or a committee, hearing officer, or designee may choose to hear from any interested persons or may limit testimony or written comments to selected persons during all or part of an investigation. At the conclusion of such investigation the Board or a Panel shall issue a written report summarizing the outcome of the investigation.

Section 9 Computation and Enlargement 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 such as the day after Thanksgiving, 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. 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 person 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 Board or a Panel sets a specific date by which the person must file.

(C) The Board, a Panel, the Chair, or a committee, hearing officer, or designee, 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 Board's schedule.

Section 10 Time and Manner of Filings, Certificate of Service

(A) Petitions and Related Materials Filed by Petitioners

(1) Copies

(a) A petitioner shall file an original and six copies of a petition to a Panel and an original and ten copies of a petition to the Board, signed by the petitioner or a duly authorized representative. The Board encourages the petitioner to file an additional electronic copy of the petition.

(b) The petitioner shall file an original and six copies of all documents or exhibits filed subsequent to the filing of a petition to a Panel and an original and ten copies of all documents or exhibits filed subsequent to the filing of a petition to the Board, except as otherwise ordered by the Chair or a committee, hearing officer, or designee.

(c) Exhibits larger than 82 x 11 inches must only be identified to persons required to be served. Only one copy of all such exhibits must be filed. Such exhibits are available for inspection at the Board's offices during normal office hours.

(2) Certificate of Service

(a) A petition and all supporting documents or exhibits, including any documents or exhibits filed to complete or supplement a petition that has been deemed substantially incomplete, shall be accompanied by a certificate of service, signed by the petitioner or a representative, and certifying to the manner of service on the persons required to be served by these Rules.

(b) The certificate of service shall also be served on all persons listed on the certificate of service.

(c) Persons listed on the certificate of service shall be identified by full name and complete mailing address.

(3) Signature, Address, and Phone Number

The petition and related materials filed by the petitioner shall be signed on the last page by the petitioner, or by his or her duly authorized representative, and shall list the address and phone number of the petitioner or representative under said signature.

(B) Written Public Comments

(1) Manner of Filing

One original copy of comments must be filed, unless otherwise specified by the Board, a Panel, or a committee, hearing officer, or designee.

(2) Electronic Filing

Comments may be filed electronically unless otherwise specified by the Board, a Panel, or a committee, hearing officer, or designee.

(3) Service

Copies of comments do not need to be served on petitioners or other persons.

(C) Date of Filing

The date of filing of petitions, public comments, and any other matters shall be the first day on which the filing is received at the Board's office during normal office hours. Filings received at any time other than normal office hours shall be deemed filed on the first day of normal office hours after the item was received.

(D) Labeling

Materials filed with regard to any matter that the Board or a Panel has assigned a case name or number must be clearly labeled with the case name and number.

(E) Format of Petitions, Written Comments, and Exhibits

(1) Petitions, supplemental petitions, and written comments exceeding five pages shall be double-spaced.

(2) Exhibits exceeding 50 pages in length must be placed in a binder, tabbed, and accompanied by an exhibit list. Exhibits containing multiple pages shall be paginated.

Section 11 Waiver of Rules

In order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause, the Board, a Panel, the Chair, or a committee, hearing officer, or designee may waive the application of any of these Rules upon such conditions as the Board, a Panel, the Chair, or a committee, hearing officer, or designee may require, except where precluded by statute.

PART II RULEMAKING PROCEEDINGS

Section 12 General

In promulgating rules the Board and its Panels will act pursuant to the applicable provisions of the Vermont Administrative Procedure Act, 3 V.S.A. ch. 25, unless another procedure is specified by statute.

Section 13 Consolidation

The Board or a Panel may consolidate petitions in order to promote procedural or fiscal efficiency or to enhance public participation in rulemaking.

Section 14 Completeness

(A) The Chair shall determine whether a petition for rulemaking is substantially complete.

(1) If the Chair determines that a petition filed with the Board or a Panel is substantially complete, the Chair shall so notify the petitioner in writing within 15 days of the filing of the petition.

(2) If the Chair determines that a petition filed with the Board or a Panel is substantially incomplete, the Chair shall notify the petitioner in writing of the basis of the Chair's determination. The petitioner shall have 15 days from the date of written notice, or such other time as the Chair may specify in writing, to complete or supplement the petition as required by the Chair or to file a written request for review by the Board or the Panel with jurisdiction over the matter. The petitioner shall have 15 days from the issuance of a written decision by the Board or a Panel with regard to the completeness of the petition, or such other time as the Board or Panel may specify in writing, to complete or supplement the petition.

(B) A petition shall be deemed received pursuant to 3 V.S.A. § 806 when it is determined to be substantially complete.

(C) A petition for rulemaking shall be deemed received as of the date of filing even if the petition is determined by the Chair not to be substantially complete, provided the defects in the petition are timely corrected as provided by paragraph (A)(2), above. Incomplete petitions that are not timely corrected as provided by paragraph (A)(2), above shall be denied.

Section 15 Content of Petitions

(A) All Petitions for rulemaking shall be in writing and shall include the following information:

(1) A detailed statement of the statutory authority under which the petition is filed.

(2) The nature and purpose of the petition.

(3) A written draft of the proposed rule.

(4) A narrative providing a detailed summary of the circumstances prompting the petition and describing the specific action sought.

(5) Copies of all documents the petitioner intends to submit in support of the petition.

(6) A list of the categories of people, enterprises, and governmental entities potentially affected by the proposed rule and an estimate for each, of the costs and benefits anticipated.

(7) A statement of how the proposed rule would be consistent with applicable state and federal laws.

(8) The signature, printed name, and complete mailing address of each person signing the petition.

(9) Petitions shall include the name, address, and telephone number of a designated representative.

(10) The Board, a Panel, or the Chair may require additional information from the petitioner, including but not limited to the names and mailing addresses of all persons owning property abutting any specific waters or wetlands that may be affected.

(B) In addition to the provisions of paragraph (A), above, petitions to the Water Resources Panel shall include the following information:

(1) Petitions to reclassify waters filed pursuant to 10 V.S.A. § 1253(c) and 6025(d)(2) shall include a detailed summary of how the proposed classification is consistent with the requirements of section 1253, other applicable provisions of state statutes, applicable federal requirements, and the provisions of the Vermont Water Quality Standards and other applicable rules.

(2) Petitions to regulate the surface levels of specific public lakes, ponds, and reservoirs filed pursuant to 10 V.S.A. § 6025(d)(1) shall include the name and mailing address of the owner of any dam or structure controlling the surface level of the lake or pond in question and a statement of how the proposed rule would serve the public interest and general welfare.

(3) Petitions to regulate the surface uses of public waters filed pursuant to 10 V.S.A. §§ 1424 and 6025(d)(4) shall explain how the rules requested by the petition comply with the applicable provisions of Section 2 of the Vermont Use of Public Waters Rules, identify any normal uses that would be affected, describe conflicting uses, and discuss what efforts the

petitioner has undertaken to resolve any conflicts in use prior to requesting rulemaking.

(4) Petitions to designate a body of water or portion thereof or a category of waters or portion thereof as outstanding resource waters filed pursuant to 10 V.S.A. §§1424a and 6025(d)(4) shall include the following information:

(a) Identification of the specific body of water or portion thereof or the specific category of waters or portion thereof for which designation is sought, including the name and location of the waters.

(b) A map showing the waters and identifying any natural or man-made features relevant to the petition.

(c) A narrative describing each exceptional natural, recreational, cultural, or scenic value of the waters specified in 10 V.S.A. § 1424a(d)(1)-(14) which the petitioner claims would warrant their designation as outstanding resource waters.

(d) Copies of all documents and exhibits which the petitioner intends to offer in support of the petition. With the prior approval of the Panel or the Chair, copies of exhibits which are in the public domain and reasonably available, or exhibits which are impractical to duplicate and distribute, may be identified in the petition with an indication of where the exhibits are available for inspection.

(e) A list of all expert witnesses, if any, whom the petitioner intends to have testify in support of the petition, including a summary of their qualifications as experts and of their anticipated testimony.

Section 16 Service of Petitions to the Water Resources Panel

Petitions to the Water Resources Panel to adopt or amend rules relating to surface levels of public lakes, ponds, and reservoirs; classification of waters; water quality standards; surface uses of public waters; outstanding resource waters, wetlands; or the management of lakes and ponds, and any materials filed to complete or supplement these petitions, shall include a certificate of service conforming to the requirements of Rule 9(A), certifying to service of the petition on the following persons:

(A) The Secretary.

- (B) The Commissioner of the Department.
- (C) For petitions to adopt or amend rules relating to specific water bodies or wetlands,
 - (1) the clerk of each Vermont municipality in which the waters or wetlands are located,
 - (2) the planning commission of each municipality in which the affected waters or wetlands are located, and
 - (3) each regional planning commission serving the area in which the waters or wetlands are located.
- (D) For petitions to regulate the surface levels of specific public lakes, ponds, or reservoirs,
 - (1) the owner of any dam or structure controlling the surface level of the lake, pond, or reservoir,
 - (2) the president of any lake or property owners association having an interest in the body of water at issue, and
 - (3) the Department of Public Safety, c/o the State Boating Law Administrator.
- (E) For petitions to regulate the surface uses of public waters,
 - (1) the president of any lake or property owners association having an interest in the body of water at issue, and
 - (2) the Department of Public Safety, c/o the State Boating Law Administrator.
- (F) Such other persons as the Water Resources Panel or the Chair may direct in writing.

PART III DECLARATORY RULINGS BY THE WATER RESOURCES PANEL

Section 17 Contents of Petitions for Declaratory Rulings

Any petition for declaratory ruling filed pursuant to 3 V.S.A. § 808 as to the applicability of any statutory provision or of any rule or order of the Water Resources

Panel shall be in writing, filed with the Chair at the Board's office, and shall state in detail:

- (A) The interest of the person filing the petition.
- (B) The statute, rule, or order at issue.
- (C) The factual situation in question.
- (D) A description of the relief sought.
- (E) To the extent known or reasonably discoverable by the petitioner, the names and addresses of all other persons whose interests may be affected by the issuance of the declaratory ruling.

Part IV PROCEEDINGS NOT GOVERNED BY THESE RULES

Section 18 Rules for Environmental Court Proceedings

Proceedings not specifically governed by these rules, by any other applicable rule, or by any applicable order or statute, shall be governed by the Vermont Rules for Environmental Court Proceedings.

Part V SEVERABILITY

Section 19 Severability

In the event any of these Rules, or any portion thereof, is found by a court of competent jurisdiction to be illegal or void, the remainder thereof shall be deemed unaffected and shall continue in full force and effect.