



**Testimony of Vermont Chamber of Commerce - H.823
Michael Zahner, February 18, 2014**

The Vermont Chamber's comments are as follows:

Item No. 1: 10 V.S.A. Section 6001(3) is amended to read:

* * *

(35) "Strip development" means linear commercial development along a public highway that includes some or all of the following characteristics: broad road frontage, predominance of single-story buildings, limited reliance on shared highway access, lack of connection to any existing settlement except by highway, limited accessibility for pedestrians, and lack of coordination with surrounding land uses in terms of design, signs, lighting, and parking.

Comment: This will result in a very complicated analysis for the district commissions and will lead to extensive litigation due to the implications under the new Criterion 9(L) - Settlement Patterns (below). Just one of the elements would be required to meet the "strip development" definition - "some or all of the following characteristics:" A project located in such a defined area as determined by the district commission shall be required to: "create or contribute to mixed uses in the adjacent area....." even if the municipality has not planned or zoned for "mixed uses" in the affected or adjacent areas. It is not clear how a new or expanding automobile dealership, plumbing supply house, Cabot cheese warehouse or an expanding transfer station in a one-use industrial or general business zone would be able to "create or contribute to mixed uses." Act 250 will see new arguments by permitted parties or statutory parties (with appeal rights) that the statute requires the applicant to undertake some activities to either build housing on the site or create some other type of mixed use in order to comply with Criterion 9(L) or the project must be denied. See Montpelier example at the end of this document.

* * *

Item No. 2: 10 V.S.A. Section 6001(3)(A) "Development" means each of the following:

* * *

(iv) The construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or trailer parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, ***within a radius of five miles*** of any point on any involved land, and within any continuous period of five years.

*Note: This is existing law with "**within a radius of five miles...**" highlighted for discussion on page 2.*

* * *

Item No. 3: (C) For the purposes of determining jurisdiction under subdivisions (3)(A) and (3)(B) of this section, the following shall apply:

(i) Incentive for Growth Inside Designated Areas.

(I) Notwithstanding subdivision (3)(A)(iv) of this section, ~~housing units constructed by a person partially or~~ the determination of jurisdiction over a discrete housing project that is located completely outside inside a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area shall ~~not be counted~~

~~to determine jurisdiction over housing units constructed by that person entirely within a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area count only the housing units included in that discrete project.~~

Comment: This is a helpful change providing greater clarity without any change in meaning.

* * *

Item No. 4: ~~(ii) Five-Year, Five-Mile Radius Jurisdiction Analysis. Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area shall be counted together with housing units constructed by that person partially or completely outside a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area to determine jurisdiction over the housing units constructed by a person partially or completely outside the designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area and within a five-mile radius in accordance with subdivision (3)(A)(iv) of this section.~~

Comment: This proposed change will require developers of housing in Vermont to get an Act 250 permit for any development of housing (a single family home) provided that the developer constructed at least nine units of housing in one of the designated center noted above within a period of five years, regardless of location for the new project. Removal of the "five mile radius" (still intact in 10 V.S.A. Section 6001(3)(A)(iv) - see page one) will serve to partially overturn important Vermont Supreme Court precedent in this area¹. For instance, a housing developer may construct nine units of medium priced housing in one of the designated centers located in Chittenden County and then would be subject to jurisdiction for the construction of a single family home in a locally designated growth center in Randolph. This could prove to be a strong disincentive for housing developers to locate projects in designated centers - contrary to what the Vermont Chamber, the Administration and others would like to see happen.

* * *

Item No. 5: "Existing settlement" excludes strip development and means an area that constitutes one of the following:

(A) A designated center.

(B) An existing community center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.

¹ The development of housing units, on separate tracts of land *within a five mile radius of each other*, constitutes the construction of a "housing project". *Trono Construction Co., Inc.*, DR #149 (FCO at 3) (5/23/84), *aff'd*, **In re DR #149 Trono Construction Co., 146 Vt. 591 (1986)**(cited in *Town of Wilmington*, DR #258, FCO at 10 (6/30/92 and; *Re: Lake Realty*, #9A0175-EB, FCO at 6 (10/20/89) [EB #437]); *Burlington Housing Authority*, DR #124 (5/20/81), *aff'd*, **In re Burlington Housing Authority, 143 Vt. 80 (1983)**. (emphasis added) Source: *NRB E-Note Index, July of 2013*.

Comment: This definition will be helpful in the review of projects under Criterion 9(H) - Cost of Scattered Development. It flows from Environmental Board precedent.²

Item No. 6: § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

(a) Before granting a permit, the ~~district commission~~ District Commission shall find that the subdivision or development:

* * *

(5)(A) Will not cause unreasonable congestion or unsafe conditions with respect to the use of the highways, trails, pedestrian and bicycle facilities, transit operations and facilities, waterways, railways, airports and airways, and other means of transportation existing or proposed. **In accordance with rules promulgated by the Natural Resources Board,** the District Commission shall allow traffic from a development or subdivision in a ~~designated center~~ **an existing settlement** to cause a level of service that is lower than the level of service required outside a ~~designated center~~ **an existing settlement**, unless this lower level of service will cause or exacerbate unsafe conditions **consistent with findings under § 6086(a)(9)(K) of this chapter.** (VCC suggested language in bold)

(B) Will provide transportation access and mobility for all users of the development or subdivision and reduce dependence on single occupancy vehicles by incorporating, as appropriate, transportation demand management strategies and safe access and connections to nearby lands and facilities, including pedestrian, bicycle, and transit networks and services.

Comment: The newly structured Criterion 5 would apply to all Act 250 developments or subdivisions in the state regardless of size, scale, type of facility or location within the community (designated growth centers or the smallest project on a one acre lot in the most rural part of the state). Every project would be required to meet these standards regardless of the economic burden. Due to the vagaries of Act 250 jurisdiction, not all developments would be subject to these requirements. For instance, in a ten acre town, a small business establishment might be located next to a larger manufacturing facility. Based on the amount of land that each project is located on, the small business establishment (on eleven acres) might be subject to jurisdiction while the manufacturing facility with many more vehicle trips might escape jurisdiction because it is being constructed on a nine acre lot. Thus the small establishment might be required to provide an access pull out for a bus service anticipated in the next ten years but not currently in operation. In addition, the small establishment could be required to "reduce dependence on single occupancy vehicles by incorporating, as appropriate, transportation demand management strategies and safe access and connections to nearby lands and facilities, including pedestrian, bicycle, and transit networks and services." Next door, the newly constructed manufacturing facility with 100 vehicle trips at peak hour would have no such obligation.

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² Criterion 9(H) -- Scattered Development: The first step under this criterion is to determine whether the project tract is physically contiguous to an existing settlement. Existing settlement has been defined by case precedent as "an extant community center similar to the traditional Vermont center in that it is compact in size and contains a mix of uses, including commercial and industrial uses, and, importantly, a significant residential component. It is a place in which people may live and work and in which the uses largely are within walking distance of each other. The term specifically excludes areas of commercial, highway-oriented uses commonly referred to as 'strip development.' Compatibility in terms of size and use is relevant to determining if an existing group of buildings constitutes an existing settlement in relation to a proposed project." (For more information see the decision in *Re: St. Albans Group and Wal-Mart Stores, Inc., Application #6F0471-EB, Findings Of Fact, Conclusions Of Law, And Order (Altered)*(Jun. 27, 1995). If the project is contiguous to an existing settlement, this criterion is satisfied. If the project is not contiguous to an existing settlement, then applicants need to demonstrate that the additional tax revenues and other public benefits of the project outweigh the additional costs of providing municipal services to the project. **Source: Guide to Applying For an Act 250 Land Use Permit (NRB)**

Item No. 7: New Criterion 9(L). Settlement patterns. To promote Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, a development or subdivision outside an existing settlement shall promote an efficient use of land, energy, roads, utilities, and other supporting infrastructure; shall be designed in a manner consistent with the planning goals set forth in 24 V.S.A. § 4302(c)(1); and shall not establish, extend, or contribute to a pattern of strip development along public highways. A development or subdivision proposed for an area in which a pattern of strip development has already been established shall incorporate compact site design; shall create or contribute to mixed uses³ in the adjacent area; and shall provide appropriate connections to existing and planned transit, bicycle, and pedestrian networks.

Comment: This new language would take the place of the existing Criterion 9(L) language which requires mandatory "clustering" in "rural growth areas" subject to Environmental Board precedent⁴. See attached analysis in EPE Realty Corp and the Act 250 Training Manual. The highlighted text provides important planning guidance to communities within the context of Title 24 but would not work well in a regulatory setting such as Act 250 for some of the reasons mentioned under Criterion 5, and major conflicts will arise with local and regional plans because many plans will not allow some of the required 9(L) actions for legitimate reasons - topography, existence of significant wetlands, adjacency to rivers, or other important municipal land use considerations such as isolation of heavy traffic oriented business or noxious uses.

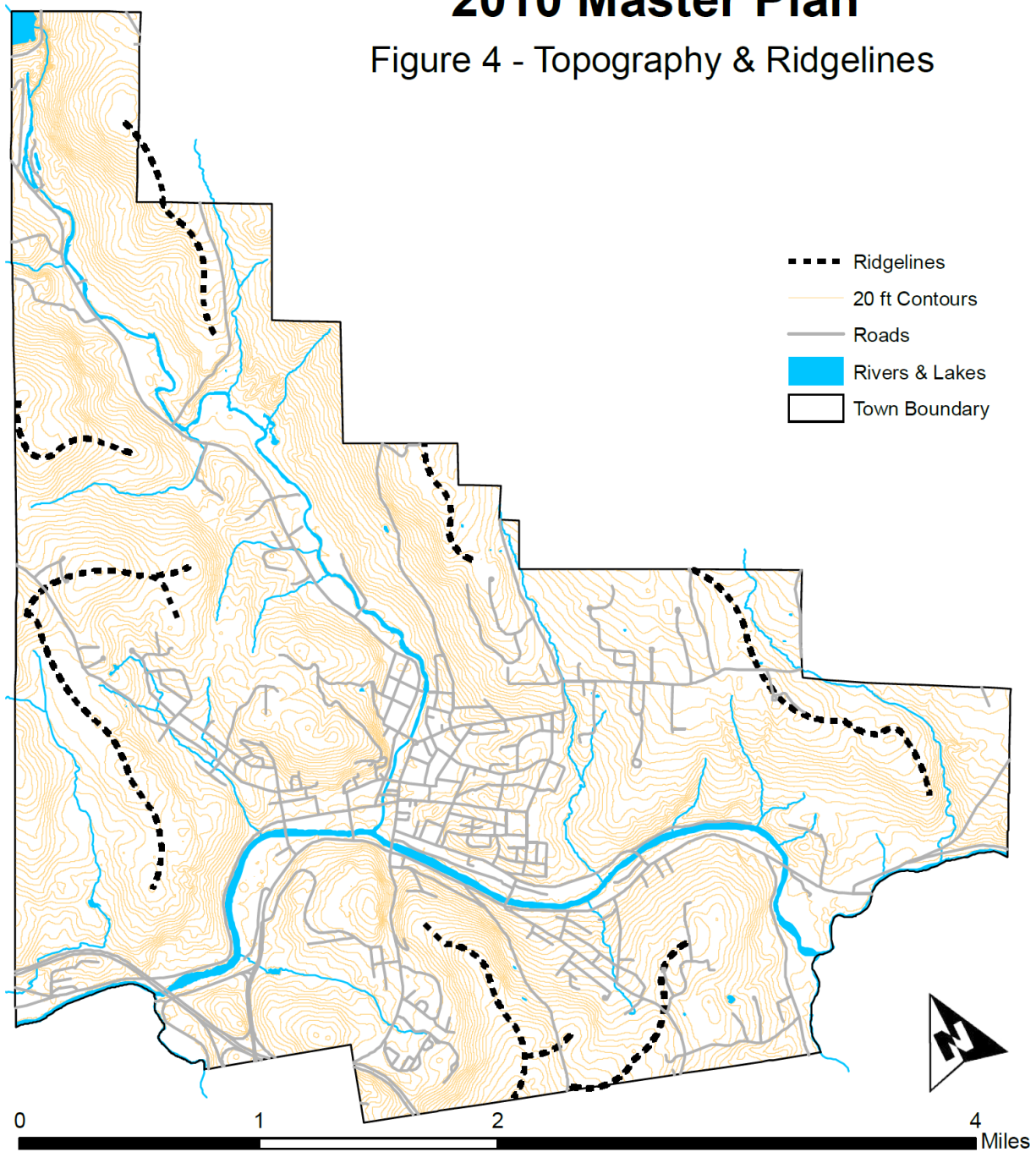
See City of Montpelier example below.

³ "Mixed use" is defined in Act 250 as the "construction of both mixed income housing and construction of space for any combination or retail, office, services, artisan, and recreational and community facilities, provided that at least 40% of the gross floor area of the buildings involved is mixed income housing. 'Mixed use' does not include industrial use." 10 V.S.A. Section 6001(28)

⁴ The Board concludes that Criterion 9(L) requires clustering of all projects in rural growth areas. The language of the criterion is clearly mandatory. Further, the General Assembly established Act 250 to promote well-planned land use and to protect natural resources Re: New England Ventures, #6F0433-EB, Memorandum of Decision (Dec. 6, 1991).

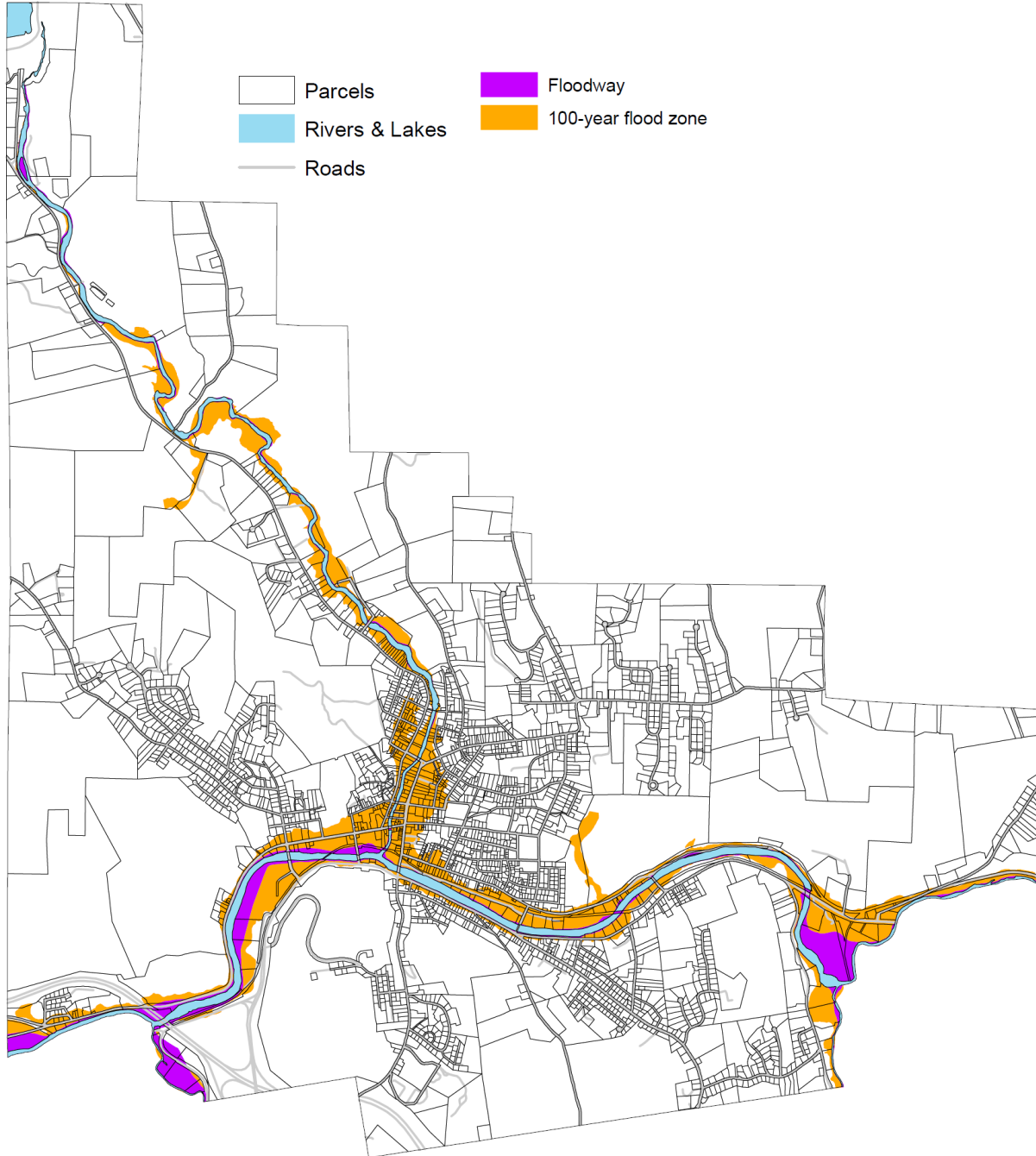
CITY OF MONTPELIER 2010 Master Plan

Figure 4 - Topography & Ridgelines



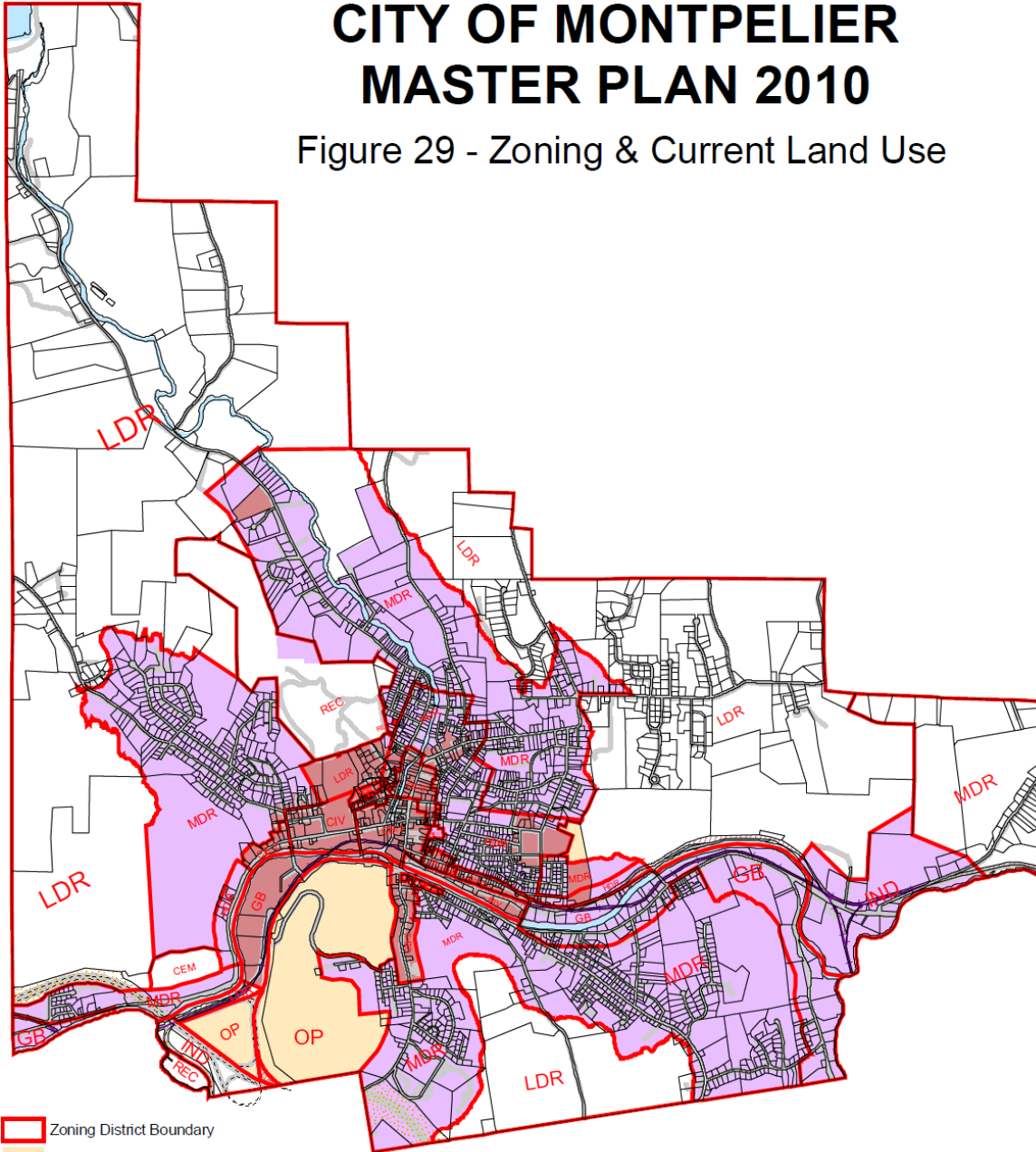
CITY OF MONTPELIER FLOOD ZONE AND FLOODWAY

UPDATED SEPTEMBER 4, 2012



CITY OF MONTPELIER MASTER PLAN 2010

Figure 29 - Zoning & Current Land Use



- Zoning District Boundary
- Design Control District only
- DCD and Growth District
- Growth District only
- Parcel Boundary
- railroad
- Railroad Right-of-Way
- State Road ROW
- I-89 Interchange
- Rivers-Lakes

	ADDITIONS	ADOPTION DATE	EFFECTIVE DATE
CB-I Central Business I	Boundary Change (Greenwood Ter.)	6-14-1995	7-05-1995
CB-II Central Business II	Boundary Change (Berlin and Northfield Sts.)	6-12-1996	7-03-1996
CIV Civic	Boundary Change (46 East State Street)	11-12-1997	12-03-1997
OP Office Park	Boundary Mapping Correction (Putnam St.)		2-10-1998
RIV Riverfront	District Creation (Riverfront District)	1-10-2001	1-31-2001
GB General Business	Interim Restricted Development District	8-06-2003	8-06-2003
IND Industrial	Boundary Change (GB to CBII & Design Control)	9-24-2003	10-15-2003



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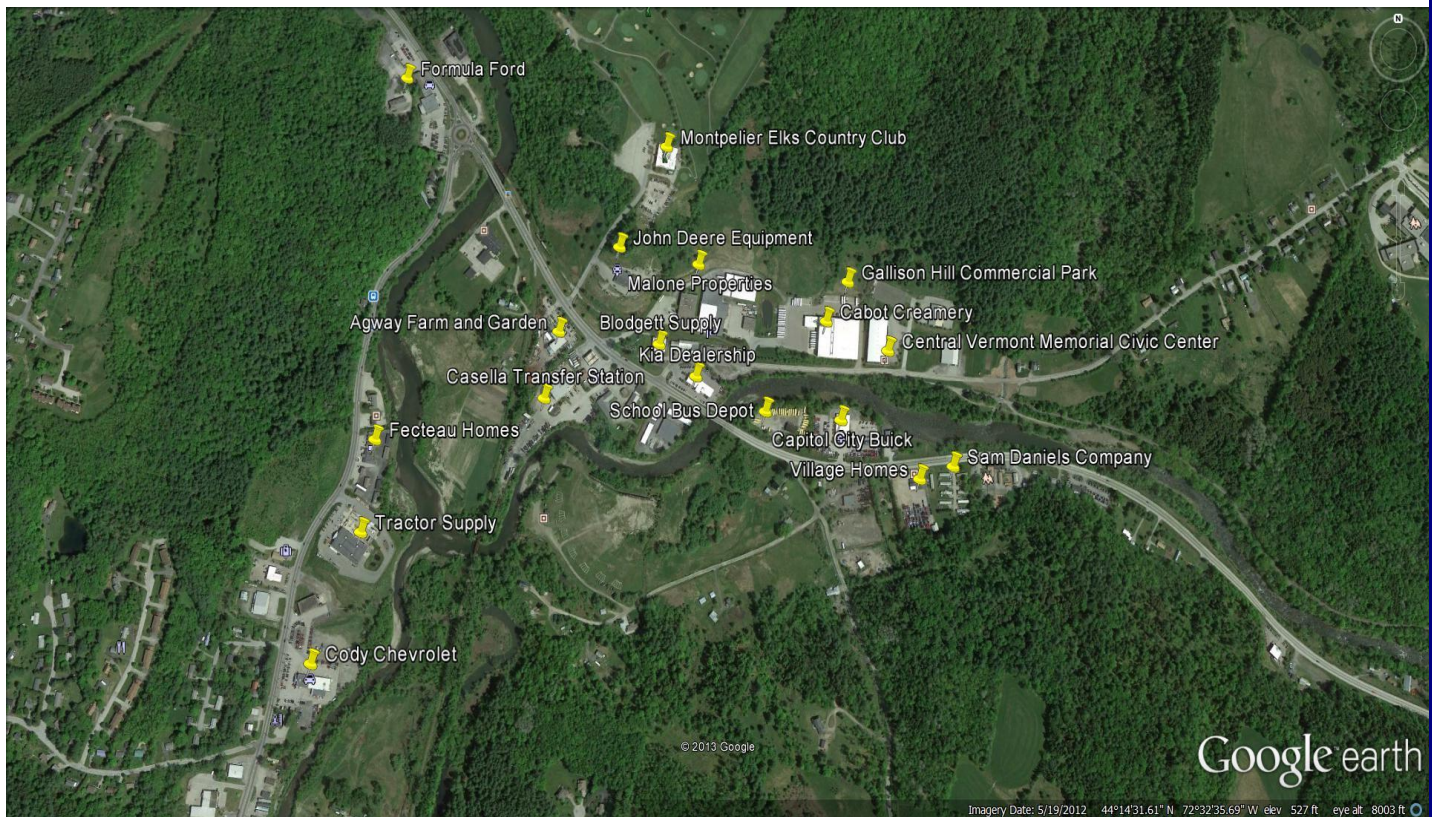
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DETERMINATION OF LEGAL TITLE
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MONTPELIER ZONING DISTRICTS AND REGULATIONS - DISTRICT OBJECTIVES.⁵

GENERAL BUSINESS (GB): *In recognition of the demand by the traveling public, the city provides for these activities in especially designated areas. They are designed for accommodating automotive activities, overnight accommodations and uses generally associated with the traveling public.*

INDUSTRIAL (IND): *The Industrial District provides areas which encourage the location of industrial development and uses through the provision of transportation and other utility infrastructure, and appropriate buffering from residential and commercial uses.(emphasis added)*

Example: *Cabot Creamery has large refrigerated warehouses in the Malone Commercial Park on a 94 acre tract of land along Gallison Hill Road in Montpelier's Industrial District. This agricultural related business with large volume tractor trailer truck volume is doing well and needs to expand its 50,000 sq ft warehouse to augment its shipping capabilities to the East Coast. Gallison Hill Road meets the definition of "strip development" - "broad road frontage, predominance of single-story buildings, limited reliance on shared highway access." With the new Criterion 9(L) language in place, the Cabot expansion will be denied by the district commission since it will "extend and contribute to a pattern of strip development along a public highway" and by its very nature "will not create or contribute to a mixed use (mixed income housing - see footnote No.3 on page 4) in the immediate or adjacent area." This denial will occur even though the project meets all environmental criteria including conformance with local and regional plans. This scenario will be repeated throughout the industrial and general business district of Montpelier and throughout the state with obvious negative economic consequences and strained relationships between local and state officials.*



⁵ *City of Montpelier Zoning & Subdivision Regulations As Amended – January 26, 2011*

