

# Report of the Smart Growth Committee

[Created by Sec. 16 of Act 176 of the 2007  
Adjourned Session (2008)]

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## I. COMMITTEE CHARGE

Sec. 16 of Act 176 of the 2007 Adjourned Session (2008) (introduced as H.863) established the Committee as follows:

### Sec. 16. SMART GROWTH; STUDY COMMITTEE

(a) A smart growth study committee is created to:

(1) Study Act 250 (10 V.S.A. § 6086) criterion 5, relating to traffic, criterion 9(H), relating to scattered development, criterion 9(L), relating to rural development, and other criteria identified by the committee, to determine the effectiveness of those criteria to promote compact settlement patterns, prevent sprawl, and protect important natural resources, and to make recommendations to improve the effectiveness of those criteria in preserving the economic vitality of Vermont's existing settlements and preventing sprawl development.

(2) Evaluate the development potential of existing designated downtowns, new town centers, and village centers and evaluate the community and natural resource impacts of developing surrounding lands.

(3) Make recommendations for incentives designed to encourage municipalities to preserve Vermont's working landscape and to develop Vermont neighborhoods and new housing.

(4) Develop recommendations for how best to conduct periodic assessments of the effectiveness of the designation programs established under chapter 76A of Title 24.

(b) The committee shall be composed of the following 13 members:

(1) Two members of the house, one from the committee on general, housing and military affairs and one from the committee on natural resources and energy.

(2) Two members of the senate, one from the committee on economic development, housing and general affairs and one from the committee on natural resources and energy.

(3) A representative from each of the following organizations:

(A) Vermont homebuilders and remodelers association.

(B) Lake Champlain regional chamber of commerce.

(C) Vermont planners association.

(D) Vermont association of planning and development agencies.

(E) Smart growth Vermont.

(F) Vermont natural resources council.

(G) Vermont natural resources board.

(H) Vermont association of realtors.

(I) Vermont league of cities and towns.

(J) The land use law center at Vermont Law School.

(c) The four legislative members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided to members of standing committees under 2 V.S.A. § 406 for attendance at a meeting when the general assembly is not in session.

(d) The chair shall be elected from any of the four legislative members by the members of the study committee from among the four legislative members. The committee shall meet as needed, and the legislative council shall provide administrative support.

(e) The committee shall issue a brief report on its findings and recommendations to the house committees on general, housing and military affairs and on natural resources and energy and the senate

committees on economic development, housing and general affairs and on natural resources and energy on or before January 15, 2009.

## II. GENERAL BACKGROUND

### A. An overview.

A preponderance of the testimony, data, and supporting information presented to the Committee strongly indicates that, despite Act 250's success with regard to protecting natural resources and mitigating many adverse impacts of rapid land development, it has not been effective in preventing sprawl. At the same time, Act 250 has not been effective in promoting smart growth (i.e., compact, high-density, mixed-use development inside existing and planned community centers), and certain criteria may serve as a hindrance to desirable in-fill development within existing centers or settlements.

Causes of Act 250's ineffectiveness in addressing smart growth and sprawl include:

- (1) The inability to address cumulative impacts of development on a project-by-project review; and
- (2) The historic lack of a land use planning framework to help guide Act 250 decision-making.

With regard to cumulative impacts, this shortcoming is especially evident in linear, automobile-oriented commercial development along major highways (with Route 7 south of Rutland City serving as a particularly egregious example). This development pattern – which is one of the most commonly identified form of sprawl – has been shown by numerous studies to have negative public impacts, including the erosion of economic vitality in historic downtowns, diminished highway capacity, and the loss of the state's scenic landscape and unique character. Addressing this issue has proven difficult in the past due to a number of challenges, including the incremental nature of strip development that limits the ability of Act 250's individual project review to address the overall development patterns within a highway corridor.

With regard to the lack of a land use planning framework to help guide Act 250 decision-making, this shortcoming dates back to the Legislature's rejection of the state land use plan in the mid-1970s. Since that time, there have been efforts made to encourage and improve land use planning, most notably with the passage of Act 200 in 1988. Act 200 has been effective in improving the scope and detail of municipal and regional planning in the state, and in many instances has led to the enactment of municipal land use and growth management tools that are far more effective than those that existed when Act 250 was passed, resulting in a degree of regulatory duplication in some communities. The vast majority of communities have adopted municipal plans. Also, approximately 77 percent have adopted zoning bylaws, and 53 percent have adopted subdivision bylaws. However, the state planning and coordination embodied in Act 250 – and intended to empower municipalities through bottom-up integration with state agency decision-making – has not been attained.<sup>1</sup>

In recent years, the Legislature has attempted to eliminate barriers to smart growth and integrate planning and development goals (as set forth in 24 V.S.A. § 4302) into the regulatory process by exempting certain types of "mixed use and mixed income housing," in specific locations, from Act 250 review. Initially, the jurisdictional

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<sup>1</sup> For a detailed exposition of implementation of Act 200 planning and its relation to other planning efforts, please review Appendix I, a memo submitted to the committee by its counsel, Al Boright. See also Appendix VII, the Vermont Department of Housing and Community Affairs' chart showing the status of municipal planning and bylaw adoption.

thresholds for “mixed-use” and mixed-income” housing developments within designated Downtown Development Districts were raised in 2002, prorated according to the population of the municipality. This was followed with enactment of the growth centers law in 2006 to encourage municipalities to plan for compact development adjacent to existing downtowns and village centers (and in certain locations, new town centers). Those same jurisdictional thresholds that applied to downtowns were also applied to growth centers. The growth centers law also modified how Criterion 9(B), related to primary agricultural soils, is applied within and outside the designated growth centers.

In 2008, the Legislature created a new designation category with the enactment of the Vermont neighborhoods program. Vermont neighborhoods are areas within or contiguous to designated downtowns and village centers where the jurisdictional threshold for new housing development was increased. At the same time, the jurisdictional thresholds in all designated areas were increased, and the limitations on housing affordability relaxed.

To date, some developers have indicated that the exemptions have reduced development costs in designated downtowns and village centers and, in the case of Williston, have facilitated compact development within growth centers. It is far from clear whether these programs will facilitate smart growth or curtail sprawl, however, for a variety of reasons, including:

- (1) The implementation of the growth centers program and Vermont neighborhoods program has been controversial. Some Committee members contend that key designation criteria have been marginalized by the expanded downtown board, resulting in over-sized growth centers that facilitate low-density sprawl that could undermine the viability of traditional downtowns. Other Committee members support broad and flexible interpretation of that law and broad deferral to local decisions. All members agree that there should be greater coordination and consistency among state, federal, and local laws, with the regulation of wetlands being one of the subject areas most commonly cited as being in need of improved consistency.
- (2) Recognizing that Act 250 neither prevents sprawl nor facilitates smart growth, the exemptions in “smart growth locations” through higher jurisdictional thresholds for housing have not been balanced with efforts to improve how Act 250 addresses rural sprawl. Again, the Committee has not reached consensus due to the concern of some parties that no changes to Act 250 criteria should be enacted until it is demonstrated that the growth center and associated programs will result in adequate housing opportunities to meet the needs of Vermonters. Other groups maintain that for locational permit reform (i.e., targeting permit exemptions to desirable development locations) to be effective, all of Act 250’s shortcomings related to settlement patterns should be addressed, including the fact that it does not effectively address strip development and sprawl.
- (3) Conflicts have emerged in Act 250 when well-designed projects proposed for areas planned for intensive growth by the municipalities were subject to denial by Act 250 because they had not been adequately clustered on the project tract to preserve a sufficient acreage of primary agricultural soils, a requirement of Subcriterion 9(B)(iii) of 10 V.S.A. § 6086. This requirement has resulted in isolated pockets of protected agricultural soils that were deemed at the time to be unlikely to be farmed in the future. Many agree that the prior statutory language of Criterion 9(B) represented the antithesis of “smart growth” since it did not allow high density development to occur on primary agricultural soils in areas served by public investment and infrastructure. This led to the passage of Act 183 of 2006 and the codification of “offsite mitigation” through the payment of fees. Maximizing development densities in these areas, including designated growth centers, as allowed in Act 183, ultimately serves to reduce development pressure on primary agricultural soils in outlying rural areas. The Criterion 9(B) revisions approved in Act 183, effective July 1,

2006, promote more efficient land use and thus are in concert with “smart growth” land use principles and one of the statutory goals of chapter 117 of Title 24 and Act 250’s Capability and Development Plan which is to encourage the historic settlement pattern of compact village and urban centers separated by rural countryside.

The definition of primary agricultural soils was amended by Act 183 to include a consideration of “location” of the project tract as part of determining whether the soils are capable of “supporting or contributing to an economic or commercial agricultural operation.” The definition was changed in the following manner:

(15) “Primary agricultural soils” means ~~soils which have a potential for growing food and forage crops, are sufficiently well drained to allow sowing and harvesting with mechanized equipment, are well supplied with plant nutrients or highly responsive to the use of fertilizer, and have soil map units with the best combination of physical and chemical characteristics that have a potential for growing food, feed, and forage crops, have sufficient moisture and drainage, plant nutrients or responsiveness to fertilizers, few limitations for cultivation or limitations which may be easily overcome. In order to qualify as primary agricultural soils, the, and an average slope of the land containing such soils that does not exceed 15 percent, and such land is. Present uses may be cropland, pasture, regenerating forests, forestland, or other agricultural or silvicultural uses. However, the soils must be of a size and location, relative to adjoining land uses, so that those soils will be capable, following removal of any identified limitations, of supporting or contributing to an economic or commercial agricultural operation. If a tract of land includes other than primary agricultural soils, only the primary agricultural soils shall be impacted by criteria relating specifically to such soils. Unless contradicted by the qualifications stated in this subdivision, primary agricultural soils shall include important farmland soils map units with a rating of prime, statewide, or local importance as defined by the Natural Resources Conservation Service (N.R.C.S.) of the United States Department of Agriculture (U.S.D.A.).~~

Some have argued consideration of the “location” of the soils may contribute to fewer soils being identified as primary agricultural soils. While this may be true, it is too early to assess accurately the impact of this change and what impact it might have on protecting primary agricultural soils.

10 V.S.A. § 6093 requires the secretary of agriculture, food and markets to establish a price-per-acre value in order to calculate any required off-site mitigation fee, which is “the recent, per-acre cost to acquire conservation easements for primary agricultural soils” in a particular region. The practice of calculating this “recent per-acre cost” of conservation easements has included “options to purchase [the conserved soils at current] agricultural value” (OPAV). Recently, the secretary of agriculture, food and markets determined that calculating the cost of conserving the soils should be the only determinant and should not also include purchase options since the statute only refers to the cost of purchasing “conservation easements,” not the purchase of affordability options which give the easement holders the right to purchase the property at its appraised agricultural value if offered for sale to a non-farmer or non-family member at some point in the future. Because easements that include the affordability option are typically worth more, computing mitigation costs without this value results in a decrease in the mitigation fees assessed and collected, and therefore a decrease in the amount of productive agricultural soils that otherwise can be conserved. It should be recognized that Act 250 mitigation fees paid to VHCB are often used to leverage other state, federal, and private funds in order to preserve large tracts of primary agricultural soils. On almost all of the recent VHCB farmland conservation projects, OPAVs are included in the conservation easements to make sure that the farmland is both conserved and affordable to future farmers. However, since Act 250 mitigation fees are not based on the additional cost of purchasing these affordability options, Act 250 developers are

paying a recent per-acre cost that is less than it costs parties who choose to conserve primary agricultural soils with options to maintain affordability for future generations of farmers.

Act 183 of 2006 required the secretary of agriculture, food and markets, with the assistance of a working group, to report to the general assembly with a work plan and budget estimate for an analysis of options and recommendations as to how these soils can be put into productive use and how to give a higher priority to their conservation. This report appears in Appendix II. That same act also required the working group: (a) to identify and evaluate options by which the state might best establish long-range agricultural lands conservation goals and maximize public and private resources to achieve these goals; and (b) to develop recommendations on how to balance long-term agricultural land conservation with local land use preferences and local development needs. This report does not appear to have been completed.

B. Summary. A summary of the testimony received by the Committee is as follows:

- Vermonters value our working landscape, proximity to natural resources, and a human scale of development. According to a recent survey conducted by the Council on Rural Development, 97 percent of Vermonters place the highest value upon maintaining the state's working landscape. According to Smart Growth Vermont's 2006-2008 survey conducted by UVM's Center for Rural Studies, approximately 70 percent of respondents feel action should be taken to avoid sprawl.
- The majority of development projects are not subject to Act 250 jurisdiction.<sup>2</sup> It would also be accurate to say that Act 250 probably captures the majority of large development projects in the state although the growth center bill may reduce the size of that majority to some degree.
- Forest fragmentation is an ongoing trend in Vermont that is not being adequately monitored or quantified. Forest resources and the forest products industry are threatened by ongoing fragmentation and parcelization of forest land, and Act 250 is not adequately addressing forest fragmentation, although addressing it is essential to combating climate change.
- Act 250 is not addressing farmland fragmentation and the incremental loss of primary agricultural soils, partly because the small-scale subdivision of nine lots or fewer within a period of five years is not subject to jurisdiction. Testimony was received that Act 250 permit denials in rural areas, whether based on the agricultural soils, scattered development, or rural development criteria, may result in projects being scaled down or phased in so as to be small enough to avoid Act 250 jurisdiction, with more sprawl and additional loss of primary agricultural soils resulting.

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<sup>2</sup> In 1982, the Vermont Supreme Court, citing prior precedent, interpreted Act 250 jurisdiction in the following manner:

As this Court has previously stated, although the purposes of Act 250 are broad, the Legislature in passing the Act did not purport to reach all land use changes in the state, nor to impose the substantial administrative and financial burdens of the Act, or interfere with local control of land use decisions, except where values of state concern are implicated through large scale changes in land utilization. The Act was a philosophic compromise between a desire to protect and control all the lands and environment in the state of Vermont, and the need to avoid an administrative nightmare. In re Agency of Administration, 141 Vt. 68, 444 A.2d 1349 (1982) (citing Committee to Save the Bishop's House, Inc vs Medical Center of Vermont, Inc, 137 Vt 142, 151, 400 A.2d 1015, 1020 (1979).

- The calculation of mitigation fees for primary agricultural soils does not include the additional costs paid by parties who choose to conserve primary agricultural soils with options to maintain affordability for future generations of farmers.
- The Vermont Housing and Conservation Fund has been the most significant incentive in existence for protecting the working landscape and promoting or creating workforce housing in municipal centers.
- Our current regulatory framework (Act 250) should not be used as a substitute for appropriate land use planning. In fact, some of our regulations may be encouraging the parcelization and fragmentation of important resource lands, as well as forcing growth in outlying areas.
- The state is not conducting comprehensive land use planning. There are gaps in the way the planning and the regulatory system function, and in the coordination between state, regional, and local planning. Current statutes include provisions for coordination, but there is not compliance with these requirements.
- State planning and development goals are in place, which should provide adequate guidance for local planning and implementation. Land use planning and zoning is undertaken primarily at the municipal level where, when bylaws are in place, development projects are reviewed. However, the extent of the local effort is inconsistent across the state. In some municipalities, review is exhaustive and in others the review is less thorough. In fact, since local planning is only an option and not a requirement under Vermont law, some communities choose not to plan at all.
- We need an overall vision that is sensitive to what we as Vermonters value, and we should develop a plan that provides an overall economic framework with energy, farm, and forest uses intertwined. The agricultural and forest resource needs of the state should be identified and considered in the context of an overall land use and energy planning framework.
- Incentives for maintaining the rural landscape should integrate the need for comprehensive food system planning, energy development, and better economic development that builds on Vermont's strengths (e.g., creative economies, rural character). Smart growth is a key to sound economic development policy.
- Commercial strip development may have adverse consequences for Vermont, which may include: (1) adverse impacts to the economic viability of downtowns and traditional community centers; (2) undue financial burden on taxpayers as incremental development results in lost highway capacity and congestion; and (3) erosion of the state's rural character.
- There is very little state statutory authority to prevent sprawl or address the cumulative impact of growth at the state or local level.
- Sprawl is a definable settlement pattern that includes automobile-dependent, scattered, low density residential development and commercial strip development outside compact centers. Sprawl is an undesirable pattern of growth, as Vermonters have indicated in multiple surveys and polls, due to its costs in terms of providing infrastructure and its impacts on transportation and energy use, as well as



aesthetics and community character. However, it is not yet being effectively addressed by many local governments or by state government.

- Many aspects of smart growth require strong regional planning and coordination, including the establishment of essential infrastructure, transportation and energy networks, and natural resource connectivity.
- We lack information on the adequacy of the land area available for growth in designated centers.
- The Energy Crisis (manifested as the market force of high fuel costs and fewer discretionary dollars overall) has people rethinking their choices in terms of where to live and work and how to reduce or eliminate transportation costs. Compact walkable communities hosting a variety of services and businesses look very attractive in this climate.

### III. ACT 250 RECOMMENDATIONS

Attached to this report, as Appendix III, is a document provided by Michael Zahner, on behalf of the Natural Resources Board, discussing the criteria of most interest to Committee members.

The following recommendations relate to the Act 250 portion of the Committee's mandate. The Committee did not reach consensus on all of these recommendations and recognizes that any of its recommendations are likely to be refined during the legislative process.

A. The Act 250 portion of the mandate is to study at least three of the Act 250 criteria, the first of which is Criterion 5 (10 V.S.A. § 6086(a)(5)), relating to traffic.

**Findings:** The Committee finds that existing Criterion 5 is not effective in promoting compact settlement patterns, preventing sprawl, or protecting important natural resources.

**Recommendations:** The Committee, with one vote against and one abstention<sup>3</sup>, recommends consideration of legislation that contains the following:

Sec. 1. 10 V.S.A. § 6086(a)(5) is amended to read:

(5) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, sidewalks, bikeways, waterways, railways, airports, and airways, and other means of transportation existing or proposed and provides appropriate connections to transit, bicycle, and pedestrian networks, where existing or planned, with the objective of providing alternative modes of travel.

B. The second criterion identified in the Committee's mandate is Criterion 9(H) (10 V.S.A. § 6086(a)(9)(H)), relating to scattered development.

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<sup>3</sup> Michael Zahner has abstained from voting on the precise language recommended by the Committee in the Act 250 section of this report since the Land Use Panel of the Natural Resources Board has not had an opportunity to review the language. The Panel does not meet again until January 27, 2009.

**Findings:** The Committee finds that existing Criterion 9(H) is not effective in promoting compact settlement patterns, preventing sprawl, or protecting important natural resources.

**Recommendations:** With two members opposed, and one abstention,<sup>4</sup> the Committee recommends consideration be given to revising Criterion 9(H) to address specifically the cumulative impacts of scattered development on existing settlements. This might read as follows:

Sec. 1. 10 V.S.A. § 6086(a)(9)(H) is amended to read:

(H) Costs of scattered development. The district commission will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision, when considered together with cumulative effects of scattered development on the costs of public services and facilities in the town or region, do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.

C. The third Act 250 criterion for consideration is Criterion 9(L) (10 V.S.A. § 6086(a)(9)(L)), relating to rural development.

**Findings:** The Committee finds that existing Criterion 9(L) is not effective in promoting compact settlement patterns, preventing sprawl, or protecting important natural resources.

**Recommendations:** With two members opposed, and one abstention,<sup>5</sup> the Committee recommends consideration of legislation that addresses the following. A slightly revised version of language that the House passed last year in its original version of H.863 might read as follows:

Sec. 1. 10 V.S.A. § 6001(16)(rural growth areas definition) is repealed.

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

Sec. 2. 10 V.S.A. § 6001(31) and (32) are added to read:

(31) “Existing settlement” means an extant community center similar to the traditional Vermont center which is compact in size and contains a mixture of uses which may include commercial, industrial, and residential components which are, to a large extent, within walking distance of each other, and which have appreciably higher densities than densities that occur outside these areas. For the purposes of this subdivision, the term shall include downtown development districts designated in accordance with 24 V.S.A. § 2793, village centers designated in accordance with 24 V.S.A. § 2793a, new town centers designated in accordance with 24 V.S.A. § 2793b, growth centers designated in

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<sup>4</sup> Please see footnote 3.

<sup>5</sup> Please see footnote 3.

accordance with 24 V.S.A. § 2793c, and Vermont neighborhoods designated in accordance with 24 V.S.A. § 2793d. This term specifically excludes areas of commercial, highway-oriented uses commonly referred to as “strip development.”

(32) “Strip development” means linear commercial development along an arterial highway leading from an existing settlement or connecting two existing settlements. The characteristics of strip development, which need not all be present in order for strip development to exist, include the following: broad road frontage; individual curb cuts for individual projects; lack of connection to existing settlements by anything except highway; limited accessibility to pedestrians; and lack of coordination with surrounding projects in terms of design, signs, lighting, and parking.

Sec. 3. 10 V.S.A. § 6086(a)(9)(L) is amended to read:

~~(L) Rural growth areas. A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) “impact of growth,” (G) “private utility service,” (H) “costs of scattered development” and (J) “public utility services” of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.~~

Settlement Patterns.

(i) Inside existing settlements, a permit shall be granted for development or subdivision of land if the applicant, in addition to other applicable criteria, demonstrates that the project will not significantly detract from Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside, which shall be accomplished by complying with planned densities that are appreciably higher than densities outside existing settlements within the municipality and region.

(ii) In areas outside existing settlements, a permit shall be granted for development or subdivision if, in addition to all other applicable criteria, the applicant demonstrates that the project:

(I) will not significantly detract from Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside, which shall be accomplished by contributing to overall densities that are appreciably lower than densities planned for existing settlements within the municipality and region;

(II) will not promote a pattern of strip development along public highways. In situations in which a pattern of strip development has already been established, development should reinforce compact in-fill site design;

(III) will promote an efficient use of land, energy, roads, utilities, and other supporting infrastructure through any combination of compact site development, clustering, and conservation subdivision design.

D. In addition to the specific recommendations described above, the Committee considered several other issues associated with Act 250. These include:

- (1) Planning in the state.

(a) Locally enacted bylaws and state regulations both should reinforce a preference for developing in downtowns and compact settlements, possibly by use of smaller lot sizes, and flexible standards for reuse of buildings. This principle implicitly supports better planning for rural areas.

(b) Vermont's planning framework is in need of improvement to provide better information about resources having local, regional, and statewide significance as well as more coordination of planning at these various levels of review. There are a number of available options that have not been considered in depth by the Committee, the history of which is summarized in the table attached as Appendix IV. The most recent legislative attempt to deal comprehensively with this issue was in S.287 of 2008, introduced by Senator Ginny Lyons and others, which would have established an office of planning coordination within the agency of administration. Such efforts or other mechanisms to improve intergovernmental and interagency coordination should be pursued, preferably in the context of a larger review of the state's planning and permitting processes, until this gap is adequately addressed and closed.

(2) Jurisdictional thresholds. Testimony was received to the effect that Act 250 permit denials in rural areas, whether based on the agricultural soils, scattered development, or rural development criteria, may result in projects being scaled down or phased in so as to be small enough to avoid Act 250 jurisdiction, with more sprawl and additional loss of primary agricultural soils resulting. This prompts some to consider whether current jurisdictional thresholds for Act 250 review are adequate, whether the Act 250 review process could be improved so that developers are less motivated to avoid it, and whether local efforts are adequate to protect agricultural soils. These considerations were beyond the scope of this Committee, however.

(3) Other criteria. With regard to other criteria and Act 250's overall effect on promoting smart growth or sprawl, the Committee finds that the time is right for taking a comprehensive review of Act 250's criteria and their relationship to other planning, land use and development regulation, natural resource protection, and community development policies and programs. Such a review should identify revisions to existing laws that would:

- (a) better coordinate various planning and permitting processes;
- (b) ensure that the permitting process is efficient and timely;
- (c) avoid redundancy between regulatory processes;
- (d) guide development in a manner that complies with Vermont's planning and development goals;
- (e) ensure citizen access to the development review process;
- (f) protect Vermont's environmental quality while encouraging growth in planned growth centers; and
- (g) address land use concerns raised during this Committee process.

(4) The Downtown Chapter.

(a) Committee members believe that the entire program under 24 V.S.A. chapter 76A, the Downtown Chapter, would be more efficient and effective if it were managed by one board, the so-called state board as expanded under 24 V.S.A. § 2792(f), instead of having some of the programs managed by the original state board, which includes representatives from a smaller range of interests.

(b) Partnerships with local officials to generate redevelopment in designated downtowns, growth centers, village centers, Vermont neighborhoods as defined in the chapter, and new town centers must include the multiple agencies administering programs that must be complied with before common goals

are actually met. Inside designated areas, requirements to address a host of issues, including air quality, wetlands, natural and fragile areas, and congestion, must be tailored to make it convenient, efficient, and easy to locate in those areas.

(5) Public education. Greater efforts and resources must be directed to providing citizens and volunteer boards with information with regard to the state's planning and regulatory systems sufficient to enable them to participate in relevant proceedings when it is in their interest to do so and to provide them with knowledge of how the system as a whole may be expected to function.

#### **IV. DEVELOPMENT POTENTIAL**

Sec. 21 of Act No. 176 of the 2007 Adjourned Session (2008) provides as follows:

##### **Sec. 21. REGIONAL PLANNING COMMISSION REPORT ON INFILL OPPORTUNITIES**

By no later than January 15, 2009, each regional planning commission is requested to inventory and map locations within its region that are served by municipal wastewater and water supply services and that are otherwise suitable for infill development and redevelopment, giving due regard to the location of important natural resources and primary agricultural soils. The inventory and map shall be provided, by January 30, 2009, to the committees of the general assembly with jurisdiction over housing, natural resources, and agriculture.

In response to the above mandate, the Vermont Association of Planning and Development Agencies (VAPDA) provided an update of the potential process and resource requirements necessary for this request to be finalized. They explained that preparing a complete and comprehensive inventory is an extensive and monumental undertaking that needs to be done correctly with all of the parties agreeing on exactly what information is expected at the end of the effort. That can be accomplished but will need to be staggered over a period of time greater than the one indicated in the legislation, because not only do the regional planning commissions have extensive responsibilities in other areas – brownfields, transportation, and emergency management – but they are facing significant reductions in the funds available to them through the Agency of Commerce and Community Development.

It is hoped that by the end of the year, as a first step, VAPDA will be able to complete the inventory and mapping of designated downtowns, villages, and growth centers as well as other communities that are zoned for village or business districts and that have both public- or government-provided sewer and water. Within those areas, the commissions may be able to consider lands that are open or substantially open and that have a reasonable expectation of use for housing. Should time permit, they may be able to consider open lands that are adjacent or contiguous to these designated areas. It is important to note that all of these determinations are local in nature and are difficult to assess from a statewide level.

The Committee discussed this mandate and also agreed that it requires additional research, debate, and funding to provide a comprehensive evaluation. The Committee agreed that in order to develop a comprehensive analysis and avoid a piecemeal approach, regional planning commissions with their municipal members need to agree upon and implement consistently a clear definition of what constitutes developable lands. The Committee suggests that developing these criteria should be undertaken by a varied group of stakeholders to build a consensus process that is agreed upon and moves forward to analyze the development potential of these areas.

The Committee also suggests investigating other organizations and individuals, such as UVM's Austin Troy, that might already be working on this issue and suggests pursuing public-private relationships to fund and implement this analysis successfully.

During Committee discussions, it was suggested that it might be helpful to create a statewide map that details how the land in all the counties is currently zoned if at all. Given that each town has different zoning requirements, the generation of an accurate and useful map would take quite a bit of time, energy, and expense. Such a map also should contain more than zoning. For example, it would be more useful if it also identifies primary agricultural lands, public lands, federal lands, and wetlands, among other categories. It should be possible to build on the work produced statewide by the regional planning commissions to map natural resources according to consistent standards. There is an existing Vermont Center for Geographic Information map layer of conserved public lands which may need updating. It is important that before such a map is created, there must be developed an underlying statement of goals or a statewide planning process that provides clear guidance regarding the purpose of the map.

## V. INCENTIVES

Municipalities and regions need innovative and useable tools such as tax increment financing and special assessment districts as well as targeted and supportive state policies and grants to fund the infrastructure that is necessary to encourage development to occur in designated growth centers or other areas specified by the municipality for economic development.

A. Incentives to encourage municipalities to preserve Vermont's working landscape.

- The state should revive its financial support for municipal planning.
- The state should expand the Current Use Program to include lands open to hunting or other public use.
- For the last 21 years, the Vermont Housing and Conservation Fund has served to both preserve Vermont's working landscape and encourage the development of new housing within our town centers for working Vermonters. It brings together the dual planning goals of the state – compact villages surrounded by working lands – and has served as a model for other states. Thus, the Committee recommends that the state fully fund the Vermont Housing and Conservation Fund.
- At least one Committee member contends that development outside designated growth nodes should be allowed to continue in a planned and thoughtful manner.

B. Incentives to encourage development in downtowns and compact settlement areas.

- State and federal financial assistance with development, maintenance, and redevelopment of infrastructure, such as highways, parking facilities, sidewalks, wastewater and water, and public transportation, is key, particularly as a municipality adjusts to accommodate greater downtown densities. Traditional centers of commerce frequently have the most deteriorated and complex infrastructure, particularly when it comes to wastewater and water. They also are host to brownfield sites, which frequently are located in the middle of town and which may require significant legal and financial resources in order to be returned to productive use.

- Locally administered revolving loan funds such as the Bennington Revolving Loan Fund and Townwide Fund that are flexible enough to respond to local needs must be available to communities and supported both locally and by the state.
- The state needs to assist towns in the creation of designated downtowns, new town centers, and village centers and in the development of their own municipal plans.
- Downtown Program funding, which is easily accessible without the lengthy paperwork typical of government funding sources, works well and should be replicated in the other programs.
- The system of designating “centers” to promote smart growth needs to be less complex.
- The benefits of obtaining a “centers” designation must be more significant and obvious (e.g., simpler permitting, access to infrastructure).
- “Common sense” should be used when different agencies with permitting authority review projects within “centers.”
- Efforts to promote smart growth in centers need to be expanded (through infrastructure investments and planning, for example); however, these programs must be coupled with efforts to protect natural resources and discourage unplanned growth in the “countryside.” Doing one without the other undermines the state’s effectiveness and ability to do either.
- Tax Increment Financing District legislation is needed. In particular, 24 V.S.A. § 1893 should be amended as follows:

§ 1893. PURPOSE

The purpose of tax increment financing districts is to provide revenues for improvements that serve the district and related costs, which will stimulate development or redevelopment within the district, provide for employment opportunities, improve and broaden the tax base, provide energy efficiency and alternative energy improvements, or enhance the general economic vitality of the municipality, the region, or the state.

- Tax credits available to developers through the Downtown Program have been used to great effect in renovating historic buildings in downtowns and should be continued.
- Local officials should be encouraged to put into practice good, innovative ideas that may fall outside the confines of programs designed to promote growth in downtowns but that would in fact result in growth in downtowns.

C. Recommendations for incentives designed to encourage municipalities to develop new housing.

This Committee’s earlier recommendation that urged full funding of the VHCB would continue the extremely effective housing development program operated by the board.

## **VI. RECOMMENDATIONS FOR HOW BEST TO CONDUCT PERIODIC ASSESSMENTS OF THE EFFECTIVENESS OF THE DESIGNATION PROGRAMS ESTABLISHED UNDER CHAPTER 76A OF TITLE 24.**

Periodic assessment of any program and project is important to ensure long-term success and effectiveness. Developing indicators as an evaluation tool is one method to conduct a periodic assessment. The Committee recommends that any evaluation process that is developed encompass procedural, qualitative, and quantitative indicators. Research into other organizations that have developed or are developing such indicators would be an important first step. For example, the National Main Street Center has developed indicators for its program, and Smart Growth Vermont is working in partnership with UVM's Center for Rural Studies, Preservation Trust of Vermont, and the Downtown Program to develop a series of indicators to measure the health of our downtowns. This project should have some results to share by the end of 2009.

Due to staffing limitations, data collection should be integrated into the program applications. In evaluating the various program designations, the Committee arrived at some limited suggestions for potential indicators to collect data on:

### Procedural Indicators:

- Number of applicants for the program
- Number of applicants applying for benefits (i.e., Downtown Transportation Fund, building rehab tax credits, sales tax reallocation)
- Stress level of applicant – difficulty of the planning process and of completing the requirements for designation

### Quantitative Indicators:

- Vacancy rates
- Investment in downtown properties
- New jobs created
- Diversity of housing types
- Development densities for all land uses
- Mixture of uses
- Use of various modes of transportation
- Miles of bike paths
- Retail sales in downtowns and villages v. outskirts

### Qualitative Indicators:

- Evaluation by downtown coordinators on how their downtown is doing
- Evaluation by municipality on success of designated areas
- Evaluation by planning coordination group, expanded downtown board and legislature on the compliance of designated growth centers with designation criteria and smart growth principles



## VI. ISSUES FOR FURTHER CONSIDERATION

During the course of its deliberations, the Committee identified a number of issues that may have been outside the Committee's mandate or that the Committee did not have the time to address adequately, but that are worthy of further consideration, including:

- Further consideration should be given to:
  - (1) establishing guidelines to control rural commercial development.
  - (2) improving incentives for municipalities to participate in downtown programs.
  - (3) permit reform which is focused on streamlining local and state permits.
- The regional planning commissions should be required:
  - (1) under 24 V.S.A. § 4348a(a)(2)(D), relating to the elements of a regional plan, to research, map, encourage, and maintain a full-cycle regional food system from creation to composting. Such a requirement would be accompanied by adequate funding.
  - (2) to map and quantify earth resources available, regional current use and future need.
  - (3) to more fully promote implementation of the Land Evaluation and Site Assessment (LESA) tool in determining regional priorities for land conservation.
- There should be conducted a study of forest fragmentation and wildlife corridors, possibly by some combination of the agency of natural resources, regional planning commissions, and the Community and University Partnerships and Service (CUPS) office at UVM, which matches UVM research resources with community needs.
- The state should examine the Town Forest Project for recommendations.
- The state should examine the valuation of land, in view of the large disparity that may exist between the understood value (the profit the landowners believe they should gain, sometimes based on real offers) and the value that may be determined by means of the formal appraisal guidance that VHCB and organizations such as the Vermont Land Trust (VLT) are required to apply. Because of this disparity, conservation organizations may be constrained in vying competitively to acquire key parcels of land to maintain the land as farm or forestland.
- The state should consider establishing an entity similar to the land trust to help communities fund revitalization efforts.
- Several states now require that local volunteer land use decision-makers become "certified" and maintain that certification via a certain number of hours of training each year. The Land Use Institute at the Vermont Law School has examined the range of state requirements now in effect. This means of ensuring a minimum level of training to increase the effectiveness of local decisions deserves consideration.
- With regard to the portion of the Vermont Neighborhoods Program that requires minimum densities of no fewer than four units of single-family, detached dwelling units per acre, exclusive of accessory apartments, consideration should be given to allowing a developer of a project in a municipality that has not adopted bylaws establishing these minimum densities to participate in the program, if the project meets these requirements.

## APPENDIX I.

To: Smart Growth Committee

From: Al Boright

Date: 8/27/08

Subject: Act 250 and Planning in Vermont, from a Statutory Architectural Perspective

### I. The original Act 250 approach

From the beginning, the regulatory provisions of Act 250 were intended to be accompanied by a planning process. The idea was that the planning process would ensure that state-wide needs and interests are met, that resources important from a state-wide perspective are adequately protected, that a planning vehicle would exist for selecting the best place for certain important activities, and that the process would assure that development took place economically and in places and in a manner that was supported by the capabilities of the land.

#### A. The capability and development plan.

When Act 250 of the 1969 adjourned session of the General Assembly was first adopted in 1970, Section 19 required the development of a capability and development plan for the purpose of “guiding ... development [in a way] which will, in accordance with present and future needs and resources, best promote the health, safety, order, convenience, prosperity and welfare of the inhabitants ..., as well as efficiency and economy in the process of development, including ... distribution of population, and of the uses of land for urbanization, ... agriculture and other uses as will create conditions favorable to transportation, health, safety ... and cultural opportunities, reduce the wastes of ... resources which result from either excessive congestion or excessive scattering of population, and tend toward an efficient and economic utilization of ... facilities and resources and the conservation and production of the supply of food, water and minerals.”

#### B. The land use plan.

Sec. 20 of the act, titled “Land use plan” required: “After the adoption of a capability and development plan, the board shall adopt a land use plan based on the capability and development plan which shall consist of a map and statements of present and prospective land uses based on the capability and development plan, which determine in broad categories the proper use of the lands in the state whether for forestry, recreation, agriculture or urban purposes, the plans to be further implemented at the local level by authorized land use controls such as subdivision regulations and zoning.”

The capability and development plan was adopted in 1973, but the idea that a local land use map would be written at the state level reportedly prompted an outcry. No state land use plan was ever adopted, and in 1984, the section that required development of a state land use plan was repealed.

## II. Act 200 of 1988

A few years later, Act 200 of 1988 was adopted. Under this law, state agencies that have programs or that take actions that affect land use are required to plan<sup>6</sup> in a manner consistent with specified land use planning goals that were adopted and inserted into the beginning of Chapter 117 of Title 24<sup>7</sup>. These state agency plans are

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<sup>6</sup> 3 V.S.A. § 4020. STATE AGENCY PLANNING AND COORDINATION

(a) State agencies that have programs or take actions affecting land use, as determined by executive order of the governor, shall engage in a continuing planning process to assure that those programs and actions are consistent with the goals established in 24 V.S.A. § 4302 and compatible with regional and approved municipal plans, as those terms are defined in that section. This planning process shall be coordinated, in a manner established by executive order of the governor, with the planning process of other agencies and of regional and municipal entities of the regions in which the programs and actions are to have effect.

(b) In the process of preparing plans or amendments to plans, a state agency shall hold at least two public hearings which are noticed as provided in 3 V.S.A. § 839 for administrative rules, but plans shall not be adopted as administrative rules under 3 V.S.A. chapter 25. Specific notice also shall be provided to the following, at least 30 days prior to the public hearing:

(1) the executive director of each regional planning commission;

(2) the department of housing and community affairs within the agency of commerce and community development;

(3) the council of regional commissions; and

(4) business, conservation, low-income advocacy and other community or interest groups or organizations that have requested notice prior to the date the hearing is warned.

(c) Any of the foregoing bodies, or their representatives, may submit comments on the proposed plan or amendment, and may appear and be heard in any proceeding with respect to the adoption of the proposed plan or amendment. State agencies shall use an informal working format at locations convenient and accessible to the public in order to provide opportunities for all persons and organizations with an interest in their plans and actions to participate.

<sup>7</sup> 24 V.S.A. § 4302(b) and (c)

(b) It is also the intent of the legislature that municipalities, regional planning commissions and state agencies shall engage in a continuing planning process that will further the following goals:

(1) To establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions, and state agencies.

(2) To encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact.

(3) To consider the use of resources and the consequences of growth and development for the region and the state, as well as the community in which it takes place.

(4) To encourage and assist municipalities to work creatively together to develop and implement plans.

(c) In addition, this chapter shall be used to further the following specific goals:

(1) To plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

(A) Intensive residential development should be encouraged primarily in areas related to community centers, and strip development along highways should be discouraged.

(B) Economic growth should be encouraged in locally designated growth areas, or employed to revitalize existing village and urban centers, or both.

(C) Public investments, including the construction or expansion of infrastructure, should reinforce the general character and planned growth patterns of the area.

(2) To provide a strong and diverse economy that provides satisfying and rewarding job opportunities and that maintains high environmental standards, and to expand economic opportunities in areas with high unemployment or low per capita incomes.

(3) To broaden access to educational and vocational training opportunities sufficient to ensure the full realization of the abilities of all Vermonters.

(4) To provide for safe, convenient, economic and energy efficient transportation systems that respect the integrity of the natural environment, including public transit options and paths for pedestrians and bicyclers.

(A) Highways, air, rail and other means of transportation should be mutually supportive, balanced and integrated.

(5) To identify, protect and preserve important natural and historic features of the Vermont landscape, including:

(A) significant natural and fragile areas;

(B) outstanding water resources, including lakes, rivers, aquifers, shorelands and wetlands;

(C) significant scenic roads, waterways and views;

(D) important historic structures, sites, or districts, archaeological sites and archaeologically sensitive areas.

(6) To maintain and improve the quality of air, water, wildlife and land resources.

(A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).

(7) To encourage the efficient use of energy and the development of renewable energy resources.

(8) To maintain and enhance recreational opportunities for Vermont residents and visitors.

(A) Growth should not significantly diminish the value and availability of outdoor recreational activities.

(B) Public access to noncommercial outdoor recreational opportunities, such as lakes and hiking trails, should be identified, provided, and protected wherever appropriate.

(9) To encourage and strengthen agricultural and forest industries.

(A) Strategies to protect long-term viability of agricultural and forest lands should be encouraged and should include maintaining low overall density.

(B) The manufacture and marketing of value-added agricultural and forest products should be encouraged.

(C) The use of locally-grown food products should be encouraged.

(D) Sound forest and agricultural management practices should be encouraged.

(E) Public investment should be planned so as to minimize development pressure on agricultural and forest land.

(10) To provide for the wise and efficient use of Vermont's natural resources and to facilitate the appropriate extraction of earth resources and the proper restoration and preservation of the aesthetic qualities of the area.

(11) To ensure the availability of safe and affordable housing for all Vermonters.

(A) Housing should be encouraged to meet the needs of a diversity of social and income groups in each Vermont community, particularly for those citizens of low and moderate income.

(B) New and rehabilitated housing should be safe, sanitary, located conveniently to employment and commercial centers, and coordinated with the provision of necessary public facilities and utilities.

required by law to be subject to review and comment by a council of regional commissions, which consists of a representative of each regional planning commission, three state agency or department heads, and two citizens appointed by the governor.<sup>8</sup> This review is to consider whether a state agency plan is compatible with those of other state agencies, whether it is consistent with the land use planning goals, whether it is compatible with regional plans and approved municipal plans.<sup>9</sup> The council is required to help resolve disagreements between

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(C) Sites for multi-family and manufactured housing should be readily available in locations similar to those generally used for single-family conventional dwellings.

(D) Accessory apartments within or attached to single family residences which provide affordable housing in close proximity to cost-effective care and supervision for relatives or disabled or elderly persons should be allowed.

(12) To plan for, finance and provide an efficient system of public facilities and services to meet future needs.

(A) Public facilities and services should include fire and police protection, emergency medical services, schools, water supply and sewage and solid waste disposal.

(B) The rate of growth should not exceed the ability of the community and the area to provide facilities and services.

(13) To ensure the availability of safe and affordable child care and to integrate child care issues into the planning process, including child care financing, infrastructure, business assistance for child care providers, and child care work force development.

(d) All plans and regulations prepared under the authority of this chapter shall be based upon surveys of existing conditions and probable future trends, and shall be made in the light of present and future growth and requirements, and with reasonable consideration, for the landowner, to topography, to needs and trends of the municipality, the region and the state, to the character of each area and to its peculiar suitability for particular uses in relationship to surrounding areas, and with a view to conserving the value of buildings.

<sup>8</sup> 24 V.S.A. § 4305(a) A council of regional commissions is hereby created. The council membership shall include a representative from each regional planning commission established under section 4341 of this title, three members who are state agency or department heads appointed by the governor and two members representing the public appointed by the governor. Each regional planning commission shall appoint its representative, or replacement in case of a vacancy, from among the commission's municipal representatives. The council shall annually elect one of its members as chairperson and another member as vice chairperson. The powers and duties of these officers shall be determined by the council. A majority of members shall constitute a quorum. Members of the council, other than state officials, are entitled to the per diem and expenses authorized under 32 V.S.A. § 1010.

<sup>9</sup> 24 V.S.A. § 4305(d)(1) The council shall review state agency plans or amendments proposed under 3 V.S.A. chapter 67, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in this chapter, and determine the following:

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

(B) whether it is consistent with the goals established in section 4302 of this title;

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

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

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

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

(A) to the regional planning commission,

and among municipalities and regional planning commissions and between and among regional planning commissions and state agencies.<sup>10</sup> In addition, the council of regional commissions is required to review regional plans and amendments and to determine whether those plans contain the elements required by law, whether they are compatible with the plans of adjoining regions, and whether the plans are consistent with the state's land use planning goals.<sup>11</sup> The law also requires that regional planning commissions review local plans submitted to them, and make decisions regarding the confirmation of municipal planning processes and the approval of municipal plans. These decisions are subject to formal review by a three person panel selected by the council of regional commissions.<sup>12</sup>

Today, large portions of Act 200 are virtually ignored and have been for years, partly as a result of a staff allocation decision made a number of years ago, originally during the Dean administration, within the Department of Housing and Community Affairs.

Accordingly, although state agencies are still required by law to do Act 200 planning, it appears that this planning is not done in the manner in which it is required by law.

State agency plans. Thus, apparently, no comprehensive state agency Act 200 planning currently takes place, there are no public hearings to evaluate whether a particular agency plan complies with the law, there is no system-wide paperwork trail that indicates whether or not state agencies even consider the state planning goals.

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

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

<sup>10</sup> 24 V.S.A. § 4305(b) The council shall provide, on request, an impartial mediator to help resolve disagreements between and among municipalities and regional planning commissions, and between and among regional planning commissions and state agencies, with respect to the compatibility of their plans with each other, and related matters.

<sup>11</sup> 24 V.S.A. § 4305 (c)(1) The council shall review proposed regional plans or amendments, after public notice, and determine the following:

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

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

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

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

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

<sup>12</sup> 24 V.S.A. § 4305(e) The council shall establish, by rule adopted according to 3 V.S.A. chapter 25, a process to conduct formal review of the sufficiency of an adopted regional plan or amendment and formal review of regional planning commission decisions with respect to the confirmation of municipal planning efforts, and the approval or disapproval of municipal plans or amendments. Formal review shall be conducted by a three-person regional review panel composed of council members, including at least two representatives of regional planning commissions, all assigned by the council in a manner established by rule. A representative of a regional planning commission shall not participate in formal review of the actions of the regional planning commission which the person represents. Council members who participate in the review of a regional plan under subsection (c) of this section shall not participate in a formal regional review panel proceeding on the same matter.

No council of regional commission reviews and comments on these state agency plans to see if they advance the goals and accord due respect to regional plans and approved local plans.

Regional plans. No council of regional commissions reviews regional plans, or makes the related determinations as to whether or not the regional plans contain the elements required by law, whether they are consistent with the goals, whether they are compatible with the plans of adjoining regions, or on request, whether they are compatible with approved municipal plans.

Municipal plans. Municipalities no longer have the ability to comment at hearings held for the preparation of state agency plans. Likewise, they lack the ability to have a state agency plan reviewed by the council of regional commissions to assure that it is compatible with an approved municipal plan. A municipality may no longer be able to appeal a regional planning commission decision regarding the confirmation of a municipal planning process or the approval of a municipal plan. Although we understand that regions still make decisions regarding the confirmation of planning efforts and the approval of municipal plans, it must be remembered that regions are dependent on funding from the towns whose planning processes and plans they review, and, accordingly are in a position in which it may be expected to be difficult not to confirm or approve a submission from a member town.

For their part, municipalities are not required to plan at all, and if they do choose to plan, they are not required to plan consistent with the planning goals: they can plan for strip development along all local roads, if they choose to do so. The encouragement of Act 200 could be characterized as the state saying: "These are the state's planning goals. State entities are going to act consistently with these goals, as are regions. If towns choose also to pursue these goals, they will receive specified benefits. But towns are free not to pursue the state goals, if that is the course they select."

So, the idea of developing a state land use plan was rejected. Its replacement, the idea of various overlapping planning regimes, has been ignored mainly with regard to state agency planning and any component that involves the council of regional commissions. The state goals reportedly are still widely supported as sensible, pertinent, and good goals, and they provide useful guidance, but consistency with the goals happens, or doesn't happen, as isolated local or regional events that are not necessarily subject to meaningful review at another level. Thus, from a statutory architecture perspective, state wide interests are not clearly protected, with regard to state agency plans, regional plans, or local plans. Maybe the state goals are pursued, maybe they are ignored.

### III. The Downtown Chapter

Commencing in 1998, the legislature adopted a Historic Downtown Development chapter, which offered benefits to induce municipalities to become designated downtowns, pursuant to specified criteria, upon successfully undergoing a review conducted by the Vermont downtown development board, also known as the state board. The idea was that certain communities who have made a substantial planning commitment in a historic downtown would be entitled to apply for and obtain substantial benefits that would be designed to make it more attractive for development to take place in a designated downtown, in order to try to reduce or remove the inherent advantage of constructing in a rural field. So, the state level component of planning was starting to evolve to "let's try to encourage development in downtowns, where we want it." The planning goals still are relevant, particularly the goal specified in 24 VSA 4302(c)(1) "to plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside."

Later amendments to the “downtown chapter” went on also to encourage designation of and development in “village centers”, and “new town centers.” Still later iterations amended the chapter to encourage “growth centers”. In this instance, however, the application requirements were more extensive and included a demonstration, under 24 VSA 2793c(d)(5)(D), “that the approved plan and the implementing bylaws further the goal of retaining a more rural character in the area surrounding the growth center, to the extent that a more rural character exists and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center.” Thus, when a growth center applies for extension of designation, it has to show that its regulatory system furthers the goal of retaining a more rural character in the area surrounding the growth center.

The 2008 session expanded upon this precedent by adding a new category of development entitled to incentives: the Vermont neighborhood. A later presentation before the committee will go into greater detail on the nature of these programs.

### III. Status quo

A. Committee’s mission. Upon this background, the committee is:

- \* to see how effective the criteria of Act 250 are to promote compact settlement pattern, prevent sprawl, protect important natural resources,

- \* to recommend improvements that would improve the effectiveness of these criteria in preserving economic vitality of existing settlements and in preventing sprawl development,

- \* to evaluate the development potential of existing designated downtowns, new town centers and village centers and evaluate the community and natural resource impacts of developing surrounding lands

- \* make recommendations for incentives to encourage municipalities to preserve the state’s working landscape and to develop Vermont neighborhoods and new housing.

B. Ailing planning/regulatory system. So this is to be done in a situation in which:

- \* we lack state agency Act 200 plans,

- \* from a statutory architectural perspective, regional plans may or may not adequately reflect and protect state interests, and the established review process is ignored,

- \* town plans and planning processes may reviewed by the regional planning commission that is funded by the town, but the appeals process is a not staffed, and the proposed list of benefits from plan approval has atrophied, as have appropriations for regional and municipal planning purposes.

C. Other planning?

One might inquire as to whether planning is taking place in other fora that might provide some level of assistance in filling the blanks. Suppose that citizens of the state face challenges over the next decade, or so, with regard to some specific and fundamental land use issues: adequate drinking water, adequate housing, adequate heat for buildings, transportation, electricity, and food supplies.

1. Electricity planning. There are existing processes designed to address electricity planning, state agency energy planning. Although there are differing views as to the success of the electricity planning process,



electricity generating facilities are specifically exempt from regulation under Act 250, assuming the electricity is connected to the grid.

2. Overall energy planning. The state comprehensive energy plan required under 30 V.S.A. § 202b<sup>13</sup> is in the process of being updated, or has recently been updated. It should be reviewed to see whether it provides for how the state might best react to “long term emergencies”, such as the attenuation of petroleum supplies and the related significant impacts throughout the energy user world.

3. Energy emergency planning. There is energy emergency planning that is on the books.

4. Emergency planning. Title 20 contains the basic law of the state on civil defense, emergency management, and the emergency powers of the governor.

5. Transportation planning. There is lots of it, and so much existing infrastructure that needs repair, that it is particularly challenging to dedicate significant funds for mass transit and rail purposes, and to take other measures that significantly decrease the need for petroleum, and the generation of greenhouse gases.

6. Drinking water planning. The state’s initiative to map the groundwater has not been fully funded, so there are large gaps in collective knowledge as to the exact location and extent of this resource.

7. Climate change planning. Although the state has taken significant preliminary steps with regard to climate change, and has established goals for the reduction of greenhouse gases, in reference to emissions that existed in 1990, requiring a 25 percent reduction by January 1, 2012, and a 50 percent reduction by January 1, 2028, there is no detailed plan for how this is to be accomplished. The state has also made it a goal, by 2025 to produce 25 percent of energy consumed within the state through the use of renewable energy sources, particularly from the state’s forests and farms. Plans for attaining this goal are to be incorporated into the comprehensive energy plan and to be presented to the general assembly by January 15, 2009. Given the state’s

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<sup>13</sup> § 202B. STATE COMPREHENSIVE ENERGY PLAN

(a) The department of public service, in conjunction with other state agencies designated by the governor, shall prepare a comprehensive state energy plan covering at least a 20-year period. The plan shall seek to implement the state energy policy set forth in section 202a of this title. The plan shall include:

(1) A comprehensive analysis and projections regarding the use, cost, supply and environmental effects of all forms of energy resources used within Vermont.

(2) Recommendations for state implementation actions, regulation, legislation, and other public and private action to carry out the comprehensive energy plan.

(b) In developing or updating the plan's recommendations, the department of public service shall seek public comment by holding public hearings in at least five different geographic regions of the state on at least three different dates, and by providing notice through publication once a week and at least seven days apart for two or more successive weeks in a newspaper or newspapers of general circulation in the regions where the hearings will be held, and by delivering notices to all licensed commercial radio and television stations with transmitting facilities within the state, plus Vermont Public Radio and Vermont Educational Television.

(c) The department shall adopt a state energy plan by no later than January 1, 1994. Upon adoption of the plan, analytical portions of the plan may be updated annually. The plan's implementation recommendations shall be updated by the department no less frequently than every five years. These recommendations shall be updated prior to the expiration of five years if the general assembly passes a joint resolution making a request to that effect. If the department proposes or the general assembly requests the revision of implementation recommendations, the department shall hold public hearings on the proposed revisions.

(d) Any distribution of the plan to members of the general assembly shall be in accordance with the provisions of 2 V.S.A. § 20.

overwhelming reliance on petroleum-powered motor vehicles, and the way the dependence upon motor vehicles permeates all aspects of our economy, this is a huge problem.

8. Housing planning. There are numerous efforts within the state to provide adequate housing at affordable prices, but because of many reasons, it is becoming an increasing challenge.

9. Building efficiency planning. The existing weatherization program for low income persons continues to weatherize homes, and the state's electricity efficiency utility has been buttressed by an entity that is able to address building efficiency, regardless of heat source. However, home heating costs have increased at an incredibly rapid rate, and with other significant costs facing the state, there has not been the perceived ability to make the major investments in building efficiency that have been recommended by energy consultants and to benefit from the massive savings that could result from these expenditures.

10. Food planning. Although there is a particularly active "localvore" movement in the state, decisions with regard to the conversion of particular agricultural lands do not necessarily include consideration of whether the state will need that land in the future, to provide food for the citizens. Act 250 is not even involved in many instances in which agricultural land is converted. The Vermont Land Trust, the Housing and Conservation Board, and other regional or local groups have been quite successful in conserving some farm and forest land, with the board also assisting in the construction of housing. (Of course, in times of budget shortfalls, the current governor tends to recommend reducing the level of historic appropriations to the board.) Act 250 involvement with agricultural soils has evolved in recent years, with greater focus on where particular soils are located, and whether particular soils are economically viable; a determination that may currently be crafted to depend too heavily upon a continued and cheap supply of petroleum. The fact that there is no apparent food planning for the state as a whole for any extended period of time becomes more apparently a problem as petroleum prices continue to climb, and as petroleum supplies dwindle.

Bottom line: in determining what are necessary natural resources, the optimal extent of buildout in a particular instance, or the siting of particular uses, a lot of foresight will be necessary, in the absence of extensive planning.

## Appendix II

### MEMORANDUM

**To:** Vermont House and Senate Committees on Agriculture and Committees on Natural Resources and Energy

**From:** Roger Allbee, Secretary

**Re:** Recommendations from the Act 183 Working Group

**Date:** January 1, 2007

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#### Participants

Roger Allbee, Secretary, Vermont Agency of Agriculture  
Jackie Folsom, President, Vermont Farm Bureau  
Alex Wylie, Agricultural Director, Vermont Land Trust  
Nancy Everhart, Conservation Director, Vermont Housing and Conservation Board  
David Lane, Deputy Secretary, Vermont Agency of Agriculture  
Elizabeth Courtney, Executive Director, Vermont Natural Resource Council  
Greg Brown, Executive Director, Vermont Association of Planning and Development

#### Case Statement

A healthy future for the Vermont economy and landscape hinges on the state's ability to plan for compact centers of growth and development, surrounded by open countryside and productive rural lands. Primary soils are critical to sustaining agriculture and the forest products industry as a vital part of Vermont's economy, culture, and history. Supporting agriculture and the forest products industry includes conserving primary soils in the state for productive use by future generations.

#### Actions of the Focus Group

- Convened three meetings to discuss legislative directive, statutes, and needs.
- Fashioned recommendations.

#### Strengths

There are numerous models developed to mitigate the loss of primary soils to the pressures of development and other changes in land use priorities. Vermont has a number of organizations with a history of sustainable land use planning and land conservation. Collectively these organizations will research strategies from Europe, Canada and other areas within the United States, strengthen Vermont's growth center law and develop new ideas for a sustainable land based economy. The consensus is that the growth center law is a good beginning in regards to the development of growth centers but does little to conserve the rural lands outside the growth centers for productive agricultural and forest products uses.

#### Needs Identified

The growth center law does not address the loss and fragmentation of important primary soils in rural areas. A significant amount of farm and forest land is developed in these rural areas outside of the state's Act 250

criteria. The loss and fragmentation of this productive land needs to be recognized and towns need to think through their local development plans with rural resources in mind.

### **Recommended Scope of Work**

1. The Agency of Agriculture will coordinate with the federal Natural Resource Conservation Service, Farm Service Agency, Vermont Land Trust and the Vermont Center for Geographic Information in developing a soils inventory for the state with the exception of Essex County for which information is not digitally available. The Agency will work with the Natural Resource Conservation Service on finishing Essex County.

Estimated Cost: \$3,000 (does not include work required for Essex County)

2. The following is a scope of work to analyze options on how to protect for productive uses, the state's rural land resources.
  - a. Literature Review of Concepts and Strategies for Primary Soils Retention
  - b. Scenario Planning for Land Use Conservation and Development
  - c. Regional Focus Groups to Collect Public Input on Land Use Scenarios
  - d. Propose Strategies for Retention of Primary Soils
  - e. Economic Analysis of Retention Proposals

Estimated Cost: \$50,000

3. Timeframe
  - a. Preliminary report by the Act 183 Working Group by January 15, 2008
  - b. Final report by the Act 183 Working Group by January 15, 2009

**Appendix III**

***SMART GROWTH STUDY COMMITTEE***

***ACT 176***

***Discussion of Criteria 5, 9(K), 9(H) and 9(L)  
Of Act 250***

***Act 250 Training Manual***

***August 28, 2008***

## **Criterion 5 (Traffic)**

### **I. Requirements for Issuance of Permit**

Criterion 5 provides that before granting a permit, the board or district commission shall find that the subdivision or development “[w]ill not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation, existing or proposed.” 10 V.S.A. §6086(a)(5).

### **II. Burden of Proof**

The applicant always has the burden of producing sufficient evidence for the Board to make positive findings. However, the burden of proof is on a party opposing application. 10 V.S.A. § 6088(b).

### **III. Permit can be conditioned but not denied**

A permit cannot be denied under Criterion 5. However, reasonable conditions and requirements may be attached to alleviate any burdens created by the development or subdivision. 10 V.S.A. § 6087(b).

### **IV. Analysis: Causation and Exacerbation**

#### **Causation**

Note that Criterion 5 states that a development cannot “*cause* unreasonable congestion or unsafe highways.” 10 V.S.A. § 6086(a)(5) (emphasis added). Criterion 5 does not require that a proposed development be the principal cause or original source of traffic problems. Several causes may contribute to a particular effect or result. *In re Pilgrim Partnership*, 153 Vt. 594, 596 (1990).

#### **Exacerbation**

“It would be absurd to permit a hazardous condition to become more hazardous”. *In re Pilgrim Partnership*, 153 Vt. 594, 596 (1990). Thus, if a project will make a traffic problem worse, it can be conditioned to address the exacerbation. *Re: Nile and Julie Duppstadt*, #4C1013-EB, Findings of Fact, Conclusions of Law, and Order at 32 (Apr. 30, 1999); and see *Re: Shimon & Malka Shalit*, #8B0334-3-EB, Findings of Fact, Conclusions of Law, and Order at 12 (Feb. 8, 1991).

#### **Two areas of inquiry: unsafe conditions and congestion**

##### **Unsafe conditions**

“Safe travel ... is in the public interest.” *In re Pilgrim Partnership*, 153 Vt. 594, 596 (1990); *Re: Times and Seasons, LLC and Hubert K. Benoit*, #3W0839 -2-EB (Altered), Findings of Fact, Conclusions of Law, and Order at 37 (Nov. 4, 2005), appeal dktd. (Vt. S. Ct.); *Wildcat Construction Co.*, #6F0283-1-EB (Oct. 4, 1991), *aff'd*, *In re Wildcat Construction Co.*, 160 Vt. 631 (1993) (trucking operation creates unsafe traffic conditions under Criterion 5 where tractor-trailers driving on a narrow side street have driven over the yards of houses on the corner and hit the houses)

## **Standards applied**

The AASHTO (American Association of State Highway and Transportation Officials) standards are informative with regard to conditions on existing roads as long as other factors (such as historical function and safety record) are taken into account. Any federal or state standard, however, is not controlling; rather, the Commission must use its own judgment to determine whether a project will cause unsafe conditions. *Re: Rome Family Corporation, #1R0410-3-EB* (Oct. 11, 1990).

Adequate sight distances are an element of the Board's safety consideration which is a function of the length of unobstructed views and speed limits. Accident data is helpful to determining whether site distances are adequate. However, a District Commission has no authority to impose a speed limit on a town road, nor can it require conformance with town road standards regarding right of ways and minimum requirements for width and slope.

## **Important Case Law**

*Re: Times and Seasons, LLC and Hubert K. Benoit, #3W0839 -2-EB* (Altered), Findings of Fact, Conclusions of Law, and Order at 37 (Nov. 4, 2005), appeal dktd. (Vt. S. Ct.); *Re: Susan Dollenmaier and Martha Dollenmaier Spoor, #3W0125-5-EB*, Findings of Fact, Conclusions of Law, and Order at 8 (Feb. 7, 2005). *Re: Okemo Mountain, Inc., #2S0351-10-EB*, Findings of Fact, Conclusions of Law, and Order at 3 (Oct. 23, 1991). *Re: Richard and Barbara Woodard, #5W1262-EB*, Findings of Fact, Conclusions of Law, and Order at 14 (Dec. 18, 1997), cited in *Re: Old Vermonter Wood Products, #5W1305-EB*, Findings of Fact, Conclusions of Law, and Order at 16 - 18 (Aug. 19, 1999). *Re: Old Vermonter Wood Products, #5W1305-EB* Findings of Fact, Conclusions of Law, and Order at 16 - 17 (Aug. 19, 1999); *Re: Horizon Development Corp. #4C0841-EB* (Aug. 21, 1992)

## **Unreasonable congestion**

Commissions are authorized to impose permit conditions to address congestion issues including installation of traffic signals or turning lanes. *OMYA, Inc. v. Town of Middlebury*, 171 Vt. 532, 533 (2000); *Re: Times and Seasons, LLC and Hubert K. Benoit, #3W0839 -2-EB* (Altered), Findings of Fact, Conclusions of Law, and Order at 37 (Nov. 4, 2005), appeal dktd. (Vt. S. Ct.)

## **The impact of the trip ends generated by the project on the existing Levels of Service (LOS) at intersections**

### **Trip ends**

In order to determine a project's impact on the roads, one must know how many trips ends the project will generate. A "trip end" is defined as one vehicle either entering or exiting a given location; one car entering a project and then exiting the project constitutes two "trip ends." Significant impacts can create traffic congestion. *In re Pilgrim Partnership*, 153 Vt. 594, 596 (1990) (30 additional vehicular trips per day). But small increases in traffic are generally not considered to create or contribute to congestion. See, *Re: Alpine Stone Corporation, ADA Chester Corporation, and Ugo Quazzo, #2S1103-EB*, Findings of Fact, Conclusions of Law, and Order at 27 - 28 (Feb. 4, 2002).

## Level of service

The impact of a project's traffic, of course, depends on the roads which the traffic will use; small increases on dysfunctional roads can lead to congestion. Thus, a Commission must make its own determination as to the nature of the area and the level of service appropriate for that area. *In Re Wal\*Mart Stores, Inc.*, 167 Vt. 75, 86 (1997); *In re Agency of Transportation.*, 157 Vt. 203, 206, (1991).

Level of service below C is generally inconsistent with Criterion 5 at intersections that are not in compact, urban areas. *Re: Okemo Limited Liability Company, et al.*, #2S0351-34-EB, Findings of Fact, Conclusions of Law, and Order at 10 (Sep. 8, 2005); *In Re Wal\*Mart Stores, Inc.*, 167 Vt. 75, 86 (1997).

## Mitigation measures to address safety and congestion concerns

Traffic and other environmental studies are well within the scope of activity contemplated by Act 250, and the Commission clearly has jurisdiction over this sort of consideration. Projects can be required to mitigate their traffic impacts in order to come into compliance with Criterion 5.

Mitigation can take many forms: installation of street light, paying for police traffic control during peak periods, setting up traffic cones, operating shuttle bus, offering mid-week ski vacations and ski packages with Amtrak, specific and specific road improvements. Truck traffic may be specifically conditioned including maximum truck length, restricted trip ends and hours of operation. Restrictions may be imposed during school busing hours and winter seasons; conditions may impose limitation on trucking routes, and maximum truck speeds may be established. The Commission may require intersections to be upgraded to include exclusive left turn lanes, etc.

## Important Case Law

*Re: Okemo Mountain, Inc., Timothy and Diane Mueller, Vermont Dep't of Forests, Parks and Recreation, and Green Mountain Railroad*, #2S0351-30(2nd Revision)-EB, #2S0351-31-EB, #2S0351-25R-EB, #2S0351-31-EB, #2S0351-25R-EB, Findings of Fact, Conclusions of Law, and Order at 83 (Feb. 22, 2002); *Re: Barre Granite Quarries, LLC and William and Margaret Dyott*, #7C1079(Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 76 (Dec. 8, 2000); *Re: Pike Industries, Inc. and Inez M. Lemieux*, #5R1415-EB, Findings of Fact, Conclusions of Law, and Order at 37 (Jun. 7, 2005); *Pilgrim Partnership, Stephen Van Esen, and Green Mountain Coffee Roasters, Inc.*, #5W0894-6/5W1156-6B-EB (Jan. 28, 1999) (signs); *Re: Eastern Landshares, Inc.*, #4C0790-EB (Nov. 19, 1991) (traffic lights); *Re: Roger Loomis d/b/a Green Mountain Archery Range*, #1R0426-2-EB (Dec. 18, 1997); *In re Alpen Associates*, 147 Vt. 647 (1986)

## Criterion 9(K) (Development affecting public investments)

### I. Requirements for Issuance of Permit

10 V.S.A. § 6086(a)(9)(K) provides:

*A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, **including but not limited to, highways, airports, waste disposal facilities, office and***



*maintenance buildings, fire and police stations universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision **will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service or lands. (emphasis added.)***

## **II. Burden of Proof**

The applicant bears the burden of proving that the proposed development will satisfy Criterion 9(K). 10 V.S.A. § 6088(a).

## **III. Analysis**

### **Elements**

1. If the project is not adjacent to governmental and public utility facilities [**highways**], services, or lands then 9(K) does not apply.
2. If the project is adjacent to governmental and public utility facilities, services, or lands then the Commission asks the applicant to demonstrate that the project will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands.

The applicant must demonstrate that the project: “*will not materially jeopardize or interfere with the function, efficiency, safety, or the public's use or enjoyment of, or access to, the facility service or lands, the permit will be issued. If this demonstration has been successfully made, assuming compliance with all other applicable criteria, then a permit will be issued.*”

### **Analysis Applied**

The Board conducts two separate inquiries under Criterion 9(K) with respect to governmental and public facilities. First, the Board examines whether a proposed project will unnecessarily or unreasonably endanger the public investment in such facilities. Second, the District Commission will examine whether a proposed project will materially jeopardize or interfere with (a) the function, efficiency or safety of such facilities, or (b) the public's use or enjoyment of or access to such facilities. *Re: Swain Development Corp., #3W0445-2-EB, Findings of Fact, Conclusions of Law, and Order at 33 (Aug. 10, 1990).*

## **Criterion 9(H) (Costs of scattered development)**

### **I. Requirements for Issuance of a Permit**

10 V.S.A § 6086(a)(9)(H) provides:

**Costs of scattered development.** *The district commission will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.*

This criterion thus involves a three-step process: the applicant must demonstrate that the project is either (1) contiguous to an existing settlement; or (2) a settlement in itself; or (3) the additional costs arising from the project do not outweigh the projects benefits. 10 V.S.A § 6086(a)(9)(H).

## II. Burden of Proof

The burden of proof under this criterion is on the applicant. 10 V.S.A § 6088(a).

## III. Analysis

### Purpose

Development that becomes sprawl, or scattered development, arises when development is not contiguous to an existing settlement. Because scattered development has adverse primary and secondary impacts, this criterion requires stricter review over development that does not occur within or adjacent to existing communities. *Re: St. Albans Group and Wal\*Mart Stores, Inc., #6F0471-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 40 - 41 (Jun. 27, 1995), aff'd, In re: Wal\*Mart, 167 Vt 75 (1997).*

*This criterion is intended to “preserve the viability of the traditional community centers of Vermont, to channel growth into such centers, to keep the growth proportionate to the existing size of Vermont’s towns and villages unless a locality seeks otherwise, and to ensure that any growth outside of the traditional centers would not have an adverse impact on state and local government.” Id.*

### Definition of existing settlement

Whether or not a project is or is contiguous to an existing settlement is a question that must be decided on a case by case basis. *Re: Stratton Corp., #2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order at 20 (May 8, 2001).*

*An “existing settlement” means 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. Re: St. Albans Group and Wal\*Mart Stores, Inc., supra, at 40 – 41.*

Existing settlements do not need to follow neat political boundaries. Existing settlements can extend through one political boundary to the next as long as they contain a balance of uses not only

commercial but industrial and residential. *Re: The Home Depot USA, Inc.*, #1R0048-12-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Aug. 20, 2001).

A development, such as a ski resort or a mixed use development might be so comprehensive that its operation would be tantamount to an existing development. That is, its design would be such that the project would not cause or contribute to sprawl. *Re: Okemo Mountain, Inc. et al. (Master Plan)*, #s 250351-30(2nd Revision)-EB, 250351-31EB, and 250351-25R-EB, Findings of Fact, Conclusions of Law, and Order at 69 (Feb. 22, 2002). However, the potential of development such as ski resorts to become settlements unto themselves rests primarily on the residential component of the settlement. The residential component does not include short-stay hotels or seasonal housing units such as condominiums. An "existing settlement" must have significant year round residential population. *Re: Killington, Ltd., et al. (Master Plan)*, #1R0835-EB, Findings of Fact, Conclusions of Law, and Order at 12, 16 - 17 (Jul. 20, 2000) and *Re: Stratton Corp.*, #2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order (May 8, 2001).

### **Changing Nature of Project**

An analysis of an initial application may determine that there will be no significant costs, or that any costs will be outweighed by benefits. However, this balancing may change due to a physical expansion or other changes in the permitted project. When such a change would cause a shift in the 9(E) balancing, a permit amendment is required by law. *Re: CVPS and Verizon New England (Jamaica)*, #2W1146-EB, Findings of Fact, Conclusions of Law, and Order (altered) at 13 (Dec. 19, 2003).

### **Analysis Applied**

In *Okemo Mountain*, the Board first determined that the applicant's project was not a settlement in itself. Though the ski village had residential and commercial areas tied closely together, the residential areas were not sufficient year-round dwellings to create the type of village or town envisioned by the statute. Because the project was not a settlement in itself, the Board next asked whether the project was physically contiguous to an existing settlement. The Board determined that it was not contiguous because the nearest existing settlement was two miles away. Because both of the above questions were answered in the negative, the Board needed to analyze the final element: whether the additional costs of public services and facilities caused directly or indirectly by the project outweigh the tax revenue and other public benefits. Since the applicant was paying for significant parts of the infrastructure for the new development, the Board concluded that the additional costs of public facilities were minimal. Furthermore, the Board concluded that the project would bring in significant tax revenues and recreational opportunities. Thus, the project satisfied criterion 9(H). *In Re: Okemo Mountain, Inc. (Master Plan)*, *supra*.  
Last Revised: October 16, 2006

## **Criterion 9(L) (Rural growth areas)**

### **I. Requirements for Issuance of a Permit**

10 V.S.A. '6086(a)(9)(L) provides that:

*A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable*

*criteria provision will be made in accordance with subdivision (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.*

## **Purpose of criterion**

The purpose of Criterion 9(L) is to promote orderly and well-planned growth in rural growth areas by providing for reasonable population densities and rates of growth, using clustered development and new community planning techniques to conserve land and the costs of services that stem from development. *Stratton Corporation*, 2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order at 30 - 35 (May 8, 2001); *Re: New England Land Ventures*, #6F0433-EB, Memorandum of Decision at 2-3 (Dec. 6, 1991).

## **II. Burden of Proof**

The burden of proof under this criterion is on the applicant. 10 V.S.A § 6088(a).

## **III. Analysis**

### **"Rural growth area" defined**

The first determination under this criterion is whether the proposed development is in a rural growth area." Act 250 defines "rural growth areas" as:

*lands which are not natural resources referred to in section 6086(a)(1)(A) through (F), section 6086(a)(8)(A) and section 6086(a)(9)(B), (C), (D), (E) and (K) of this title [Title 10]. 10 V.S.A. ' 6001(16).*

Paradoxically, perhaps, a "rural growth area" is defined in terms of what it is *not*. *Re: EPE Realty Corporation and Fergessen Management, Ltd.*, #3W0865-EB, FCO at 35 (Nov. 24, 2004) ("lands which are not natural resources..."). To be a rural growth area, the area must be predominately rural in character and be an area in which resources referenced in §6001(16) are *absent*.

### **Important Case Law**

*Re: EPE Realty Corporation and Fergessen Management, Ltd.*, #3W0865-EB, Findings of Fact, Conclusions of Law, and Order at 35 Nov. 24, 2004); *Re: Stratton Corporation*, 2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order at 30 - 35 (May 8, 2001), citing *Re: New England Ventures*, #6F0433-EB, Memorandum of Decision at 3 (Dec. 6, 1991); *Re: Horizon Development Corp.*, #4C0841, Findings of Fact, Conclusions of Law, and Order at 26 (Aug. 21, 1992); and see *Re: Okemo Mountain, Inc., Timothy and Diane Mueller, Vermont Dep't of Forests, Parks and Recreation, and Green Mountain Railroad*, #2S0351-30(2nd Revision)-EB, #2S0351-31-EB, #2S0351-25R-EB, #2S0351-31-EB, #2S0351-25R-EB, Findings of Fact, Conclusions of Law, and Order at 106 (Feb. 22, 2002) (because vast majority of proposed construction area is headwaters area, and other referenced natural resources are present in said area, there is no rural growth area).

## **“Rural”**

The term “rural” is not defined in the statute. Board case law holds that the word “rural” describes” areas which are not densely settled and which may consist of small villages surrounded by mostly open, farmed, or undeveloped country.”. *Re: EPE Realty Corporation and Fergessen Management, Ltd.*, #3W0865-EB, Findings of Fact, Conclusions of Law, and Order at 37 n.9 (Nov. 24, 2004), quoting *Re: New England Ventures*, #6F0433-EB, Memorandum of Decision at 2 - 3 (Dec. 6, 1991); *Re: Stratton Corporation*, 2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order at 30 - 35 (May 8, 2001) An area may be rural even if it is contiguous to an existing settlement. *New England Ventures*, #6F0433-EB, Memorandum of Decision at 2 - 3 (Dec. 6, 1991).

### **The existence of the referenced natural resources at the site**

Over the years, the Board developed an all or nothing analysis - - that if any referenced natural resources listed in the definition of rural growth areas were present anywhere on the project site, none of the project site was a “rural growth area.” *Re: Horizon Development Corporation* #4C0841-EB, Findings of Fact, Conclusions of Law and Order at 20 (Aug. 21, 1992). Not surprisingly, no rural growth areas were found under that test, since it is hard to conceive of a tract of land in Vermont without at least one referenced natural resource.

In *Stratton Corporation*, the Board overruled its earlier narrow interpretations of Criterion 9L:

*The Board has determined that this “all or nothing” analysis essentially nullifies Criterion 9(L) because it may be difficult, if not impossible, to find a rural project site in Vermont without a referenced natural resource, such as a stream, floodway, headwater, shoreline, necessary wildlife habitat, primary agricultural soil, forest or secondary agricultural soil, earth resource, or public investment present somewhere on the project site. As a result, lands proposed for development which contain a referenced resource have not been receiving the protection that Criterion 9(L) was intended to provide.*

*Nor do we believe that the statute requires an “all or nothing” analysis. A literal reading of the language of Criterion 9(L) is that if the land in question is a referenced natural resource, then that specific and limited land is not a rural growth area. However, other lands within the project site which are not referenced resources may constitute a rural growth area. For example, if a several hundred acre project site contains a stream, it does not automatically follow that the entire project site can not be a rural growth area. The stream and a buffer on either side may not be a rural growth area but the remainder of the project site, or portions of it, may be a rural growth area.*

*We believe this interpretation affords lands the protection the legislature intended when it adopted Criterion 9(L). Criterion 9(L) recognizes that lands that are the referenced natural resources already have protection under the other Criteria. Conversely, lands which are not the referenced natural resources do not have the benefit of protection from the other Criteria and will be under greater development pressure. As a result, Criterion 9(L) provides an alternative kind of protection that is not focused on specific resources but on preventing carte blanche development by requiring clustered development, reasonable rates of growth, reasonable population densities, and new community planning. This economizes the use of these lands and ultimately lessens development pressure on adjacent natural resources. Thus, an environmentally*

*sensitive development that proposes developing in a rural growth area still needs to engage in the required planning to meet the complementary protection afforded rural growth areas. To the extent Luce Hill [Partnership, #5L1055-EB, Findings of Fact, Conclusions of Law, and Order (Jul. 7, 1992)] and Horizon relied on the “all or nothing” project site analysis, and are inconsistent with our holding in the instant case, they are overruled. Re: Stratton Corporation, 2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order at 30 - 35 (May 8, 2001)*

Re: *Stratton Corporation*, 2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order at 34 (5/8/01). In *Re: Okemo Mountain, Inc.*, #2S0351-30(2nd Revision)-EB, #2S0351-31-EB, and #2S0351-25R-EB Findings of Fact, Conclusions of Law, and Order at 104-5 (Feb. 22, 2002), the Board defined the correct analysis for Criterion 9(L):

*The correct inquiry is not whether there is a referenced natural resource located anywhere on the Project site. The correct inquiry is first to delineate the area on which the proposed development will occur. Second, determine what part of that area is one or more of the referenced natural resources. Third, determine whether such land that is not one or more of the referenced natural resources is of sufficient acreage that it is possible to carve out a meaningful and usable rural growth area.*

#### **Requirements on a project in a rural growth area**

Should a Commission determine that a project is proposed for a rural growth area, it would then need to meet the requirements of Criterion 9(L) concerning reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.

Criterion 9(L) requires clustering of all projects in rural growth areas; the language of the criterion is mandatory. *New England Ventures*, #6F0433-EB (Dec. 6, 1991). Criterion 9(L) does not weigh costs vs. benefits; rather public costs must be reduced to the extent possible through the planning techniques listed in criterion. *Re: New England Ventures*, #6F0433-EB (Dec. 6, 1991).

#### **Thoughts on rural growth areas**

Of all the Act 250 criteria, Criterion 9(L) is perhaps the strangest, as it seems to make it more difficult to develop in an area where resources are absent than in an area where resources are present. In *Re: EPE Realty Corporation and Fergessen Management, Ltd.*, #3W0865-EB, Findings of Fact, Conclusions of Law, and Order at 35 - 37 (Nov. 24, 2004), the Board discussed the philosophy behind 10 V.S.A. §6086(a)(9)(L); and why what appears to be “curious” and paradoxical is not:

One commentator has described the definition of “rural growth areas” as “curious.” Brooks, *Toward Community Sustainability: Vermont’s Act 250*, Vol. I, Criterion 9(L) at 1(1996). The Board agrees; it seems illogical to provide special protection to lands which appear not to warrant such protection because they lack important environmental resources. Board precedent, however, resolves this apparent paradox and provides guidance as to the purpose of Criterion 9(L). In *New England Ventures*, for example, the Board wrote:

*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 ....Accordingly, the General Assembly required that developments and subdivisions be reviewed for compliance with ten criteria which seek to ensure that natural resources are protected and that sound planning principles are applied in designing projects. See 10 V.S.A. 5 6086(a).*

*Viewed in this light, the Board concludes that the purpose of Criterion 9(L) is to promote orderly and well-planned growth in rural growth areas. The legislature defined rural growth areas as places where most of the resources protected by Act 250 are absent. 10 V.S.A. §6001(16). Since, by definition, most of those resources are not present in rural growth areas, it is reasonable to infer that the General Assembly intended them as places where growth should occur.*

*The legislature also emphasized that developments in rural growth areas provide for reasonable population densities and rates of growth and for use of cluster planning and new community planning. Thus, the Board infers that the General Assembly intended that growth in these areas be orderly and making use of all of the planning techniques enumerated in Criterion 9(L).*

*Similar to other resources protected by Act 250, rural growth areas are resources to be protected. However, unlike those other resources, the Board believes that the rural growth areas are to be protected so that future development may be concentrated in them. Projects in such areas must use all the planning techniques in Criterion 9(L) in a way which does not use up all available land in the growth areas and allows room for orderly future growth. Accordingly, all projects in rural growth areas must cluster. The level of clustering may vary depending on the nature of the rural growth area and of the project.*

*For example, clustering may be different for an industrial than for a residential subdivision. Reasonable provision for clustering, however, must be demonstrated. Re New England Ventures, #6F0433-EB (Dec. 6, 1991)*

The Board's resolution of the issues raised by the Applicant means that a hearing is needed to take evidence on whether the application complies with Criterion 9(L) as interpreted by this decision. *Re: New England Ventures, supra*, at 4 – 6 (emphasis added). In *Re: Stratton Corporation, #2W0519-10-EB*, Findings of Fact, Conclusions of Law, and Order at 33 - 34 (May 8, 2001), the Board further explained the philosophy behind Criterion 9(L):

*The correct inquiry is first to delineate the area on which the proposed development will occur. Second, determine whether that area is one or more of the referenced natural resources. Third, if so, determine whether such land is of sufficient acreage that it is possible to carve out a meaningful and usable rural growth area.*

*We believe this interpretation affords lands the protection the legislature intended when it adopted Criterion 9(L). Criterion 9(L) recognizes that lands that are the referenced natural resources already have protection under the other Criteria. Conversely, lands which are not the referenced natural resources do not have the benefit of protection from the other Criteria and will be under greater development*

*pressure. As a result, Criterion 9(L) provides an alternative kind of protection that is not focused on specific resources but on preventing carte blanche development by requiring clustered development, reasonable rates of growth, reasonable population densities, and new community planning. This economizes the use of these lands and ultimately lessens development pressure on adjacent natural resources. Thus, an environmentally sensitive development that proposes developing in a rural growth area still needs to engage in the required planning to meet the complementary protection afforded rural growth areas.*

(Footnote). *Seen in this light, Criterion 9(L)'s apparently paradoxical language and intent become clear and logical. Re: Stratton Corporation, #2W0519-10-EB, Findings of Fact, Conclusions of Law, and Order at 33 - 34 (May 8, 2001)*

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**Appendix IV  
Vermont State Policy Coordination Comparison (Peg Elmer, Vermont Law School's Land Use Institute)**

	Statutory reference or bill#	Structure	History	Pros	Cons
State Planning Office	3 V.S.A. § 2104	Attached to the Gov's Office, Director appointed	Est. early 70s, transformed to Office of Policy Research and Coordination in late '80s - by 1994 became simply communication connection between agencies and Gov's Office	Works well if Governor is invested in state planning and policy coordination. Remains in statute.	Subject to political and financial roller coaster - constant target for cutting, politicizing - unappreciated by state division directors
Council of Regional Commissions (CRC)	24 V.S.A., Chapter 117 section 4305 Also see 3 VSA Chapter 67 §§ 4020-21	The council membership shall include a representative from each regional planning commission, three members who are state agency or department heads appointed by the governor, and two members representing the public appointed by the governor	1989 - ~1994 Faded due to lack of staffing due to budget cuts	Gave citizens, appointed by local selectbds to regional commissions, a rare view, education, and say in state agency policy-making.	Appreciated by few, it cannot survive financial downturns. 2-yr state planning cycle was too frequent and separate from federally required plans
Development Cabinet	3 V.S.A. § 2293	Made up of the secretaries of five agencies related to planning and development, the Development Cabinet has most often focused on specific ongoing issues or controversial projects in the state permit process	Utilized informally under previous governors, under Governor Dean, the Development Cabinet was formalized in state law in 1999	It provides for coordination at the agency secretary level	Does not communicate widely with other levels. Effectiveness and application dependent on Administration
VT by Design #1	N/A	Final Report by the Vermont Council on Planning, "Challenges and	Recommendations: 1. Plans Matter: "State investments must comply	Would get state agency planning going again that	Intention at the time was to work with statewide

		<p>Recommendations on Improving the Structure of Planning in Vermont”</p>	<p>with state planning goals and local and regional plans, support local leadership, and strengthen local comprehensive planning</p> <ol style="list-style-type: none"> <li>2. Improve public access to information on regional and state agency plans</li> <li>3. Revise state agency 2-year planning requirement</li> <li>4. Establish consistent, long-term funding for local and regional planning, and the Office of Planning Coordination</li> <li>5. Create an Office of Planning Coordination to serve as clearinghouse for planning and research (develop, convene, and facilitate regular meetings of a State Agency Planning Consortium made up of agency planning directors or senior staff from all pertinent state agencies and report to Governor, provide physical and online center for guides, reports and plans, oversee state funding and research contracts, staff VT Planning Commission, and provide necessary forecasting data)</li> <li>6. Establish a Vermont Planning Commission (defined by</li> </ol>	<p>is linked to local and regional levels. The State Planning Commission would be less subject to political roller coaster</p>	<p>“partners” through staff at Housing &amp; Community Affairs. Staffing at this time would be problematic. Would probably not retain support, unless funding decisions on grant programs are linked as a responsibility</p>
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			Legislature, appointed by Governor) to unify and guide state planning efforts (staffed by the Office of Planning Coordination), evaluate regional plans to ensure their compliance to Vermont's statutory planning goals, define criteria to determine which state agency plans should be reviewed for conformance with state planning goals, review state agency plan Executive Summaries to evaluate their consistency with regional plans and statutory state goals, approve growth centers that are determined by the municipalities, mediate and coordinate between state, regional, and local levels of planning		
VT by Design: Next Steps #2	N/A	A Report of a Conference held at Vermont Law School 2/24/06 and Implementation Plan, published in August 2006 by the Land Use Institute	Summarized and upheld recommendations in <i>Vermont by Design #1</i> <ul style="list-style-type: none"> <li>• established a group of stakeholders for next steps</li> <li>• drafted implementation plan</li> </ul>		
Proposed office of planning coordination	S. 287 (2008)	<ul style="list-style-type: none"> <li>• Would repeal CRC</li> <li>• Proposed to establish an office of planning coordination within the agency of administration</li> <li>• Would coordinate planning</li> </ul>	Introduced by Senator Lyons and Senator Miller, this did not move further	Connection to budget approval	Proximity to Gov's Office, difficult political and financial climate

		<p>efforts among the various levels of government</p> <ul style="list-style-type: none"> <li>• Review certain actions of regional planning commissions</li> <li>• Maintain all current regional and local plans</li> <li>• Report annually on the consistency of state agency, regional, and municipal plans with the state's planning goals</li> <li>• Changes name of the Development Cabinet to Planning Cabinet</li> <li>• Decisions on sufficiency of plans would be made by Environmental Court instead of by the CRC</li> <li>• Budget estimates would be withheld by the Governor unless state agency plans are consistent with other agency plans and state goals</li> </ul>			
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Appendix V

**From:** Zahner, Michael  
**Sent:** Thursday, October 23, 2008 11:34 AM  
**To:** Shirley Adams; Dean Pierce; Noelle MacKay; Tom Kennedy; Dawn Francis; Peg Elmer; Karen Horn; Brian Shupe; Joe Sinagra; Ken Belyea  
**Cc:** James Libby  
**Subject:** Act 250 Off-Site Mitigation - VHCB 9(B) Report (2002)

This in response to Noelle's question regarding the effectiveness of the 9(B) off-site mitigation program:

***Executive Summary - VHCB 2002 Report***  
<http://www.vhcb.org/mitigationreport.pdf>

*Since 1991 [to 2002], VHCB has received approximately \$1 million in mitigation funds generated by the loss of 634 acres of primary agricultural soils in 58 developments under Act 250 jurisdiction. These funds are legally restricted to protection of farms within the geographical area of the development. As of November 30, 2002, VHCB has matched approximately \$500,000 of these funds with \$3,500,000 in state, federal and private funds to purchase conservation easements on 22 farms containing a total of 5,183 acres of land. All of the landowners who sell development rights on their farms are paid fair market value for deeded conservation easements based on a qualified appraisal. These 5,183 acres contribute to large blocks of farmland protected in perpetuity by Vermont's network of conservation land trusts working with private and public partners.*

\* \* \*

***Conclusion***

*Off-site mitigation payments have become an integral and important part of Vermont's efforts to protect farmland for agricultural purposes, to strengthen our rural economy and to maintain the health and integrity of our communities and the rural landscape. Agriculture is fundamental to Vermont's economy and no state has made a greater per capita investment in conserving the working landscape than Vermont. By utilizing off-site mitigation under Act 250, Criterion 9(B), District Environmental Commissioners can promote development within concentrated growth centers while assuring protection of our best farmland.*

Michael Zahner Analysis:

Between 1991 and 2002, VHCB received approximately \$1 million in Act 250 mitigation funds resulting from the loss of 634 acres of primary agricultural soils (average cost - \$1,577 per acre). Half of that amount (\$500,000) was used to leverage other funds (\$3,500,000) to purchase the development rights on 22 conserved farms - 5,183 acres of total land. These Act 250 mitigation funds (\$500,000) represent 12.5% of the total (\$4,000,000). Therefore, it could be reasoned that these funds were responsible for the conservation of 12.5% of the 5,183 acres of total land or 647 acres. However, the total land conserved usually consists of a mixture of primary agricultural soils, forest lands and other lands associated with each conserved farm. Assuming that the \$500,000 was generated by the loss of 317 acres of primary agricultural soils (634 divided by 2), the conservation ratio would be calculated as 2:1 - 2 acres conserved for every acre lost. The actual conservation ratio for primary agricultural soils might be a little lower when factoring out the amount of forest land conserved. Here is another caveat: the forest land conserved may actually consist of primary agricultural soils (in accordance with the statutory definition) and may be cleared in the future for farming purposes or used for maple sugar operations (defined agricultural activity).

I will ask VHCB if they have updated this report and will copy Jim Libby with this email to see if he has further insights.

Michael Zahner

Executive Director

Natural Resources Board

Appendix VI

TO: Smart Growth Summer Study Committee  
FROM: Joss Besse, Department of Housing and Community Affairs  
DATE: December 3, 2008  
RE: Evaluation of Designation Programs

The Committee has asked for input on the last of the Committee's assignments:

*Develop recommendations for how best to conduct periodic assessments of the effectiveness of the designation programs established under chapter 76A of Title 24*

Given the short time available to develop such recommendations, I offer these thoughts but also note that there are also a number of other entities that should be a part of this discussion, including but not limited to the Downtown Development Board itself, so I hope the committee will consider other suggestions on this matter. That said, my thoughts follow below:

Designated Downtowns: There are 23 designated downtowns, including all of the major downtowns in the state. It is not clear if there will be any more applicants. The key requirement for designation is that there be an organization whose *primary responsibility* is downtown revitalization, and that such organizations are engaged in a *long term and comprehensive program* as shown in their workplan and budget. The legislature this spring allowed the Board the ability to review compliance within the new 5 year designation period, and while that discussion has not concluded yet we have recommended that they use this authority to review the status of that organization 1-2 times within the designation period. One measure of the success of the program is that every designated community has aggressively sought to retain their designation status - to date no downtown has lost designation.

When we think of indicators, they tend to be economic – reduced vacancies (if the vacancy rate was high to begin with), investment in downtown properties, net new jobs. We have encouraged downtowns to collect these and other statistics consistent with the National Main Street Center's, but we have not had much success - collecting this data takes time, and our local programs have not made this a priority.

One could also measure success by the health of the local downtown organization – if they are not doing well, there is little likelihood of long term improvement in that downtown. Indicators might then be numbers of volunteers, increases or decreases in budgets, or the quality of their work program.

Finally, success might also be measured by the level of interest in applying for downtown benefits (Downtown Transportation Fund, building rehab tax credits, sales tax reallocations).

I would also note that Smart Growth VT is in the middle of a project that is looking for indicators of downtown health, and their results could be very relevant to this question.

Designated Village Centers: There are 84 designated village centers, well distributed around the state. Application volume has declined substantially in the past year. We have only had one community that did not renew their designation – and that was because they no longer had a “confirmed planning process” as required for designation (they noted they would want to become designated again when eligible).

This designation is essentially defining an area for benefits (tax credits) and does not require an ongoing program like downtowns. Success might be measured by the level of interest in the benefits, or the number of towns that don’t renew.

Designated New Town Centers: There is currently 1 Designated New Town Center (Colchester) and I do not envision more than one or two more. There are no benefits other than that it allows a community that does not have a designated downtown or village to apply for Growth Center designation. I would not recommend a formal evaluation process for this program. If any changes were proposed, I would suggest consolidating this program with the Growth Centers designation.

Designated Growth Centers: Currently there are two designated Growth Centers – Williston and Bennington. Three other communities (Montpelier, Middlebury and Waitsfield) have submitted preliminary applications to the Planning Coordination Group for review, and are expected to submit formal applications later. Several others (Pownal, Manchester, St Albans, Hartford) are doing some form of planning for growth center designation.

If the goal of this program is to support growth center planning around the state, then success might simply be the number of communities seeking designation. Another measure might be how well designated areas meet their original expectation when they return for renewal after 5 years – has 50% of the growth actually occurred within the growth center at appropriate densities; has infrastructure been built as anticipated; have resources been protected as anticipated; has it supported or competed with the nearby designated downtowns, villages or new town centers.

Designated Vermont Neighborhoods: Passed in the spring of 2008, we have not had any Neighborhoods considered yet – though Essex Jct is proposed for Board consideration on December 22<sup>nd</sup>.

There appear to be several goals to this program, so indicators would logically look at whether they are being met. In terms of increasing housing production, one might look at the number of Neighborhoods approved and numbers of new housing units produced. In terms of affordability, one might look at the number or percentage of housing units that are affordable (though there is no requirement that housing be affordable in order to become designated).

Finally, because proximity to a designated downtown, village or new town center is required, a measure of success for this might be improvements to the



health of that underlying designation – though I have not thought of any strong indicators that would measure this. I would also mention that statute already requires the Department to report on a number of indicators for this program in January, 2010.

Overall, it might also be useful to develop a standard self-evaluation process for these various designated areas to fill out, which our agency could compile and tabulate – of particular interest might be for them to express how useful/productive the designation has proven to be from their perspective.

As a final comment, I think there is always a need to balance the costs with the benefits of any evaluation process - I would hope evaluations would be built around existing data wherever possible, so that local and state staff can remain focused on their core activities.

APPENDIX VII. VT. DEPT. OF HOUSING AND COMMUNITY AFFAIRS CHART RE MUNICIPAL PLAN AND BYLAW ADOPTION (OCT. 2008)

Municipality	City/Town/Other	RPC	Town Plan adoption date	Town Plan Update	Town Plan Expir.	Confirmation Date	confirmed y/n	No Active Planning Commission? (X)	Zoning?	Original zoning adoption date	Zoning - Latest Adoption Date	Subdivision?
Addison	Town	ACRPC	4/6/2004		4/6/2009	9/8/2004	yes		Yes	1/1/1989	11/27/2007	Yes
Bridport	Town	ACRPC	10/20/2005		10/20/2010	4/12/2006	yes		Yes	3/5/2002	(8/22/06)	Yes
Bristol	Town	ACRPC	1/15/2007		1/15/2012	6/11/2008	yes		Yes		3/7/2006	No
Cornwall	Town	ACRPC	9/20/2005	(5/17/06)	9/20/2010	11/9/2005	yes		Yes	10/1/1999	2/00/2008	Yes
Ferrisburg	Town	ACRPC	7/6/2006		7/6/2011	9/13/2006	yes		Yes	3/1/2001	3/6/2001	Yes
Goshen	Town	ACRPC	5/8/2007		5/8/2012	9/12/2007	yes		Yes	4/1/1986	4/00/86	Yes
Leicester	Town	ACRPC	exp.		2/3/2008	no	no		Yes	2/21/2005	2/21/2005	Yes
Lincoln	Town	ACRPC	exp.			no	no		Yes	3/7/2006	3/7/2006	Yes
Middlebury	Town	ACRPC	6/19/2007		6/19/2012	3/12/2008	yes		Yes	5/1/1995	(1/23/08)	Yes
Monkton	Town	ACRPC	9/13/2007		9/13/2012	3/12/2008	yes		Yes	5/1/1986	05/00/86	Yes
New Haven	Town	ACRPC	3/7/2006	(4/3/08)	3/7/2011	7/12/2006	yes		Yes	6/27/2006	(4/3/08)	Yes
Orwell	Town	ACRPC	9/10/2007		9/10/2012	3/12/2008	yes		Yes	3/00/95	3/00/2008	Yes
Panton	Town	ACRPC	4/12/2005		4/12/2010	5/11/2005	yes		Yes	3/1/2001	3/1/2001	Yes
Ripton	Town	ACRPC	10/11/2004		10/11/2009	3/9/2005	yes		Yes	2/13/2006	2/13/2006	Yes
Salisbury	Town	ACRPC	2/1/2006		2/1/2011	5/1/2006	yes		Yes	11/28/2005	(9/29/08)	yes
Shoreham	Town	ACRPC	12/22/2003		12/22/2008	3/10/2004	yes		Yes	3/1/2004	(9/3/08)	No
Starksboro	Town	ACRPC	exp.		8/4/2008	exp.	no		Yes	??	7/6/2006	Yes

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Vergennes	City	ACRPC	9/28/2004		9/28/2009	11/10/2004	yes		Yes	7/11/2006	4/30/2007	Yes	
Waltham	Town	ACRPC	exp.		06/00/07	no	no		Yes	9/00/91	6/4/2007	Yes	
Weybridge	Town	ACRPC	exp.		2/5/2007	no	no		Yes	7/11/2006	7/11/2006	Yes	
Whiting	Town	ACRPC	exp.		08/00/06	no	no		Yes	12/29/2005	12/29/2005	Yes	
Arlington	Town	BCRC	9/8/2008		9/8/2013	9/18/2008	yes		Yes	8/23/1973	6/12/2006	Yes	
Bennington	Town	BCRC	12/12/2005		12/12/2010	5/18/2006	yes		Yes	00/00/1972	10/23/2006	Yes	
Dorset	Town	BCRC	11/16/2004		11/16/2009	9/18/2008	yes		Yes	3/6/1973	(3/7/06)	Yes	
Glastenbury		BCRC	7/14/2005		7/14/2010	9/15/2005	yes		Yes	11/29/1990	5/4/2006	No	
Landgrove	Town	BCRC	8/9/2007		8/9/2012	9/20/2007	yes		Yes	00/00/1972	7/13/2006	No	
Manchester	Town	BCRC	5/22/2007		5/22/2012	9/20/2007	yes		Yes	00/00/1972	(7/28/08)	Yes	
Manchester	Village	BCRC	9/00/2004		9/00/2009	9/16/2004	yes		Yes	5/1/1987	(4/2/07)	No	
North Bennington	Village	BCRC	2/12/2008		2/12/2013	9/18/2008	yes		Yes	5/00/87	00/00/2007	No	
Old Bennington	Village	BCRC	9/6/2004		9/6/2009	9/16/2004	yes		Yes	2/1/1973	(9/12/05)	Yes	
Peru	Town	BCRC	1/7/2007		1/7/2012	9/20/2007	yes		Yes	6/22/1993	00/00/03	No	
Pownal	Town	BCRC	10/12/2006		10/12/2011	9/20/2007	yes		Yes	00/00/1974	12/19/2002	Yes	
Rupert	Town	BCRC	4/26/2006		4/26/2011	9/20/2007	yes		Yes	3/7/1972	5/9/2000	Yes	
Sandgate	Town	BCRC	exp.		3/5/2007	no	no		Yes	5/30/1973	(3/22/06)	Yes	
Shaftsbury	Town	BCRC	3/2/2004		3/2/2009	9/16/2004	yes		Yes	00/00/1973	(1/22/08)	Yes	
Stamford	Town	BCRC	10/21/2004		10/21/2009	3/24/2005	yes		Yes	3/2/1999	(3/21/06)	No	
Sunderland	Town	BCRC	2/24/2004		2/24/2009	9/16/2004	yes		Yes	00/00/73	(9/11/03)	No	
Woodford	Town	BCRC	exp.		10/17/2007	exp	no		Yes	2/5/1974	2/5/1974	No	
Bolton	Town	CCRPC	6/4/2007		6/4/2012	7/23/2007	yes		Yes		1/5/2005	Yes	
Buel's Gore	Gore	CCRPC	3/24/2008		3/24/2013	3/24/2008	yes		Interim		2/12/2004	No	
Burlington	City	CCRPC	5/22/2006		5/22/2011	5/22/2006	yes		Yes		(1/29/07)	Yes	
Charlotte	Town	CCRPC	4/28/2008		4/28/2003	4/28/2008	yes		Yes		(5/15/08)	Yes	
Colchester	Town	CCRPC	7/10/2007		7/10/2012	6/25/2008	yes		Yes		(5/20/08)	Yes	
Essex	Town	CCRPC	4/11/2006		4/11/2011	4/10/2006	yes		Yes		(9/25/08)	Yes	
Essex Jct.	Village	CCRPC	1/22/2008		1/22/2013	1/28/2008	yes		Yes		5/24/2005	Yes	
Hinesburg	Town	CCRPC	6/19/2005		6/19/2010	6/19/2005	yes		Yes		9/19/2005	Yes	
Huntington	Town	CCRPC	6/18/2008		6/18/2013	6/18/2008	yes		Yes	7/11/1995	(1/27/04)	Yes	
Jericho	Town	CCRPC	4/17/2006		4/17/2011	4/17/2006	yes		Yes		(9/16/2008)	Yes	
Milton	Town	CCRPC	4/21/2008		4/21/2013	4/28/2008	yes		Yes		3/26/2007	Yes	

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Richmond	Town	CCRPC	1/29/2007		1/29/2012	3/5/2007	yes		Yes		4/25/2006	Yes	
Shelburne	Town	CCRPC	4/14/2004	(11/10/05)	4/14/2009	4/14/2004	yes		Yes		(1/31/2008)	Yes	
South Burlington	City	CCRPC	3/9/2006		3/9/2011	3/9/2006	yes		Yes		(11/21/06)	Yes	
St. George	Town	CCRPC	5/1/2007		5/1/2012	5/1/2007	yes		Yes		12/15/2005	Yes	
Underhill	Town	CCRPC	3/2/2004		3/2/2009	3/2/2004	yes		Yes		(12/10/02)	Yes	
Westford	Town	CCRPC	10/26/2004	(8/6/08)	10/26/2009	10/26/2005	yes		Yes		(8/6/08)	Yes	
Williston	Town	CCRPC	2/6/2006		2/6/2011	2/6/2006	yes		Yes		(4/17/07)	Yes	
Winooski	City	CCRPC	exp.		1/22/2008	exp.	no		Yes		(1/3/05)	Yes	
Barre	City	CVRPC	10/18/2005		10/18/2010	12/5/2005	yes		Yes	00/00/74	(4/26/06)	Yes	
Barre	Town	CVRPC	6/00/2008		6/00/2013	expected 10/08	no		Yes	00/00/1968	(3/14/07)	Yes	
Berlin	Town	CVRPC	6/00/2005		6/00/2010	no	no		Yes	00/00/1973	(12/16/04)	Yes	
Cabot	Town	CVRPC	exp.		6/00/08	9/9/2003	no		Yes	00/00/1979	(4/14/08)	No	
Calais	Town	CVRPC	exp.		6/00/08	11/00/03	no		Yes	00/00/1973	(9/19/06)	Yes	
Duxbury	Town	CVRPC	4/00/2008		4/00/2013	6/00/2008	yes		Yes	00/00/1971	(12/14/05)	No	
East Montpelier	Town	CVRPC	6/00/2008		6/00/2013	9/00/2008	yes		Yes	00/00/1970	(10/18/07)	Yes	
Fayston	Town	CVRPC	6/00/2007	(8/19/08)	6/00/2012	exp.	no		Yes	00/00/1980	(11/21/06)	Yes	
Marshfield	Town	CVRPC	1/00/2006		1/00/2011	4/11/2006	yes		Yes	00/00/1970	(12/13/07)	Yes	
Middlesex	Town	CVRPC	1/00/2008		1/00/2008	6/00/2008	yes		Yes	00/00/1977	(1/11/06)	No	
Montpelier	City	CVRPC	7/00/05		7/00/10	4/11/2006	yes		Yes	00/00/1970	(1/23/06)	Yes	
Moretown	Town	CVRPC	1/00/2008		1/00/2013	4/00/2008	yes		Yes	00/00/1981	(1/21/08)	No	
Northfield	Town	CVRPC	6/14/2004		6/14/2009	12/14/2004	yes		Yes	00/00/1972	(8/25/05)	No	
Northfield	Village	CVRPC	6/14/2004		6/14/2009	12/15/2004	not a municipality		Yes				
Orange	Town	CVRPC	07/00/05		07/00/10	2/14/2006	yes		No			No	
Plainfield	Town	CVRPC	11/00/2007		11/00/2012	exp.	no		Yes	00/00/1974	(5/5/08)	Yes	
Roxbury	Town	CVRPC	5/19/2008		5/19/2013	9/00/2008	yes		No			No	
Waitsfield	Town	CVRPC	6/00/05		6/00/10	11/00/06	yes		Yes	00/00/1980	(12/4/07)	Yes	
Warren	Town	CVRPC	5/24/2005	(8/27/07)	5/24/2010	09/00/05	yes		Yes	00/00/1980	(12/5/05)	Yes	
Washington	Town	CVRPC	exp.		7/8/2008	exp.	no		Yes	00/00/1992		No	
Waterbury	Town	CVRPC	10/27/2003	(8/27/08)	10/27/2008	10/00/04	yes		Yes	00/00/1985	(9/6/07)	No	
Waterbury	Village	CVRPC	11/12/2003	(8/27/08)	11/12/2008	10/00/04	yes		Yes	00/00/85		No	
Williamstown	Town	CVRPC	07/00/05		07/00/10	10/11/2005	yes		No		(12/10/02)	No	
Woodbury	Town	CVRPC	exp.		4/10/2008	exp.	no		Yes	00/00/1973	(11/21/05)	No	

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Worcester	Town	CVRPC	11/00/2007		11/00/2012	1/00/08	yes		No			No	
Belvidere	Town	LCPC	5/5/2005		5/5/2010	7/12/2005	yes		No			No	
Cambridge	Town	LCPC	yes		00/00/2013	00/00/2008	no		No		(9/9/2008)	Yes	
Eden	Town	LCPC	8/29/2007		8/29/2004	9/11/2007	yes		No			No	
Elmore	Town	LCPC	8/11/2008		8/11/2013	9/23/2008	yes		Yes		1/12/2005	yes	
Hyde Park	Town	LCPC	11/18/2005		11/18/2010	7/12/2005	yes		Yes		11/2/2005	Yes	
Hyde Park	Village	LCPC	8/1/2006		8/1/2011	9/12/2006	yes		Yes		2/1/2000	No	
Jeffersonville	Village	LCPC	exp		8/29/2008	exp	no		No			No	
Johnson	Town	LCPC	8/21/2006		8/21/2011	9/12/2006	yes		No		(9/13/07)	No	
Johnson	Village	LCPC	6/9/2008		6/9/2013	yes							
Morristown	Town	LCPC	3/13/2008		3/13/2013	5/27/2008	yes		Yes	11/27/1995	1/16/2006	Yes	
Morrisville	Village	LCPC	3/13/2008		3/13/2013	5/27/2008	yes		Yes	11/27/1995	(10/04/05)	Yes	
Stowe	Town	LCPC	12/8/2003		12/8/2008	5/11/2004	yes		Yes	6/3/1995	(9/17/07)	Yes	
Waterville	Town	LCPC	4/14/2008		4/14/2013	5/27/2008	yes		No			No	
Wolcott	Town	LCPC	2/6/2008		2/6/2013	5/27/2008	yes		Yes	6/28/1991	3/7/2006	Yes	
Alburg	Town	NRPC	7/25/2006		7/25/2011	8/27/2006	yes		Yes		2/28/2006	No	
Bakersfield	Town	NRPC	exp.	(4/15/03)	10/23/2006	exp?	no		Yes		7/24/2006	Yes	
Berkshire	Town	NRPC	4/25/2005		4/25/2010	6/29/2005	yes		Yes	3/6/2006?	5/6/2007	Yes	
Enosburg	Town	NRPC	9/8/2008		9/8/2013	9/24/2008	yes		Yes	??	8/00/07	Yes	
Enosburg Falls	Village	NRPC	8/26/2008		8/26/2013	9/24/2008	yes		Yes		8/26/200/	Yes	
Fairfax	Town	NRPC	9/22/2008		9/22/2013	9/24/2008	yes		Yes		8/6/2007	Yes	
Fairfield	Town	NRPC	exp.		1/7/2007	exp.	no		Yes		6/6/2006	Yes	
Fletcher	Town	NRPC	9/19/2005		9/9/2010	9/28/2005	yes		Yes		10/25/2002	Yes	1
Franklin	Town	NRPC	11/12/2007		11/12/2012	1/30/2008	yes		Yes		11/5/2002	Yes	
Georgia	Town	NRPC	9/25/2006		9/25/2011	9/27/2006	yes		Yes		(3/25/08)	Yes	
Grand Isle	Town	NRPC	2/5/2007		2/5/2012	3/28/2007	yes		Yes		(2/18/08)	Yes	
Highgate	Town	NRPC	7/7/2005		10/5/2010	9/28/2005	yes		Yes	4/17/2003	(5/7/07)	Yes	
Isle La Motte	Town	NRPC	No			No	no		No			No	
Montgomery	Town	NRPC	9/19/2005		9/19/2010	9/28/2005	yes		Yes		3/1/2005	No	
North Hero	Town	NRPC	10/20/2003		10/20/2008	10/22/2003	yes		Yes		5/00/2006	Yes	
Richford	Town	NRPC	9/00/2006		9/27/2011	9/27/2006	yes		Yes		3/1/2005	No	
Sheldon	Town	NRPC	10/17/2005		10/17/2010	9/28/2005	yes		Yes		5/5/2008	Yes	

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South Hero	Town	NRPC	6/28/2004		6/28/2009	9/29/2004	yes		Yes		10/4/2005	Yes	
St. Albans	City	NRPC	9/27/2006		9/27/2011	9/27/2006	yes		Yes		1/1/2007	Yes	
St. Albans	Town	NRPC	9/26/2005		9/26/2010	9/28/2005	yes		Yes		5/29/2006	Yes	
Swanton	Town	NRPC	7/19/2005		7/19/2010	9/28/2005	yes		Yes		(2/11/08)	Yes	
Swanton	Village	NRPC	7/19/2005		7/19/2010	9/28/2005	yes		Yes		(2/11/08)	Yes	
Albany	Town	NVDA	No			No	no		No		(4/15/04)	No	
Barnet	Town	NVDA	9/22/2008		9/22/2013	EXP.	no		Yes	10/9/1997		No	
Barton	Town	NVDA	exp	(1/17/08)	5/14/2007	exp	no		Yes	5/14/2002		No	
Barton	Village	NVDA	No			No	not a municipality		No			Yes	
Bloomfield	Town	NVDA	No			No	no		No			No	
Brighton	Town	NVDA	7/8/2008		7/8/2013	9/25/2008	yes		Yes		2/6/2007	No	
Brownington	Town	NVDA	4/11/2007		4/11/2012	9/27/2007	yes		No			No	
Brunswick	Town	NVDA	exp.		5/16/2007	No	no		Yes	3/7/1989	(8/14/01)	No	
Burke	Town	NVDA	12/4/2006		12/4/2011	9/27/2007	yes		Yes	00/00/01	3/4/2008	Yes	
Canaan	Town	NVDA	3/7/2006		3/7/2011	9/27/2007	yes		Yes	10/18/2000	3/4/2008	No	
Charleston	Town	NVDA	exp.	(6/6/05)	11/1/1978	No	no		No			No	
Concord	Town	NVDA	exp.		12/7/1997	No	no		Yes	3/1/1994		No	
Coventry	Town	NVDA	exp.		6/10/2008	no	no		No		(7/23/07)	No	
Craftsbury	Town	NVDA	5/16/2006		5/16/2011	9/27/2007	yes		No			No	
Danville	Town	NVDA	12/8/2005		12/8/2010	9/27/2007	yes		Yes		12/6/2007	No	
Derby	Town	NVDA	exp.		3/5/2007	no	no		Yes		8/18/2004	No	
Derby Line	Village	NVDA	No			No	not a municipality		No			No	
East Haven	Town	NVDA	exp.		10/9/1987	No	no		No			No	
Glover	Town	NVDA	6/7/2006		6/7/2011	9/27/2007	yes		No			No	
Granby	Town	NVDA	exp.		12/8/1997	no	no		Yes	9/8/1993		No	
Greensboro	Town	NVDA	4/11/2007		4/11/2012	9/27/2007	yes		Yes	8/7/1996	(7/30/07)	No	
Groton	Town	NVDA	exp.		4/20/2005	No	no		Yes	3/2/2004		No	
Guildhall	Town	NVDA	3/1/2005		3/1/2010	9/27/2007	yes		Yes	3/1/2005	(11/4/04)	No	
Hardwick	Town	NVDA	10/4/2007	(7/29/2008)	10/4/2012	9/27/2007	yes		Yes	10/30/2003	11/3/2005	Yes	
Holland	Town	NVDA	3/19/2007		3/19/2012	9/27/2007	yes		No			No	
Irasburg	Town	NVDA	No			No	no		No			No	

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Jay	Town	NVDA	6/6/2005		6/6/2010	9/27/2007	yes		Yes	00/00/02	(4/26/05)	Yes	
Kirby	Town	NVDA	3/7/2006		3/7/2011	9/27/2007	yes		Yes	4/24/2001	(10/6/05)	No	
Lemington	Town	NVDA	exp.		1/16/2000	No	no		Yes	11/6/1990		No	
Lowell	Town	NVDA	exp.		1/28/2008	exp.	no		Yes	3/4/2003		No	
Lunenburg	Town	NVDA	exp.		2/28/1996	No	no		No			No	
Lyndon	Town	NVDA	exp	(7/31/2008)	7/13/2004	exp	no		Yes	4/16/2003		Yes	
Lyndonville	Village	NVDA	No			No	not a municipality		No			No	
Maidstone	Town	NVDA	4/19/2007		4/18/2012	9/27/2007	yes		Yes	7/8/2002		Yes	
Morgan	Town	NVDA	10/25/2004		10/25/2009	9/28/2006	yes		Yes	10/25/2004		No	
Newark	Town	NVDA	1/9/2006		1/9/2011	9/27/2007	yes		No			No	
Newport	City	NVDA	9/20/2004		9/20/2009	9/27/2007	yes		Yes		10/1/2007	Yes	
Newport	Town	NVDA	12/16/2004		12/16/2009	9/27/2007	yes		Yes		2/2/2006	No	
North Troy	Village	NVDA	No			No	not a municipality		No			No	
Norton	Town	NVDA	7/6/2006		7/6/2011	9/27/2007	yes		Yes	00/00/94		No	
Orleans	Village	NVDA	No			No	not a municipality		No			No	
Peacham	Town	NVDA	6/15/2005		6/15/2010	9/27/2007	yes		Yes	12/7/2005		No	
Ryegate	Town	NVDA	exp.		9/1/2006	No	no		Yes	3/5/1996		No	
Sheffield	Town	NVDA	yes 00/00/2008?	(10/17/07)	00/00/2013?	no	no		No			No	
St. Johnsbury	Town	NVDA	4/10/2006		4/10/2011	9/27/2007	yes		Yes	2005?	3/8/2006	Yes	
Stannard	Town	NVDA	9/26/2005		9/26/2010	9/27/2007	yes		Yes		6/3/2006	No	
Sutton	Town	NVDA	8/23/2005		8/23/2010	9/27/2007	yes		Yes		8/23/2005	Yes	
Troy	Town	NVDA	3/20/2008		3/20/2013	9/25/2008	yes		Yes	6/25/1987		No	
UTG		NVDA	1/12/2006		1/12/2011	9/27/2007	yes		Yes	1/12/2006	6/12/2008	No	
Victory	Town	NVDA	No			No	no		No			No	
Walden	Town	NVDA	exp.		8/14/1980	No	no		No			No	
Waterford	Town	NVDA	6/9/2008		6/9/2013	9/25/2008	yes		Yes	4/8/2002		Yes	
Westfield	Town	NVDA	exp.		1/28/2008	exp	no		Yes		11/14/2005	No	
Westmore	Town	NVDA	6/9/2008		6/9/2013	9/25/2008	yes		Yes		7/21/2008	No	
Wheelock	Town	NVDA	8/13/2008		8/13/2013	9/25/2008	yes		No			No	
Benson	Town	RRPC	5/18/2004	(5/14/08)	5/18/2009	6/17/2008	yes		yes		3/7/2006	Yes	

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Brandon	Town	RRPC	12/17/2007		12/17/2007	no	no	Yes		(April/07)	yes	
Castleton	Town	RRPC	5/14/2007	(6/3/08)	5/14/2012	6/17/2008	yes	Yes	7/00/87	1/00/2008	Yes	
Chittenden	Town	RRPC	No plan			No	no	No			No	
Clarendon	Town	RRPC	5/14/2007	(9/2/08)	5/14/2012	no	no	Yes	6/25/1990	3/00/2003	No	
Danby	Town	RRPC	12/6/2007		12/6/2012	6/17/2008	yes	No			No	
Fair Haven	Town	RRPC	exp.		9/24/2008	9/20/2005	no	Yes	6/2/1998		No	
Hubbardton	Town	RRPC	6/14/2004		6/14/2009	9/21/2004	yes	Yes		7/22/2003	Yes	
Ira	Town	RRPC	11/17/2003		11/17/2008	9/21/2004	yes	No			No	
Killington	Town	RRPC	7/25/7/2005		7/25/2010	9/20/2005	yes	Yes		(2/13/08)	No	
Mendon	Town	RRPC	8/22/2005		8/22/2010	9/20/2005	yes	Yes	3/7/2000	(3/31/08)	Yes	
Middletown Springs	Town	RRPC	9/25/2007		9/25/2012	9/18/2007	yes	No			No	
Mt. Holly	Town	RRPC	4/8/2008		4/8/2013	6/17/2008	yes	No			Yes	
Mt. Tabor	Town	RRPC	No			No	no	No			No	
Pawlet	Town	RRPC	9/13/2005		9/13/2010	9/20/2005	yes	Yes	5/1/2002	(7/30/07)	No	
Pittsford	Town	RRPC	8/22/2007		8/22/2012	9/18/2007	yes	Yes		12/7/2005	No	
Poultney	Town	RRPC	9/26/2005		9/26/2010	9/20/2005	yes	Yes	2/12/2001	9/3/2007	Yes	
Proctor	Town	RRPC	9/10/2007		9/10/2012	no	no	Yes		(5/19/08)	No	
Rutland	City	RRPC	12/3/2007		12/3/2012	6/17/2008	yes	Yes		(3/19/08)	Yes	
Rutland	Town	RRPC	9/18/2007		9/18/2012	9/18/2007	yes	No		(8/7/08)	Yes	
Shrewsbury	Town	RRPC	exp.		8/20/2008	exp.	no	Yes	4/5/1988	(5/22/08)	Yes	
Sudbury	Town	RRPC	9/13/2004		9/13/2009	9/21/2004	no	Yes	11/7/2000	(7/29/08)	Yes	
Tinmouth	Town	RRPC	9/24/2007		9/24/2012	9/18/2007	yes	Yes		10/13/2005	Yes	
Wallingford	Town	RRPC	7/19/2004		7/19/2009	9/21/2004	yes	Yes	3/00/1971	(1/8/07)	Yes	
Wells	Town	RRPC	5/17/2005		5/17/2010	9/20/2005	yes	No			No	
West Haven	Town	RRPC	7/10/2008		7/10/2013	6/17/2008	yes	Yes		11/14/2006	No	
West Rutland	Town	RRPC	4/24/2006		4/24/2011	No	no	Yes		4/24/2006	Yes	
Andover	Town	SWCRPC	9/10/2007		9/10/2012	9/18/2007	yes	Yes		9/10/2007	Yes	
Baltimore	Town	SWCRPC	7/5/2006		7/5/2011	9/19/2006	yes	Yes	5/9/1987	10/5/2005	Yes	
Cavendish	Town	SWCRPC	1/8/2007		1/8/2012	4/17/2007	yes	No		(2/19/03)	No	
Chester	Town	SWCRPC	5/19/2008		5/19/2013	9/23/2008	yes	Yes	7/16/1999	11/17/2007	Yes	
Ludlow	Town	SWCRPC	9/20/2004		9/20/2009	9/21/2004	yes	Yes		(8/21/07)	Yes	
Reading	Town	SWCRPC	7/18/2005		7/18/2010	9/20/2005	yes	Yes		7/16/2007	No	



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Springfield	Town	SWCRPC	4/12/2004		4/12/2009	7/20/2004	yes		Yes		9/10/2007	Yes	
Weathersfield	Town	SWCRPC	9/15/2005		9/15/2010	9/21/2004	yes		Yes		9/18/2007	Yes	
West Windsor	Town	SWCRPC	9/19/2005	(5/20/08)	9/19/2010	9/20/2005	yes		Yes		7/22//2008	Yes	
Windsor	Town	SWCRPC	7/25/2006		7/25/2011	9/19/2006	yes		Yes		(8/30/07)	Yes	
Barnard	Town	TRORPC	9/29/2004		9/29/2009	9/22/2004	yes		Yes		11/13/2007	No	
Bethel	Town	TRORPC	8/28/2006		8/28/2011	9/27/2006	yes		Yes		8/27/2007	Yes	
Bradford	Town	TRORPC	exp		2/18/2008	exp	no		Yes		10/27/2005	No	
Braintree	Town	TRORPC	2/28/2006		2/28/2011	5/24/2006	yes		Yes		4/10/2007	Yes	
Bridgewater	Town	TRORPC	1/22/2008		1/22/2013	3/26/2008	yes		No			No	
Brookfield	Town	TRORPC	9/12/2005		9/12/2010	12/14/2005	yes		Yes		11/14/2005	Yes	
Chelsea	Town	TRORPC	4/15/2008		5/1/2012	4/23/2008	yes		Yes		9/6/2005	No	
Corinth	Town	TRORPC	6/25/2007		6/25/2012	9/25/2007	yes		No			Yes	
Fairlee	Town	TRORPC	exp.	(12/19/07)	6/18/2006	No	no		Yes		(3/7/06)	Yes	
Granville	Town	TRORPC	10/3/2005		10/3/2010	9/28/2005	yes		No			No	
Hancock	Town	TRORPC	exp.	(9/15/2008)	8/19/2008	exp	no		No			No	
Hartford	Town	TRORPC	6/5/2007		6/5/2012	9/25/2007	yes		Yes		10/14/2008	Yes	
Hartland	Town	TRORPC	6/5/2007		6/5/2012	9/25/2007	yes		No			No	
Newbury	Town	TRORPC	9/26/2005		9/26/2010	9/28/2005	yes		Yes		6/11/2007	Yes	
Norwich	Town	TRORPC	9/27/2006		9/27/2011	9/27/2006	yes		Yes		(3/27/07)	Yes	
Pittsfield	Town	TRORPC	7/28/2005		7/28/2010	9/28/2005	yes		No		(9/13/07)	No	
Plymouth	Town	TRORPC	12/5/2005	(11/14/06)	12/5/2010	5/24/2006	yes		Yes		1/29/2007	No	
Pomfret	Town	TRORPC	11/21/2007		11/21/2012	3/26/2008	yes		Yes	3/7/1989	(3/12/07)	Yes	
Randolph	Town	TRORPC	12/21/2004		12/21/2009	9/28/2005	yes		Yes		(7/17/08)	Yes	
Rochester	Town	TRORPC	6/11/2007		6/11/2012	9/25/2007	yes		Yes		(11/1/05)	Yes	
Royalton	Town	TRORPC	3/6/2007		3/6/2012	5/30/2007	yes		No			No	
Sharon	Town	TRORPC	3/15/2005		3/15/2010	9/28/2005	yes		No			Yes	
Stockbridge	Town	TRORPC	2/3/2005		2/3/2010	9/28/2005	yes		Yes		9/15/2005	Yes	
Strafford	Town	TRORPC	3/26/2008		3/26/2013	4/23/2008	yes		Yes		1/10/2007	Yes	
Thetford	Town	TRORPC	3/19/2007		3/19/2012	4/25/2007	yes		Yes	3/2/1999		Yes	
Topsham	Town	TRORPC	1/24/2005		1/24/2010	9/28/2005	yes		No			No	
Tunbridge	Town	TRORPC	10/17/2007		10/17/2012	12/12/2007	yes		No			No	
Vershire	Town	TRORPC	11/7/2006		11/7/2011	1/24/2007	yes		Yes	3/6/2001	3/6/2008	Yes	

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West Fairlee	Town	TRORPC	8/15/2005		8/15/2010	9/28/2005	yes		No		(6/18/02)	No	
Woodstock	Town	TRORPC	4/25/2007		4/25/2012	5/30/2007	yes		Yes		12/18/2007	No	
Woodstock	Village	TRORPC	4/25/2007		4/25/2012	5/30/2007	yes		Yes		(1/11/05)	No	
Athens	Town	WRC	No			No	no		No			No	
Bellows Falls	Village	WRC	No			No	no		No			No	
Brattleboro	Town	WRC	2/19/2008		2/19/2013	8/26/2008	yes		Yes	3/28/88?	11/30/2007	Yes	
Brookline	Town	WRC	8/17/2005		8/17/2010	8/30/2005	yes		No		(6/24/04)	No	
Dover	Town	WRC	1/2/2007	(5/19/08)	1/2/2012	No	no		Yes	11/8/1988	3/7/2007	No	
Dummerston	Town	WRC	8/11/2004		8/11/2009	8/31/2004	yes		Yes	6/27/1979	7/6/2007	No	
Grafton	Town	WRC	5/26/2008		5/26/2013	8/26/2008	yes		No			Yes	
Guilford	Town	WRC	7/25/2005		7/25/2010	8/30/2005	yes		No			No	
Halifax	Town	WRC	6/15/2004		6/15/2009	8/31/2004	yes		Yes	6/10/1971	11/6/2007	No	
Jamaica	Town	WRC	6/12/2006		6/12/2011	8/29/2006	yes		No			No	
Londonderry	Town	WRC	10/17/2005		10/17/2010	8/29/2006	yes		Yes	1/6/2000	9/1/2000	No	
Marlboro	Town	WRC	6/12/2008		6/12/2013	7/29/2008	yes		Yes	3/4/1974	3/6/2007	Yes	
Newfane	Town	WRC	9/13/2006		9/13/2011	8/29/2006	yes		Yes	5/16/1975	10/00/2008	Yes	
Putney	Town	WRC	1/30/2006		1/30/2011	4/25/2006	yes		Yes	9/00/71	8/30/2005	Yes	
Readsboro	Town	WRC	8/25/2005		8/25/2010	8/30/2005	yes		Yes	00/00/70	4/18/2006	No	
Rockingham	Town	WRC	1/18/2005		1/18/2010	8/30/2005	yes		Yes	6/22/1982	8/7/2007	Yes	
Searsburg	Town	WRC	No			No	no		No			No	
Somerset		WRC	No		expired	No	no		No			No	
Stratton	Town	WRC	9/27/2004		9/27/2009	no	no		Yes		7/11/2007	Yes	
Townshend	Town	WRC	11/17/2003	(9/24/08)	11/17/2008	3/30/2004	yes		No			No	
Vernon	Town	WRC	3/3/2003		3/3/2008	No	no		No			No	
Wardsboro	Town	WRC	exp		9/9/2008	No	no		Yes	3/2/1976	(7/9/08)	No	
Westminster	Town	WRC	9/11/2007		8/11/2012	6/24/2008	yes		Yes	3/30/1970	(1/7/08)	Yes	
Weston	Town	WRC	8/22/2006		8/22/2011	8/29/2006	yes		Yes		(10/15/07)	Yes	
Whitingham	Town	WRC	10/26/2007		10/26/2012	6/24/2008	yes		Yes	00/00/69	9/25/2007	No	
Wilmington	Town	WRC	9/28/2005		9/28/2010	8/30/2005	yes		Yes	3/5/1968	(12/4/07)	No	
Windham	Town	WRC	9/7/2004	(2/28/08)	9/7/2009	no	no		Yes	9/9/1986	5/1/2001	No	
Winhall	Town	WRC	7/19/2006		7/19/2011	7/25/2006	yes		Yes		6/00/2005	Yes	

## Appendix VIII

# Changes Still Needed To Provide Workable Tax Increment Financing (TIF) Program and Incentives for Municipalities to Undertake Smart Growth Planning

*Offered by Karen Horn, VLCT  
November 13, 2008*

### Tax Increment Financing (TIF) Program

Given the new energy constrained world in which Vermonters live, we believe it would be very helpful to include a reference to energy efficiency and energy independence upgrades in the purpose section of the TIF statute. That section reads,

*24 V.S.A. 1893*

*The purpose of tax increment financing districts is to provide revenues for improvements that serve the district and related costs, which will stimulate development or redevelopment within the district, provide employment opportunities, improve and broaden the tax base, **provide energy efficiency or alternative energy improvements** or enhance the general economic vitality of the municipality, the region, or the state.*

As an aside, we also believe that such authorization should be given to municipalities in their general police powers.

In legislation passed this year (Act 190) “financing” was defined to mean only specific kinds of debt instruments. Our strong preference is to leave the definition of “financing” open ended so that municipal officials working with their financial advisors, consultants and staff, may use innovative kinds of financing that may be available. For instance, a second Congressional stimulus package might include a new loan instrument for local governments that is not among those listed at 24 V.S.A. § 1891 (7). The kinds of financing now allowed are bonds, HUD Section 108 financing instruments, inter fund loans within a municipality, State of VT revolving loan funds and USDA loans.

24 V.S.A. § 1894 (a) was amended to require that if no indebtedness is incurred within the first five years after creation of the district, no indebtedness may be incurred unless reapproval of the TIF is obtained. Until passage of this amendment, statute allowed projects to be undertaken with indebtedness incurred over the life of the TIF as revenues from the TIF permitted.

24 V.S.A. § 1897 was amended this year to require that the legal voters of a municipality, by a single vote, shall authorize the legislative body to pledge credit up to a

specified maximum dollar amount for all debt obligations to be financed with the state property tax increment pursuant to approval by the VT economic progress council. To accomplish this in a single vote will be extremely difficult.

### **Incentives to Local Governments**

*Tax credits available to developers through the Downtown Program have been used to great effect in renovating historic buildings in downtowns.*

*Locally administered revolving loan funds such as the Bennington Revolving Loan Fund and Townwide Fund that are flexible enough to respond to needs in that community.*

*Downtown Program funding – easily accessible without lengthy paperwork typical of government funding sources.*

*Payment per new unit of affordable housing to the municipality.*

*New Idea: Establish a state funding source based on the land trust model that would provide funds for helping municipalities create development success stories and bolster development in villages, downtowns and growth centers. Funds could be used to help purchase key properties, either fee simple or development rights, to secure them for the downtown.*

Appendix IX

**SMART GROWTH STUDY COMMITTEE**  
**Summary of VLCT Proposals for Encouraging Development**  
**in Compact Settlement Areas**  
*Karen Horn, Director Public Policy & Advocacy*  
*December 3, 2008*

We have testified that the following measures work to encourage development in downtowns and compact settlement areas.

*Assistance with infrastructure development or redevelopment is key. In compiling a list of local infrastructure projects that are ready to go if a second Congressional stimulus package is available, we have more than ½ billion in projects.*

*Tax Increment Financing District legislation is needed to address some of the lingering issues with that statute as indicated in November 13 testimony.*

*Tax credits available to developers through the Downtown Program have been used to great effect in renovating historic buildings in downtowns and should be continued.*

*Partnerships with local officials to generate redevelopment in designated downtowns, growth centers, village centers, VT Neighborhoods, new town centers must include the multiple agencies administering programs that must be complied with before common goals are actually met. Inside designated areas requirements to address a host of issues including air quality, wetlands, natural and fragile areas, congestion, must be tailored to make it convenient, efficient and easy to locate in those areas. Who at the state level is looking at the whole picture and how to achieve the ultimate goal of development in compact settlement areas?*

*Locally administered revolving loan funds such as the Bennington Revolving Loan Fund and Townwide Fund flexible enough to respond to needs in that community must be available to communities and supported both locally and by the state.*

*Locally enacted bylaws that reinforce the concept that downtown is where you want development to occur and state regulations that also reinforce a preference for developing in downtowns. Smaller lot sizes, flexible standards for reuse of buildings.*

*Downtown Program funding – easily accessible without lengthy paperwork typical of government funding sources works well and should be replicated in the other programs.*

*Downtown Program requirements should be consistent with requirements for growth centers, TIFs, new town centers, and VT Neighborhoods.*

*Providing assistance in resolving parking, traffic and public transportation issues that accrue as a result of increased density and use of a designated area.*

*Unleashing local officials to put into practice some very innovative ideas that may fall outside the confines of programs designed to promote growth in downtowns but that would in fact result in growth in downtowns.*

*The Energy Crisis (manifested as the market force of high fuel costs and fewer discretionary dollars overall) has people rethinking their choices in terms of where to live and work and how to reduce or eliminate transportation costs. Compact walkable communities hosting a variety of services and businesses look very attractive in this climate.*