VERMONT LEAGUE OF CITIES & TOWNS

Serving and Strengthening Vermont Local Governments

November 6, 2018

Hon. Amy Sheldon, Chair
Commission on Act 250
Vermont State House
115 State Street
Montpelier, VT 05633-5301
Dear Chairperson Sheldon:

I am writing to follow up on VLCT's testimony of November 15, 2017, and letter of December 13, 2017, urging the commission to reduce redundancies that have evolved between Act 250 and state, federal and local jurisdiction over land use. As we wrote– and as you have heard from many different sources – the state's laws and regulatory review responsibilities have expanded significantly in breadth and capacity since Act 250 was enacted in 1970.

As the commission moves ahead, it is vitally important to ensure that jurisdiction assumed by Act 250 neither duplicates nor contradicts other regulations administered by state agencies or boards or by local governments which have enacted comprehensive plans and bylaws. As you know, the primary purpose of Act 250 is to "encourage the appropriate development of all lands in this state by the action of its constituent municipalities and regions…" Duplicative permitting systems do not accomplish that purpose. More than 200 of Vermont's 246 cities and towns currently have adopted plans and bylaws in accordance with the multitudinous provisions of Title 24, Chapter 117, the Municipal and Regional Planning and Development Act. They have been developed, adopted, and implemented by more than 2,300 planning and zoning commission and development review board members, who are dedicated to realizing community visions for growth, development, conservation, health and safety, and so much more. The chapter's purpose section gives a taste of what is required.

"24 VSA § 4302 It is the intent and purpose of this chapter to encourage the appropriate development of all lands in this State by the action of its constituent municipalities and regions, with the aid and assistance of the State, in a manner which will promote the public health, safety against fire, floods, explosions, and other dangers; to promote prosperity, comfort, access to adequate light and air, convenience, efficiency, economy, and general welfare; to enable the mitigation of the burden of property taxes on agricultural, forest, and other open lands; to encourage appropriate architectural design; to encourage the development of renewable resources; to protect residential, agricultural, and other areas from undue concentrations of population and overcrowding of land and buildings, from traffic congestion, from inadequate parking and the invasion of through traffic, and from the loss of peace, quiet, and privacy; to facilitate the growth of villages, towns, and cities and of their communities and neighborhoods so as to create an optimum environment, with good civic design; to encourage development of a rich cultural environment and to foster the arts; and to provide means and methods for the municipalities and regions of this State to plan for the prevention, minimization, and future elimination of such land development problems as may presently exist or which may be foreseen and to implement those plans when and where appropriate."

We strongly endorse the recommendation from the Agency of Commerce and Community Development to recognize the heightened level of planning, design, and local regulation in designated downtowns, growth centers, new town centers and neighborhood development areas, as well as tax increment financing districts, and to remove remaining Act 250 jurisdiction from development in those areas. These are the walkable, multi-use, compact settlement areas in which we all agree economic growth should be encouraged and which people – especially young people – seek out. These are the places where proposed projects receive intense municipal scrutiny from

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both professional staff and local board members as they will come to define a community for decades to come. Project review at the local level is far more detailed than was even contemplated at the time Act 250 was enacted. It should not be *more* difficult to develop in areas that have been designated as priorities for development, yet with the continuations of Act 250 jurisdiction in addition to municipal regulatory review, such is frequently the case. We therefore urge you to recognize the evolved regulatory environment, commitment to good design, and competence at the local level in those areas.

Likewise, Act 250 was not written with some varieties of projects in mind. The Act 250 process for assessing the development of recreation trails – which frequently extend beyond one district commission and cross or abut multiple private properties – is a mismatch for those amenities, which are significant and growing economic drivers of Vermont's flourishing outdoor recreation economy.

We continue to endorse the testimony from the Agency of Transportation last year (and likely again this week) that calls for eliminating redundancies between Act 250 criteria (and sub-criteria) and other state permitting programs. Such redundancies complicate the review and implementation of transportation projects, including those that advance Complete Streets objectives, which integrate people of all ages and abilities in planning, design, construction, operation and maintenance of transportation networks.

We believe in strengthening the presumptions accorded to other state permits in recognition of their expanded breadth, the professional capacity of staff who implement them, and the new environmental notice bulletin, which makes it easier for all to navigate and comment on permits.

Criterion 8 of Act 250 requires the district commission to find that a project "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." The "Quechee Analysis" is seen by many as a subjective assessment of aesthetics and was called out as such by participants in the Cope & Associates' Public Engagement Process. Visual impact assessments (VIAs) assess the visual character and quality before and after a project's construction to evaluate the impact of proposed projects. The National Environmental Policy Act established that the federal government must use all practicable means to ensure that all Americans have access to safe, healthful, productive, and *aesthetically and culturally pleasing* surroundings. For decades, the Bureau of Land Management of the U.S. Department of the Interior, the Federal Highway Authority of the Department of Transportation, and the Department of Energy, among other federal agencies, have used the VIA tools to acquire consistent results in characterizing the visual impacts of proposed federally funded projects. We urge the commission to consider using VIAs to help assess Criterion 8, aesthetics.

We also urge the commission to eliminate "legacy only" Act 250 jurisdiction over properties that would not otherwise trigger current Act 250 jurisdiction.

Finally, VLCT endorses the notion that Act 250 jurisdiction designed to protect critical habitats, wildlife corridors, and forest blocks outside of designated areas, while mindful of existing regulations, will help protect Vermont's environment and would be most effectively addressed in a new criterion.

Thank you for the opportunity to reaffirm our comments on these critical issues.

Sincerely,

Karen B. Horn

Karen B. Horn, Director
Public Policy and Advocacy