VERMONT LEAGUE OF CITIES & TOWNS

Serving and Strengthening Vermont Local Governments

February 11, 2020

Hon. Amy Sheldon, Chair
House Natural Resources, Fish and Wildlife Committee
Vermont State House
115 State Street
Montpelier VT 05633-5301

Dear Chairperson Sheldon:

After reading the draft Act 250 bill dated February 4 (DR-190040 draft 10.4), we have a few comments that relate to the functioning of land use planning and municipal governments in Vermont. We have testified to many issues in the past, but now want to emphasize the areas that concern local officials in this most recent draft.

The VLCT Board of Directors endorsed the broad concept of a professional Vermont Environmental Review Board at their January 16 meeting. VLCT also strongly supports exempting designated downtowns and neighborhood areas from Act 250. In fact, much of the project development in those designated areas is already outside of Act 250 jurisdiction.

We do not endorse turning locally based planning on its head or effectively taking municipal planning out of consideration for Act 250 permits. The current draft of the bill would require that permitted uses, patterns of development, and aesthetics of development at interstate interchanges conform with the "regional plan." (24 V.S.A. § 6000 (3)(A)(xi)(IX), p. 7). We urge you to also require conformity to the municipal plan.

Please delete language stating roads shall include any new road or improvement to a Class IV road by a private person for the purpose of accessing a development or subdivision, "including roads that will be transferred to or maintained by a municipality after their construction or improvement". ((24 V.S.A. § 6000 (3)(A)(xii), p. 8) It is rarely good practice for a town to assume the expense, liability, and maintenance of a private road, and we do not advise towns to do so. The inclusion of that language will raise unrealistic expectations that a town is likely to take over private roads or maintain Class IV roads.

The current draft of the bill would require the new five-member Vermont Environmental Review Board to adopt a state capability and development plan and update maps. The board would have to consult with regional planning commissions when updating maps. (24 V.S.A. § 6030 (b)(2). The board should also have to consult with municipalities or at least require regional commissions to collaborate with municipalities to determine the regional commission response when the board consults them.

The board would also approve regional plans. Local plans would have to be in conformance with those regional plans. The board would adopt rules, would hear appeals of the Vermont Downtown Board decisions regarding designated programs and hear appeals of district commission decisions. (24 V.S.A. § 6030 (b) (10, p. 58). The board would hear appeals of regional commission decisions and appropriate municipal panels if the decision pertains to land development and if the project also needs a permit from the Agency of Natural Resources or a district commission. As is the case with the Public Utility Commission, the five-member Natural Resources Board would be in charge of plans, rules, practices, and

Sponsor of:

VLCT Employment Resource and Benefits Trust, Inc.

VLCT Municipal Assistance Center

VLCT Property and Casualty Intermunicipal

decisions at every level, and at every step of the way. Any regional distinction would be absorbed into the state board's vision of Vermont. We believe that regional plans should not be approved by the board. Nor should the board be authorized to hear appeals of designation decisions under 24 V.S.A. § 2798 (p. 71). Those designations already go through a public, exhaustive and expensive process before the downtown development board approves them.

As envisioned in the draft bill, the district commission process would conduct an intensely legalistic process that is unfriendly to lay people and towns with volunteer boards and commissions. We urge you to consider a model such as the Municipal Administrative Procedures Act, which was designed for local boards conducting contested hearings. (24 V.S.A. Chapter 36) The draft bill would also provide that if a municipality has not responded to a request regarding impacts on educational or municipal services (24 V.S.A. §§ 6086 (6) and (7), p. 53) the applicants will be presumed to not have an unreasonable burden on those services. We suggest that if there is no response from a municipality within 90 days, the district commission should make its own assessment of those burdens.

We are concerned about the absolute exemptions from permit conditions for forest enterprises and logging trucks. You will certainly hear about this from project neighbors if such blanket exemptions go into effect. Permitting shipping outside permitted hours of operation including nights, weekends, and holidays for a minimum of 60 days is a significant exemption. A similar flat-out exemption for shipping and delivery of wood pellets, chips, or cord wood outside of permitted hours including nights, weekends, and holidays (and when school buses run) for seven months of the year (including April, which can be mud season) does not make sense and can significantly affect a community. A better approach would be to give a presumption to the logging or forest products company that their request is reasonable. The state regulates weights of such trucks, and wood products trucks are fined not infrequently for being overweight – a real consideration for maintaining local highway and bridge infrastructure in good repair.

We urge you to amend the bill in the above sections. Thank you for your consideration.

Sincerely,

Karen B. Horn

Karen B. Horn, Director
Public Policy and Advocacy