

House Committee on Environment and Energy

Comments on H.687 (Draft No.2, 2/6/2024) from

Charlie Baker and Catherine Dimitruk, Vermont Association of Planning and Development Agencies

February 13, 2024

General comments – Thank you for your work on addressing our housing crisis, improving environmental protection, and strengthening the planning and permitting processes to better support implementation of municipal and regional plans.

Here are specific comments for your consideration:

1. Sec.2, page 2 – We recommend striking the Capability and Development Plan language from this section.
2. Sec. 5, page 9 – We recommend striking the third sentence requiring rules for approving regional plans and maps in the hopes that the statute language provides enough direction to do our work with guidance developed by the ERB, as necessary. We have proposed language for Sec. 6 to address this change.
3. Sec. 6, page 13 – We recommend the following language to replace the language in subsections (j), (k), and (l).

(j) The Board shall review applications from municipalities for a Designated Planned Growth Areas and approve or disapprove based on whether a municipal application demonstrates compliance with the requirements of 24 V.S.A. § 5806. The Environmental Review board shall produce guidelines for municipalities seeking to obtain the Planned Growth Area designation.

(k) The Board shall review requests from regional planning commissions for approval of regional plans pursuant to 24 V.S.A. § 4348a. The Board may produce guidelines for regional planning commissions seeking regional plan approval.

(l) The Board shall review requests from regional planning commissions to designate downtown and village centers, neighborhood areas, and rural-conservation areas and the delineation of planned growth areas. The Board shall approve or disapprove based on whether the proposed areas demonstrate compliance with the requirements of 24 V.S.A. § 5805. The Board shall approve or disapprove based on whether the proposed rural-conservation areas demonstrate compliance with the definition of critical resource areas in section 6001 of this title. The Board may produce guidelines for regional planning commissions seeking to obtain these designations. If requested by the regional planning commission, the Board shall complete this review concurrently with regional plan approval in (k) above.

4. Proposed new section – we recommend deleting the reference to the Capability and Development Plan in 10 V.S.A. § 6042 et. seq. and replacing it with a reference to the regional planning process.

§ 6042. Regional Plans

The Board shall ~~adopt a Capability and Development Plan consistent with the Interim Land Capability Plan that shall be made~~ review and approve regional plans and future land use maps with the general purpose of guiding and accomplishing...

§ 6044. Public hearings – REPEAL

§ 6046. Approval of Governor and Legislature – REPEAL

§ 6047. Changes in the Capability and Development Plan - REPEAL

5. Sec. 23, page 43+ - We recommend specific language be included in statute to guide Act 250 jurisdiction and that jurisdictional decisions not be left to rule making.
 - a. Generally, we support the combined road/driveway threshold of 2,000' as recommended in the NRB Report.
 - b. We are concerned with the amount of land that might be jurisdictional based on the definition of critical resource area. We would be happy to work with the Committee on a revised definition.

6. Sec. 23, page 46 – We recommend providing a clearer link between a revised definition of “critical resource area” and the regional plan maps.

(50) “Critical resource area” means This definition shall be used by regional planning commissions in defining rural-conservation future land use areas in their regional plans per 24 V.S.A. § 4348a.

7. Sec. 24, page 47 – We recommend a minor change in language to be clear that a designated planned growth area is more than the core of the municipality. We also recommend deleting subsection (2). We believe a separate application process is only needed for Tier 1A/Designated Planned Growth Areas when complete Act 250 jurisdiction is being removed. We recommend that Tier 1B designations and center designations be accomplished through a review process that is done concurrently with reviewing a regional plan as recommended in the Designation Report. This will be more inclusive of more towns across the State and shift the administrative burden from small towns to regional planning commissions.

(1) Beginning on January 1, 2027, a municipality, by resolution of its legislative body, may apply to the Environmental Review Board for designation of a planned growth area for the ~~core~~ area portion of the municipality that is suitable for dense development and meets the requirements of subsection (b) of this section.

(2) A municipality may apply for designation as a Tier 1A or Tier 1B planned growth area.

8. Sec. 24, page 48 – We recommend providing more flexibility in the urban form requirement so that more municipalities can and will seek the Tier 1A/ Planned Growth Area Designation. We are also a bit concerned with the historic preservation and wildlife habitat bylaw requirements but would like to hear more from municipalities before offering specific comments. We would

also like to think about whether new bylaws are required or there should be an option for a municipality to demonstrate an alternative method of protecting river corridors, flood zones and wildlife corridors.

(F) Urban form bylaws for the planned growth area that further the smart growth principles of 24 V.S.A. chapter 117, adequately regulate the physical form and scale of development, ~~make reasonable provision for buildings in areas with sewer and water to have at least six stories~~ designate a portion of areas served by sewer and water to allow buildings of at least three stories, and conform to the guidelines established by the Board.

9. Sec. 24, page 49 – we recommend a couple more edits consistent with comments above.

(K) The applicable regional plan and planned growth area has been approved by the Board.

~~(2) To obtain a Tier 1B planned growth area designation under this section, a municipality must demonstrate to the Board that it has the following requirements described in subdivisions (A), (E), (I), (J), and (K) of this subsection (b).~~

10. Sec. 24, page 50-51 – We don't believe that RPCs need to be as involved as some of the language proposed in section (c) suggests. Here are some recommendations to simplify the process.

(c)(1) A preapplication meeting shall be held with the municipality and the staff of the relevant regional planning commission to review the requirements of subsection (b) of this section. ...

(c)(3) delete – we think this extra work that could just as easily be incorporated into a recommendation letter from the RPC

(c)(4)(A)(i) – delete

(c)(4)(B) - No defect in the form or substance of any requirements of this subsection (c) shall invalidate the action of the Board where reasonable efforts are made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Superior Court or by the Board itself, ~~the regional planning commission shall provide and~~ the municipality shall issue new posting and notice, and the Board shall hold a new hearing and take a new action.

11. Sec. 27, page 55 – The designations for Tier 1A and Tier 1B should reference the designation section of statute

(z) – in this subsection, either add or replace the reference to § 6032 with references to 24 V.S.A. § 5806 for Tier 1A/planned growth areas and 24 V.S.A. § 5805 for Tier 1B/neighborhood areas.

12. Sec. 28, page 57 – We are not sure that subsection (h) is needed given the previous language in (g) or if it does have a different intent than (g), it should clarify that permits “as may be modified in accordance with subsection (g)” shall be enforced by municipalities.

13. Sec. 30, page 63 – We are no longer sure that we want or need subsection (21) related to RPCs participating in municipal permit reviews. This subsection can be deleted.

14. Sec. 32, page 64-65 – Given the state-level work that is forthcoming on recommended processes for meaningful public engagement with marginalized communities, we recommend adding the following sentence to subsection (a)

These public engagement efforts shall follow guidance developed to provide meaningful participation and address environmental justice per 3 V.S.A. chapter 72.

15. Sec. 32, pages 65 and 68 – If comment #13 is implemented, the reference to “the definition of substantial regional impact” should also be removed from new subsections (d) and (h)(1).

16. Sec. 32, page 69 – We recommend adding a new subsection (i) dealing with appeals of regional plans with the appeal of the RPC decision to be heard by the ERB as a part of the ERB’s review and approval of the regional plan.

(i) Appeal.

(1) An interested party who has participated in the regional plan adoption process may appeal the adoption of the plan to the Environmental Review Board within 15 days of plan adoption. Participation is defined as providing written or verbal comments for consideration at a public hearing held by the regional planning commission. Appeals shall be submitted using a form provided by the Environmental Review Board.

(2) As used in this section, an “interested party” means any one of the following:

(A) A person owning title to or occupying property within the region.

(B) Any 20 persons by signed petition who own or occupy real property located within the region. The petition must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal. The designated representative must have participated in the regional plan adoption process as described in subdivision (e)(1) of this section.

(C) A party entitled to notice under 4348 (d) of this section.

(3) Any appeal under this section shall be limited to the question of whether the regional plan is consistent with the regional plan elements as described in section 4348a of this title. The requirements of subdivision 4352 of this title related to enhanced energy planning shall be under the sole authority of the Public Service Department and shall not be reviewed by the Environmental Review Board.

(4) the Environmental Review Board shall hear any appeal of regional plan adoption concurrently with regional plan review under 4348 (h) of this section and 10 V.S.A. 6027. The Environmental Review Board decision of appeal shall uphold or deny the appeal in whole or in part and the reasons shall be stated in writing. If applicable, the decision to uphold the appeal shall suggest modifications to the regional plan.

(5) the Environmental Review Board decision is final and not appealable.

17. Sec. 32, page 69 – We recommend a clarification about minor amendments in subsection (i) as follows:

A regional planning commission and a municipality may submit a joint request for a minor amendment to boundaries of a ~~Designated Area~~ future land use area pursuant to this chapter for consideration by the Environmental Review Board.

18. Sec. 33, pages 73 & 75 – We recommend moving the language from page 75, subsection (6) and adding it to the natural resource element on page 7, after subsection (C) as new subsections (D) and (E).

19. Sec. 33, page 76 – In subsection (A), we recommend deleting the word hamlets and adding a clarifying sentence at the end, “Village Centers may not have water, sewer, a municipal plan, or bylaws.”

20. Sec. 33, page 77 – We recommend adding a clarifying criterion to subsection (B) Planned Growth Areas as follows:

(iii) The area is served by municipal sewer and water infrastructure as defined in section 4303 of this title.

21. Sec. 33, page 78 – We recommend revising the description of Village Areas as follows with a clarifying sentence in the body and two explicit criteria.

(C) ... Village Areas may or may not have one of the following: water, sewer, or land development regulations. If no sewer is available, the area must have soils that are adequate for wastewater disposal.

(i) The municipality has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title and has adopted bylaws and regulations in accordance with sections 4414, 4418, and 4442 of this title.

(ii) Unless the municipality has adopted flood hazard and river corridor bylaws, applicable to the entire municipality, that are consistent with the standards established pursuant to subsection 755(b) of this title (Title10?) (flood hazard) and subsection 1428(b) of this title (Title10?) (river corridor), the area excludes identified flood hazard and fluvial erosion areas, except those areas containing preexisting development in areas suitable for infill development as defined in § 29-201 of the Vermont Flood Hazard Area and River Corridor Rule.

22. Sec. 33, page 80 – We recommend replacing the description of Rural, Conservation with the following.

(J) Rural; Conservation. These are critical resource areas as defined in 10 V.S.A. § 6001.

23. Sections 34 and 35, pages 81 – Consistent with comment #13, we now recommend deleting regional planning commissions and significant regional impact references from these sections if they remain. Given our role in developing the regional plan and the designation processes, we don't see a need for our involvement in municipal permits. We believe that VTrans is working on language that may significantly modify or replace these sections.

24. There is significant language in the proposed new Designation Chapter of statute (24 V.S.A. Chapter 139) that we recommend be included in this bill to fully integrate the planning, designation, and permitting processes. This is important to line up the non-regulatory benefits in these same locations. It is also important to fully connect the roles of the ERB, RPCs, and DHCD in supporting our communities. DHCD can provide more specific language.