

To: Rural Vermont
From: Food & Agriculture Clinic, VLGS¹
Re: VCSI compliance with public participation requirements
Date: October 30, 2024

MEMORANDUM

In 2023, the Vermont General Assembly passed the Community Resilience and Biodiversity Protection Act, sometimes known as Act 59. This legislation seeks to conserve thirty percent of the State's lands by 2030, and fifty percent by 2050. Act 59 envisions this effort as supporting a host of legislative ambitions, from preserving biodiversity, to supporting Vermont's historic settlement patterns. It sets out to inventory certain types of conserved lands and to formulate a plan to achieve the 30x30 and 50x50 goals.

The inventory and plan required by Act 59 will form the basis by which a full half of the land of the state will be governed within the next quarter of a decade. With such a significant footprint, it is imperative that this process fulfill the public participation requirements set in Vermont statute. To date, Act 59 implementation—now known as the Vermont Conservation Strategy Initiative (VCSI)—has fallen short of compliance with the state's Open Meeting and Environmental Justice Laws.

Vermont's government processes are governed by several intersecting statutes, including the Open Meeting Law, the Public Records Act, and the Environmental Justice Law. The configuration of the governmental entity and the nature of its activity will determine which law applies. The Open Meeting Law and Public Records Act apply broadly but not universally. In contrast, only certain state agencies must adhere to the state's Environmental Justice Law.

After explaining the VCSI implementation so far, this memo lays out the overlapping requirements for public process in Vermont, examining whether the Agency of Natural Resources (ANR) and the Vermont Housing and Conservation Board (VHCB or the Board²) are covered by these statutory schemes. Simultaneously, it analyzes where the VCSI process has fallen short of complying with each statute.

I. The VCSI Process to Date

Act 59 (the Act) sets out an order of business for the VCSI and enumerates key questions to be answered by the process. In an unusual move, the legislature split the initiative between ANR

¹ This memorandum was written by clinician Christina Reiter under the supervision of the Clinic Director, Emma Scott. Additional review provided by Prof. Laurie Beyranevand.

² Throughout this memo, VHCB refers to the entity as a whole—the 11-member Board and its staff. References to “the Board” are intended to encompass only appointed, voting members as enumerated in VT. STAT. ANN. TIT. 10, § 312.

and VHCB.³ The Act delegates authority over the project to ANR, stating “The Secretary of Natural Resources shall lead the effort in achieving these goals.”⁴ However, the Act then assigns the bulk of the work to VHCB.⁵

As a first step, the legislature directs VHCB, in consultation with ANR, to inventory conserved lands and conservation policies. This phase includes a review of the types of conserved areas of Vermont, a summary of the tools available to conserve land, and questions the legislature wants answered before the planning phase.⁶ This inventory process comprises most of the work that has been done to date.

Next, depending on the results of the inventory, VHCB must create a comprehensive plan addressing how to reach the objectives of the bill. Act 59 also includes specific instructions on public engagement for this planning phase.⁷ It requires VHCB to get input from an enumerated list of stakeholders, including private landowners, various businesses, minority groups, and state and local level land management agencies.⁸ The Act directs VHCB to hold “12 or more” public meetings, with “at least three” of those designed to solicit comments from the general public.⁹ The plan is due by the end of December 2025.¹⁰

VHCB began the inventory work by engaging “key” organizational partners.¹¹ Their initial list included: the Agency of Natural Resources (ANR), Vermont Land Trust (VLT), The Nature Conservancy of Vermont (TNC), the Audubon Society VT Chapter (Audubon), and the Trust for Public Land (TPL).¹² The State Natural Resources Conservation Council was added after this group first convened.¹³ This group then selected and contracted with Nature for Justice (N4J) to manage the project.¹⁴

³ VT. STAT. ANN. TIT. 10, §§ 2802-2803; In a prior session, a bill similar to Act 59 was passed that assigned all duties to ANR but that legislation was vetoed by the Governor. *See*, H.606 2021-22 Vt. Gen. Assemb. (Vt. 2022). The ‘as introduced’ version of Act 59 also assigned the entire project to ANR. The bill was first amended to read “the Secretary, with assistance from the Vermont Housing and Conservation Board, shall create an inventory...” H.126 2023-24 Vt. Gen. Assemb. (Vt. 2023), *as passed by the House*. The Senate introduced the language that ended up in the final law. H.126 2023-24 Vt. Gen. Assemb. (Vt. 2023), *as passed by the Senate*.

⁴ *Id.* § 2802(b).

⁵ *Id.* §§ 2803-2804.

⁶ *Id.* § 2803.

⁷ *Id.* § 2804.

⁸ *Id.* § 2804(c).

⁹ *Id.*

¹⁰ *Id.* § 2804(a).

¹¹ VT HOUS.AND CONSERVATION BD., ACT 59 OF 2023 – 10 V.S.A. SECTION 2803(B) INVENTORY REPORT ANNEX, 4 (2024),

https://vhcb.org/sites/default/files/programs/conservation/VCSI/Consolidated%20Annexes_DRAFT_PUBLIC_6.24_merged.pdf [hereinafter VHCB ANNEX].

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

To start, VHCB, ANR and N4J established further subcommittees—an oversight group, a data group, and a science and policy group. The oversight group initially consisted of two state agencies (VHCB and ANR) and three private businesses (N4J, TNC, VLT).¹⁵ “Later in the fall” a representative from the Natural Resource Conservation Districts was added.¹⁶ N4J then ran a public input process where they collected information through surveys, interviews, and affinity-based focus groups.¹⁷ ANR and VHCB separately established four working groups to provide input on topics specified in Act 59’s questions, including “conservation categories,” “agricultural lands,” “aquatic systems,” and “state lands.”¹⁸ Later in the process, they also added two ad hoc groups to assess intergenerational land transfers and funding and financing for Act 59 implementation.¹⁹

VHCB published the draft inventory report in June, and the final update was released September 20, 2024.²⁰

II. Vermont’s Open Meeting Law

Vermont’s Open Meeting Law (OML) gives effect to the state constitutional principle that “public officials are ‘trustees and servants’ of the people who are ‘at all times, in a legal way, accountable to them.’”²¹ The OML’s purpose is to promote transparency and accountability in governmental decision-making.²² Courts have declared that the OML should be liberally construed and “exemptions to the Open Meeting Law must be strictly construed.”²³

A. The Basics of the Open Meeting Law

The OML requires all meetings of a public body to be accessible to the public.²⁴ While it has been updated to accommodate a variety of meeting formats, OML’s fundamental mandates remain unchanged.²⁵ As a “right to know” law, the OML requires any covered events to be properly noticed, allow for public input, and be properly documented for the record.²⁶

¹⁵ VT. HOUS. AND CONSERVATION BD., ACT 59 OF 2023 – 10 V.S.A. SECTION 2803(B) INVENTORY REPORT 16 (2024), https://vhcb.org/sites/default/files/programs/conservation/VCSI/Act%2059%20of%202023_formatted.pdf [hereinafter INVENTORY REPORT].

¹⁶ *Id.*

¹⁷ VHCB ANNEX, *supra* note 11, at 4.

¹⁸ INVENTORY REPORT at 16.

¹⁹ *Id.*

²⁰ VT. HOUS. AND CONSERVATION BD., UPDATE TO ACT 59 OF 2023 – 10 V.S.A. SECTION 2803(B) INVENTORY REPORT (2024).

<https://vhcb.org/sites/default/files/programs/conservation/VCSI/Finalized%20Inventory%20Cover%20Letter092024.pdf>.

²¹ *Moorecroft v. Town of Brookfield*, 2011 WL 7657478 (2011).

²² VT. STAT. ANN. TIT. 1, § 311.

²³ *Negots. Comm. of Caledonia Cent. Supervisory Union v. Caledonia Cent. Educ. Ass’n*, 206 Vt. 636, 648 (2018).

²⁴ See S.55 2023-24 Gen. Assemb. (Vt. 2024) (An act relating to updating Vermont’s Open Meeting Law).

²⁵ VT. SEC’Y OF STATE, OPEN MEETINGS, <https://sos.vermont.gov/municipal-division/open-meetings/>

²⁶ VT. SEC’Y OF STATE, A GUIDE TO OPEN MEETINGS (2019), <https://outside.vermont.gov/dept/sos/Municipal%20Division/a-guide-to-open-meetings-january-2019.pdf>.

A meeting is defined as “a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.”²⁷ A meeting can be in person or remote, or via email, text, or other means of communication.²⁸ It does not include communications to schedule, distribute materials for, or set an agenda for such a meeting.²⁹

A public body encompasses

*any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee or subcommittee of any of the forgoing boards, councils, or commissions.*³⁰

The only exception made is for groups convened by the Governor for the sole purpose of advising the Governor on policy matters.³¹ Recent amendments create a new category designated as an “advisory body” within the umbrella of public body.³² An advisory body is defined as “a public body that does not have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters.”³³ All other bodies are referred to as “nonadvisory” though that term is not separately defined.³⁴

In contrast to other states, Vermont’s OML does not cover agencies themselves.³⁵ States like Delaware, Alaska, and Kansas specifically enumerate agencies in their definitions of covered entities.³⁶ New Mexico incorporates agencies by covering all public bodies ‘except the legislature and the courts.’³⁷ This omission also contrasts to Vermont’s own public records act, which does specifically include state agencies.³⁸ Though not explicit in Vermont’s law, in general, open meeting laws apply to collegial, deliberative bodies—entities where more than one person is exercising authority rather than a single individual.³⁹ Vermont’s “agencies” are

²⁷ VT. STAT. ANN. TIT. 1, § 310.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* § 310(6).

³¹ *Id.*

³² S.55 2023-24 Gen. Assemb. (Vt. 2024)

³³ *Id.*

³⁴ *See Id.*

³⁵ VT. STAT. ANN. TIT. 1, § 310(6).

³⁶ *See* 29 Del. Code § 10002; Alaska’s Open Meetings Act, AS 44.62. 310-. 31; Kansas Open Meetings Act, KSA 75-4317, et seq.

³⁷ Open Meetings Act, NMSA 1978, §§ 10-15-1 -10-15-4.

³⁸ VT. STAT. ANN. TIT. 1, § 316. *See also* Vt Sec’y of State, Guide to Vermont’s Public Records Laws (2014).

<https://outside.vermont.gov/dept/sos/Municipal%20Division/a-matter-of-public-record-2014.pdf> (last accessed Oct 9, 2024).

³⁹ *See, e.g.* Plourde ex rel. State v. Habegger, 294 Wis. 2d 746, 752-53 (2006) (“Moreover, the notion of applying the open meetings law to a body of one creates certain practical problems... we require the public to be granted access to discussions among governmental body members so that the public can be informed of the debate and

typically headed by a single individual.⁴⁰ Instead of the OML, public participation in agency processes are governed by Vermont’s Administrative Procedures Act.⁴¹

Most OML requirements apply regardless of what type of public body is meeting. The law requires public bodies to: 1) provide advance public notice of meetings, including a meeting agenda; 2) discuss all business and take all actions in open session (unless an exception in statute applies); 3) allow members of the public to attend and participate in meetings; and 4) take meeting minutes and make them available to the public.⁴²

The notice requirement is further divided between regular meetings and special meetings. Regular meetings are “designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body.”⁴³ They require 48-hours notice. Special meetings are any meeting that is not a regular or emergency meeting and require at least 24 hours advance warning.⁴⁴ Both regular and special meetings require an agenda to be posted, along with information on when and where it will be held.⁴⁵

Minutes are required for all meetings of public bodies.⁴⁶ Minutes must “give a true indication of the business of the meeting,” and record all topics and motions covered.⁴⁷ At minimum the record must show the members of the public body present, all active meeting participants, the business considered and its disposition, and the results of any vote.⁴⁸ The body must also not only retain the minutes and make them available upon request, but also must post those minutes to the body’s website (if one exists) within five calendar days.⁴⁹ Those minutes must remain posted, though they may be amended, for one year after the date of the memorialized meeting.⁵⁰

The advisory versus nonadvisory distinction is important for determining whether a meeting may be fully remote and whether the meeting must be recorded.⁵¹ An advisory body may hold

decision-making process that occurs between the body's membership. But it would be absurd, if not impossible, to require an open meeting notice whenever a body of one would set out to contemplate a pending issue. We do not believe the legislature intended to require public soliloquies by single-member governmental bodies.”); *and* *Parravano v. Babbitt*, 837 F. Supp. 1034, 1048 (N.D. Cal. 1993), *aff’d*, 70 F.3d 539 (9th Cir. 1995) (distinguishing application of a sunshine law to a collegial body and not to an agency headed by an individual).

⁴⁰ See e.g. VT. STAT. ANN. TIT. 3, §2208 (vesting Agency of Natural Resources authority in the secretary), *or* VT. STAT. ANN. TIT. 3, §2203 (vesting Agency of Administration authority in the secretary).

⁴¹ VT. STAT. ANN. TIT. 3, §§ 800-848. In addition to basic statutory requirements for public hearings, the Vermont APA sets up a process to ensure agencies are “maximizing public input.” VT. STAT. ANN. TIT. 3, §820.

⁴² VT. STAT. ANN. TIT. 1, § 312.

⁴³ *Id.* §312(c)(1).

⁴⁴ *Id.* §312(c)(2).

⁴⁵ *Id.* §312(c).

⁴⁶ *Id.* §312(b)(1).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* § 312(b)(2)

⁵⁰ *Id.*

⁵¹ S.55 2023-24 Gen. Assemb. (Vt. 2024).

meetings remotely at any time. Nonadvisory bodies must provide a physical location, unless a remote meeting is justified by a qualified emergency. Additionally, there must be at least one employee stationed at the physical address. Nonadvisory bodies also must navigate mandates around recording the meeting where advisory bodies are not required to create such a record.⁵² All the other requirements of the OML still apply to advisory bodies.

B. The VCSI process has not fully complied with the Open Meeting Law

The split in delegation between ANR and VHCB complicates analysis under the OML because they are different forms of government entities. Falling squarely in the definition of public body, VHCB, as a Board, could trigger OML requirements whereas ANR, as an agency, would not. However, regardless of which body is deemed to have initiated them, the working groups formed to gather input are all covered by OML requirements.

Analysis is further complicated by the contract with N4J. N4J is a private entity so ordinarily would not be covered by OML. However, in this case, the contract appears to be fulfilling a function of the public entity—the fact-finding, informational, and recommendation purposes outlined in Act 59.⁵³ To the extent N4J performed the roles assigned to either governmental body, the process should fall under OML requirements.

Ordinarily, VHCB would be considered a nonadvisory public body as it falls squarely within the OML definition. VHCB is a board established by state statute and exercises many of the nonadvisory powers enumerated in the OML. However, in this case, VHCB is not functioning according to its usual procedures. VHCB was created to manage and distribute the Vermont Housing and Conservation Trust Fund.⁵⁴ Normally, the Board's primary duty is distributing funds via consensus vote.⁵⁵ They do so in properly noticed and recorded meetings.⁵⁶ In the present context, the members of the Board do not convene to implement Act 59, so their involvement does not necessarily mandate OML compliance. No official action is taken by the Board on the VCSI work.⁵⁷ Rather, it appears the VHCB staff is acting as staff for ANR and no VCSI business appears in the Board's agendas.

⁵² S.55 2023-24 Gen. Assemb. (Vt. 2024). See also, Vt Sec. of State, Open Meetings Law Record Keeping Chart, https://sos.vermont.gov/media/vien1tsj/oml_recordkeepingchart_2024.pdf (last visited October 11, 2024).

⁵³ INVENTORY REPORT, *supra* note 15, at 16.

⁵⁴ VT. STAT. ANN. TIT 10, §§ 311-312.

⁵⁵ *About Us*, VT. HOUS. AND CONSERVATION BD., <https://vhcb.org/about-us> (explaining VHCB's \$400 million in investments) (last visited Oct. 30, 2024).

⁵⁶ *Board Meetings*, VT. HOUS. AND CONSERVATION BD., <https://vhcb.org/about-us/board-meetings> (last visited Oct. 30, 2024).

⁵⁷ See e.g., VT. HOUS. AND CONSERVATION BD. MINUTES, JUNE 21, 2024 (VCSI is mentioned briefly in the Director's Report, which is not an actionable item on the Board's agenda).

ANR is an agency of the State and triggers Vermont's OML only when it forms a further subdivision to carry out its work.⁵⁸ Administrative, policymaking, rule-making, and regulatory functions are vested in the Secretary as an individual.⁵⁹ By statute, any board, council, committee or subcommittee formed by the Agency is advisory.⁶⁰

Here, many subcommittees—called working groups in this context—were formed and attribution to VHCB or ANR does not make a difference to their OML coverage. The legislature's most recent amendments make clear they intended the OML to extend to this type of body. First, they amended the definition of “public body” to include “subcommittees” of any board, council, or commission. Second, the designation of ‘advisory bodies’ indicates that the legislature specifically intended to capture this type of activity—groups whose sole purpose is to give advice—even if they have no decision-making or legislative power.⁶¹ Finally, these ‘sunshine’ or ‘right-to-know’ laws are designed so that citizens can understand who is providing input into government decision-making as well as to give every citizen an opportunity to be heard in the decision-making process.⁶² To allow the agency or board to evade the OML by using a different moniker would thwart the public policy of the law.

Going forward, any VCSI working groups should be considered advisory for two reasons. First, because Act 59 designated ANR as the lead agency, the formation of the working groups is attributable to the agency. Therefore, by operation of statute, they must be advisory in nature. Second, the subject matter of the work is purely advisory. The VCSI requires no legislative, quasi-judicial, tax, or budgetary action.⁶³ The groups are tasked solely with information gathering and formulating recommendations. Therefore, the groups working on VCSI should be treated as advisory bodies.⁶⁴

As public bodies, the work of these VCSI working groups triggered OML meeting requirements. Whenever there was a quorum of the members of any of the various groups, there should have been notice given and an opportunity for public participation. Moreover, the minutes from each meeting should be posted and available to the public.

At this point, from the publicly available materials, it is unclear how many of the working group meetings complied with the notice requirements or allowed for public participation. While notes and, in some cases, minutes are on the VHCB website, it appears many are missing. It is also

⁵⁸ VT. STAT. ANN. TIT 1, § 312.

⁵⁹ VT. STAT. ANN. TIT 3, § 2803(a).

⁶⁰ VT. STAT. ANN. TIT 3, § 2803(a).

⁶¹ S.55 2023-24 Gen. Assemb. 4 (Vt. 2024); *Contrast with W. Org. of Res. Councils v. Bernhardt*, 362 F. Supp. 3d 900, 913 (D. Mont. 2019)(discussing the Federal Open Meeting law's carve out for subcommittees).

⁶² *Valley Realty & Dev., Inc. v. Town of Hartford*, 165 Vt. 463 (1996) (explaining the purpose of open meeting laws is to give public exposure to governmental decision-making).

⁶³ VT. STAT. ANN. TIT 10, §§ 2801-2804.

⁶⁴ S.55 2023-24 Gen. Assemb. 4 (Vt. 2024).

unclear whether the “notes” posted by VHCB are intended to be minutes. So, in this instance, VHCB has not satisfied the OML requirement to post minutes within five days.

Indeed, when contrasted with the clarity of the record for the Board’s ordinary statutory duties, the difference is stark.⁶⁵ The regular Board records are easy to find and easy to follow.⁶⁶ The records posted under VHCB’s VCSI page are inconsistent and unorganized in comparison.⁶⁷ While some of the required information is there, it appears incomplete and is not clearly presented.⁶⁸ In fact, there is even a contrast between the record of the Agricultural Working Group—which raised OML concerns as a committee—to those of the other groups.⁶⁹ The Agricultural Working Group’s materials are significantly more comprehensive than the others and so come closer to meeting statutory mandates though still do not meet them entirely.

While it is too late to remedy the openness of the working group process, VHCB might be able to remedy some deficiencies in the record. VHCB’s website should reflect greater transparency than it does currently, with greater consistency and organization. At a minimum, the times, dates, and attendees of each meeting should be included in the record. Meeting records still retained by ANR, VHCB or N4J, which might reflect subject matters, could also be posted.

III. Vermont’s Public Records Law

Vermont’s public records law put into effect the principle that, “in a democracy, the people have a right to know what their government has done and more importantly why public decisions have been made.”⁷⁰ The law provides that, with some exceptions and within certain time parameters, “any person may inspect or copy any public record of a public agency.”⁷¹ Thus, the public records act applies more broadly even than the OML since it sweeps in “any agency, board, department, commission, committee, branch, instrumentality or authority of the state or any agency, board, committee, department, branch, instrumentality, commission or authority of any political subdivision of the state.”⁷² A public record encompasses “all papers, documents, machine readable materials or any other written or recorded matters, regardless of their physical

⁶⁵ *Board Meetings*, VT. HOUS. AND CONSERVATION BD., <https://vhcb.org/about-us/board-meetings> (last visited Oct. 30, 2024).

⁶⁶ *See e.g.* VT. HOUS. AND CONSERVATION BD., AGENDA FOR OCTOBER 2, 2024 BOARD MEETING, <https://vhcb.org/sites/default/files/meeting-agendas/2024/Agenda-October-2-2024.pdf>, and VT. HOUS. AND CONSERVATION BD., MINUTES FOR OCTOBER 2, 2024 BOARD MEETING, <https://vhcb.org/sites/default/files/meeting-minutes/2024/DRAFT%20October%202%2C%202024%20Board%20Minutes.pdf>.

⁶⁷ *Vermont Conservation Strategy Initiative*, VT. HOUS. AND CONSERVATION BD., <https://vhcb.org/our-programs/VCSI> (last visited Oct. 30, 2024).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ VT. SEC’Y OF STATE, A GUIDE TO VERMONT’S PUBLIC RECORDS LAWS (2014), <https://outside.vermont.gov/dept/sos/Municipal%20Division/a-matter-of-public-record-2014.pdf> [hereinafter PUBLIC RECORD GUIDE].

⁷¹ VT. STAT. ANN. TIT. 1, § 316.

⁷² *Id.* § 316.

form or characteristics, that are produced or acquired in the course of agency business” and not subject to an exemption.⁷³

The public records act requires an affirmative request for an agency to comply with the law. Meeting minutes are among the most common requests.⁷⁴ Unlike the OML, there are no proactive posting requirements to post information written into this legislation. As such, until a request is made, it will not be possible to tell whether ANR, VHCB, and the working groups have preserved their records as necessitated by this law.

IV. Vermont’s Environmental Justice Law

The Vermont Environmental Justice Law’s (EJL) purpose is to identify, reduce, and eliminate environmental health disparities in Vermont.⁷⁵ EJL applies to decisions of The Agency of Natural Resources, of Transportation, of Commerce and Community Development, of Agriculture, Food and Markets, and of Education; the Public Utility Commission; the Natural Resources Board; and the Departments of Health, of Public Safety, and of Public Service.⁷⁶ EJL requires that these agencies consider environmental benefit and burden distribution in their decision-making.

A. The Basics of the Environmental Justice Law

The EJL also mandates the opportunity for “meaningful participation” in the formulation of laws, regulations, and policies of the State.⁷⁷ Meaningful participation is defined as the opportunity for all individuals to participate in energy, climate, and environmental decision making, with a particular focus on environmental justice focus populations.⁷⁸ Environmental justice focus populations are particularly defined census blocks within the state, characterized by either low-income or significant minority populations. The EJL specifically cites several examples of covered decision making, including “planning processes.”⁷⁹ The meaningful participation definition also calls for integration of diverse knowledge systems and transparency in community input.⁸⁰

The law requires covered agencies to create community engagement plans to spell out how each agency will involve environmental justice focus populations.⁸¹ Unfortunately, the rulemaking associated with developing specific policies is not due until 2025.⁸² Therefore, the process requirements of the EJL for ANR remain mostly undefined.

⁷³ PUBLIC RECORD GUIDE, *supra* note 70.

⁷⁴ *Id.*

⁷⁵ VT. STAT. ANN. TIT 3, § 6003.

⁷⁶ *Id.* § 6004.

⁷⁷ *Id.* § 6003.

⁷⁸ *Id.* § 6002.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* § 6004.

⁸² *Id.* § 6004(c).

B. The VCSI Process Has Not Fully Complied with the Environmental Justice Law Act 59 designates ANR as the lead agency in charge of the VSCI and thereby triggers EJI coverage. However, its application is muddled by the assignment of the actual work to VHCB and VHCB is not a division of any of the agencies enumerated in the EJI. However, here again, VHCB is not operating according to its ordinary statutory functions. Rather, the VHCB staff appear to serve as staffing for this ANR led process. Thus, even though the work of the VCSI is assigned to VHCB, it should be considered covered under the EJI because of ANR's role as the lead agency.

Though specific EJI process requirements have not been put in place, the VCSI process nevertheless has not complied with the law's broad mandates. The inventory and planning work are certainly covered by the EJI, as the definition of meaningful participation specifically cites planning processes. To start, the lack of compliance with OML indicates the transparency of the inventory process was insufficient. Moreover, the lack of clarity in the record makes it difficult to assess the incorporation of people with lower incomes or Black, Indigenous, and Persons of Color through the inventory process.

Indeed, while VHCB made efforts towards transparency, their own report acknowledges deficiencies in inclusivity.⁸³ VHCB explicitly advises future engagement with the Land Access and Opportunity Board and the Environmental Justice Advisory Council "to more fully define how this work will proceed in an inclusive and effective manner."⁸⁴ At the same time, VHCB recognized their process was dominated by large statewide government entities and corporations.⁸⁵ By its own words, the inventory phase of VCSI failed to incorporate a true diversity of knowledge systems in violation of the EJI.

V. Conclusion

Regardless of the awkward split of responsibilities between an executive agency and a government board, many of the public participation requirements in Vermont law apply to the methods chosen to begin the VCSI work. By forming multiple subcommittees to engage various stakeholders, ANR and VHCB triggered OML duties and these duties have not been fully met by the process to date.

The OML, PRA, and the EJI are part of an effort to ensure the democratic process works for all Vermonters. The mandates of the OML and EJI are proactive as they try to ensure that decisionmakers hear from all sides of an issue in advance of setting policy. The OML and PRA ensure that citizens can understand how and why a decision was made, as well as by whom.

⁸³ INVENTORY REPORT *supra* note 15, at 15.

⁸⁴ *Id.* at footnote 4.

⁸⁵ *Id.* at 15.

Without full compliance, the entire VCSI process is vulnerable to invalidation.⁸⁶ The legislature, ANR, and VHCB should clarify for the public who is playing what role within the Act 59 process to ensure that the mandates and intent of the statutes governing government procedure are adhered to. In the meantime, ANR and VCHB should take steps to ensure their process, at the very least, meets traditional OML requirements and the new broad mandates of the EJL.

⁸⁶ See VT. STAT. ANN. TIT 1, § 314.