



CHITTENDEN COUNTY RPC

Communities Planning Together

Planning Advisory Committee

Wednesday, July 11, 2018

3:30pm to 4:30pm

CCRPC Main Conference Room, 110 West Canal Street, Winooski

WIFI Info: Network = CCRPC-Guest; Password = ccrpc\$guest

Agenda

3:30 Welcome and Introductions, Joss Besse

3:35 Approval of June 13, 2018 Minutes*

3:40 Act 250/Section 248 Review Guidelines*, Emily Nosse-Leirer

This document was last reviewed by the PAC at the May meeting. We've subsequently incorporated edits from that meeting, as well as edits from the Board's review. **New edits since the last time you reviewed this document have been highlighted in yellow.** We'll review these final edits and request a recommendation for approval to the CCRPC Board. As a reminder we are amending this document to address the new enhanced energy component.

3:55 Essex Land Use Regulation Housing Audit Study*, Regina Mahony, Dana Hanley & Darren Schibler

Essex requested CCRPC to conduct an audit of their land use regulations to identify barriers to affordable housing. Regina Mahony will provide an overview of this study as it may be useful to other municipalities.

4:15 Regional Act 250/Section 248 Projects on the Horizon, Committee Members

4:25 Other Business

- a. FloodTraining.vermont.gov is now fully available for administrative officers (AO) of municipal flood hazard and river corridor bylaws. The site features tools and case studies for AOs, members of Development Review Boards and other community officials. The new site complements FloodReady.vermont.gov with its focus on community planning for flood resilience, and the technical materials available at the [DEC Rivers](http://DEC.Rivers) page.
- b. FY19 Municipal Planning Grant program has been announced and applications are due on October 1. See the [Program Description](#) for more details.
- c. Here are the 2018 Legislative Session Summaries:
 - i. VLCT: <https://www.vlct.org/news/2018-legislative-wrap>
 - ii. DHCD: http://accd.vermont.gov/sites/accdnew/files/documents/CD/CPR/DHCD_Legislative%20Update_2018_FINAL.pdf
 - iii. VPA*

4:30 Adjourn

* = Attachment

NEXT MEETING: September 12, 2018 at 2:30pm to 4:30pm.

In accordance with provisions of the Americans with Disabilities Act (ADA) of 1990, the CCRPC will ensure public meeting sites are accessible to all people. Requests for free interpretive or translation services, assistive devices, or other requested accommodations, should be made to Emma Vaughn, CCRPC Title VI Coordinator, at 802-846-4490 ext *21 or evaughn@ccrpcvt.org, no later than 3 business days prior to the meeting for which services are requested.

CHITTENDEN COUNTY REGIONAL PLANNING COMMISSION
PLANNING ADVISORY COMMITTEE - MINUTES

DATE: Wednesday, June 13, 2018
TIME: 2:30 p.m. to 4:00 p.m.
PLACE: CCRPC Offices, 110 West Canal Street, Suite 202, Winooski, VT

Members Present:

Michael Burris, Milton
Victor Sinadinoski, Milton
Ken Belliveau, Williston
Matt Boulanger, Williston
Jessica Draper, Richmond
Paul Conner, South Burlington
Joss Besse, Bolton
Dean Pierce, Shelburne
Dana Hanley, Essex

Darren Schibler, Essex

Sarah Hadd, Colchester (here at 2:45pm)

Zach Maia, Colchester Intern

Jessie Baker, Winooski

David White, Burlington

Staff:

Regina Mahony, Planning Program Manager

Emily Nosse-Leirer, Planner

1. Welcome and Introductions

Joss Besse called the meeting to order at 2:35 p.m.

2. Approval of May 9, 2018 Minutes

Ken Belliveau made a motion, seconded by Victor Sinadinoski, to approve the May 9, 2018 minutes, with an amendment to correct the spelling of Darren Schibler's name. No further discussion. MOTION PASSED. Dean Pierce abstained.

3. Implementing Form Based Codes

Regina Mahony stated as part of our Sharing Skill Sets agenda item your fellow planners will give a quick overview of their experiences thus far with form based codes including what's worked well, what has been a challenge, and any observations in comparison to traditional zoning. We have form based codes in Burlington, South Burlington, Winooski, Colchester, Shelburne, Jericho and Westford (close to it).

We've printed out a comparison chart between Winooski's, Burlington's and South Burlington's codes (attached); as well as some sections from each of them. South Burlington, Burlington, and Winooski will give a quick overview; and Colchester and Shelburne as well.

South Burlington – melded a number of various zoning districts together to create the form based code district. Only one building was conforming after adoption. The little things have really helped – much simpler list of uses and simple parking standards has proven useful for property owners and staff. So far they've fully approved two brand new buildings (both by same architect) on Market Street and by Staples. Currently reviewing a third building; and a smaller project. Process didn't feel faster for the applicant the first time, because there was a big learning curve. Staff now has more answers so it seems to be going faster. Margins of things have become more important than before (for example, measuring window from the outside or the inside) which rarely came up at the DRB under the traditional zoning. There are very specific open space rules, and applicants have typically left the open space to the end of the design process, but that is proving challenging. It needs to be thought through up front to ensure you meet the code. Applicants have gotten 97% of the way there and it is difficult to know if the code should be adjusted, or if applicants can make it. For now, the PC wants to keep the bar where it is, to push applicants to meet the code in full before they consider changing anything.

Burlington – Adopted last Fall, though the basic elements were adopted in an earlier amendment that guided City Place development. Since the code has been adopted haven't had any other big buildings except for some amendments. Approvals are administrative, except there are thresholds that kick the review to the DRB, such as over 65' in height goes to DRB for any change in mass. Applicants having the hardest time with the code are struggling

1 with the things that aren't discretionary. They don't want to be in a box, but that is the idea. Have had some head
2 scratching moments, that will likely result in some tweaks in the future. Currently, they are looking at expanding the
3 area subject to form based code for an additional 18 properties around the current transition zone (the FBC is now in
4 the City Center and transition zone). They have asked applicants to prove that they meet the standards which has
5 aided the review process.

6
7 Winooski – It was adopted in 2016 on the Gateways (Mallets Bay Ave, Main St./Route 7 and East Allen/Route 15),
8 one property deep with residential neighborhoods on the back side. It was intended to focus development on the
9 gateways, and protect those residential neighborhoods. Two projects are fully built and occupied; one more is fully
10 approved; and 6 more are underway in permitting. Pretty big impact, quickly. The administrative approval process
11 has worked well for relationship building between the development community and the staff leadership team. The
12 leadership team in the City does the review from a City service perspective. What hasn't worked well: 1. While this
13 was anticipated, there are utility conflicts with buildings right to the sidewalks and overhead lines (the silver lining is
14 a \$23 bond passed to revitalize the Main St. streetscape); 2. DRB and public have felt very out of the loop (so
15 working on the communication pieces with the rest of the community); and 3. neither the energy efficiency or
16 affordable housing bonus has been utilized. The City Council is really looking to make the affordable housing
17 component more workable.

18
19 Shelburne – the form based code is an optional overlay. There is still a fair amount of consideration of use. It
20 addresses non-conformities but since its optional there really isn't a non-conforming trigger. The FBC gets you more
21 density so there is an incentive to use it. The district goes from the bridge on the LaPlatte all the way north to the So.
22 Burlington line. One applicant has opted to use the code, and while it wasn't easy they knew they'd get more out of it
23 at the end and that they would get an approval at the end. However, there were some challenges over a road that is
24 included on the Regulating Plan approved as part of the form based code. So the project was ultimately pulled. Took
25 months and months and months to get the code through the PC, and the SLB adopted it in one night. They do have a
26 second set of amendments that they'd like to make; however they are now focused on the Town Plan. The code does
27 default to underlying zoning for some standards like signs, and parking (though the FBC does allow you to reduce
28 parking). Approval is by the DRB and you do have to convince the Board that it will work, so it is still fairly
29 discretionary.

30
31 Colchester – Severance Corners had several large subdivisions approved but the development of them slowed during
32 the recession. The Town took that time to re-look at the area, and adopted the Form Based Code as a result. However,
33 most of the developments have been building out under their original subdivision permits. They've only seen one
34 building approved under the FBC. They worked out some non-conformities, and provided some incentives in the
35 FBC that they are hoping developers will want to take advantage of. So far developers have not wanted to embrace it.
36 The older subdivisions are expiring soon. They have no transects, but they have A, B and C streets. Approval is by
37 the DRB with discretion to some extent. A lot of the standards are under the public works standards. They have open
38 space standards, but not required set asides. No density (one thing they are hoping the developers take advantage of).
39 Table of uses is broad and pretty wide open, including some industry. There is no maximum or minimum for
40 parking; instead they regulate the form of it (for example, required landscape islands, and break up the lots behind the
41 buildings to discourage massive surface parking lots).

42
43 Questions –

44 Did you start out wanting to do a FBC and end up with a hybrid? South Burlington – in some ways have a very
45 classic code because other parts of the zoning still come into account. Burlington - don't know what a pure FBC is.
46 Burlington's been trying to do something like this since 1973. They've known that design is really important, but the
47 regulations have gotten so subjective over the years. So they decided to try another approach that was more
48 prescriptive and less subjective. We never called it a "form based code" just as we never would have called our other
49 zoning "Euclidean zoning". We simply framed it as making some changes that would be more prescriptive.
50 Shelburne – a key player on Planning Commission was under the mindset of old is bad, new is good and we need to
51 call it something very different, so they used the term.

52
53 The discussion continued regarding 'form based codes' in their pure form and the need to stick to all of the
54 component pieces and intentions. The reality for those that have included form based code elements in their

1 regulations is that they've established regulations that are intended to improve the process and outcomes. The exact
2 components vary and none of them are 'pure'. Regarding amending these codes in the future, the hope is that we are
3 building local expertise.
4

5 How is the design community reacting to this? South Burlington - People that are used to the previous regulations
6 had a challenge with it. While a firm that never worked with us before got it 97% off the bat. Some see it as
7 constricting, while others view it as open. Burlington - Have a similar experience; and some designers like it because
8 it helps them hold the line on a good design. South Burlington - We are wondering if the inability to reach the
9 last 3% of compliance is a problem with the code, or a leap that the applicants can meet. The challenge in meeting
10 the last 3% does vary, though the open space requirement seems to be consistent as it hasn't been thought through
11 early enough in the process.
12

13 Regina Mahony will email the comparison chart out to the PAC. If those with a form based code could fill it in for
14 their municipality that would be greatly appreciated.
15

16 **4. Richmond Plan Review**

17 Emily Nosse-Leirer provided an overview of the staff comments on the draft Richmond Town Plan, including where
18 Richmond is in the process. There have been a number of significant changes since the last time the PAC reviewed
19 the Plan including a full and thorough land use chapter. Staff is asking for additional detail on the compatibility with
20 adjacent municipal plans and the regional plan to meet the statutory requirements. There is also a minor suggestion to
21 clarify the terms river corridor and river corridor protection area. Emily Nosse-Leirer indicated that while CCRPC
22 can't provide a formal recommendation on the energy determination because CCRPC does not yet have it's own
23 determination, Staff did review the draft Plan for the necessary content and called for one edit to meet the standard
24 which is to clarify the reference to the maps. There is also a question regarding the reference to trails in the list of
25 possible constraints.
26

27 Jess Draper provided some additional information. The Planning Commission's public hearing that took place after
28 the last PAC review was three hours long and not very positive. The Planning Commission heard that the energy
29 section was not robust enough, there was not enough protection of natural resources, and it was not Richmond
30 enough. The Plan has been heavily revised since then to address these concerns, and they have had informal outreach
31 since then.
32

33 Joss Besse asked Jess if she thinks they can add more on the compatibility piece. Jess Draper indicated that they
34 probably can, however when she brought the comment to the Planning Commission last time they didn't address it.
35 Paul Conner recalled that there was a suggestion to more closely link between the agricultural land use section and
36 the natural resource review section; and asked if this was done. Jess Draper stated that they did address this, and it
37 was actually through the energy planning work and identification of constraints. Jess Draper anticipates that there
38 may still be a contingent that is unhappy with the Plan and they may take up their concerns with the Selectboard.
39

40 Dean Pierce made a motion, seconded by Ken Belliveau, that the PAC finds that the draft 2018 Richmond Town
41 Plan, as submitted meets all other statutory requirements for CCRPC approval with the exception of describing
42 adjacent municipalities plans and regional plan compatibility; otherwise, the PAC finds the municipality's planning
43 process meets all statutory requirements for CCRPC confirmation.

44 Upon notification that the Plan has been adopted by the municipality, CCRPC staff will review the plan, and any
45 information relevant to the confirmation process, including confirmation that the compatibility statement has been
46 changed. If staff determines that changes are substantive, those changes will be forwarded to the PAC for review.
47 Otherwise the PAC recommends that the Plan, and the municipal planning process, should be forwarded to the
48 CCRPC Board for approval.

49 No further discussion. MOTION PASSED.
50

51 **5. Regional Act 250/Section 248 Projects on the Horizon**

1 South Burlington: There is a sub-station pre-application by the airport that will go to the PUC. There is a project in
2 front of the Holiday Inn in the FBC that is subject to Act 250. Eventually a large residential neighborhood (160
3 housing units at Nolan Farm and Dorset) will go to Act 250.

4 Richmond: Nothing

5 Williston: Northridge residential subdivision Phase I (22 units) by Black Rock will go to Act 250 soon. State police
6 barracks are potentially moving; they are meeting with Staff to discuss. A membership type store is potentially
7 coming in.

8 Milton: There is a proposal for a warehouse and retail store at the Charlebois property. 252 Middle Road - solar
9 project, 45 day notice already submitted. Update – There has been a successful mediation on the sand pit project with
10 the Winterlane neighbors.

11 Burlington: UVM Arena

12 Colchester: They have 4 solar farm applications (2 are the Towns). The street addresses they are using are not
13 official. 92 room hotel on Water Tower Circle.

14 Shelburne: pretty quiet on 248. Act 250: Snyder golf course housing development – sketch approval and partial
15 preliminary approval from the Town so far. Water is an issue.

16 Essex: Nothing new since last meeting. Solar project moving forward.

17 Bolton: Nothing.

18 19 **6. Other Business**

- 20 a. ECOS Plan to be adopted next week on June 20th. We will send it to DPS for Determination of Energy
21 Compliance. They have 60 days to review and act on our request.
- 22 b. The VLCT Municipal Assistance Center recently developed a model highway access policy and drainage
23 management best practice standards. You can find them here: [https://www.vlct.org/resource/highway-access-](https://www.vlct.org/resource/highway-access-drainage-management-standards)
24 [drainage-management-standards](https://www.vlct.org/resource/highway-access-drainage-management-standards).
- 25 c. The Form-Based Codes Institute (FBCI) did not respond to the PAC's questions about their class offerings.
26 Regina Mahony assumes they got enough interest from other locations. Regina Mahony will provide the
27 dates and locations of these classes when they are announced.
- 28 d. The next Housing Convening will probably take place at the end of August or October. Likely on the topic of
29 Housing Trust Funds.

30 31 **7. Adjourn**

32 The meeting adjourned at 4:02 p.m.

33
34 Respectfully submitted, Regina Mahony

DRAFT

Guidelines and Standards for Reviewing Act 250 and Section 248 Applications

*Adopted by the Chittenden County Regional Planning Commission January 26, 2004
Amended by the Chittenden County Regional Planning Commission: September 26, 2005,
September 19, 2012, ~~and~~ October 16, 2013 and July X, 2018*

CCRPC Participation in the Act 250 Process

INTRODUCTION

History of Act 250

Vermont experienced new growth in the 1960's, which brought many important planning issues to the forefront. This period of new growth was characterized by the following:

- Completion of Interstate Highway 89 and the southern Vermont section of Interstate Highway 91;
- IBM locating a primary facility in Essex Junction; and
- A growing tourist industry.

Vermonters are sensitive to the link between the natural and human environments. Many people were concerned that this link was threatened and, in the absence of a mechanism to protect or strengthen this relationship, development was proceeding apace. The steadfastness of concerned Vermont natives began to gain recognition with the State government in the late 1960's.

Prior to *Act 250*, there were no State-level environmental regulations or land use controls in Vermont. In 1970, Vermont enacted the *Land Use and Development Law* (commonly known as *Act 250*). That law created nine District Commissions and an Environmental Board tasked to review development applications based on 10 criteria specified in *Act 250*.

Why Does CCRPC Review Act 250 Applications?

CCRPC reviews *Act 250* development applications as part of an effective regional planning process for the betterment of Chittenden County. Each of Vermont's eleven Regional Planning Commissions is a party by right which may appear and participate in the *Act 250* proceeding of a proposed development whose site is located either in or on the boundaries with a municipality that is a member of that Regional Planning Commission ["Act 250 Environmental Board Rule 14(A)(3)"]. In addition, pursuant to 24 V.S.A. § 4345a(13) all RPCs "shall appear before district environmental commissions to aid them in making a determination as to the conformance of developments and subdivisions with the criteria of 10 V.S.A. § 6086."

CCRPC REVIEW PROCESS

In General

The CCRPC's Executive Committee ("EC") and designated CCRPC staff are responsible for the review of *Act 250* applications.

CCRPC staff shall initially review each application before the District 4 Environmental Commission (with specific attention given to those applications going to a hearing) for the purpose of identifying for the EC:

1. whether the proposed project is or is not in conformance with the provisions of the current *Chittenden County ECOS Plan*- (hereafter referred to as the Regional Plan), with specific attention given to the Planning Areas section of the Regional Plan; and
2. whether the proposed project fails to comply with one or more of the 10 Act 250 criteria, 10 V.S.A. §§ 6086 (a) (1) through (10), with specific attention paid to the criteria dealing with transportation and/or traffic and the other criteria within CCRPC's expertise based on approved technical reports and/or on in-house technical expertise or expert opinion of individuals consulted by in-house staff; and -
3. whether the proposed project avoids known development constraints or minimizes impacts to possible development constraints identified in the Regional Plan. The constraints are identified in the current Regional Plan and are based on statewide or local policies that are currently adopted or in effect. Because these constraints are protected at the state and local level already, CCRPC will defer to the relevant municipality or state agency with jurisdiction over the constraint. More detailed descriptions of each constraint are available in Appendix A: Local Constraint Language. This appendix will guide CCRPC in providing comments and participating in hearings before the District Environmental PUC Commission.

CCRPC Actions

The EC may take action on an application only if there is an affirmative vote by the majority of those present. In the absence of such an affirmative vote, the EC and Executive Director will jointly bring the matter forward to the full CCRPC Board for action. To the best of our ability we will take action within a posted meeting – however, if participation is required before a meeting of either the EC or the full CCRPC Board can be held Staff will send the letter to Act 250 only if no objections have been heard from the Executive Committee. Formal review and action will be taken on the letter at the first available meeting following submittal of the letter.

CCRPC staff shall review all applications as required by 24 V.S.A. § 4345a(13) (with specific attention given to those applications going to a hearing) and will recommend one or more of the following actions to the EC:

Letters: The EC may submit one or more letters to the District Environmental Commission or Environmental Division of Vermont Superior Court to represent the position of CCRPC that accomplish one or more of the following purposes:

- Request clarification of specific matters in the application,
- Indicate if the proposed development is in conformance with the current Regional Plan, or

The Full CCRPC Board may submit one or more letters to the District Environmental Commission or Environmental Division of Vermont Superior Court to represent the position of CCRPC that accomplish one or more of the following purposes:

- Indicate if the proposed development is not in conformance with the current Regional Plan, or
- Indicate if the proposed development does not comply with one or more of the ten Act 250 criteria, or
- Request a hearing.

Hearings: If the EC determines it is beneficial for CCRPC to actively participate in a District Environmental Commission hearing, the EC will designate the Executive Director, CCRPC staff, or an EC member to attend and represent CCRPC at the District Environmental Commission hearing.

Pre-Submission and Post-Submission Discussions

In order to improve the likelihood that a project will be consistent with the Regional Plan, CCRPC staff ~~will inquire about upcoming projects during discussions with member municipalities, primarily through discussion with planning and zoning staff at Planning Advisory Committee (PAC) meetings. Staff will inquire if any new projects currently under municipal planning and zoning review appear likely to have an Act 250 hearing. discussion with the Planning and/or Zoning staff of its member municipalities at the Planning Advisory Committee (PAC) meetings on at least a quarterly basis and inquire if any new projects currently under municipal planning and zoning review appear likely to have an Act 250 hearing.~~ When CCRPC staff learns of such a project, CCRPC staff ~~shall request will communicate, as needed, with a meeting with~~ municipal staff and the project applicant, so that any regional issues, concerns or potential impacts may be identified and addressed at the earliest stages. These discussions are intended to provide information and not formulate CCRPC's position on specific applications.

Appeals

The Environmental Division of Vermont Superior Court is responsible for reviewing appeals of District Environmental Commission rulings. Before CCRPC may be a party in an appeal of a District Environmental Commission decision to the Environmental Division of Vermont Superior Court (either to contest a District Environmental Commission decision or to support a District Environmental Commission decision that is contested by others), the Commission must approve such action, following recommendations made by the Executive Committee. Before CCRPC may be a party in an appeal of an Environmental Division of Vermont Superior Court decision to the Vermont Supreme Court (either to contest an Environmental Court decision or to support an Environmental Court decision that is contested by others), the Commission must approve such action, following recommendations made by the Executive Committee.

CCRPC Participation in the Section 248 Process

INTRODUCTION

The Vermont Public ~~Service Board~~ Utilities Commission (“~~PSBPUC~~”) is a State quasi-judicial board with jurisdiction over public utilities, cable television, water utilities, electric utilities, water carriers, gas utilities, telephone utilities, and resellers of telephone services, as described in 30 V.S.A. § 203. An entity that proposes to construct certain types of new/renovated gas or electric facilities must obtain a Certificate of Public Good from the ~~PSBPUC~~ pursuant to 30 V.S.A. § 248. The ~~PSBPUC~~ may not issue a Certificate of Public Good unless it finds (among other conditions) that the “...facility will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions.” 30 V.S.A. § 248(b)(1). In addition, 24 V.S.A. § 4345a(14) requires regional planning commissions to “appear before the public service board to aid the board in making determinations under 30 V.S.A. § 248.”

The Regional Plan is written to meet the requirements for the Department of Public Service to grant a Determination of Energy Compliance. ~~The Regional Plan received a Determination of Energy Compliance from the Public Service Department on August X, 2018. This means that a~~ Determination of Energy Compliance means that the PUC should give the plan “substantial deference.” “Substantial deference” means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy. The known and possible development constraints and suitability policies identified in the Regional Plan will receive substantial deference in PUC proceedings.

More detailed descriptions of each development constraint are available in Appendix A: Local Development Constraint Language. This appendix will guide CCRPC in providing comments and participating in hearings before the PUC.

CCRPC REVIEW PROCESS

Criteria for CCRPC Review

In reviewing petitions for Certificates of Public Good, CCRPC will focus its review on:

1. Compliance or non-compliance of the petition or plan for the proposed facility with the provisions of the current Regional Plan, with specific attention given to the Planning Areas section of the Regional Plan; ~~or~~ and
2. Whether the proposed facility will or will not unduly interfere with the orderly development of the region. While the statute does not provide specific criteria for review (such as the 10 Act 250 criteria), CCRPC will review the petition with specific attention paid to transportation and/or traffic, the suitability policies identified in the ~~Regional Plan~~, and the other criteria within CCRPC’s expertise based on approved technical reports and/or on in-house technical expertise or expert opinion of individuals consulted by in-house staff; and.
3. Whether the proposed facilities avoid known development constraints or minimize impacts to possible development constraints identified in the Regional Plan. The constraints are identified in the current Regional Plan and are based on statewide or local policies that are currently adopted or in effect. When constraints are already protected at the state level or in a

municipality with a plan that has received a Determination of Energy Compliance, CCRPC will defer to the relevant municipal or state agency review of the constraint. When a constraint is protected at the municipal level in a municipality with a plan that has not received a Determination of Energy Compliance, in consultation with the municipality CCRPC will review whether known constraints are being avoided and whether impacts to possible constraints are being minimized.

During review, CCRPC may also ask for clarification of specific matters in the petition or plan for the proposed facility.

CCRPC RECOMMENDATIONS TO THE PUC DURING THE 45-DAY NOTICE PERIOD

At least 45 days before filing a Section 248 petition with the Commission, an applicant must provide advance notice of the proposed project to the municipal and regional planning commissions and the municipal legislative bodies in the town where the project will be located.

A regional planning commission must make any recommendation to the PUC and to the petitioner within 40 days of the submittal of the advance notice. CCRPC will make such recommendations after staff review and Executive Committee approval. Staff will communicate with municipal staff in developing the draft recommendation.- Although § 248 is silent with respect to the nature of a regional planning commission's recommendations, CCRPC's policy is that any recommendations made by CCRPC will be expressed in a letter that provides the PUC and the petitioner with information about CCRPC's preliminary determination on the review criteria identified above, along with requests for any additional information needed to make that determination. Following the comment letter, CCRPC may correspond further with the applicant and host municipality during the advance notice period to address concerns before the petition for a Certificate of Public Good is filed.

Commented [A1]: Note for PAC: Specifically, for Section 248 review, does there need to be more information in here about the correspondence between CCRPC and the municipalities? Which individuals/departments do we need to be contacting? We have generally coordinated these reviews with planning staff, but have received some questions from board members about whether we should be involving public works directors, town managers or others as well.

CCRPC PARTICIPATION AFTER A PETITION FOR A CERTIFICATE OF PUBLIC GOOD IS FILED

When a Petition for a CPG is filed, CCRPC staff will review the Petition in light of any comments submitted during the advance notice period and recommend action by the Executive Committee. CCRPC may:

1. Hold a CCRPC hearing
2. Submit comments during a PUC hearing
3. Intervene in a PUC hearing and becoming a party to the case
4. Request a hearing.

During any step, CCRPC may request that the Department of Public Service exercise its authority to retain experts and other personnel to review the proposed facility.

CCRPC Hearing

Although 30 V.S.A. § 248(f) specifically authorizes regional planning commissions to hold a public hearing on the plan for the proposed facility that is the subject of a §248 petition, it does not specify any additional details on the nature or requirements of such a hearing. It is CCRPC's policy to limit

the hearing to requesting more information or presenting of evidence regarding the review criteria identified above. CCRPC shall attempt to hold its public hearing at locations and times that are convenient to members of the public who are most likely to be interested in the outcome of the petition.

Submitting Comments during a PUC Hearing

When notified of a hearing before the PUC, CCRPC staff will make a recommendation to the Executive Committee (EC) regarding the petition, with a particular emphasis on any issues raised during the advance notice period. If all issues have been adequately addressed, CCRPC will submit comments stating that and will not participate further.

Intervening in PUC Hearings

When notified of a hearing before the PUC, CCRPC's Executive Committee (EC) and staff will review the petition, with a particular emphasis on any issues raised during the advance notice period. If issues raised in the advance notice period have not been addressed, CCRPC's EC and staff will work with the affected municipality to determine whether further participation is needed.

CCRPC may intervene in a PUC hearing. The EC ~~has the authority to~~ may decide that it is beneficial for CCRPC to intervene in a PUC hearing, or the EC may decide to bring the decision to the full CCRPC Board. If the CCRPC ~~Board agrees~~ decides to intervene, it shall designate a representative to attend and represent CCRPC at the Public ~~Service Board~~ Utilities Commission hearing.

To participate in a **PSBPUC** hearing beyond providing comments on the petition (as noted above), CCRPC must be granted "intervenor status" by the **PSBPUC**. Although 30 V.S.A. § 248 does not automatically recognize that regional planning commissions are parties in **PSBPUC** hearings, the current practice of the **PSBPUC** is to allow entities that receive copies of the application according to 30 V.S.A. § 248(4)(C) an opportunity to submit a request to be named as a party when they file a Notice of Appearance. If CCRPC deems that it is necessary to participate in hearings governed by 30 V.S.A. § 248, it shall accompany its Notice of Appearance submission with a letter requesting Intervenor Status. If this request is denied and CCRPC continues to deem it necessary to participate, CCRPC may submit a Motion to Intervene.

CCRPC's participation in a PUC hearing will be limited to the review criteria identified above.

Requesting a PUC Hearing

When notified that a petition has been submitted to the PUC, CCRPC will review the petition in consultation with the affected municipality, with a particular emphasis on any issues raised during the advance notice period. If the issues raised have not been addressed and a hearing has not been scheduled, CCRPC is able to request a hearing. The EC has the authority to decide that it is beneficial for CCRPC to request a PUC hearing, or the EC may decide to bring the decision to the full CCRPC Board. If the CCRPC ~~Board agrees~~ decides to intervene, it shall designate a representative to attend and represent CCRPC at the Public ~~Service Board~~ Utilities Commission hearing.

DETERMINING PREFERRED SITES FOR SOLAR GENERATION FACILITIES

Vermont's net metering rules (5.100 Rule Pertaining to Construction and Operation of Net-Metering Systems) allows Regional Planning Commissions and municipalities to identify preferred sites for net metering projects by identifying a preferred site in a joint letter of support from the municipal legislative body and the municipal and regional planning commission. Upon request, CCRPC's Executive Committee and staff will review the site's consistency with the review criteria identified above. CCRPC will participate in a joint letter if the criteria are met.

[NOTE: this process may change based on legislative changes in the 2018 session.]

CCRPC Policies Related to Both Act 250 and Section 248 Participation

ACT 250/SECTION 248 MONTHLY REPORTS

The EC shall use its monthly draft minutes to the full Commission to provide information pertaining to Act 250 and Section 248 applications in which a letter and/or testimony was submitted. In addition, the letters will be presented to the full Commission in the monthly meeting packets. For each application the EC minutes shall identify:

- 1) the project name, location, and a brief description,
- 2) note any hearing dates on the project, and
- 3) any actions the EC decided to exercise.

CONFLICT OF INTEREST

Real or apparent conflicts of interest will be guided by *CCRPC Bylaws, Article XII Resolving Conflicting Interests*.

Essex Land Use Regulation Housing Audit

Developed by CCRPC for the Town of Essex
June, 2018



CHITTENDEN COUNTY RPC
Communities Planning Together

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EXECUTIVE SUMMARY

The following report includes a variety of recommendations for the Town of Essex Zoning Regulations to eliminate barriers to affordable housing. Some of these recommendations are broad in scope while others are simple housekeeping changes. The broader recommendations go beyond a text edit in the zoning regulations and, while complex, may produce a more beneficial result than the minor housekeeping recommendations. The broader recommendations should be considered within the context of a housing needs assessment, and perhaps by a housing committee if and when established. This report should also help as a guide when implementing changes from the Town Center visioning work.

Here is a summary of the overarching broad recommendations:

- Consider a Development Review Board form of review so projects can be reviewed with just one combined Site Plan and Conditional Use review rather than the time and money associated with two different Boards and two hearings.
- Consider a Growth Center or New Town Center and Neighborhood Development Area Designation from the State to alleviate Act 250 review and permitting.
- Continue to allow Accessory Dwelling Units (ADUs) in all residential areas with more relaxed standards.
- Overall, the base dimensional requirements do not allow for the level of density needed to help accommodate additional housing, let alone affordable housing. Therefore, it is recommended that the regulations be amended, particularly in the Town Center to accommodate more density in a smart growth manner.
- Overall, the standards and process for a density bonus and a Planned Unit Development are too complex to gain the benefit of the increased density. Within the areas planned for growth, define the density and/or form of development you'd like to see and simplify the review process so that vision can be achieved. Eliminate the overly complicated PUD and density bonus provisions.

- Inclusionary zoning (a mandatory requirement for a portion of a housing development to be affordable) can be an effective mechanism for achieving housing affordability in areas where growth is happening. It is not a tool that addresses the cost of building affordable housing, as this mandatory requirement simply passes the cost on to developers. However, as changes are considered in the Town Center, it is a tool that should be looked at, along with a local housing trust fund.
- Overall, consider whether minimum parking requirements are too high and whether maximum parking or no parking requirements would be a better method.

BACKGROUND

By way of background, the Essex 2016 Town Plan includes:

Action 4.1 Undertake a comprehensive housing study, including recommendations for regulatory and non-regulatory methods of increasing the stock of affordable housing.

Action 4.2 Develop regulations to promote affordable housing and/or remove barriers to it, if this initiative is recommended in the comprehensive housing study.

The Town is not undertaking a comprehensive housing study at this time, largely because the VHFA's website has not been updated with the necessary housing data. It is expected that the housing data website will be updated sometime in 2018. VHFA's Maura Collins has also recommended that the Town form an Affordable Housing Committee to tackle the issue.

In the meantime, the Town of Essex requested CCRPC to do a comprehensive review, or "audit", of the Town's zoning and subdivision regulations. The audit would determine the obstacles to affordable housing that may be embedded in the regulations and prepare suggested zoning and subdivision amendments to promote affordable housing and/or remove barriers to it.

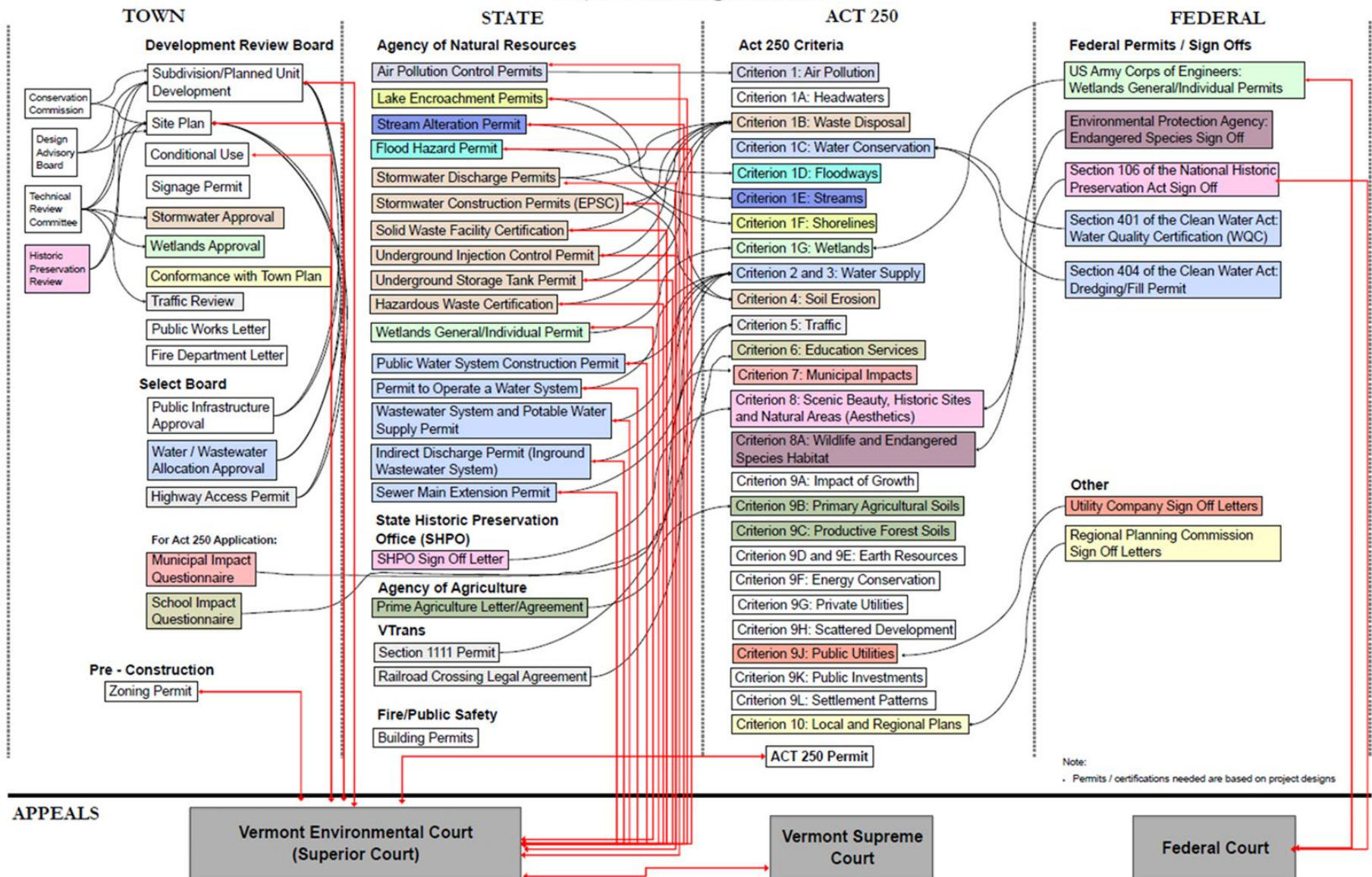
The timing of this study is appropriate from a regional perspective as there is a total housing and affordable housing shortage that exists in the region.

- One of the biggest challenges identified in the ECOS Plan is our housing shortage.
- Housing is unaffordable: 33% of homeowners and 56% of renters spend more than 30% of their income on housing.

- Less workers live in the County: 68% of employees live here, compared to 75% in 2002.
- Household size is shrinking: 2.4 persons/household, compared to 3.5 in 1960; and we are growing at the same time (by approximately 900 people per year over the last six years).
- Rental vacancy rate is anemic: 2.6% in 2017; 1.8% long term average

The cost of building more housing is a challenge, and it's particularly challenging to build housing to an affordable price point for many reasons. One reason is the lengthy and unpredictable permitting process in Vermont as demonstrated by the flowchart on the following page from Ernie Pomerleau. While this is not the only cost factor, it is significant for a municipality because streamlining and improving efficiency is within your purview.

Project Permitting Flowchart



METHODOLOGY

KICK-OFF MEETINGS

Regina Mahony, Planning Program Manager at CCRPC, met with Dana Hanley and Darren Schibler on 2/2/2018 to discuss the parameters of this project, and verify the scope. It was decided that CCRPC will focus their review on the following provisions: base density, density bonus, parking requirements, and the development review process in the zoning districts in the sewer service area. In addition, CCRPC will review the accessory dwelling unit provisions, as they are applicable to all zoning districts both inside and outside of the sewer service area. CCRPC will only do a cursory review of the Agricultural-Residential, Conservation, Floodplain, Industrial/Residential, and Fort Ethan Allen districts as they are not within the Town's sewer service area and not likely candidates for additional housing.

It is important to note that this study does not include an analysis of the affordable housing needs for Essex – including what price points Essex may want to target. This will come from the comprehensive housing study.

Regina Mahony and Essex planning staff reviewed the scope of work with the Planning Commission on 2/22/2018. Regina Mahony answered preliminary questions and gathered feedback from the Planning Commission.

Regina Mahony provided Essex planning staff with a draft report, and subsequently incorporated Staff comments. The draft report was then provided to the Essex Planning Commission in advance of the June 28, 2018 presentation. Regina Mahony subsequently incorporated comments from the Commission in the Final Report. Lastly, Regina Mahony provided the Selectboard with a presentation on July 9, 2018.

CCRPC RESEARCH & RECOMMENDATIONS

Following the preliminary review, CCRPC conducted a literature review for best practices where relevant; reviewed Essex's regulations; reviewed regulations in surrounding municipalities; and developed a list of recommendations. These results are presented by regulatory provision category below.

REVIEW & RECOMMENDATIONS

DEVELOPMENT REVIEW PROCESS

Before getting into specific zoning provisions, it is beneficial to review the development review process and make some overarching recommendations on the existing procedures.

Reason for Review from Affordable Housing Perspective

Time and uncertainty can add to the cost of a development project and minimize the ability to accommodate affordable housing. The basis of this review is focused on the distinction between by-right (i.e. objective) and discretionary approvals (i.e. subjective), and other review/approval aspects that can reduce time-consuming, costly, uncertain, inconsistent, and unpredictable decisions.

“Elected officials want zoning to achieve specific goals. Citizens want to know what can happen next to their home. Developers want to read the zoning code and prepare a plan that meets the standards and can be approved. Discretionary approvals fail all these desires, and it stands to reason that a failed zoning tool should be abandoned.”
By Lane Kendingⁱ

In the *By-Right Zoning*, Zoning Practice report, Lane Kending describes both conditional use and Planned Unit Developments as highly discretionary approval processes. Conditional uses were originally added to use tables to address uses that are necessary and sometimes needed in residential areas or downtowns (e.g. emergency services, wastewater treatment plants, electrical sub-stations), likely to cause a nuisance, and were difficult to classify as simply permitted or prohibited. Over time common uses have been added to this list because only under certain conditions may a particular use be a good fit in some districts. The challenge is that the conditional use standards are highly discretionary (e.g. “character of neighborhood”) and can lead to unpredictable results. The issues that are usually of concern (e.g. unsightly appearance, traffic, signs, lighting, etc.) can and should be addressed through clear, objective standards and not under the context of a conditional approval. In addition, many of these provisions are covered under a Site Plan review process. Planned Unit Developments (PUDs) are also highly discretionary as the concept is to allow for flexibility from the standards, and therefore results in unpredictable results.

Comparison to Other Regional Municipalities

Municipalities have been working to make their regulations more objective for a few reasons, including the current subjective review processes do not result in predictable outcomes, J.A.M. Golf LLC and other VT decisions clarify the requirements for more specific and objective standardsⁱⁱ, and developments have not met the vision hoped for in the municipal plans. Form Based Codes are a tool that has been used to establish more objective standards to achieve predictable outcomes and developments that meet the communities vision. Some municipalities have an administrative review process associated with these (i.e. approved by the Zoning Administrator), while others are approved by the Development Review Board. There are many aspects to a Form Based Code, but it is not necessary to make use of all the provisions depending on the objectives of the municipality. The key benefit is more objective standards. There are also other tools that can be used as well, including improvements to existing standards within the regulations (e.g. switch from setbacks to build-to lines).

The following table includes four municipalities in Chittenden County that have adopted a form based code and describes their review process and subjectivity. Other municipalities in Chittenden County with form based codes include Shelburne, Jericho and Westford (many components of form based code type zoning, though they don't call it that).

Form Based Code Provisions in Chittenden County Communities

	Winooski (Gateways)	South Burlington (City Center)	Burlington (Downtown & surrounding district)	Colchester (Severance Corners)
Review Type - Small projects	Administrative Approval	Administrative Approval	Administrative Approval	Development Review Board
Review Type - Large projects	Administrative Approval	Administrative Approval & DRB depending on height	Administrative Approval	Development Review Board
Does the Code allow for staff or DRB discretion?	Yes, within objective limits: "Administrative Adjustment Standards"	Both	None except DRB for doorway spacing	No

Recommendations for Essex Regulations

Process 1. The overall recommendation is to adjust the zoning regulations to a more by-right, objective process. This includes making multi-family housing a permitted use, and not requiring PUD approval.

Process 2. Table 2.1: Make multi-family housing is a permitted use rather than conditional use in the districts where the Town would like to see more housing. Currently there are only four districts where multi-family housing is a permitted use, and two of those districts aren't likely to be used for additional multi-family housing (i.e. R3 is essentially built-out and in B1 housing isn't a

component of the purpose statement). Secondly there is a provision where multi-family dwellings are permitted but only under PUD approval; therefore, the benefit of it being permitted by-right is negated by requiring a complicated, subjective review process.

Process 3. Consider a Development Review Board form of review so projects can be reviewed with just one combined Site Plan and Conditional Use review rather than the time and money associated with two different Boards and two hearings.

Process 4. Consider a Growth Center or New Town Center and Neighborhood Development Area Designation from the State to alleviate Act 250 review and permitting.

Process 5. 5.5(A): Amendments – Approved as consent agenda. For many Chittenden County municipalities, these types of things are approved administratively by staff. Consider following this practice as it can eliminate time and uncertainty for applicants.

Process 6. 8.1: Subdivision Definition – Amend the subdivision definition so a multi-family building on one lot does not need to be approved as a subdivision (review it instead as a Site Plan only). Look to the Essex Way 70 decision, and other multi-family approvals to understand if there is anything from the subdivision review process that is necessary for an effective review of these types of projects. If so, incorporate those elements within a Site Plan provision specific to multi-family projects, rather than subjecting these developments to a 2- or 3-hearing process.

Process 7. The table below attempts to compare the relative ease of the process changes to the benefit. The more difficult changes may likely produce the greatest benefit. However, within each of these options there are small changes that can be made with less difficulty.

OPTIONS FOR PROCESS CHANGES	EASE OF CHANGE	RELATIVE BENEFIT OF CHANGE	SPECIFIC EXAMPLES
ADDITIONAL “BY RIGHT” APPROVALS (MEANING PERMITTED WITHOUT A NEED FOR DISCRETIONARY DECISION MAKING AND APPROVED BY STAFF)	DIFFICULT	HIGH	ELIMINATE CU REVIEW FOR ADUS IN NEW ACCESSORY STRUCTURES AND ADDITIONAL FLOOR AREA
FEWER DISCRETIONARY APPROVALS (I.E. CONDITIONAL USE, PUDS AND SUBDIVISION REVIEW WHERE NO LAND IS BEING SUBDIVIDED)	EASY	HIGH	NO SUBDIVISION REVIEW FOR MULTI-FAMILY ON ONE LOT, ONLY SITE PLAN REVIEW. ALSO MULTI-FAMILY AS PERMITTED USE RATHER THAN CONDITIONAL
DEVELOPMENT REVIEW BOARD STRUCTURE RATHER THAN PLANNING COMMISSION & ZONING BOARD OF ADJUSTMENT	DIFFICULT	MEDIUM	ELIMINATE REPETITIVE REVIEW PROCESS BY TWO DIFFERENT BOARDS FOR THE SAME APPLICATION
ADDITIONAL CONSENT AGENDA APPROVALS	EASY	LOW	

ACCESSORY DWELLING UNITS

Vermont recognizes the benefits that Accessory Dwelling Units (ADUs) can have on overall housing stock and housing affordability and requires municipalities to allow these units wherever single family homes are allowed. However, ADUs haven't been built in significant numbers despite their relative low cost in comparison to other new housing development in infill areas. This section describes the benefits of ADUs, successful incentive programs in the West, comparison to other Chittenden County municipalities, and recommendations for Essex to consider for greater use of ADUs.

Reason for Review from Affordable Housing Perspective

Benefits of Accessory Dwelling Unitsⁱⁱⁱ:

- Increases a community's housing supply without significant further land development
- Facilitates efficient use of existing housing stock & infrastructure
- An affordable housing option for many low- and moderate-income residents
- Improves homeowner cash flow
- Helpful to aging and/or people with disabilities (or caregivers, empty nesters, young adults, etc.) who may want to live close to family members.

Despite these benefits, ADUs have not been built in a significant way. However, there has been more recent success in the West, specifically in Vancouver, Seattle, Portland and California. *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver* helps to explain the market in these cities and the key takeaways that helped enable their success^{iv}:

- Reform zoning for minimum lot size and floor area. Minimize design review and relax owner occupancy requirements. Homeowners appreciate flexibility and use them for a variety of reasons; the majority are used for affordable housing (not short-term rentals as some expected).

- Work with local banks to allow homeowners to borrow against the future value of the ADU. Otherwise, only those with cash can afford to build them despite them costing the lowest of any new housing construction in already built-up areas (because they are small, can be built quickly and efficiently, and there is no land cost). Reduction of permit fees and utility fees can spur homeowners to build, though it likely won't impact the cost of construction significantly.
- Educating landowners and providing technical assistance will likely produce good results for relatively little cost. This played a big role in Portland's success over the last decade. As an example, this is a great website geared toward property owners and developers: www.accessorydwelling.org.

Of note is Portland's success (2,000 ADU permits issued since 2010) which can be attributed to these factors^v:

- Regulatory: no owner occupancy requirement, no design review, a by-right process, and fee waivers.
- Financial: eliminated impact fees (called System Development Charges) which are on average 7% of the cost of construction.
- Social: green building and ADU advocates hosted tours to educate other residents on the benefits and the process in building.

California made sweeping changes to their enabling statute for ADUs in an attempt to help deal with their housing shortage crisis. The law that went into effect on January 1, 2017 makes a wide variety of changes including but not limited to administrative approval, limitation of parking requirements, and elimination of some utility connection fees^{vi}.

Comparison to Other Regional Municipalities

	Occupancy Requirement		Relation to Principal Dwelling		Total Floor Area	Required Parking	Bedrooms	Other
	Principal Dwelling	Either Principal or ADU	Within	Attached with Expansion or New Detached ¹				
Essex		X	P	CU	30%	1/unit	efficiency or 1 bedroom	
Essex Junction (Section 721)	X		P	CU	30%	1/unit		not in residential garage unless there is adequate separation between the residential unit and garage and is compliant with the Vermont Fire Prevention Code
Burlington (Section 5.4.5)		X	P	CU	30%	1/unit	efficiency or 1 bedroom	
Colchester (Section 2.09(B))		X	P	CU	30% or 900 ft ² whichever is greater	1/bedroom	up to 2 bedrooms	unit whether attached or detached shall have the external appearance of a single-family residence; and compatible (including scale, fenestration, roof & siding materials, color & design) with the principal dwelling
South Burlington (Section 3.10.E.)	X		P	CU	30%	2/unit ²	efficiency or 1 bedroom	
Williston (Section 20.1)	X		P	CU	30% ³	1/unit for efficiency & 1 bedroom, 2/unit for 2 bedrooms	up to 2 bedrooms	Detached accessory dwellings in the Village must comply with the Village design standards.
Winooski (Section 5.1)		X	P	CU	30%	1/unit	efficiency or 1 bedroom	
CCRPC Recommendation for Essex	Consider no owner occupancy requirement		Allow both by right so long as lot coverage and setbacks are met ⁴		Relax floor area size ⁵	Consider no off-street parking in areas with transit.		

¹While there are some distinctions, Essex and most of these municipalities require a CU for additions or new accessory structure, increase in building height or habitable floor area, or increase in dimensions of parking area

²South Burlington - if deed restricted for a disabled person, no additional parking required.

³Williston - "...or where the parcel is larger than one-half acre, but too small to subdivide in the zoning district in which it is located, no more than 50% of the total floor area of the dwelling to which it is accessory, with a maximum size for any accessory dwelling of 1,500 square feet."

⁴Essentially no one can do an ADU by right if they can't fit it within the existing structure of their home.

⁵Portland allows 75%, up to a maximum of 800 ft².

Recommendations for Essex Regulations

ADU 1. The overall recommendation is to continue to allow ADUs in all residential areas with more relaxed standards.

Opportunities for Improvement:

ADU 2. 4.1(A)(2): Owner occupancy. While it is helpful that either the single family unit or the accessory unit can be owner occupied, consider removal of the owner occupancy requirement altogether. There is a question about whether this is enabled in statute. 24 VSA §4412 (1)(E) is the enabling statute for accessory dwelling units and includes the language "no bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling." §4412 (1)(F) states "Nothing in subdivision (1)(E) of this section shall be construed to prohibit: (i) a bylaw that is less restrictive of accessory dwelling units". Since (1)(F) refers to the entirety of (1)(E), I interpret this to mean that a municipality can relax any provision within (1)(E), including "owner-occupied". However this is debatable and if Essex were interested, legal counsel should be sought. An associated issue to be resolved, if the Town removes the owner occupancy requirement is the distinction between an ADU and a duplex. The main differences between ADUs and duplexes are the size limitation and owner occupancy requirement. If the owner occupancy component is removed from ADUs it challenges the system in determining what use it actually is. That is a real challenge that would need to be worked out, but if the end goal is more housing units and more units that would fall into an affordable category both ADUs and duplexes are

valuable uses that the Town should encourage. There is no real need to make the permitting process for one more complicated than the other.

ADU 3. 4.1(A)(5): Shall not exceed 30% in size. Consider relaxing this size maximum by one or both of the following: 1. Allow the 30% to be calculated with the ADU rather than just the single family dwelling prior to construction; 2. Allow for 30% or up to a maximum size (examples include 800ft² from Portland, OR; and 900ft² from Colchester). Based on Essex's 30% max, only a fairly large home over 2,600 ft² could have an ADU around 800 ft²; a 2,000 ft² home could only have a 600 ft² ADU; and a traditional home around 1,200 ft² could only have a 360 ft² ADU which some may find too small. There is some value in holding the 30% size limitation if it is truly producing smaller units that are filling an affordable housing gap, but it is recommended to allow some flexibility in how the 30% is calculated.

ADU 4. 4.1(A)(6): Parking. See parking review section for more details.

ADU 5. 4.1(B): Conditional Use Review. As written Section 4.1(B) requires Conditional Use review for additions or new structures ("...that increases the height *or floor area* of the existing single family dwelling..."). In practice, it is rare for an applicant to go to the ZBA for an accessory apartment either because the single family home is so large the 30% floor area for the accessory apartment can be easily accommodated within the existing floor area, or because a zoning permit is pulled for an addition first and then a second permit is pulled for an accessory apartment. The latter comes with some risk, and while minimal, it is not a risk that a landowner with limited means would likely take. Additionally, in practice, conditional use review is only invoked when the ADU itself exceeds the 30% floor area limitation; however, the wording in 4.1(B) is not limited to only that. Consider an amendment to 4.1(B) that would eliminate the need for Conditional Use review for an addition to accommodate an ADU, so long as the addition and parking fit within lot coverage, setbacks and height. This could be accomplished by simply deleting "or floor area" from Section 4.1(B). This would increase the opportunity for ADU development by right. Also, from a land use perspective a duplex is a more "intense" use than an ADU; and currently, duplexes are a

permitted use in all residential districts except MXD where it is a conditional use, and C1 where it isn't allowed at all. Therefore, if the more intense duplex is a permitted use in most circumstances, this is an argument for ADUs as permitted uses even when done in an addition.

ADU 6. 4.1(B): Conditional Use Review. To further expand on the opportunities for ADU development by right, consider allowing ADUs in a new accessory structure without Conditional Use review so long as the new structure and parking fit within lot coverage, setbacks and height. Because new accessory structures may be placed further back in the yard than the existing single family home, it may be appropriate to establish some basic design standards associated with this by right ADU development. For example, a standard that the 2nd story can only be 60% of the floor area of the 1st story to avoid obtrusive height and sight lines directly into a neighboring back yard (this is an example from Vancouver, and they have others. Winooski's residential form-based code district has some simple standards that could help with the preservation of privacy in back yards as well). Another example is this provision from Colchester: "unit whether attached or detached shall have the external appearance of a single-family residence; and compatible (including scale, fenestration, roof & siding materials, color & design) with the principal dwelling." Ensure that these standards are clear and specific so the Zoning Administrator can approve them without discretion via a zoning permit.

BASE DENSITY

Reason for Review from Affordable Housing Perspective

While there are many factors that impact the cost of construction, the number of homes that can be built on a given lot is a critical piece of the puzzle. The base thresholds that CCRPC used for comparison in this study include the following:

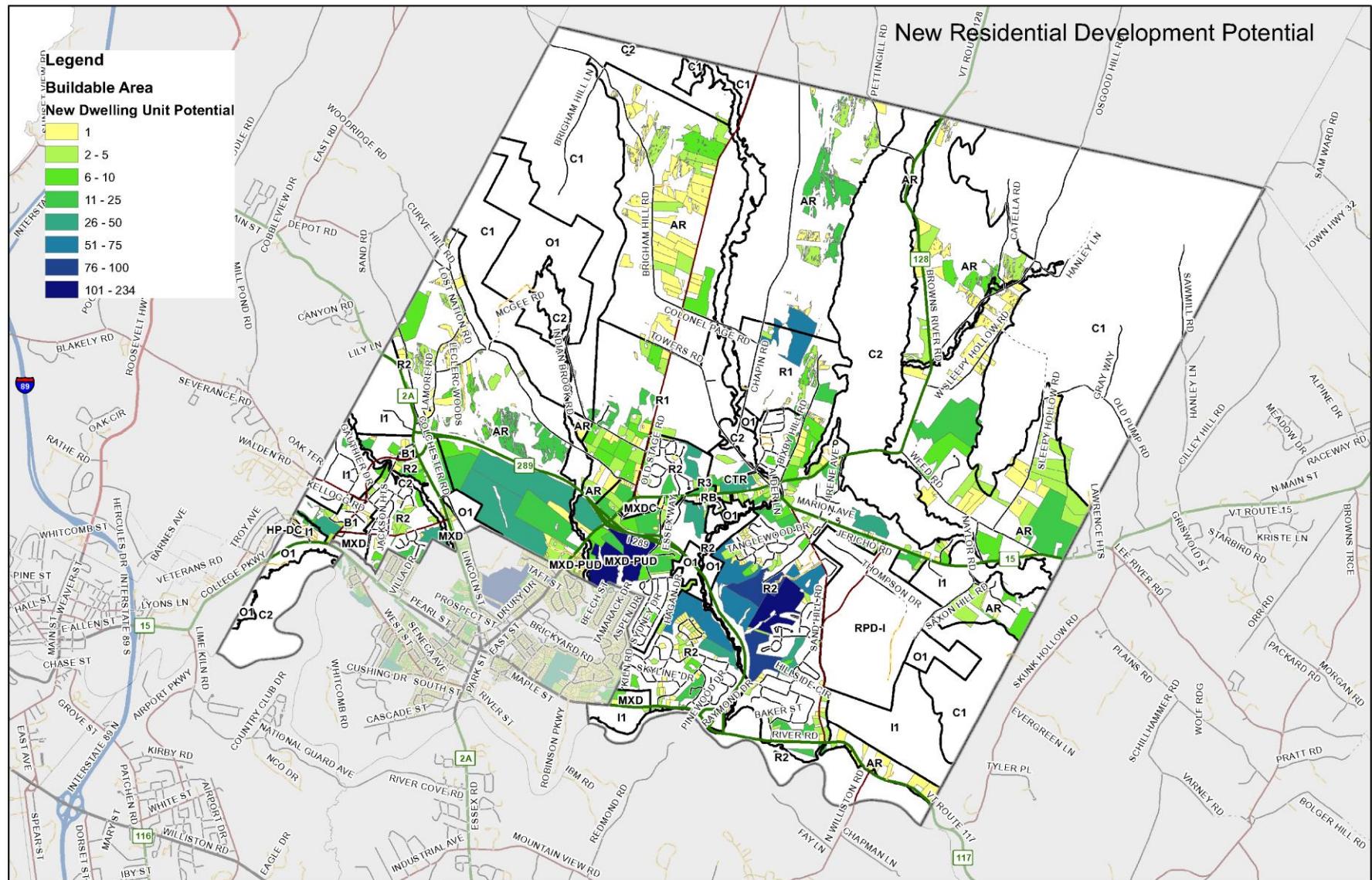
- 4 units per acre is the minimum density threshold for Vermont's Growth Center and Neighborhood Development Area designations.
- 7 units per acre is the minimum density needed to support transit with a frequency of 1 bus every 30 minutes^{vii}.
- 5,000 ft² is the recommended minimum lot size for single family residential from Vermont's Growth Center and Neighborhood Development Area designations. It is presumed that this can promote infill development and creates a neighborhood scale development that is walkable.
- Another factor to consider is flexibility in unit sizing. The market for micro apartments is being driven by millennials and the retirement of baby boomers. These units are commonly understood to be smaller than 400ft², and can be as small as 220ft², according to the International Code Council's International Building Code. "Tiny homes" are also typically 400ft² or smaller.

Also, because the densities in each zoning district are related to limited sewer service area allocations, density increases to accommodate a more affordable housing unit cost in one area may involve a reduction in density in another area. To understand the future growth allocation based on existing zoning densities, CCRPC mapped Essex's potential future growth from the 2050 population forecasts (established for the *2018 ECOS Plan* and prepared by Economic & Policy Resources, Inc. in 2017). The 2050 population and household forecasts for Essex include the Junction and are listed below:

Essex (with the Junction)	Population Forecast	Household Forecast
2015	20,946	8,360
2050	24,020	11,429

Prepared by Economic & Policy Resources, Inc. 2017

The following map depicts a build-out based on potential new residential development from the forecast, current zoning parameters and development constraints removed (meaning natural resources that can't be developed, such as wetlands, have been accounted for).



Prepared by CCRPC, 2018

Comparison to Density Thresholds

Zoning District in Sewer Service Area	Meet NDA min. 4 du/acre density?	Type of Housing Permitted?	Type of Housing CU?	Allow at least 3 stories?	Allow for smaller (approximately 5,000 ft ²) minimum lot sizes for SF?	Allow for relaxed dimensional requirements for infill?	7 units/acre for 30 min. bus service?
MXDC	Yes, smallest at 7,000ft ²	two and multi-family	congregate	Yes, but only 40'	This district doesn't allow SF homes.	Yes, 70% lot coverage for multi-family residential; 36' front setback at minimum (larger on Rte. 15 and Main St.); no side or rear setbacks	No
CTR	Yes, 10,000ft ²	single and two family	multi-family and congregate	Yes, but only 40'	Not sure this is prohibited. The purpose statement indicates moderate to high density development.	Allows for up to 4 units within existing historic structures which is useful for existing structures. But standards for new construction is limited. Only allows for 40% lot coverage for multi-family residential.	No
R3	Yes, 10,000ft ²	single, two and multi	congregate	Yes, but only 40'. Maybe OK here.	Ratio in PUD getting slightly better but still a square lot with a required 75' min frontage (100' regular) would be 66' depth.	Not really. Slightly better setbacks in PUDs but not really encouraging infill. Though this zone is built-out.	No
RB	Yes, 10,000ft ²	single and two family	multi-family and congregate	Yes, but only 40'. Maybe OK here.	Doesn't prevent it, but with 100' minimum frontage it really isn't workable (you'd only have a 50' depth).	Not really, and PUDs not allowed.	No
B1	No, 20,000ft ²	multi-family and congregate		Yes, but only 40'. Maybe OK here.	Does not allow single family	Allows 70% lot coverage for multi-family; though 150' frontage might be large even for multi-family (urban v. suburban style)	No
R2	No, 20,000ft ²	single and two family	multi-family and congregate	Yes (40', but okay here)	Ratio in PUD getting slightly better but still a square lot with a required 75' min frontage (100' frontage otherwise) would be 66' depth.	Not really. Slightly better setbacks in PUDs but not really encouraging infill. Though density increases for congregate housing at 10,000ft ² /du.	No
HP-DC	No, 20,000ft ²	single, two and multi	congregate	Yes, but only 40'	No, minimum lot size is too large. No frontage and no setbacks is helpful.	No frontage, no setbacks, but only 40% lot coverage for multi-family.	No

MXD	No, 20,000ft ²	two family in PUD	two and multi- family and congregate	Yes, but only 40'. Maybe OK here.	Ratio in PUD getting slightly better but still a square lot with a required 75' min frontage (100' regular) would be 66' depth.	Not really. Slightly better setbacks in PUDs but not really encouraging infill.	No
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Recommendations for Essex Regulations

Overall, the base dimensional requirements do not allow for the level of density needed to help accommodate additional housing, let alone affordable housing. Therefore, it is recommended that the regulations be amended, particularly in the Town Center to accommodate more density in a smart growth manner. Look to the R2 district, particularly east of 289 for additional sewer allocation if needed to bolster the development potential in the Town Center.

Opportunities for Improvement:

Base Density 1. 8.1: Dwelling Unit Size in Definitions - Essex's current definition for dwelling unit size allows for 350ft² usable floor area in any two-family, multi-family or mobile home configuration; and the minimum size for single family units is 500ft². The multi-family size could be reduced to allow for smaller units to accommodate the micro unit apartments. However, according to a recent Burlington Free Press article^{viii} on smaller units in the region, the smallest studios reported are 360ft² -- so perhaps 350ft² is small enough. Regarding the single family unit size of 500ft², it is limiting the use of "tiny homes" which are typically^{ix} referred to as 400ft² or less.

Base Density 2. Article II: Minimum Lot Area - Generally the minimum lot area is the basis for density, and the associated base density for most of the zoning districts in the sewer service area is very low. Density increases largely require PUD approval which is an incredibly complicated review process (see below for more details).

Base Density 3. Article II: Lot Frontages - Generally the minimum lot frontages for many of the zoning districts in the sewer service area are too large to create small in-fill residential lots of 5,000ft² or less. A 50' frontage can help pave the way for a 5,000ft² (or 1/8 acre) lot. While 10,000ft² (or ¼ acre) lots are compatible with 75' to 100' frontages, lots should be smaller in sewer service areas where multi-modal, walkable neighborhoods are the goal.

Base Density 4. Consider form over traditional use and density based zoning. Increasing density can be a hard sell when the public doesn't have visuals to help them understand the changes proposed. Focusing visuals on the human experience within the streetscape can help residents understand what the changes will feel like, rather than fear the greater height or density that goes along with the change. See pages 17 and 20 in the [Winooski Gateway Corridors Vision Plan](#) as an example (credit to

Urban Advantage for the visuals). Form Based Code (or similar tools) processes start with a robust visioning exercise that aims at consensus over the look and feel of a place. That vision is then coded and standardized in a by-right, objective zoning regulation to help create a predictable approval process on the back-end. Along with this planning process it is important to educate residents on the high cost of expanding infrastructure into greenfields rather than concentrating development in areas planned for growth that are already served by existing infrastructure.

DENSITY BONUS & PUDS

Reason for Review from Affordable Housing Perspective

As discussed in the previous section, some of the zoning districts have low base densities and dimensional requirements that are likely barriers to increased housing and affordable housing. Because Planned Unit Development is the only method for increased density through the bonus density provisions, this provision was analyzed as part of this study.

Comparison to Burlington's Inclusionary Zoning Ordinance

While affordable housing is not a requirement in Essex's regulations, it is helpful to look at inclusionary zoning parameters as a frame of reference for the 'get something to give something' concept as the intent is the same for bonus density provisions associated with incentivizing affordable housing development.

The sidebar from the Burlington Inclusionary Zoning report eloquently captures the challenge of cost shifting to developers. In addition, the report identifies the importance of a consistent and predictable development review process and public funds to support the system in full. The following explains some of the basic provisions of Burlington's inclusionary ordinance and the report's recommendations*:

1. Required for projects with 5 or more residential units; and 10 or more units for rehabs. The study finds that 5 units may be too small in Burlington's market, and recommends increasing this to 10 or more units.
2. The percent affordable is based on the average market value of the units:

The following is a screen shot from the *Evaluation of the City of Burlington's Inclusionary Zoning Ordinance* by czb, LLC. Jan. 2017

Cost shifting from the public to developers:

The public has a right to set high standards for development in Burlington. After all, careful stewardship of the city's assets has created tremendous value that would be silly not to leverage. But that does not mean developers should be expected to provide a public good without incentive or compensation of some kind – that is why cost offsets are a fundamental part of any inclusionary zoning ordinance. Developers are no less rational than other economic actors and need to obtain a return comparable to any risk-taking entity; expecting them to do otherwise will limit the realization of community goals that mandate their participation as partners.

Average price range of units	% of units to become perpetually affordable
At or below 139% Area Median Income (AMI)	15%
Between 140 – 179% AMI	20%
180% + of AMI, or on waterfront	25%

Income targets: 65% AMI for rental; 75% for ownership. The study recommends switching this to ranges, and notes that 75% is low for ownership. When Essex does a housing needs assessment and research to understand the right income targets, page 32 of this report can be helpful for more specifics on these range recommendations.

3. Cost offsets: Developers are entitled to density and lot coverage bonuses of between 15% and 20%; 50% parking requirement waiver; and waiver of a portion of impact fees for the inclusionary units. However, the study reports that the give and get that should work here to cover the developers costs of complying is not working. Interviews with the for-profit and non-profit developers found these bonuses are not being realized and in fact developments end up coming in under the base allowable density. The study recommends revamping these because cost offsets are fundamental to inclusionary zoning to help offset the costs that developers incur in building to an affordable price point.

Because of this study, the City has been considering amendments to the ordinance. While they are still in process, the Inclusionary Zoning Working Group has produced this recommendations report on 6/4/2018:

https://www.burlingtonvt.gov/sites/default/files/IZWG%20Draft%20Recommendations%206.4.18_0.pdf. It would be beneficial for Essex to follow the results of this work to assist with improvements to the existing bonus density provision, or for considering an inclusionary zoning provision.

Recommendations for Essex Regulations

Density Bonus & PUD 1. Overall, the standards and process for a bonus density and a Planned Unit Development are too complex to gain the benefit of the bonus densities. Within the areas planned for growth, define the density and/or form of

development you'd like to see and simplify the review process so that vision can be achieved. Eliminate overly complicated PUD and bonus density provisions.

Density Bonus & PUD 2. Inclusionary zoning (a mandatory requirement for a portion of a housing development to be affordable) can be an effective mechanism for achieving housing affordability in areas where growth is happening. It is not a tool that addresses the cost of building affordable housing, as this mandatory requirement simply passes the cost on to developers. However, as changes are considered in the Town Center it is a tool that should be looked at, along with a local housing trust fund.

Strengths:

Density Bonus & PUD 3. 6.8(A): Purpose of PUD-R – Inclusion of “provide greater housing opportunities” is very helpful in the purpose statement.

Opportunities for Improvement:

Density Bonus & PUD 4. 8.1: Affordable Housing Definition – allow for up to 100% area median income (AMI) as a range as suggested at the Economics of Housing workshop. A housing needs assessment will help Essex define the correct range for its goals, but a range can be much more workable than a set target.

Density Bonus & PUD 5. 6.3(A)(1): PUD, Review Process – As suggested elsewhere in this report, change the subdivision definition so that multi-family residential projects on one lot do not need to be reviewed as a subdivision as there is no actual subdivision of land. Also, another bullet is likely needed in Section 6.3(A) to define the review process for this situation. If PUDs remain as the only method for increased density, a more simplified PUD approval process should be established (potentially site plan only). Though the overall recommendation is to set a higher base density by right and review it as a Site Plan.

Density Bonus & PUD 6. 6.4(E): Density Calculations – while not uncommon, this provision requires the unbuildable land to be subtracted from the allowable density calculation. If the remaining buildable land can accommodate the full density (water, sewer, parking, etc.) of the entire project parcel, why not allow the full density on the buildable portion? The unbuildable land will be protected; this provision does not protect it further.

Density Bonus & PUD 7. 6.4(K): Residential Density Bonus – this provision is requiring at least two extra amenities (energy efficiency), in return for the one added benefit of 25% more density. Because an increase in housing is a municipal goal, consider allowing it by right within the appropriate parameters, rather than using it as a carrot for other good behavior. Also, 25% more density as the ‘get’ for building more density may not be enough of a benefit to make the finances work.

Density Bonus & PUD 8. 6.4(K): Residential Density Bonus – The energy efficiency requirement reads: “All units in any development that is granted a bonus density must meet the Energy Star standards as defined by Efficiency Vermont.” In talking with Efficiency Vermont to determine whether this requirement is above and beyond the current VT Residential Building Energy Standards (RBES), it became clear that the provision in Essex’s regulation is not well defined. This provision should be amended to clarify exactly what standard developers are being required to meet. There are four standards (not including ‘net zero’ which is above and beyond these):

1. EPA’s Energy Star standards. Defined by the federal Environmental Protection Agency and certified by third parties. Efficiency Vermont conducts those rating certifications in VT, but they don’t define these standards. According to Steve Spatz of Efficiency Vermont, they don’t see a lot of Vermont developers seeking this standard and it can be very difficult to meet if they aren’t intending it from the start since it includes other provisions like water usage and onsite water run-off.

2. Efficiency Vermont Certified Home. This is an Efficiency Vermont program and they conduct final building verifications to issue these certifications. The standards are above and beyond the base RBES requirements since 2018, and the stretch energy code that is required under Act 250 review.

3. Stretch Energy Code under Act 250 Review. This is more stringent than the base RBES requirements largely due to higher insulation value for foundations (R15 to R20).

4. VT Residential Building Energy Standards. This is the base requirement for all new residential construction in VT. Establishing this as the standard would not be imposing an additional burden on developers, which is recommended for the purposes of this report. Considering additional requirements do not improve the bottom line for the goal of achieving more affordable housing.

Density Bonus & PUD 9. 6.4(K)(2): Residential Density Bonus – It doesn't sound like the provision for contribution to the municipal conservation fund in an amount at least 50% of the current assessed lot value has been used. Essex Staff has run this through on some conceptual projects and found that it doesn't seem to make financial sense. This is similar to a fee in lieu provision in an inclusionary zoning ordinance. Monitor the work in Burlington's inclusionary zoning ordinance, as an example, to set a more reasonable fee for contribution.

Density Bonus & PUD 10. 6.4(K)(3): Residential Density Bonus – while bonus densities are not the best tool for achieving the right density, it is good that only a portion of the bonus units (25%) need to be affordable. That is likely more workable for a developer than requiring 25% of the total units to be affordable, and seemingly more workable than the 25% total affordable in the 400% bonus provision. A Housing Committee with input from the development community can help define the specific percentage that is right for Essex, as well as understanding where Burlington ultimately lands on their inclusionary zoning ordinance.

Density Bonus & PUD 11. 6.6: PUD-Commercial – Within this review process congregate and 1- and 2-bedroom multi-family residential uses can be built without the restrictions that are in PUD-Mixed Use. Namely the 10 du/acre maximum restriction doesn't come into play here, so the allowance of up to 400% density bonus appears to be a real incentive. However, there are several confusing provisions to try to settle here. It appears that this is only allowed in the B1 district with a base density of 20,000 ft², which equates to a low number of units – making the 400% bonus density appealing. However, though the B1 district isn't intended for housing (even though congregate housing is allowed). In addition, Table 2.9(F)(2) states that the maximum density is 25 units/acre, a very different density than defined by 20,000ft².

Example Density: PUD-C, B1 District, 3 acre lot (the minimum required for a PUD-C)	Calculated Units	Comments
Base Density of 20,000ft ² (though it isn't clear how the 25 units/acre maximum comes into play):	6 units	Very low.
400% Bonus Density (Section 6.4(K)):	+ 18 units = 24 total units	Seemingly useful incentive. However, this translates to 1 du/5,000 ft ² (or 8 units/acre), an arguably good base for a walkable single family neighborhood, but still low for a multi-family project?
25% Required Affordable:	6 units	While 24 total is better than 6, 18 units is not enough to recover the cost of the 6 units affordable. Consider a lower proportion of affordable, just like the 25% bonus density (which requires only 25% of the bonus units to be affordable).

Density Bonus & PUD 12. 6.7: PUD-Mixed Use – There are some scenarios where the density bonuses allowable with a PUD-Mixed Use are workable, however Section 6.7(E) sets a maximum density of 10 du/acre which undermines the intent of the 400% bonus density.

Example Density: PUD-MU, MXD-C district, 5 acre lot (the minimum required for PUD-MU)	Calculated Units	Comments
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Base Density of 7,000ft ² :	28 units	Better base density
400% Bonus Density (Section 6.4(K)):	+ 84 units = 112 units	A much more logical density for multi-family in an concentrated growth is desired. 1 du/1,785ft ² or 22 units/acre (frame of reference: in DT Burlington the cost of land at \$500,000/acre translates to a minimum of 20 units/acre to make a project work financially).
25% Required Affordable:	28 units	With 112 units total, there is room to recover some affordable units (though 25% may still be too high).
Max 10 units/acre:	Only 50 units with 12 affordable	While this is greater than the base density, it is significantly lower than 112, so the 400% bonus is meaningless. Consider a lower proportion of affordable, just like the 25% bonus density (which requires only 25% of the bonus units to be affordable).

Example Density: PUD-MU, MXD district, 5 acre lot (the minimum required for PUD-MU)	Calculated Units	Comments
Base Density of 20,000ft ² :	10 units	Very low for a mixed-use area that is planned for growth in the sewer service area.
400% Bonus Density (Section 6.4(K)):	+ 30 units = 40 units	Seemingly useful incentive. However, this translates to 1 du/5,000ft ² (or 8 units/acre), an arguably good base for a walkable single family neighborhood, but still low for a multi-family project on a 5 acre lot.
25% Required Affordable:	10 units	While 40 total is better than 10, 30 units may not be enough to recover the cost of the 10 units affordable.
Max 10 units/acre:	Not triggered.	

Density Bonus & PUD 13. 6.7(D)(2): PUD-Mixed Use – Non-residential density. Why not use this same, simple concept for residential densities as well? It's more of a form-based approach and allows for development of the lots as appropriate for the space rather than setting and defining arbitrary densities.

Density Bonus & PUD 14. 6.7(D)(3): PUD-Mixed Use – This section describes that areas devoted to commercial only buildings be subtracted out and added back in as 2/3 when calculating total density. The intent is unclear and the approach is convoluted. Consider adding an intent so applicants know what the aim is, and establishing a more simple method for achieving the intent.

Density Bonus & PUD 15. 6.7(D)(4): PUD-Mixed Use – Additional 2 units/density. This seems like a good incentive because it doesn't have any associated requirements with it; however, it isn't allowed beyond the 25% bonus, so it really isn't adding anything. In addition, it is unclear how this relates to the 400% bonus density.

Density Bonus & PUD 16. 6.7(F): PUD-Mixed Use – Doesn't allow any construction in a subsequent phase until the previous phase is complete and seems quite restrictive from an infrastructure standpoint. While the intent is sound (infrastructure should not get too far ahead of the project itself in case something goes wrong), it seems the PC could allow some flexibility here. Particularly when it comes to the opportunity to establish street connections; there may be a benefit in those connections even if all the phases of development aren't fulfilled.

Density Bonus & PUD 17. 6.8(E)(2): PUD-R – Suggest that you include a reference to provision 6.4(K) as a reminder that bonus densities can be approved here. For an example of how the bonus density works in the PUD-R (to compare to the above PUD example tables):

Example Density: PUD-R, R2 district, 5 acre lot (to compare to the other scenarios)	Calculated Units	Comments
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Open Space (Section 6.8(J)):	1 acre	The density from this acre can be used in the density calculation which is helpful (but only if it can be reasonably adapted to recreational use), unlike undevelopable land.
Base Density of 20,000ft ² :	10 units	Very low for a 5 acre lot.
400% Bonus Density (Section 6.4(K)):	+ 30 units = 40 units	Seemingly useful incentive, and it translates to 1 du/5,000 ft ² (or 8 units/acre), an arguably good base for a walkable single family neighborhood.
25% Required Affordable:	10 units	While 40 total is better than 10, 30 units may not be enough to recover the cost of the 10 units affordable. Also, considering undevelopable land needs to be subtracted, it is unlikely you'd even get to 40 total units in this scenario.

Density Bonus & PUD 18. 6.8(F): PUD-R, Minimum Lot Size & Lot Area – This provision requires the applicant to prove the benefit of these reductions. If the intent of the PUD-R is more efficient use of the land, the lot sizes and lot area must be reduced because at its base it creates an inefficient, suburban layout. Consider allowing these reductions by right, rather than waiver. This might mean changing the base dimensional requirements rather than allowing for by right exceptions in the PUD provision, but it could be the latter. This may be appropriate in some districts and not others.

Density Bonus & PUD 19. 6.8(G)(2)(c): PUD-R, Side Yard – Allowing a zero feet setback on one side of a single family lot is challenging for maintenance of that lot (house painting, etc.). Perhaps this would be better suited by relaxing the total frontage, and allowing 5' side setbacks?

Density Bonus & PUD 20. 6.8(G)(4): PUD-R, Frontage – While the 100' frontage might make sense for the AR and R1 districts, a 50' frontage may be more effective at creating a walkable neighborhood which might be more logical in some of the R2 district locations. In addition, 5,000ft² is a good marker for a walkable, single family neighborhood. 75' of frontage creates an inefficient lot pattern (75' wide, and 66' deep).

Density Bonus & PUD 21. 6.8(G)(5): PUD-R, Townhouse – Very useful to allow for these with waivers to frontage, setback and size provisions; however, consider allowing these by right in some districts. A form-based code style code can help enable this, though it isn't necessary.

Density Bonus & PUD 22. 6.8(H): PUD-R, Buffers – This buffer concept can unintentionally create a separation of uses, and can reinforce suburban style, non-walkable areas. This may make sense in some districts, but consider a different method in the districts where you want to influence a more walkable neighborhood.

Density Bonus & PUD 23. 6.8(I): PUD-R, Mobile Home Parks - The specific site standards for a new mobile home park is more on par with a walkable neighborhood pattern, except for 30' front setback as it is too deep. I'd suggest using this for all areas where the goal is a walkable neighborhood with detached style developments (the homes themselves could be single, duplex or more).

Density Bonus & PUD 24. 6.8(J)(1)(a): PUD-R, Open Space – If a multi-family, single parcel project needs to go through PUD review to get a density bonus, this provision then requires them to set aside 1 acre for open space. Depending on the site and size of the overall parcel, this could be a non-starter for a multi-family project. This provision makes sense for a larger detached neighborhood style development where the 1 acre would abut existing open space or could be used for a neighborhood park, but for a multi-family project in the MXD, MXDC or CTR districts this could be a challenge. It may be better to identify urban open spaces within the Town Center in a master plan/form-based code type of structure rather than requiring every project to set aside an acre.

Density Bonus & PUD 25. 6.8(J)(1)(c): PUD-R, Open Space - Only acreage associated with open space used for recreation purposes can be used in the allowable density calculation. There are other natural resource benefits of open space protection, and the acreage associated with all of them should be used in the allowable density calculation. Protect the natural resources

and set aside open space, but don't penalize the applicant by not allowing the density from that open space acreage to be used in the overall density calculation.

PARKING

Reason for Review from Affordable Housing Perspective

Parking is a significant cost of development, and therefore raises housing prices. There are a variety of factors that influence the cost of constructing parking, but some of the average costs cited by parking researchers include:

- Donald Shoup, professor of urban planning at the University of California, Los Angeles, and the author of *The High Cost of Free Parking*, finds: “the average cost per space for parking structures in the U.S. is about \$24,000 for aboveground parking and \$34,000 for underground parking.”^{xi}
- Carl Walker’s annual *Parking Structure Cost Outlook* for 2017 reports: “As of March 2017, our statistical data indicates that the median construction cost for a new parking structure is \$19,700 per space and \$59.06 per square foot.”^{xii} These costs do not include land acquisition, permitting and engineering, and other soft costs. Since New England’s construction costs are generally higher than the U.S. average, Boston’s median cost may be a better surrogate for Vermont than the U.S. median. Boston’s median cost/space is \$22,591 and \$67.74 per square foot^{xiii}. Compare that to a typical cost of construction of a home in Chittenden County of \$250,000 (Housing Vermont example from the Chittenden County Economics of Housing Workshop on 1/29/18), a \$22,591 parking space is 9% of that total cost.

Donald Shoup’s work identifies the significance of this cost particularly on affordable housing – the cost of the parking can negate the affordable housing subsidy.^{xiv} In addition to the impact on housing prices, other reasons to examine parking requirements found in municipal land use regulations include the impact it has on inducing automobile traffic rather than multi-modal, walkable neighborhood patterns, and causing inefficient use of land and degradation of the built environment. For these reasons, many municipalities are considering alternatives to the traditional approach of minimum parking requirements so that only the necessary amount of parking is built^{xv}.

Comparison to Other Regional Municipalities

Required Residential Parking	Essex	Essex Junction	Burlington	Colchester	South Burlington	Williston	Winooski
These are all minimum parking requirements unless stated otherwise							
Residential (single family and duplex)	2.3 spaces per DU	2 spaces per DU	2 spaces per DU; except 1 space per DU in Downtown	2 spaces per DU Plus 1 space for every four units for two-family DUs	2 spaces per DU	2 spaces per DU	2 spaces per DU
Residential, multiple family	1.67 spaces per 1 & 2 bedroom DUs	2 spaces per multi-family DU Plus 1 space for every 10 DUs	2 spaces per DU in neighborhood districts 1 space per DU in Shared Use and Downtown districts	2 spaces per DU Plus 1 space for every 4 DUs	1 space per studio and 1-bedroom DUs 2 spaces per DU for all other DUs Plus 1 space for every 4 DUs	1.75 spaces per DU	1 space per studio, 1 & 2 bedroom DUs 1.5 spaces per 3 bedroom or larger DUs Plus 1 space for every 4 DUs (calculated at increments of 4)
Residential, accessory dwelling	1 space per DU	1 space per DU	1 space per DU	1 space/bedroom	1 space, but 2 when w/o occupancy restriction on lots of ½ acre or more	1 space per efficiency & 1 bedroom DU 2 spaces per 2 bedroom DU	1 space per DU
Other			Many special residential use parking minimums. Maximum total spaces shall not exceed 125% of the minimum number of required spaces (Sec. 8.1.9)	Congregate Housing: 1.2 spaces per DU Plus 1 space for every 4 units	In City Center/Form Based Code District: Maximum 2 spaces per DU		

A local parking reform example: A few years ago South Burlington researched actual parking needs at residential developments on Farrell Street and a few other locations. Based on these data they reduced the minimum required parking for studio and 1 bedroom units from 2 spaces to 1 space. In the Form Based Code district they set a maximum of 2 spaces/unit. In addition, they are now re-thinking their parking regulations citywide. Staff have had discussions with the Planning Commission about doing one of the following:

- Eliminating parking minimums altogether
- Switching the parking “minimums” to being “maximums” and eliminating minimums
- Eliminating minimums and setting something akin to the current minimum as a “maximum without DRB approval”

South Burlington has found that most if not all single and two-family homes have far more than the minimum parking requirements. On the multi-family side, they’ve not experienced a situation where the number of parking spaces they’ve required has been too little (except for a student housing building that was more of a management issue).

For more examples of municipalities that have reduced minimum parking requirements, switched to maximum parking requirements, or done away with them altogether see this national map from Strong Towns:

<https://www.strongtowns.org/journal/2016/11/22/our-parking-minimums-map-updated>

Additional resources that may be helpful include: a City Lab interview with Donald Shoup:

<https://www.citylab.com/transportation/2018/05/parking-is-sexy-now-thank-donald-shoup/560876/>; and his new book:

<https://www.routledge.com/Parking-and-the-City/Shoup/p/book/9781138497122>

Recommendations for Essex Regulations

Parking 1. Overall, consider whether minimum parking requirements are too high and whether maximum parking or no parking requirements would be a better method.

Room for Improvement:

Parking 2. Table 3.3: Residential Parking – 2.3 parking spaces per dwelling unit for single family and duplexes is higher than the surrounding municipalities. Consider decreasing this requirement. Particularly considering the addition of 1 unit for an ADU - a single family house would then need 3.3 parking spaces, rounded up to 4 parking spaces, which could be prohibitive in some circumstances.

Parking 3. Table 3.3: Multi-family Residential Parking – Depending on the size of the unit the Essex minimum parking requirements are over or under South Burlington’s (a comparison made due to their current work on this topic):

	1 Bedroom Multi-Family, 8 unit project	2 Bedroom Multi-Family, 8 unit project
Essex	14 parking spaces	14 parking spaces
South Burlington	10 parking spaces	16 parking spaces

Consider researching current parking usage and demand and adjust accordingly to minimize any unnecessary parking requirements. Also consider alternative methods (i.e. maximum parking requirements, or no requirements). Developers at the Economics of Housing Workshop advocated for no parking requirements as they know what parking needs they have and will accommodate those to effectively market the units.

Parking 4. 3.9(E): Recommended New Section on Parking Reductions – The shared parking and off-site lot are helpful provisions. Considering the high cost of parking spaces and the impact on housing prices, it may be beneficial to allow for a reduction in required residential parking based on proximity to bus stops and bike facilities (and perhaps car-share if that expands in the future). Typical walking distance to a transit stop is about 0.25 to 0.50 mile (5 to 10 minutes)^{xvi}.

SUMMARY/CONCLUSION

This study includes several recommendations that can be used by the Town to remove barriers to affordable housing within the land use regulations. While regulations and permitting are not the only factor impacting the high costs of construction, it is a significant factor that is within the control of the Town. If Essex conducts a comprehensive housing study, this study should be a helpful companion document for any regulatory recommendations. This study can also be used more immediately as land use amendments are considered, such as amendments to the Town Center.

ⁱ *By-Right Zoning: Minimizing Reliance on Discretionary Approvals*. By Lane Kending. Zoning Practice, April 2016. A publication of the American Planning Association.

ⁱⁱ *Interpreting and Applying Development Standards*. Vermont Land Use Education and Training Collaborative. Development Review Training Modules. August 2010. <http://vpic.info/Publications/Reports/DevelopmentReviewModules/Interpreting.pdf>

ⁱⁱⁱ *Big House, Little House, Back House...ADU?* American Planning Association Webinar. Presented by Ben Frost, NNECAPA member. <https://youtu.be/yt9U208YW6M>

^{iv} *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned From Portland, Seattle And Vancouver*. Karen Chapple, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. Prepared for and funded by the San Francisco chapter of the Urban Land Institute. http://turnercenter.berkeley.edu/uploads/ADU_report_4.18.pdf

^v *Jumpstarting the Market For Accessory Dwelling Units: Lessons Learned From Portland, Seattle And Vancouver*. Karen Chapple, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman. Prepared for and funded by the San Francisco chapter of the Urban Land Institute. http://turnercenter.berkeley.edu/uploads/ADU_report_4.18.pdf

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- vi *ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes*. By David Garcia, December 2017. Turner Center at Berkeley. http://turnercenter.berkeley.edu/uploads/ADU_Update_Brief_December_2017_.pdf
- vii Visualizing Density Website: Investigating the density challenge facing the United States. Lincoln Institute of Land Policy. Contributors: Julie Campoli of Terra Firma Urban Design, Alex MacLean of Landslides, and Lincoln Institute Staff: Armando Carbonell and Dennis Robinson. <http://datatoolkits.lincolninst.edu/subcenters/visualizing-density/glossary.aspx#threshold>
- viii *Developers Offer Small Units as Answer to Burlington's Workforce Housing Crunch*. Joel Banner Baird. Burlington Free Press. April 2, 2018. <https://www.burlingtonfreepress.com/story/news/2018/04/08/micro-apartments-planned-south-burlington-larkin/478030002/>
- ix *Making Space for Tiny Houses*. David Morley, AICP. A Publication of the American Planning Association, PAS QuickNotes No. 68
- x *Evaluation of the City of Burlington's Inclusionary Zoning Ordinance*. By czb, LLC. January 2017.
- xi *Putting a Cap on Parking Requirements: A Way to Make Cities Function Better*. Donald Shoup. Planning May 2015.
- xii *Parking Structure Cost Outlook for 2017*. By Gary Cudney, P.E., President/CEO of Carl Walker. Can be found: <http://denver.streetsblog.org/wp-content/uploads/sites/14/2017/10/2017-Cost-Article.pdf>
- xiii *Parking Structure Cost Outlook for 2017*. By Gary Cudney, P.E., President/CEO of Carl Walker. Can be found: <http://denver.streetsblog.org/wp-content/uploads/sites/14/2017/10/2017-Cost-Article.pdf>
- xiv *Putting a Cap on Parking Requirements: A Way to Make Cities Function Better*. Donald Shoup. Planning May 2015.
- xv *Eliminating Parking Minimums*. By Ben LeRoy. American Planning Association. Zoning Practice June 2017.
- xvi Pedestrian Safety Guide for Transit Agencies. Federal Highway Administration. https://safety.fhwa.dot.gov/ped_bike/ped_transit/ped_transguide/ch4.cfm

Regina Mahony

From: Vermont Planners Association <VPA@list.uvm.edu> on behalf of Alex Weinhagen <aweinhagen@VERMONTPLANNERS.ORG>
Sent: Tuesday, June 26, 2018 12:09 PM
To: VPA@LIST.UVM.EDU
Subject: [VPA] VPA 2018 Legislative Summary – 6/26/18

VPA,

The Legislature's regular session ended on May 12. Their special session to resolve the budget and taxation impasse with the Governor started on May 23 and concluded on Monday (June 25) when the Legislature passed a third budget bill, and the Governor announced he would allow it to become law without his signature. Finally...

Here's a summary of the seven planning-related bills that became law during the 2018 legislative session. The VT League of Cities and Towns just published their much more comprehensive summary today (<https://www.vlct.org/news/2018-legislative-wrap>), which goes beyond planning-related issues and emphasizes legislation that impacts municipalities. The VT Department of Housing and Community Development (DHCD) will be publishing their legislative summary soon. The DHCD summary covers planning-related legislation, and typically has more detail on budget-related planning items that were not approved as stand-alone bills. If you want the full scoop on law making in 2018, be sure to take a look at these summaries as well.

Act 168 (bill S.260) – An act relating to funding the cleanup of State waters. Act summary and actual language available at <https://legislature.vermont.gov/bill/status/2018/s.260>. Major provisions:

- Clarifies the creation of a Clean Water Board to plan, coordinate, and finance cleanup of State waters.
- Adds four new members to the Board to be appointed by the Governor. These four will be members of the public with relevant expertise, and will join five agency secretaries that previously comprised the Board.
- Specifically require (contingent on availability of funds) that State agencies work with VAPDA (VT Association of Planning and Development Agencies) on performance grants to assist with basin planning.
- Creates a new designation called "lake in crisis" and require a State response to lakes with this designation. Grants Lake Carmi this designation. Others would go through a process to receive the designation.

Miscellaneous other provisions: farm practices report due January 2019; petroleum cleanup fund date changes; municipal roads general permit fee revisions; mercury-added motor vehicle component removal requirements; loans for failed individual water/wastewater systems (multi-family dwelling properties now eligible); ANR ability to suspend ban on paper going to landfills.

Notable flaws: Provides no source of funding. Kicks the can down the road again when it comes to funding the State's responsibility to clean up Lake Champlain and Vermont's other waterbodies. Interesting that Vermont's much heralded "Clean Water Act" (Act 64) passed in 2015 with required changes to a host of water quality practices, and a promise that adequate funding would be dedicated.

Act 197 (bill S.94) - An act relating to promoting remote work. Act summary and actual language available at <https://legislature.vermont.gov/bill/status/2018/s.94>. Major provisions:

- Extends the duration of State designations (e.g., downtown, village center, etc.) from five to eight years.
- Enables electronic notices for municipal plan hearings, regional plan hearings, etc. Also enables submission of electronic plans, bylaws, etc. after adoption.
- Creates a “new remote worker” grant program.
- Creates a “ThinkVermont Innovation Initiative” – i.e., grant program to help expansion of businesses with 20 or fewer employees.

Miscellaneous other provisions: report on improving infrastructure to support remote workers, co-working spaces, etc.; report on the potential for State-established remote worksites; report on broadband availability and strategies for expansion; loans for failed individual water/wastewater systems (yep, similar to provision in Act 168 above)

Act 181 (bill H.576) – An act relating to stormwater management. Act summary and actual language available at <https://legislature.vermont.gov/bill/status/2018/h.576>. Major provisions:

- Revises the deadline for the Agency of Natural Resources to issue rules requiring a stormwater permit for existing properties with three or more acres of impervious surface that weren’t previously permitted.
- Changes the impervious surface trigger for needing a State stormwater permit from one acre to one-half of an acre for new construction. Does not become effective until July 1, 2022.

Notable flaws: Four years until the trigger drops to one-half an acre for new construction? That’s four more years of water quality “death by a thousand cuts”.

Act 143 (bill H.663) – An act relating to municipal land use regulation of accessory on-farm businesses. Act summary and actual language available at <https://legislature.vermont.gov/bill/status/2018/H.663>. Major provisions:

- Creates a definition and expressly allows for accessory on-farm businesses (i.e., municipalities may not prohibit).
- Clarifies a municipal review pathway including site plan review and application of performance standards while allowing municipalities to have a lesser review process.
- Brings Vermont statutes into conformance with federal law on industrial hemp programs – unrelated to the accessory on-farm business provisions (i.e., hemp language tacked on to H.663 at the end of the session).

** This was a consensus bill with input from a lot of groups (e.g., VPA, VLCT, Farm Bureau, VT Sustainable Jobs Fund, Agency of Agriculture, etc.). As such, many understand the bill’s intent, but no group got exactly what they wanted in the bill language. Stephanie Smith (Agency of Agriculture), Jake Claro (VT Sustainable Jobs Fund), and I are working on developing a common set of outreach and education materials for farmers and municipal officials. More information to come later this summer and fall.

Act 152 (bill H.859) – An act relating to requiring municipal corporations to affirmatively vote to retain ownership of lease lands. Act summary and actual language available at <https://legislature.vermont.gov/bill/status/2018/H.859>. Major provisions:

- Requires municipal corporations to affirmatively vote to retain their lease lands, which are sometimes referred to as “glebes.” Lease lands shall vest in the current lessee of record on January 1, 2020, unless the legislative body votes to keep them.
- The legislative body may vote before the deadline to release some or all of the municipality’s lease lands.
- When fee simple title to lease land vests in the current lessee of record, the land shall remain subject to any other encumbrances of record.

Miscellaneous other provisions: exempts lease land conveyances from statutory notice required for the conveyance of municipal real estate.

Act 198 (bill S.101) - An act relating to the conduct of forestry operations. Act summary and actual language available at <https://legislature.vermont.gov/bill/status/2018/s.101>. Major provisions:

- Provides more protection for conventional forestry operations from nuisance lawsuits so long as the operation is in compliance with the "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont."

Act 194 (bill S.276) - An act relating to rural economic development. Act summary and actual language available at <https://legislature.vermont.gov/bill/status/2018/s.276>. Major provisions:

- Requires that the Agency of Commerce and Community Development submit recommendations by 12/15/2018 for a new rural industrial park designation area, including regulatory and permitting incentives. The required recommendations are supposed to come after consultation with regional planning commissions, VNRC, and the commission on Act 250.
- Establishes a new State program to provide incentives for communities to promote outdoor recreation assets.
- Technical amendments to the State's Current Use program, including allowances for enrollment of wildlife habitat and ecologically significant areas.

Miscellaneous other provisions: too many to list here – see summary of act

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