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VPA Comments: S.286 Permit Reform Bill Senate Natural Resources & Energy

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We appreciate the opportunity to provide comment on planning-related sections of S.286. Due to its length and complexity, we have not yet had time to give this legislation our full consideration. Initial comments, based on adopted VPA policies and positions, are summarized below. Some recommended wording changes for specific sections of the bill are attached.

State Permit Reform Provisions

VPA, having focused its efforts on the update of municipal and regional planning statutes (24 V.S.A Chapter 117), has not actively participated in recent discussions regarding state permit reform. We, however, continue to support:

- A citizen based Act 250 review process, to include appeals to an administrative board rather than to the Environmental or Superior Court.
- Definitions of “party status” that continue to allow for public involvement in the review process, particularly for local citizen groups that may be affected by a particular project.
- Early identification of issues to be addressed by the applicant and/or other parties.
- Appeal rights for the applicant and all participating parties as needed to guarantee due process [e.g., as specified under the Vermont Rules of Civil Procedure].
- Coordinated permit application and review processes within and between state agencies and review boards.

This bill appears to provide for all of the above, through a better defined and coordinated agency permitting process, and consolidated appeals to a reconstituted Environmental Board. We suggest some minor changes with regard to recommended participants in scoping meetings (to include all statutory parties) and the substitution of “municipal land use permit” as defined in 24 V.S.A §4303(24) for “local permit” as defined in the bill.

State Planning Office [Sec. 2, pp. 33-37]

VPA supports the re-establishment of a state planning office, to be headed by a professional planner. We are concerned, however, that proposed amendments to central planning office statutes currently on the books [3 VSA §2104] will be no more effective in ensuring that this office will be re-established, funded, staffed, and remain functional into the future. **We recommend further consideration of the types, roles and functions of state planning offices (or departments) as part of the Vermont Council on Rural Development’s proposed evaluation of Vermont’s planning framework.** Guidance in this area is also available from the American Planning Association’s *Growing SmartSM Legislative Guidebook, 2002 edition, Chapter 4.*

Growth Opportunity Centers [Sec. 55, pp 86-88]

VPA supports incorporation of existing “growth center” definitions for purposes of targeting state funding for infrastructure, expediting state permit review, and for consideration in Act 250 proceedings, including the off-site mitigation of agricultural land. The growth center definition currently agreed to by VACCD and VANR has its basis in VPA’s 1999 Growth Centers Study Report, and has been modified over time to meet state program needs. The proposed definitions under 35(A) and (B) – to include downtown, village, and “new town” centers designated under 24 VSA §2791, and other “community and regional planned growth areas” that exhibit growth center characteristics– is consistent with these definitions. “Growth center characteristics” under 36(A) are also generally consistent with current definitions –it would be useful to include a spatial component, (e.g., a maximum walking distance of ¼ to ½ mile) to help define growth center boundaries.

The Vermont Planners Association (VPA) is an organization representing citizen and professional planners, landscape architects, housing and economic development specialists, developers, and engineering consultants from throughout the state. VPA is committed to advancing the art and science of planning.

Growth Opportunity Centers (continued)

We are concerned, however, that identifying “residential neighborhoods” and “commercial or industrial uses” under 36(B) as types of growth opportunity centers – which apparently may include individual subdivisions or developments located outside of a designated growth center – will have the effect of undermining the above definitions (which allow for both industrial and residential development, including industrial parks) and the intent and purpose of growth center designation.

Off-site Mitigation of Agricultural Land [Sec. 69, pp.125-128]

VPA supports proposed statutory provisions that specifically enable off-site mitigation of agricultural land within designated growth centers, and allow monies collected to be used within the municipality, in accordance with stated priorities. We are less supportive of off-site mitigation for subdivisions or developments located outside of designated growth centers, unless “as a last resort” can be more clearly defined and applied in association with related standards. Greenfield development located outside of growth centers is inevitable, but should be sited and designed to avoid adverse impacts to designated resource lands, including primary agricultural soils.

We are also concerned that smaller acreages will now be excluded from protection. It’s important to note that the nature of farming – particularly in Chittenden County – is changing from large dairy operations to smaller specialty truck or market farms (including CSAs) that co-exist with, and cater to, a more urban/suburban market. According to preliminary 2002 Census of Agriculture results, 34% of Vermont farms are less than 50 acres in size, and 7.4% are less than 10 acres in size. Even these smaller parcels are eligible for enrollment in the current use program if they meet income generation requirements.

Municipal Planning & Zoning [pp. 135-137]

Most importantly, we would like the Chapter 117 changes in H.175, already agreed to by the House, Senate, and Administration, to be incorporated in S.286 as appropriate. We have no particular objections to other proposed changes to Chapter 117 included in this bill, but recommend that 117 planning provisions, including those enacted under Act 200, be included in VCRD’s overall evaluation of Vermont’s planning framework. With regard to specific sections:

- **Inventory Requirements.** Municipal plans typically are based on “inventories and studies of air, water, wildlife and land resources, and capacity studies” – to the extent available data and information allow. **If such studies are specified in statute under §4382(c), they should include other types of inventories as well.** [Section 79, p. 135]
- **Build-out Analyses.** Statutory authority is not needed to enable the use of build-out analyses, which represent only one type of planning tool used to identify potential impacts of proposed plans, regulations, or development [Section 79, 135].
- **Master Plans.** The provision that enables a municipal plan to include a master plan for specific lands (e.g., downtown redevelopment or an interchange area) is useful, particularly if it can be considered in Act 250 as proposed in Section 80. **It is not clear, however, how this relates to Act 250 presumptions under Section 82, which appear to apply either to the master plan, or the municipal plan in its entirety. If it applies to the entire plan, how the plan will be used in Act 250 should be clarified** [Sections 80, 82, p.136].
- **Cumulative Growth.** Many municipalities already adopt zoning and subdivision regulations to manage cumulative growth – zoning and subdivision regulations are, in themselves, regulatory tools to manage growth in accordance with an adopted municipal plan. **Specific enabling legislation is not needed; but if included, as proposed and intended (e.g., for reference in Act 250), it should also include a statutory definition of “cumulative growth” to distinguish this from other types or patterns of growth – a definition which would clearly relate to the definition of “cumulative impact” found elsewhere in the bill.** However, locally derived definitions of cumulative growth may be more appropriate for municipal planning and regulatory purposes [Section 81, p.136].