

ACT 250 CAN LIMIT TRUCK TRAFFIC

Finally, there is a Vermont Supreme Court decision that may be of interest to municipalities wrestling with truck traffic. In *OMYA v. Town of Middlebury et al.* Vt. Entry Order No. 99-282 (July 25, 2000), the Court upheld an Environmental Board decision which limited the number of truck round trips which a company could operate through the Village of Brandon each day. The essentials of the Court's decision are, briefly:

- Act 250 gives the Board (and not the Agency of Transportation (VTrans)) jurisdiction over certain traffic that causes “unreasonable congestion.”
- The Legislature has created more stringent traffic standards under Act 250, thus the Board may apply them in addition to any restrictions applied by VTrans.
- The number of truck trips is related to “public welfare” through such things as noise, dust levels, effects on buildings, air quality and use of property, thus a limit on trips is a proper use of police power.
- The limit does not amount to a “taking” of OMYA’s business because the limitation does advance a legitimate state interest and it does not deny OMYA all economic benefit if its property.
- Act 250 does not violate the Common Benefits Clause of the Vermont Constitution by regulating selected types of traffic because “the legislature may choose to address problems incrementally.”

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