WLR April 7: 3-Acre Permit Reform, Legal Trails, Transportation Fund Woes, and More

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Will April showers bring May flowers? Last week our advocacy team tended the legislative seeds planted in the beginning of the session: 3-Acre permit reform, municipal liability concerns, legal trails, and transportation fund woes. In this issue of our ***Weekly Legislative Report***, we update you on the dogged progress of these key priorities and more.

Digging Deeper on 3-Acre

Last week, the Senate Committee on Natural Resources and Energy began testimony on House bill H.481, an act relating to stormwater management (opens in a new tab). H.481 makes some changes to the state's 3-Acre permit program and creates the "Municipal Stormwater Implementation Grant Program" under the Clean Water Fund – but leaves out many of the more fundamental reforms VLCT has advocated for throughout this session.

The committee heard testimony from Christine Dougherty, Public Works Assistant Director for the Town of Williston, and Harry Shepard, Public Works Director for the Town of Stowe, who together represented our partners the Green Mountain Water and Environment Association. Christina and Harry articulated the many challenges that all municipalities face in navigating the 3-Acre Permit requirements, including capacity, liability, and the double-permitting of some town highways which are roped into 3-Acre sites. Harry also walked through a Stowe site map(opens in a new tab) which illustrates the arbitrary nature of this state regulation, whereby some adjacent condo developments are "in" and others are "out". For the residents who are included, the treatment costs will be exorbitant.

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Recent cost estimates shared with lawmakers are up to $112,000 per acre – putting total cleanup costs for all 677 3-Acre sites (about 6,500 acres) in the ballpark of $700 million.

H.481 attempts to sweeten the pot for municipalities that are able and willing to take over 3-Acre sites and gives all affected parcels more time to comply. The bill does not, in our estimation, address the basic flaws driving all the conflict and confusion around 3-Acre implementation.

On Tuesday, April 8, the VLCT advocacy team will testify on H.481 and ask that the Senate take further action to:

- allow cost to be a factor in determining the feasibility and approval of engineered treatments,
- allow municipalities to separate publicly owned facilities (such as town roads) from private parcels under the permit,
- remove dispersed residential neighborhoods without common ownership from 3-Acre regulation, and
- only require treatment at the time of redevelopment.

Take a Hike: S.4 Would Protect Legal Trails

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On Friday, April 4, the VLCT advocacy team kicked off the weekend with a high-stakes testimony to the Senate Committee on Transportation in favor of S.4, an act relating to maintenance and use of legal trails(opens in a new tab). This bill would clarify, once and for all, the exclusive authority of municipalities to regulate both the **use and the maintenance of** legal trails. It is too late for S.4 to make it out as a standalone bill this session, but the committee could amend the same simple language into the annual Transportation bill.

Vermont cities and towns currently maintain authority over 547 of these trails statewide with an average of two miles per town. Legal trails provide critical access to state, municipal, and federal public lands throughout Vermont. Many legal trails connect to larger multi-use trail networks that are the backbone of our rural outdoor recreation economy. Vermonters and visitors alike use legal trails for hunting, fishing, hiking, back country skiing, mountain biking, and more. These are vital public venues for outdoor recreation of all kinds, and many have been on town highway maps for hundreds of years.

Also testifying on Friday, but against S.4, was John Echeverria, a private landowner and the plaintiff in an ongoing case against the Town of Tunbridge (opens in a new tab). If the court were to rule against the Town of Tunbridge in this case, it could jeopardize public access to hundreds of miles of legal trails (opens in a new tab) that abut or cross private land.

Following a slate of testimony just before Town Meeting Day, passage of S.4 seemed nearly imminent, but at least some committee members appeared to have cold feet after hearing Echeverria's assertion that trail maintenance constituted a "taking".

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VLCT maintains that municipalities do have the authority to maintain, or cause to be maintained, all legal trails by obvious legislative intent. In a recent survey, 44 of 45 responding municipalities said they currently maintain legal trails to clear brush and trees, provide signage, conduct grading and ditching, and more. Furthermore, it is in the clear interest of the state government to protect access to public lands.

Contact members of the Senate Transportation committee(opens in a new tab) **today and let them know that S.4 is a must-pass bill this session.**

Municipal Monetary Liability Cap

A tranche of fresh legislative proposals seeking to create new incentives for novel municipal programs has us crying foul.

While the majority of public services are delivered by municipal government, only state government enjoys a monetary liability cap. The absence of this basic protection for municipalities is affecting the insurability of some critical public infrastructure and imperiling the ability of local government to deliver the public services that Vermonters want and need.

This issue is becoming more urgent this session in light of new environmental proposals that are meant well but could increase municipal liability.

House bill H.481 (discussed above) makes clean water funding available to municipalities that accept full legal liability for 3-Acre permits and H.86 "the salt bill"(opens in a new tab) offers limited liability from civil suits for municipal

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salt applicators – but only if they are certified under a to-be-created chloride reduction program. H.86 has a companion proposal, S.29(opens in a new tab), which we summarized in the February 24 *Weekly Legislative Report*(opens in a new tab).

These proposals do not acknowledge that municipal government is in the business of public service. If the resources are available, and if the risks are manageable, local government can take on new and innovative services for the public good.

VLCT will be testifying on both H.481 and H.86 later this week – and we will ask for amendments from the provisions in H.138, an act relating to maximum liability of municipalities for tort claims(opens in a new tab) that would establish equal protection from tort claims for both state and local government. H.138 was introduced early this session and is co-sponsored by House Judiciary chair Martin Lalonde and freshman Representative Ian Goodnow – but has been hanging on the wall until now.

Funding for Paving Hits Pothole

This session, VLCT has advocated against the governor's proposed cuts (opens in a new tab) to Town Highways Structure and Class 2 Town Highway funding. The annual Transportation Bill, H.488(opens in a new tab), passed the House with the governor's recommended funding of $7.2 million for Structures (down 10.2% from FY25) and $8.6 million for Class 2 roads (down 2.9%). The Transportation Bill, or "T-bill" as it is fondly called, also includes new

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appropriations language that will, in future years, fix a minimum town highway funding appropriation at the prior year's amount unless inflation has gone down.

The Agency of Transportation is currently only able to fund about one quarter of town projects submitted.

There's more bad news for Vermont commuters: funding for the state's own paving program is down to $103 million, from $130 million in FY25 and $141 million in FY26. Transportation Secretary Joe Flynn reports that construction bids are up about 40% over recent years. This steep decline in annual funding combined with high inflation means that the Agency of Transportation will only be able to tackle 125 miles this construction season – a 45% year-over-year reduction.

Making matters worse, the downward trend in transportation funds means Vermont could be leaving more and more federal funding on the table in future years. The commonly understood rate of replacement for paved roads is about 10 years, and diminishing the mileage of road replaced each year only digs a deeper hole.

The Vermont Association of General Contractors lobbyist Sarah Mearhoff told VTDigger(opens in a new tab), "this is truly something that affects everyone … if we're talking education, kids ride to school on the bus on our roads. If we're talking jobs, people commute to their jobs on the roads."

We couldn't agree more. VLCT will take up town road appropriations with the Senate committees and ask for level funding paired with structural financing reforms to shore up the state's transportation reserves.

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Another One Down: The Second BAA Bites the Dust

Governor Scott issued his second veto of the session on Friday. His first veto was for the Annual Budget Adjustment Act (BAA), his second veto was also for a (different) BAA.

In his veto message(opens in a new tab), the governor said, "I'm hopeful, the Legislature will stop sending me bills they know I will veto and instead send me a clean budget adjustment bill without controversial policy".

That said, the House passed its "big bill" for FY26 Appropriations last week, and the Senate Appropriations committee has just begun its mark-up. It seems unlikely that lawmakers will muster another attempt at mid-year FY25 adjustment this far into the next year's budget development. You never know, though. Maybe the third time will be the charm.

Stay Involved

The legislature has introduced 644 bills so far this year – 500 in the House and 144 in the Senate. VLCT is currently tracking and monitoring 166 bills, with 43 affecting municipal capacity, revenue, or governance and 29 concerning housing, community development, or land use. There will be many more opportunities for you to help Josh and Samantha in VLCT's advocacy work. Remember to register and attend our **bi-weekly Advocacy Chats**(opens in a new tab), which are held via Zoom every other Monday at 1 PM.

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- You can find (and share) this legislative report and future reports and alerts on our main Advocacy webpage(opens in a new tab).

- To support VLCT's advocacy work; participate in policy development, testimony, and legislative actions; or just learn more, reach out to Josh and Samantha by email at jhanford@vlct.org(opens in a new tab) and ssheehan@vlct.org(opens in a new tab).

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