

To: Members of the Land Use Review Board, State of Vermont

Cc: Sarah Hadd

From: Josh Hanford, Director of Intergovernmental Relations, Samantha Sheehan, Municipal Policy and Advocacy Specialist

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RE: Tier 1A Framework Draft

The Vermont League of Cities and Towns (VLCT), on behalf of our 247 municipal members, has long advocated for changes to state land use law to eliminate the duplicative regulation, review, permitting, and threat of appeal created by Act 250 jurisdiction in Vermont municipalities with equal or greater standards in their own zoning and bylaws. VLCT supported the intent of Act 181 to create location-based jurisdiction that will expedite the creation of new housing that local communities need, envision, and allow for in local bylaws. To realize the potential and intent of Act 181, the Tier 1A exemption process must be clear and objective. It must also recognize and respect the processes and systems that municipalities are required to follow by state law.

The purpose of this memo is to provide feedback on the Vermont Land Use Review Board's recently issued [draft for the Tier 1A Framework](#).

Eliminate Duplicative Processes and Allow for Substantial Changes

At a high level, it is concerning that the draft framework more closely resembles the former process for designated area approval and is not a process for municipal delegation. In its Tier 1A approval process, the LURB must essentially make two separate findings:

1. Does the municipal corporation meet the statutory standards for Tier 1 through its permanent land development regulations, the existence of municipal water and sewer, and demonstrated Municipal resources adequate to support coordinated comprehensive and capital planning, development review, and zoning administration?
2. Does the exempted area have "boundaries are consistent with downtown, or village centers and planned growth areas as defined 24 V.S.A. § 4348a(a)(12) in an approved regional plan future land use map with any minor amendments"?

If the municipal corporation meets the standards to support a finding that it is Tier 1 eligible, the precise boundaries of the exempted area for Tier 1A will necessarily be changed over time and should not trigger a new Tier 1 approval process. The municipality may wish to change or expand the boundaries of the exempted area or to seek a new non-contiguous area as it is able to extend water and sewer service, access various state community development programs, creates or amends zoning districts and bylaw, or is required to act according to state laws that require updating the municipal and

regional plan and the adoption of new regulatory standards (such as in flood hazard areas) or to meet new state zoning pre-emptions in the future.

Recommendation:

- Separate the application and approval process at the LURB for Tier 1 standards and the mapping of the exempted Tier 1A area.
- Provide a clear framework for a process to seek a substantial change to the exemption boundary or to add a non-contiguous area, without triggering a duplicative review for the other statutory requirements.
- Allow, do not require, separate applications for non-contiguous areas.

Pre-Application Requirements

10 V.S.A. § 6034 (c)(3)(A)(ii) includes a clear notice requirement beyond what the law had required in notice period for the creation of old designated areas and beyond what is required now in Title 24 for the creation or amendment to bylaw. The LURB's draft Tier 1A framework expands the list of parties well beyond what the law requires to include the Vermont Community Investment Board, the general public of the municipality, and any business, conservation, low-income advocacy, and community or interest groups within their community. Furthermore, the framework offers no specification on the type of input or feedback the municipality should solicit from these parties. Municipalities and their advisory bodies do not generally need guidance on how to conduct community engagement in a planning process.

Municipalities need specific guidance from the LURB on what type of stakeholder input should be summarized in their Tier 1A application and to what extent that input will be weighted in the approval process.

Recommendation:

- Limit the framework to include only the parties required to receive pre-approval notice per 10 V.S.A. § 6034 (c)(3)(A)(ii)
- Provide more specific guidance as to the type of stakeholder input the LURB will need to consider for Tier 1A approval, such as: boundaries, does Tier 1A support or hinder flood resiliency and recovery, is the exempted area consistent with local and regional conservation goals and housing needs, etc.

Application Requirements

V.S.A. § 6034 (b)(1)(E) requires that “the municipality has permanent land development regulations for the Tier 1A area that further the smart growth principles of 24 V.S.A. chapter 76A, adequately regulate the physical form and scale of development, provide reasonable provision for a portion of the areas with sewer and water to allow at least four stories, and conform to the guidelines established by the Board”.

In the draft framework, the smart growth narrative exceeds what is required by law and introduces some self-conflicting concepts that create a standard for smart growth regulation that is too complex to meet for many historic downtown areas. Furthermore, it uses non-objective standards including “character” that are not aligned with smart growth planning.

The framework should eliminate any subjective test for local bylaw and should not include standards that would artificially constrain the boundaries of the exempted area that would otherwise support true smart growth principles such as to accommodate future development away from flood hazard areas and beyond existing public, civic, and historic sites but toward job sheds, transportation corridors, or other community institutions such as schools, tourism destinations, hospitals, transit centers and more.

Specifically, these subsections could over complicate and distort the local mapping process for the future exempted areas where a community wishes to provide for a higher density of development:

(vii) Ensures compatibility of buildings and other improvements as determined by their arrangement, building bulk, form, design, character, and landscaping to establish a livable, harmonious, and diverse environment.

(viii) Provides for public and private buildings that form a consistent, distinct edge, are oriented toward streets, and define the border between the public street space and the private block interior

Recommendation:

- Eliminate subjective language such as “design”, “character”, “harmony”, and “diversity” which conflict with modern approaches to land use regulation that supports inclusive, smart growth planning.
- Eliminate overly specific requirements such as for public transit, which is not available in most Vermont communities, and encourage planning that allows for local needs and priorities.

Act 250 Permit Enforcement and Administration

The draft framework inadequately addresses how Tier 1A municipalities will administer existing Act 250 permits. As VLCT highlighted during legislative testimony, the requirement under Act 181 that Tier 1A municipalities take over the administration of state permits is having a dampening effect on local officials' desire to seek Tier 1A approval.

Municipalities anticipate that Act 250 permit amendments and appeals will happen. Confusion about how to navigate the ongoing administrative process for existing Act 250 permits, and by doing so potentially jeopardizing the municipality's Tier 1A status overall, will cause significant consternation and inhibit communities from seeking designation all together. A system of municipal delegation is more appropriate here. Once the LURB has confirmed that a municipality meets all of the statutory standards

to be Tier 1 eligible, the municipality should then acquire the necessary authorities for the full administration of existing state permits within the exempted areas.

The LURB must provide clear, practical guidance for the administration of state permits and appropriately delegate permit authorities to Tier 1A municipalities.

Recommendation:

- Tier 1A municipalities should have the authority to allow amendment to existing Act 250 permits.
- Tier 1A municipalities should have the ability to transition existing Act 250 permits to municipal permits pursuant to 4460(g)(2)(D)
- Tier 1A municipalities should have the ability to remove existing permit requirements that are inconsistent or non-conforming to local regulation
- Provide clarity on permit defense in the event a Jurisdictional Opinion, permit, or permit amendment is appealed after a municipality receives Tier 1A exemption.