

Discover Act 250's Secret Sauce:

Tier 1A and Tier 1B Status Areas

Vermont League of Cities and Towns
Planning and Zoning Conference

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Act 181 of 2024 Established Purposes:

- **Much of Act 250's new purpose statement and Act 181's changes can be distilled into the following theme that has guided Vermont's land use and planning laws since Act 250's inception:**

Maintain Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside.

- **The Legislature's longstanding focus on this vision, a form of what is sometimes referred to as "smart growth," helps to explain Act 181's tiered jurisdiction structure and other focus areas of the new law.**

Goals:

To make it easier to build housing near existing centers and areas that are **planned** for growth.

- Establishes **Tier 1A** areas where development is exempt from Act 250.
- Establishes **Tier 1B** areas where housing projects up to 50 units are exempt from Act 250.



Goals:

To protect forests and connecting habitats from fragmentation.

- Creates **Criterion 8(C) - forest blocks and habitat connectors**.
- Establishes a **road construction jurisdictional trigger** to encouraging clustering of development.



A scenic landscape photograph showing a calm lake in the foreground, surrounded by lush green vegetation and tall purple flowers. In the background, a dense forest of evergreen trees lines the shore, with rolling green hills and mountains visible under a bright blue sky with scattered white clouds.

Goals:

To protect **critical natural resources**.

- Establishes **Tier 3** where all “development” will trigger Act 250 review.



Act 181 of 2024:

- Interim Act 250 Housing Exemptions
- Consistent Regional Planning: Future Land Use Areas
- State Designation Programs: Steps
- Location Based Act 250 Jurisdiction: Tiers
- New Act 250 Governance: Land Use Review Board

State-level land use review increases



Tier 3
Enhanced jurisdiction



Tier 2
Status quo + expanded road construction jurisdiction



Tier 1B
Jurisdiction over housing is limited



Tier 1A
No jurisdiction



Regional Plans

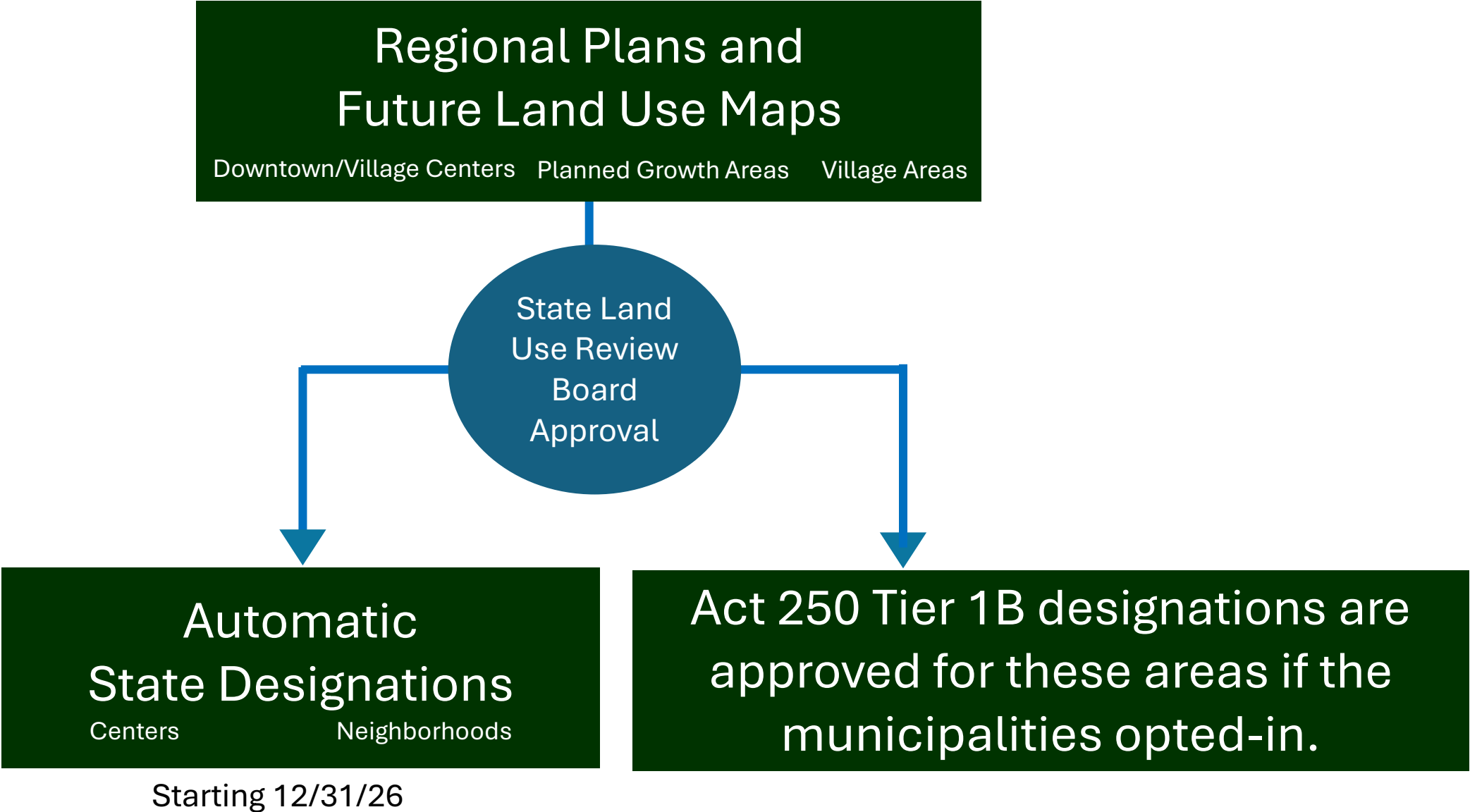
- The state's 11 **Regional Planning Commissions (RPCs)** will apply to the **Land Use Review Board (LURB)** for affirmative determinations for **regional plans**.
- The **regional plans** will include new **future land use (FLU) maps** that include 10 consistent FLU areas, as mandated in Act 181. [24 V.S.A. § 4348a\(12\)](#)
 - Downtown/Village Centers
 - Planned Growth Areas
 - Village Areas
 - Transition/Infill Areas
 - Resource-Based Recreation Areas
 - Enterprise
 - Hamlet
 - Rural – General
 - Rural - Agricultural and Forestry
 - Rural - Conservation



Regional Plan Determinations

- When **LURB** determines a **regional plan compliant** it confers **state designations** for **centers** and **neighborhoods** and it determines whether **Tier 1B** areas meet requirements.
- **Downtown centers, village centers, planned growth areas, and village areas** shown on the regional **FLU maps** are the areas eligible for **state designation** as **centers** and **neighborhoods**. [24 V.S.A. §§ 5803 and 5804](#)
- **RPCs** will request **Tier 1B** status for these areas for municipalities that have opted-in.
- All 11 **RPCs** must adopt Act 181-compliant **regional plans** by the **end of 2026** and have them **confirmed** by the **LURB** or **legacy state designations** within the region **expire**.

Regional Plan Approvals confer state designations



How regional plan maps will confer new state designations:

The **Community Investment Board** will implement the new system of smart growth incentives based on **2 state designations consistent with future land uses mapped in the new regional plans.**

Four of the 10 **Regional Plan** Land Use Categories:



When **LURB** approves **regional plans**, they approve the following **state designations** for the above categories:



Starting in 2027:

Legacy state designations:

New state designations:

Village Centers	Centers
Downtowns	
New Town Centers	
Neighborhood Development Areas	Neighborhoods
Growth Centers	

What are Tier 1B & Tier 1A?

Tier 1B

- Area of Act 250 exemption for up to 50 units of housing (including mixed-use) on tract(s) of land involving 10 acres or less
- RPC applies with Regional Plan or later as a separate application
- Continues until modified or Board revokes

Tier 1A

- Area of Act 250 exemption for any subdivision, development, or change to an existing project
- Municipality administers and enforces transferred Act 250 permits within Tier 1A area
- Municipality applies after Board issues affirmative determination on Regional Plan
- Continues until modified or Board revokes

Tier 1B & Tier 1A Requirements

Tier 1B

- Must be qualifying future land use map category.
- Municipality must have a confirmed plan, zoning, and subdivision bylaws.
- If the area has floodplain and river corridors, the municipality must have flood hazard and river corridor bylaws.
- Municipality must have water or wastewater infrastructure or soils to accommodate compact housing.
- Municipality must “opt-in” with resolution affirming capacity to support development review and zoning administration in Tier 1B area.

Tier 1A

- All the requirements of Tier 1B.
- Required review of determinations at least every four years.
- Preapplication and application meetings.
- Fee (\$295).
- Application guidance in development with requirements for map data layers and narrative.
- Municipal resolution must include an explanation of its capacity to administer and enforce previously permitted Act 250 permits.

Tier 1A Application Narrative Highlights

- Form & Scale
- Historic & Cultural Resources
- Natural Communities & Rare, Threatened, & Endangered Species
- Water & Wastewater



Form & Scale



Detail how the proposed Tier 1A area will create a compact settlement oriented toward pedestrian activity including an identifiable center with higher density than the surrounding area. For those proposed Tier 1A areas that extend to a municipal boundary, surrounding area density may instead be addressed by describing how the Tier 1A area relates to the development trends and plans for the adjacent municipality.



Explain regulatory provisions for public buildings, open spaces, and other visual features that act as landmarks, symbols, and focal points for community identity within the Tier 1A area.



Describe how the Tier 1A area will enable a variety of housing types, businesses, services, and facilities all within close proximity and interwoven within the area.



Describe how the regulations for the Tier 1A area govern the arrangement, building bulk, form, design, character, and landscaping of sites to ensure compatibility of buildings and other improvements.



Provide an overview of the transportation system serving the Tier 1A area and how it provides or will provide a hierarchy of appropriately designed facilities for pedestrians, bicycles, automotive vehicles, and public transit, if present.



Provide an overview of the historic settlement pattern and street pattern within the Tier 1A area noting existing edges. Explain how the regulations provide for public and private buildings that are oriented toward streets and further maintaining or creating a defined edge around the Tier 1A area.



Describe how the regulations provide for open spaces within the Tier 1A area that incorporate natural features and undisturbed areas as well as historically compatible squares, greens, landscaped streets, greenways, and parks woven into the pattern of the center.



If the Tier 1A area is served by sewer and water, detail how regulations provide for a minimum of four-story buildings within a portion of the Tier 1A area. A story may be a below ground story or a story within the roofline so long as the majority of the floor area is occupiable.

Historic & Cultural Resources

If the Tier 1A area is adjacent to or inclusive of a National Register Historic District, National or State Register Historic Place or significant resource as identified by the municipality or State Historic Preservation Office, the applicant must provide a narrative noting historic, cultural resources in or adjacent to the proposed Tier 1A area and submit proof of one of the following:

Designation of the municipality as a Certified Local Government community.

Municipality adoption of a local historic district for the Tier 1A area in accordance with 24 V.S.A. § 4414(1)(F).

Municipal adoption of a design review district for the Tier 1A area in accordance with 24 V.S.A. § 4414(1)(E) or comparable design regulations (including form-based code) that sustains the historic character of the Tier 1A area.

A Memorandum of Understanding between the municipality and the Vermont Division of Historic Preservation to provide binding recommendations for development applications seeking to alter significant historic resources within the Tier 1A area.

Natural Communities & Rare, Threatened, & Endangered Species

If a proposed Tier 1A area contains a significant natural resource as defined by the Vermont Natural Heritage Rare, Threatened and Endangered Species list and classified as a conservation rank of S1, S2, S3, or contains a significant natural community shown on the *Vermont Natural Resources Atlas*, the municipality should consult with the Vermont Department of Fish & Wildlife and submit proof of one of the following:

A determination from a qualified professional or from the Vermont Department of Fish & Wildlife that the Tier 1A area does not include the identified significant natural resource.

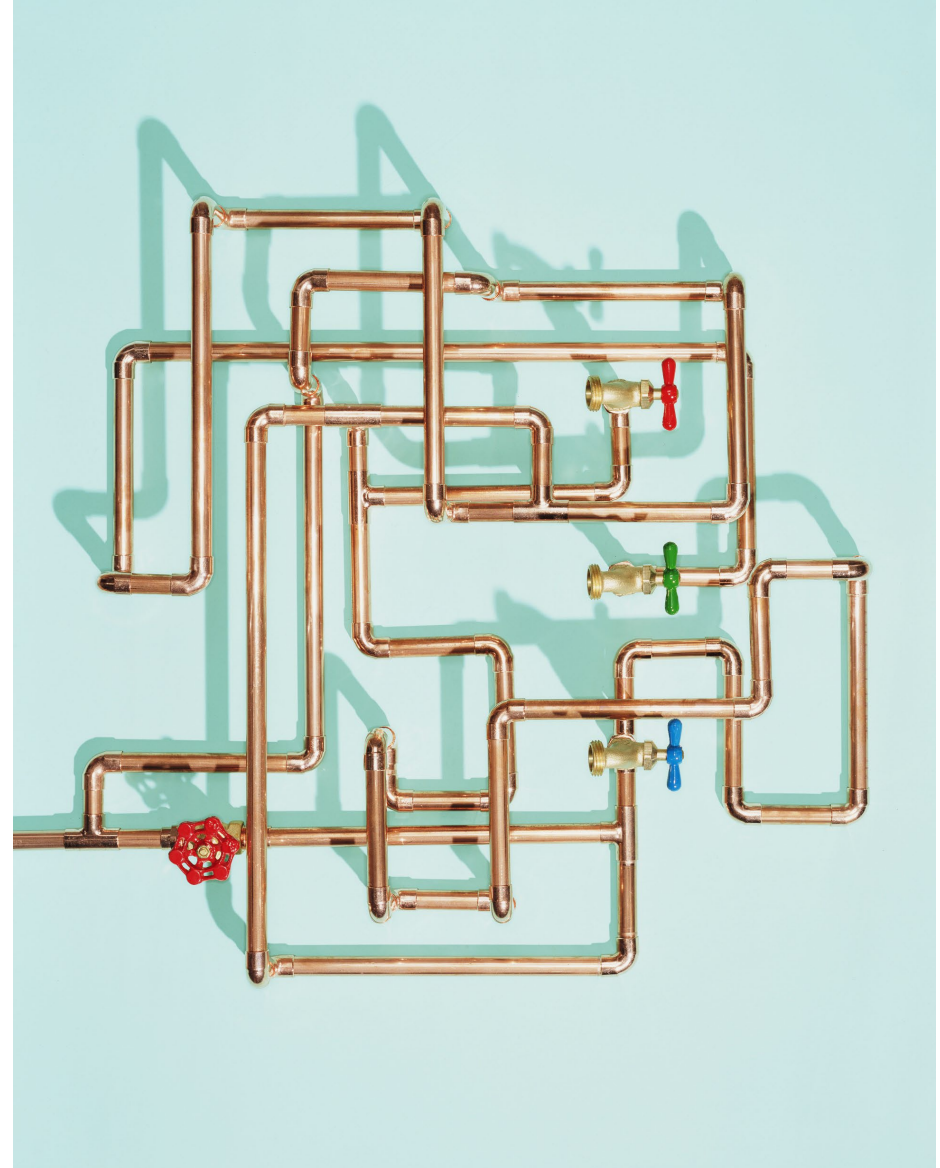
A *Natural Resources Atlas Map* depicting mapped RTE species and significant natural community occurrences within and adjacent to the proposed Tier1A and municipal regulations for the Tier 1A and adjacent areas that:

Ensure no jeopardy to rare species or adverse modification to significant natural communities and compliance with State and Federal Threatened and Endangered species regulations.

Require project-specific natural resource inventories and assessments conducted by a qualified professional when occurrences of RTE species and/or significant natural communities are predicted or otherwise known to occur in a project vicinity. The Vermont Department of Fish and Wildlife must be provided a copy of the application and the opportunity to provide the municipality with technical input if an undue adverse impact on RTE species or significant natural communities is proposed.

Water & Wastewater

The municipality shall demonstrate capacity by providing available water and wastewater allocations in the proposed Tier 1A area or planned capacity noting any existing or proposed water/sewer infrastructure in the Tier 1A area and the status of any planned improvements, noting status of engineering and financing, ownership of infrastructure or planned improvements, and possible timeline to implement. Decentralized infrastructure shall be acceptable improvements.



Tier 1A Administration

24 V.S.A Section 4460(g) provide municipalities may amend Act 250 permits through municipal permit process. The DRB's decision must include conditions contained within the Act 250 permit unless the panel determines the condition relates to:

the construction phase
of an already
constructed project;

compliance with
another State permit
that has independent
jurisdiction;

federal or State law that
is no longer in effect or
applicable;

an issue that is
addressed by municipal
regulation and the
project will meet the
standard; or

a physical or use
condition that is no
longer in effect or
applicable to the new
project.

The DRB must issue a
decision in accordance
with 24 V.S.A. § 4464(b)
and include specific
findings.

Tier 1A Enforcement

- Municipalities will need local regulations to amend existing Act 250 permits.
- 24 V.S.A Section 4460(h) provides for municipal enforcement of Act 250 permits.
- A listing of all amended and enforced Act 250 permits must be provided to the Board annually.
- The Board is working on FAQ for municipalities to address Act 250 permit administration and enforcement.



Tier 1A

- Board begins receiving applications from Cities and Towns in **2026**.
- Process starts with a **preapplication meeting**
- Upon **final application** submission, a **hearing** will be held. The RPC and the municipality will be responsible for providing **notice of the hearing**.
- Law requires Board to issue a **decision** on each Tier 1A application within **45 days** of receiving a complete application from a municipality.





2034

- **24 V.S.A., Chapter 76A** (Historic Downtown Development) expires on July 1, 2034.
- This law governs **the current state smart growth designation incentives program**, which is being phased out.
- By this date, all **benefits** for state **designated centers** and **neighborhoods** that received their designation by virtue of their legacy status being transitioned into the new system via a LURB-approved regional plan shall **sunset**, and the then-current benefits for centers and neighborhoods shall apply.

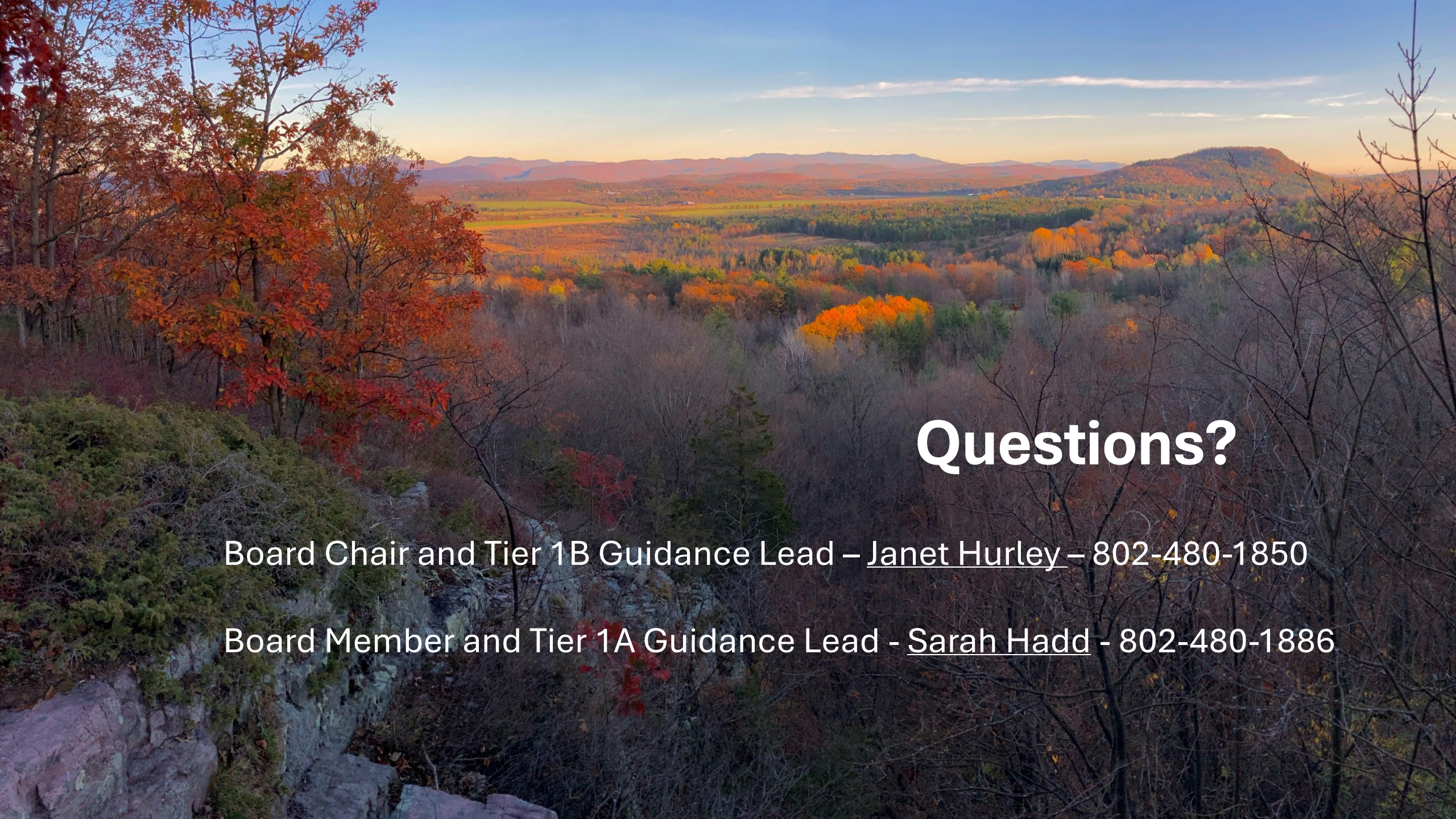
2034

In less than a decade, the way that the State of Vermont regulates land use and incentivizes growth and development will be comprehensively revised.

- Integration of local, regional, & state planning.
- Simplification of State Designation Programs.
- Tiered location-based Act 250 jurisdiction.

The State will continue to incentivize growth close to existing centers to protect the state's historic development pattern while minimizing impacts on natural resources and resource-based industries.





Questions?

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