



Central Vermont Regional Planning Commission

EXECUTIVE COMMITTEE MEETING

Monday, January 4, 2016

4:00 p.m. at CVRPC's Office

AGENDA

1. **4:00** Public Comment
2. **4:05** Adjustments to the Agenda
3. **4:10** November 30, 2015 meeting minutes* (attached)
4. **4:15** Financial Report (attached)
5. **4:20** Executive Director Report (attached)
6. **4:30** Authorize signing of contracts* (attached):
 - a. *Dept. of Housing & Community Development, CDBG Flood Inundation Study* – Complete a hydrologic analysis and develop flood inundation data and maps for the Mad and Winooski Rivers in Duxbury, Fayston, Middlesex, Moretown, Waitsfield, Warren and Waterbury. Action is Resolution for Grant Agreement Award Authority.
7. **4:35** FY16 Budget Restructure Format & Project/Program Descriptions (attached)
8. **4:50** VAPDA Amicus Brief Participation Request* (attached)
9. **5:10** January 12, 2016 CVRPC Meeting Agenda
 1. **7:00** Public Comments
 2. **7:05** Adjustments to the Agenda
 3. **7:08** December 8, 2015 meeting minutes (attached)
 4. **7:10** Staff Reports (attached) and any updates
 5. **7:15** Executive Director's report
 6. **7:20** Central VT Economic Development Corporation report
 7. **7:25** Review and acceptance of the Housing Element for the 2016 Regional Plan
 8. **9:00** Adjournment
10. **5:15** Possible Executive Session - Personnel [1 V.S.A Chapter 5, §313(a)(3)]* (attached)
11. **5:30** Adjourn

Future Executive Committee agenda items: CVRPC Committee structure and ex-officio members

*Denotes anticipated action item

NEXT MEETING: Monday, February 1, 2016 at 4:00 p.m.

Executive Committee

DRAFT Minutes

November 30, 2015

Present were: J. Potter, T. Ruth, B. Atwood, L. Hebert, D. Strong, B. Waninger, and L. Emery. Steve Whitaker was present as a member of the public.

S. Whitaker briefed members on the telecommunication planning that is happening in Vermont and the ability of municipalities to form a union municipal district for telecommunication. He expressed interest in having CVRPC look at the feasibility of assisting in developing a union municipal district for Central Vermont. Members expressed their concern about available staff time to do this work and the interest level of municipalities. Montpelier is currently a member of ECFiber, which is a union municipal district. Staff suggested that CVRPC staff review the legislation (Act 41 from the 2014 legislative session) and see where the telecommunication goals may or may not match with the Regional Plan goals and whether there are goals we should be sure to include in the Utilities, Facilities, and Services Element of the 2016 Regional Plan.

There were no adjustments to the agenda.

The minutes of the November 2, 2015 Executive Committee meeting were accepted as written with one abstention.

Financial Report for November 2015: Looking at the FY 16 budget, we anticipate a fund balance increase of \$48,906 based on the number of anticipated contracts and grants. At the end of November, revenue exceeds expenses by \$80,854. It should be noted that this includes the quarterly advance received for the legislative appropriation provided to CVRPC through the Agency of Commerce and Community Development. We should be able to rebuild our reserves and recapture prior years' indirect costs. We are fully staffed now, but were not earlier in the fiscal year. Some of the revenue projected for FY 16 may actually be earned in FY 17 because some of the work couldn't be accomplished while under-staffed. We monitor grants carefully, but there is always the risk of over-runs, though they are not expected to happen.

Executive Director's Report: B. Waninger updated members on the latest happenings noting that new phones will be installed December 8 and we will return to having voice mail. VTrans is considering implementing an administrative fee for all new curb cuts to recoup the cost of administering the permits. At the GIS Users Conference, D. Currier presented on the Mad River transportation resiliency study and received praise from GIS folks in the NE area who found the study to be innovative and informative. It's possible that Plainfield may be able to use green infrastructure to help reduce the phosphorus going into their wastewater treatment plant. D. Currier shared with them green infrastructure methods that have worked elsewhere. Our Brownfields program will be starting up in December. There are several sites in Central Vermont that have potential to apply for funds for assessment (sites in Woodbury, Barre Town, Montpelier, and Northfield). We will use a pre-qualified consultant process to get those consultants who have certain skills and experience that may apply to a particular site. This is the process EPA prefers precisely because the consultant with the appropriate experience can be awarded the site that needs that experience.

Personnel Policy Interim Change to Compensatory Time: CVRPC's current policy on compensatory time for employees does not pay comp time that's accrued and not used, but in some instances a grant may be invoiced for the time worked. Federal regulations require that each grant using an actual-cost system pay the costs associated with the work of the grant. For an interim solution, it is being recommended that the Personnel Policy sentence on "Compensatory time for exempt personnel will not be paid in lieu of time off" be deleted; and the following be added:

If a particular employee's compensatory time accrues to 10 hours for any reason, the employee and the Executive Director will meet to determine how the compensatory time may be taken. Exempt employees, upon termination or

resignation, will be paid for any earned, but unused compensatory time at a rate of one hour per every hour of compensatory time remaining.

• The final sentence of the existing policy on compensatory time which states "Exempt employees, upon termination or resignation, will not be paid for any earned but unused compensatory time" will also be deleted.

The interim policy will be reviewed by the Personnel Policy Committee when they do their review of the final draft of the policies.

• It was moved, seconded, and unanimously approved, to adopt the Executive Director's recommendation on compensatory time as an interim Personnel Policy.

Personnel Policy Review Committee Update: Committee members have completed the first review of the Policies and are now looking at the complete package in its entirety. They will probably have a final draft for Executive Committee review in the spring of 2016, but need to bring it to staff for their input, too.

Regional Plan Housing Element: The Draft Regional Plan Review Committee did not have a quorum and so couldn't have a motion to put the Housing Element on the Commission meeting agenda. The Executive Committee is being asked to recommend that the Housing Element be reviewed and endorsed at the December 8 Commission meeting. It was agreed to place the Housing Element on the December 8 agenda.

The Draft Regional Plan Review Committee needs an additional member. D. Rubin resigned. Staff will contact Capstone to see if they have someone who would be interested in serving on the Committee and a recommendation will be made to the Executive Committee at its January 4, 2016 meeting.

Executive Director - 90 Day Probationary Period: The Personnel Policies don't say that after the probationary period that there is an evaluation; however, the Executive Director inquired how the Executive Committee would like to proceed. (During the discussion, it was suggested that in the revised Personnel Policies, the 90 day probationary period be changed to six months.) It was agreed that the Executive Committee and the Executive Director should have an informal review with the Executive Director presenting highlights for discussion. The review will be scheduled for the January 4, 2016 meeting of the Executive Committee. It was stated that the Executive Director is doing an excellent job.

Central Vermont Regional Planning Commission

November 10, 2015

Draft Minutes

Present were:

Barre City: Janet Shatney

Plainfield: David Strong

Robert Atchinson-absent

Barre Town: Byron Atwood

Roxbury: Gerry D'Amico-absent

Mark Nicholson-absent

Waitsfield: Don La Haye

Harrison Snapp-absent

Berlin: Bob Wernecke

Warren: Camilla Behn

Cabot: Dick Payne

Washington: Gary Winders-absent

Calais: Paul Rose – absent

Waterbury: Steve Lotspeich

John Brabant-absent

Williamstown: Larry Hebert

Duxbury: Brian Fitzgerald

Woodbury:

East Montpelier: Julie Potter-absent

Worcester: Bill Arrand-absent

Jack Pauly-absent

Fayston: Carol Chamberlin-absent

Marshfield:

Middlesex: Ron Krauth

Montpelier: Tina Ruth

Kim Cheney-absent

Moretown: Dara Torre-absent

Northfield: Laura Hill-Eubanks

Orange: George Malek

Staff: B. Waninger, L. Emery, S. Gladczuk

Others:

The meeting was called to order at 7:00 p.m. There were no members of the public in attendance. It was noted that Sam Andersen of the Central VT Economic Development Corporation was out of the state and would not be making a report.

The minutes of the October 13, 2015 Commission meeting were accepted as written.

Review and Acceptance of the revised Transportation Element for the 2016 Regional Plan: The motion to accept the Element was tabled at the October 13 meeting to tonight's meeting so that the Transportation Element could be reformatted and revised as recommended October 13. The tabled motion was "to accept the Transportation Element for the 2016 Regional Plan."

In reviewing the Executive Summary of the Element, it was noted that the public transit plan will be updated through work of the Green Mountain Transit Agency. Most of the high accident locations in the Central Vermont Region are located in the more urban areas of the Region. Park and ride lot usage has increased.

It was suggested that each map in the Element have a link to the website where a larger version of the map can be viewed so one can see the roads and road names more clearly.

It was queried whether the recommendations in the aviation section should be stronger to encourage greater use of the Knapp Airport. It was noted that Knapp Airport needs to develop a long range master plan and that could be added to the recommendations.

It was asked what the environmental impact is of higher traffic volume in the village areas and the increased noise level; would lowering the speed limit reduce the volume of noise. It was stated that vehicle miles traveled have been relatively level for the last four years. It may be that traffic volume from heavier vehicle types has increased and that

could be the cause of the increased noise level. The traffic volume data from VTrans is fairly extensive and would demonstrate any increase from heavier vehicles.

It was moved and seconded to remove the tabled motion from the October 13, 2015 meeting. The motion was unanimously approved.

It was stated that the revised Transportation Element is good and that it should be accepted.

It was moved and seconded to accept the revised Transportation Element for the 2016 Regional Plan. The motion was unanimously approved.

Executive Director's Report: B. Waninger summarized a presentation made by economists on the future of Vermont's economy as a result of Vermont's demographics. We have an aging population and a work force with insufficient skills for what will be needed into the future. Some countries are recruiting immigrants with specific skills as part of their work force. Vermont may need to look at what its labor skills are and what will be needed into the future and begin to develop appropriate training for the needs. This would be looking ahead ten years or so to forecast what will be needed and how to get there. This will require a full discussion, including Federal immigration policy changes, by various organizations, partners and agencies.

The Clean Water Fund Board recommended a spending plan to implement the Lake Champlain Basin Total Maximum Daily Load (TMDL) plan to decrease the amount of phosphorous in the Lake. The Winooski River is part of the Lake Champlain basin and feeds into the Lake. The Agency of Natural Resources has a fact sheet (Vermont Clean Water Fund Board Proposed Priorities) highlighting the various responsibilities and summarizing the Plan. This list includes what municipalities will be asked to do and things such as general permits that municipalities will need. There has not yet been rulemaking regarding the exact implementation of these changes, but that will be happening soon. Municipalities will be required to have a general road permit by 2021. CVRPC will assist towns with identifying where road erosion is occurring by completing our road erosion inventories for the remaining towns. CVRPC can also assist towns with developing grant applications for the funding that will be attached to cleaning up the Lake Champlain basin. Staff will be following the development of this process and the rulemaking as it moves forward.

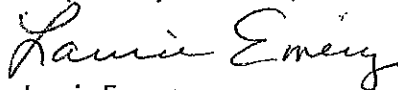
There's an article in the November 10, 2015 Times Argus on the meeting of the Barre Area Development Corporation and the discussion on Criterion 9L for Act 250 land use permits regarding scattered development. It is being discussed that this change to 9L is a broad rule that needs clarity. The Agency of Natural Resources and the Natural Resources Board are developing a guidance document on how to interpret and apply the revised 9L.

A concern was raised about the plans of the Central Vermont Solid Waste Management District to build a facility to process recycling and trash. The District does not yet have a business plan for this development, but is stating that they may need to charge an increased per capita fee of \$3.00. Although this development is related to Act 148, mandatory recycling and composting, the cost of the CVSWMD's proposal seems excessive. It was suggested that towns take a good look at the feasibility and cost and provide input to the Solid Waste District.

The next meeting of the Commission is scheduled for December 8, 2015.

The meeting was adjourned at 8:23 p.m.

Respectfully submitted,


Laurie Emery



Central Vermont Regional Planning Commission

TO: Executive Committee
FROM: Laurie Emery
DATE: December 30, 2015

RE: December 30, 2015 Financial Statement

Our fund balance/equity is \$144,015.18 with our year to date *net* income at \$57,673.33 against the budget projection of \$48,906.00.

We have \$106,465.57 in the bank; \$51,126.80 in accounts receivable and \$35,296.80 in payables (State withholding, health savings account withholding, accrued vacation at \$21,665, accrued expenses at \$8,583 and pension liability at \$3,341).

We will be invoicing the next quarterly payment from the Agency of Commerce and Community Development for the legislative appropriation on January 1, 2016.

We have received or invoiced for 45% of our budgeted income and have spent 41% of our budgeted expenditures and are through 50% of our fiscal year.

We are healthy and very busy!

8:23 AM

12/30/15

Accrual Basis

Central Vermont Regional Planning Commission
Balance Sheet
As of December 30, 2015

	<u>Dec 30, 15</u>
ASSETS	
Current Assets	
Checking/Savings	
1000 - Checking	95,280.86
1055 - CD Chittenden	11,183.82
1070 - Peoples - CDBG Disaster Recover	0.89
Total Checking/Savings	106,465.57
Accounts Receivable	
1100 - Accounts Receivable	51,126.80
Total Accounts Receivable	51,126.80
Other Current Assets	
1120 - Prepaid Payroll	3,915.76
Total Other Current Assets	3,915.76
Total Current Assets	161,508.13
Other Assets	
1700 - Deposits	4,415.00
1960 - Other Prepaid Expense	13,388.85
Total Other Assets	17,803.85
TOTAL ASSETS	<u>179,311.98</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
2110 - State withholding	1,274.37
2120 - HSA deductible withholding	432.70
2140 - Accrued Vacation	21,665.28
2160 - Accrued Expenses	8,583.05
2200 - Pension Liability	3,341.40
Total Other Current Liabilities	35,296.80
Total Current Liabilities	35,296.80
Total Liabilities	35,296.80
Equity	
3100 - Fund Balance	354,952.91
3900 - Retained Earnings	-237,724.26
Net Income	26,786.53
Total Equity	144,015.18
TOTAL LIABILITIES & EQUITY	<u>179,311.98</u>

8:25 AM

Central Vermont Regional Planning Commission

Profit & Loss Budget vs. Actual

July 1 through December 30, 2015

12/30/15

Accrual Basis

	CVRPC			
	Jul 1 - Dec 30, 15	Budget	\$ Over Budget	% of Budget
Income				
1145 · Prepaid REVENUE	0.00	0.00	0.00	0.0%
4040 · US Treasury	0.00	0.00	0.00	0.0%
4042 · Treasury Refund	0.00	0.00	0.00	0.0%
4045 · CDBG Admin	0.00	750.00	-750.00	0.0%
4046 · EDA Resiliency	0.00	0.00	0.00	0.0%
4050 · DCA Core	136,126.50	272,253.00	-136,126.50	50.0%
4051 · Chapter 117	0.00	0.00	0.00	0.0%
4055 · Brownfields State Admn-DHCA	0.00	0.00	0.00	0.0%
4060 · VDH Healthy Communities	0.00	0.00	0.00	0.0%
4065 · Food Systems Council pass thru	0.00	0.00	0.00	0.0%
4080 · Montpelier DRB	0.00	0.00	0.00	0.0%
4085 · Mtlpr Open Space Admn	0.00	0.00	0.00	0.0%
4100 · Cross VT Trail	0.00	0.00	0.00	0.0%
4110 · Cross VT Trail reimbursement	0.00	0.00	0.00	0.0%
4112 · Trail Finder/Local Motion	0.00	0.00	0.00	0.0%
4146 · MRVPD Admn	1,979.15	4,750.00	-2,770.85	41.7%
4150 · RC&D Admn	0.00	0.00	0.00	0.0%
4185 · WBRD Admn	2,600.00	2,600.00	0.00	100.0%
4190 · SWCRPC Forest	0.00	0.00	0.00	0.0%
4192 · Urban Forest Grant	1,000.00	0.00	1,000.00	100.0%
4195 · VERI TRORC	1,036.47	931.00	105.47	111.3%
4200 · Town Dues	0.00	0.00	0.00	0.0%
4201 · TownDues FY 16	70,540.80	71,537.00	-996.20	98.6%
4220 · ECO Northfield SW	18,570.00	0.00	18,570.00	100.0%
4225 · ERP Northfld Village SW	0.00	0.00	0.00	0.0%
4230 · RERP DPS	0.00	0.00	0.00	0.0%
4235 · CDBG 16	3,000.00	0.00	3,000.00	100.0%
4240 · DEMHSDPS MOU	501.06	0.00	501.06	100.0%
4250 · Barre Town CDBG	0.00	0.00	0.00	0.0%
4300 · Reparative Justice Grant	0.00	0.00	0.00	0.0%
4350 · Central VT Food System	0.00	0.00	0.00	0.0%
4400 · Brownfields Grant	0.00	80,000.00	-80,000.00	0.0%
4410 · Brownfields #2	0.00	0.00	0.00	0.0%
4410Rut · EPA Brown Rutland RPC	0.00	0.00	0.00	0.0%
4420 · Petroleum Grt, EPA	0.00	0.00	0.00	0.0%
4425 · Brownfields Rev. State	0.00	0.00	0.00	0.0%
4500 · DOE Energy grant	0.00	0.00	0.00	0.0%
4510 · ACRPC Energy Sub	0.00	0.00	0.00	0.0%
4520 · Energy - DOE - Two Rivers RPC	0.00	0.00	0.00	0.0%
4550 · DPS EECBG energy	0.00	0.00	0.00	0.0%
4560 · Efficiency Vermont	0.00	0.00	0.00	0.0%
4600 · Miscellaneous Income	0.00	0.00	0.00	0.0%
4640 · Broadband Contract	0.00	0.00	0.00	0.0%
4650 · VEM	0.00	0.00	0.00	0.0%
4655 · VEM-MMMS FHAR	0.00	0.00	0.00	0.0%
4660 · LCPC/PDM now NWRPC	1,950.00	0.00	1,950.00	100.0%
4665 · SWCRPC Debris Mgmt	0.00	0.00	0.00	0.0%
4668 · NRPC PDM-C grant	260.00	0.00	260.00	100.0%
4670 · HMPG CCRPC	0.00	29,580.00	-29,580.00	0.0%
4671 · EMPG CVRPC	19,096.31	58,894.00	-39,797.69	32.4%
4672 · HMGP - Statewide	0.00	0.00	0.00	0.0%
4675 · EMPG CCRPC	0.00	0.00	0.00	0.0%
4678 · EMPG CCRPC 2013	0.00	0.00	0.00	0.0%
4679 · EMGP CCRPC 2014	0.00	0.00	0.00	0.0%
4680 · NFIP flood review	0.00	0.00	0.00	0.0%
4682 · CDBG-DR-RPC	0.00	0.00	0.00	0.0%
4685 · Green Infrastructure ccrpc rev	5,355.88	4,952.00	403.88	108.2%
4700 · Interest Income	4.66	0.00	4.66	100.0%
4720 · CVRegional Cooperative Admn	0.00	0.00	0.00	0.0%
4725 · Plainfield CDBG	750.00	0.00	750.00	100.0%
4730 · Forest Stewardship LCPC	1,465.00	1,000.00	465.00	146.5%
4745 · Waterbury ERP FEH GIS	12,820.00	0.00	12,820.00	100.0%

8:25 AM

Central Vermont Regional Planning Commission

Profit & Loss Budget vs. Actual

July 1 through December 30, 2015

12/30/15

Accrual Basis

CVRPC				
	Jul 1 - Dec 30, 15	Budget	\$ Over Budget	% of Budget
4749 · GIS 604B LCPC	0.00	0.00	0.00	0.0%
4749.5 · GIS 604B ACRPC	2,000.00	4,000.00	-2,000.00	50.0%
4750 · GIS Project	4,333.00	10,655.00	-6,322.00	40.7%
4751 · GIS Federal Income.	0.00	82,625.00	-82,625.00	0.0%
4752 · GIS fluvial	0.00	0.00	0.00	0.0%
4753 · GIS Critical Facilities	0.00	0.00	0.00	0.0%
4754 · ANR/PDM fluvial	0.00	0.00	0.00	0.0%
4755 · NW Growth Study	0.00	0.00	0.00	0.0%
4756 · GIS FEH State/DEC	0.00	0.00	0.00	0.0%
4757 · CCMPO growth study 2009	0.00	0.00	0.00	0.0%
4758 · GIS LID/ARRA	0.00	0.00	0.00	0.0%
4759 · Sketch Up	0.00	0.00	0.00	0.0%
4800 · Safe Routes to School	0.00	0.00	0.00	0.0%
4810 · Water Quality	0.00	17,000.00	-17,000.00	0.0%
4907 · Lamoureux Dickinson TPI	0.00	0.00	0.00	0.0%
4908 · GO Vermont, VTrans	0.00	0.00	0.00	0.0%
4909 · Transportation	104,218.60	206,948.00	-102,729.40	50.4%
4910 · VTrans traffic counts	0.00	0.00	0.00	0.0%
4910.5 · Better Back Roads	0.00	16,000.00	-16,000.00	0.0%
4911 · Flood Recovery, VTrans	0.00	0.00	0.00	0.0%
4920 · VAPDA Chapter 117	0.00	0.00	0.00	0.0%
4980 · Misc. Income	0.00	0.00	0.00	0.0%
Total Income	387,607.43	864,475.00	-476,867.57	44.8%
Cost of Goods Sold				
50000 · Cost of Goods Sold	0.00	0.00	0.00	0.0%
Total COGS	0.00	0.00	0.00	0.0%
Gross Profit	387,607.43	864,475.00	-476,867.57	44.8%
Expense				
CDBG-	0.00	0.00	0.00	0.0%
5000 · Personnel	178,453.60	412,174.00	-233,720.40	43.3%
5009 · Trans Personnel	0.00	0.00	0.00	0.0%
6000 · Flex Benefits	0.00	0.00	0.00	0.0%
6005 · ED Job Search	0.00	3,000.00	-3,000.00	0.0%
6010 · Health Insurance	31,928.71	82,020.00	-50,091.29	38.9%
6011 · Life Disability Insurance	1,452.02	4,471.00	-3,018.98	32.5%
6012 · CVRPC FICA	13,074.42	32,592.00	-19,517.58	40.1%
6015 · Workmen's comp	621.00	2,500.00	-1,879.00	24.8%
6016 · MRVPD Insurance	0.00	0.00	0.00	0.0%
6016.5 · MRVPD staff travel	34.50	0.00	34.50	100.0%
6017 · Unemployment Comp	1,354.00	750.00	604.00	180.5%
6018 · Pension Plan	5,154.72	11,528.00	-6,373.28	44.7%
6019 · RC&D Insurance	0.00	0.00	0.00	0.0%
6023 · Cleaning	840.00	1,800.00	-960.00	46.7%
6025 · Consolidation Committee	0.00	0.00	0.00	0.0%
6027 · Trash/Recycle	0.00	0.00	0.00	0.0%
6030 · Rent/Utility Deposits	0.00	0.00	0.00	0.0%
6040 · Rent	17,107.90	41,059.00	-23,951.10	41.7%
6050 · Telephone	1,987.65	5,100.00	-3,112.35	39.0%
6055 · Consultant studies, non-VTrans	0.00	0.00	0.00	0.0%
6060 · Postage	1,850.00	2,530.00	-680.00	73.1%
6065 · Food systems Council expense	50.00	0.00	50.00	100.0%
6070 · Dues/Pubs/Subs	2,047.62	4,810.00	-2,762.38	42.6%
6080 · Staff Education	760.00	1,500.00	-740.00	50.7%
6085 · ACCD - other	1,351.51	0.00	1,351.51	100.0%
6089 · Barre Town man hole map	326.60	0.00	326.60	100.0%
6090 · Staff Travel	158.63	8,000.00	-7,841.37	2.0%
6090.5 · Staff Travel - Admin	651.90	0.00	651.90	100.0%
6091 · Flood recovery	0.00	0.00	0.00	0.0%
6092 · EMPG travel etc	424.25	0.00	424.25	100.0%
6093 · PlainfieldCDBG	11.50	0.00	11.50	100.0%

8:25 AM

Central Vermont Regional Planning Commission

Profit & Loss Budget vs. Actual

July 1 through December 30, 2015

12/30/15

Accrual Basis

	CVRPC			
	Jul 1 - Dec 30, 15	Budget	\$ Over Budget	% of Budget
6094 · RERP	79.35	0.00	79.35	100.0%
6095 · Disaster Recovery	0.00	0.00	0.00	0.0%
6096 · Green Infrastructure ccrpc	0.00	0.00	0.00	0.0%
6100 · Office Supplies	2,742.94	4,000.00	-1,257.06	68.6%
6115 · Copier Lease Payments	2,550.00	5,550.00	-3,000.00	45.9%
6116 · Copier extra copies	129.05	0.00	129.05	100.0%
6117 · Copier property tax	98.36	0.00	98.36	100.0%
6120 · Commission Meetings	1,824.67	5,400.00	-3,575.33	33.8%
6130 · Home Energy Challenge - VEIC	0.00	0.00	0.00	0.0%
6140 · Liability Insurance	461.00	1,576.00	-1,115.00	29.3%
6150 · Mapping/Printing	0.00	0.00	0.00	0.0%
6160 · Workshops	0.00	1,200.00	-1,200.00	0.0%
6170 · Miscellaneous	0.00	0.00	0.00	0.0%
6180 · NRPC PDM-C	45.43	0.00	45.43	100.0%
6185 · ECO-Geo-Waterbury	0.00	0.00	0.00	0.0%
6188 · Clean Water	113.83	0.00	113.83	100.0%
6190 · Northfield ECO SW	31,904.65	67,662.00	-35,757.35	47.2%
6195 · Northfld Village SW ERP	0.00	0.00	0.00	0.0%
6250 · Benefit Strategies Cost	0.00	0.00	0.00	0.0%
6320 · VEM/fluviol geo contractual	0.00	0.00	0.00	0.0%
6330 · GIS Eqpt/Software	3,600.00	3,700.00	-100.00	97.3%
6340 · GIS Consultants	0.00	0.00	0.00	0.0%
6350 · GIS Supplies	0.00	1,200.00	-1,200.00	0.0%
6352 · River Debris Grant	0.00	0.00	0.00	0.0%
6355 · GIS Computer Lease	0.00	0.00	0.00	0.0%
6358 · Growth Study	0.00	0.00	0.00	0.0%
6370 · Fluvial geo studies/intern	0.00	0.00	0.00	0.0%
6380 · Local Motion Trail grant	0.00	0.00	0.00	0.0%
6400 · Regional Plan	841.46	8,000.00	-7,158.54	10.5%
6450 · East Montpelier MPG	0.00	0.00	0.00	0.0%
6500 · DOE Energy Audit Expense	0.00	0.00	0.00	0.0%
6510 · DOE Energy WX reimburse towns	0.00	0.00	0.00	0.0%
6520 · Energy-DOE-Two Rivers RPC	0.00	0.00	0.00	0.0%
6682 · CDBG-DR-RPC TA	0.00	0.00	0.00	0.0%
6685 · Green Infrastructure CCRPC Exp	51.93	0.00	51.93	100.0%
66900 · Reconciliation Discrepancies	0.00	0.00	0.00	0.0%
6730 · Forest Stewardship exp	39.10	0.00	39.10	100.0%
6745 · Waterbury ERP FEH GIS expense	0.00	0.00	0.00	0.0%
6750 · Two Rivers VERI	0.00	0.00	0.00	0.0%
6800 · Interns	0.00	0.00	0.00	0.0%
6820 · Equipment/Server	0.00	5,500.00	-5,500.00	0.0%
6821 · Equipment installation	0.00	0.00	0.00	0.0%
6825 · SafetyNet/server maintenance	2,490.00	0.00	2,490.00	100.0%
6850 · CVRPC Audit	6,000.00	12,500.00	-6,500.00	48.0%
6855 · Legal Assistance	0.00	0.00	0.00	0.0%
6860 · Government Relations	1,363.64	2,500.00	-1,136.36	54.5%
6880 · Legal	0.00	0.00	0.00	0.0%
6885 · Website development	0.00	0.00	0.00	0.0%
6999 · GO Vermont	0.00	0.00	0.00	0.0%
7000 · Transportation Direct	14,610.64	18,904.00	-4,293.36	77.3%
7001 · Safe Routes to School, VTrans	0.00	0.00	0.00	0.0%
7100 · XVermont Trail	0.00	0.00	0.00	0.0%
7200 · Energy Program - DPS	0.00	0.00	0.00	0.0%
7300 · WC Reparative Justice	0.00	0.00	0.00	0.0%
7400 · Brownfields expense	384.36	64,043.00	-63,658.64	0.6%
7401 · Brownfields Travel	963.16	0.00	963.16	100.0%
7410 · Brownfields Grt #2	0.00	0.00	0.00	0.0%
7410Rut · EPA Brown Rutland RPC \$	0.00	0.00	0.00	0.0%
7420 · Petroleum Grt	0.00	0.00	0.00	0.0%
7425 · Brownfields State	0.00	0.00	0.00	0.0%
7500 · Reparative Justice	0.00	0.00	0.00	0.0%
7600 · CV Cooperative	0.00	0.00	0.00	0.0%
7800 · contingency	0.00	0.00	0.00	0.0%

8:25 AM

12/30/15

Accrual Basis

Central Vermont Regional Planning Commission

Profit & Loss Budget vs. Actual

July 1 through December 30, 2015

	CVRPC			
	Jul 1 - Dec 30, 15	Budget	\$ Over Budget	% of Budget
8000 - Equipment Reserve	0.00	0.00	0.00	0.0%
Total Expense	329,934.10	815,569.00	-485,634.90	40.5%
Net Income	57,673.33	48,906.00	8,767.33	117.9%

Executive Director's Report

December 29, 2015

Legislation: Enabling RPC Transition to Council of Governments

In the 2014 Legislative session, H.249 was introduced to enable Regional Planning Commissions (RPCs) to convert to a Council of Government (COG). COGs have been established nationwide to provide better and a more diverse set of services for member municipalities. They can explicitly and more easily enter into voluntary formal agreements to share or provide municipal services and programs and their full costs. The COG structure also assists groups of municipalities to better manage emerging challenges.

COGs would assume the same RPC responsibilities currently in statute and would assume the existing contractual obligations of the RPC. Each regional commission, through a super majority vote of 60% of the RPC's Board of Commissioners as well as the governing bodies of its member municipalities, would have the option of creating a COG. The COG would be responsible for the execution and management of services and programs on behalf of the municipalities. Because municipalities would be entering into financial relationships with one another and the COG, municipal representation on the COG should include a standard for local elected official participation on the COG Board. Based on models in other states, it works best if the municipal representative is a member of the local legislative body.

A COG would have no taxing authority or power of eminent domain. The only services beyond current RPC services will be those which municipalities vote to provide and fund. The decision to participate in or purchase a particular service would be decided by each municipality's elected body and not imposed by the other member municipalities or the COG.

The role of Vermont's Regional Planning Commissions is an evolutionary story of assisting municipalities to address varied and increasing areas of responsibility.

1980s - land use planning through municipal and regional plans, local bylaws, and municipal & community infrastructure development

1990s – the transportation planning initiative gave municipalities a voice in the state transportation system process

2000s – emergency management planning; water quality activities begin with river movement and streambank erosion; brownfield redevelopment emerges

2010s – water quality activities transition to roads, agriculture and the built environment;
health, energy, and community infrastructure emerging as issues

2020s – inter-municipal services???

Enabling a COG structure sets the stage for municipalities to use RPCs for shared-service activities.

Attachment D

Other Grant Agreement Provisions

1. **Work Product Clause:** This clause shall replace item #12 on page 1 of this agreement. The parties agree that ownership of all data, papers, reports, forms, or other material collected or produced by the Grantee, under this agreement, (the "work product") shall belong to the Grantee. Upon a request made by the State, the Grantee shall provide, free of cost, copies of all such work product no later than 30 days from the date of the request. The State shall have a nonexclusive, nontransferable, irrevocable, royalty free paid-up license to use or have used the work product for or on behalf of the State during the pendency of the agreement and thereafter. The State may provide the work product to its contractors, grantees, community partners, and to other local, state, and federal governmental entities for their non-commercial use.
2. **Erosion Prevention and Sediment Control:** All aspects of the project involving earth disturbance shall, at a minimum, comply with the requirements listed within the "Low Risk Site Handbook for Erosion Prevention and Sediment Control," available at:

http://www.vtwaterquality.org/stormwater/docs/construction/sw_low_risk_site_handbook.pdf

Projects disturbing more than 1 acre must seek coverage under the Vermont Construction Stormwater General Permit 3-9020. For more information, see

http://www.vtwaterquality.org/stormwater/htm/sw_cgp.htm

2. **References Cited:** Below is a list of references cited in Attachment A:
ERP Project Design Terminology and Guidance, available at:

<http://www.watershedmanagement.vt.gov/erp/docs/ERPDesignTerminologyandGuidance.pdf>

Vermont Agency of Natural Resources Winooski River Basin Water Quality Management Plan, May 2012, available at:

http://www.watershedmanagement.vt.gov/mapp/docs/mp_basin8final.pdf

Certificate as to Easements and Rights of Way, available at:

ftp://ftp.anr.state.vt.us/FED_Design_Review/ERPGrants/



State of Vermont
Department of Housing and Community Development
Deane C. Davis Building – 6th Floor [phone] 802-828-3211
One National Life Drive
Montpelier, VT 05620-0501

*Agency of Commerce and
Community Development*

November 25, 2015

Bonnie Waninger, Executive Director
CVRPC
29 Main Street, Suite 4
Montpelier VT 05602-2952

RE: Central Vermont Regional Planning Commission; 07110-DR-PG-2012-CVRPC-00018
Grant Agreement Offer

Dear Ms. Waninger:

Enclosed for your consideration is the Grant Agreement between the Central Vermont Regional Planning Commission and this Agency. Please review the offer carefully. **Prior to signing the Grant Agreement your Board of Directors is required to adopt a resolution, (enclosed). This form states the acceptance and responsibility of the terms and conditions of the Grant Agreement and designates the person with the overall responsibility and authority to execute all appropriate documents.** If it is satisfactory, please sign the cover page and return the original copy along with the original of the signed resolution form for processing by December 15, 2015. They should be mailed and not uploaded. The Commissioner will then sign it and a fully executed copy will be uploaded to the Agreement Documents node online. If you would like to revise your grant agreement, please contact me with your comments.

Before a request for funds can be processed, all requirements and special conditions as stated in the Grant Agreement must be satisfied. It is important to understand that some special conditions may have already been met, and if you have any questions in this regard please contact me. We recommend that you review the requirements set out in the Grants Management Guide, paying particular attention to **the chapter on Award Conditions and Executing Your Grant Agreement**, and that you review your Grant Agreement carefully for requirements that may not be in the checklist.

If you have any questions regarding the Grant Agreement please contact me by email Claire.Forbes@vermont.gov or by phone at 828-1256.

Sincerely,

A handwritten signature in cursive script that reads "Claire Forbes".

Claire Forbes
Community Development Specialist

CF:cmf
Enclosures
cc: Laurie Emery, CVRPC



STATE OF VERMONT GRANT AGREEMENT

Part 1 - Grant Award Detail

SECTION I - GENERAL GRANT INFORMATION

¹ Grant #: DR-PG-2012-CVRPC-00018		² Original <input checked="" type="checkbox"/> Amendment # _____	
³ Grant Title: Flood Study			
⁴ Amount Previously Awarded: \$ 0.00		⁵ Amount Awarded This Action: \$ 62,250.00	
⁶ Total Award Amount: \$ 62,250.00			
⁷ Award Start Date: 6/13/2013		⁸ Award End Date: 12/31/2016	
⁹ Subrecipient Award: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			
¹⁰ Vendor #: 43329		¹¹ Grantee Name: Central Vermont Regional Planning Commission (CVRPC)	
¹² Grantee Address: 29 Main Street, Suite 4			
¹³ City: Montpelier		¹⁴ State: VT	
		¹⁵ Zip Code: 05602-2952	
¹⁶ State Granting Agency: Agency of Commerce and Community Development, DHCD			¹⁷ Business Unit: 07110
¹⁸ Performance Measures: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		¹⁹ Match/In-Kind: \$6,250 Description: See Attachment B – Payment Provision and Project Budget, 4. Sources and Uses	
²⁰ If this action is an amendment, the following is amended: Amount: <input type="checkbox"/> Funding Allocation: <input type="checkbox"/> Performance Period: <input type="checkbox"/> Scope of Work: <input type="checkbox"/> Other: <input type="checkbox"/>			

SECTION II - SUBRECIPIENT AWARD INFORMATION

²¹ Grantee DUNS #: 158842195		²² Indirect Rate: N/A		²³ FFATA: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
²⁴ Grantee Fiscal Year End Month (MM format): 6/30		_____% (Approved rate or de minimis 10%)		²⁵ R&D: <input type="checkbox"/>	
²⁶ DUNS Registered Name (If different than VISION Vendor Name in Box 11):					

SECTION III - FUNDING ALLOCATION

STATE FUNDS

Fund Type	²⁷ Awarded Previously	²⁸ Award This Action	²⁹ Cumulative Award	³⁰ Special & Other Fund Descriptions
General Fund	\$0.00	\$0.00	\$0.00	
Special Fund	\$0.00	\$0.00	\$0.00	
Global Commitment (non-subrecipient funds)	\$0.00	\$0.00	\$0.00	
Other State Funds	\$0.00	\$0.00	\$0.00	

FEDERAL FUNDS

(includes subrecipient Global Commitment funds)

Required Federal Award Information

³¹ CFDA #	³² Program Title	³³ Awarded Previously	³⁴ Award This Action	³⁵ Cumulative Award	³⁶ FAIN	³⁷ Federal Award Date	³⁸ Total Federal Award
14.228	Community Development Block Grant- Disaster Recovery	\$0.00	\$62,250.00	\$62,250.00	B-12-DT-50-0001	8/30/2012	\$62,250.00
³⁹ Federal Awarding Agency: U.S. Department of Housing and Urban Development (HUD)			⁴⁰ Federal Award Project Descr: CDBG-DR1				
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:			Federal Award Project Descr:				
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:			Federal Award Project Descr:				
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:			Federal Award Project Descr:				
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:			Federal Award Project Descr:				
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:			Federal Award Project Descr:				
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:			Federal Award Project Descr:				
Total Awarded - All Funds		\$0.00	\$62,250.00	\$62,250.00			

GRANT AGREEMENT # 07110-DR-PG-2012-CVRPG-00018

1. **Parties:** This is a Grant Agreement between State of Vermont Agency of Commerce and Community Development (hereinafter called "State" or "Agency") and Central Vermont Regional Planning Commission with principal place of business at 29 Main Street, Suite 4, Montpelier VT (hereinafter called "Grantee"). It is the grantee's responsibility to contact the Vermont Department of Taxes to determine if, by law, the grantee is required to have a Vermont Department of Taxes Business Account Number. The grantee is required by law to have a Federal ID # and it is # 03-0225677.
2. **Subject Matter:** The subject matter of this Grant Agreement is Community Development Block Grant-Disaster Recovery.
3. **Award Details:** Amounts, dates and other award details are as shown in the attached *Grant Agreement Part 1-Grant Award Detail*. A detailed scope of work covered by this award is described in Attachment A.
4. **Amendment:** No changes, modifications, or amendments in the terms and conditions of this Grant Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Grantee.
5. **Cancellation:** This Grant Agreement may be suspended or cancelled by either party by giving written notice at least 30 days in advance.
6. **Attachments:** This Grant consists of 24 pages including the following attachments that are incorporated herein:

Attachment A – Scope of Work To Be Performed and Special Conditions

Attachment B – Payment Provisions and Project Budget

Attachment C – Customary State Grant Provisions

Attachment D – Other Provisions (CDBG-DR1 Standard Provisions)

Attachment E – Certifications

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS GRANT AGREEMENT.

By the State of Vermont:

By the Grantee:

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: Noelle MacKay, Commissioner
Department of Housing and Community Development
for
Patricia Moulton, Secretary
Agency of Commerce and Community Development

Name: Bonnie Waninger, Executive Director
Central Vermont Regional Planning Commission

SCOPE OF WORK AND SPECIAL CONDITIONS

(A) Definitions - The following definitions shall apply throughout:

Program Delivery: Central Vermont Regional Planning Commission (CVRPC), 29 Main Street, Suite 4, Montpelier, VT 05602-2952 (DUNS # 158842195, Fed ID # 03-0225677)

Consultant: Dubois & King, Inc., PO Box 339, Randolph, VT 05060 (DUNS # 045010253, Fed ID # 03-0224555)

(B) **Project Description:**

The Grantee shall use CDBG-DR1 funds, together with Other Resources, as set out in the *Attachment B – Payment Provisions and Project Budget, 4. Sources and Uses* to conduct a Flood Study of the Mad River and Winooski River to develop flood inundation data. The study is a direct result of the inundation and damage caused by Tropical Storm Irene 2011 and will help guide redevelopment and lead to mitigation actions to reduce risks to public safety and infrastructure in the future. The area under study is along the Mad and Winooski Rivers in the towns of Duxbury, Fayston, Middlesex, Moretown, Waitsfield, Warren and Waterbury and the Village of Waterbury.

Detailed elevation data that meets/exceeds FEMA specifications for elevation data will be used in the creation of the flood inundation data that will also meet or exceed FEMA's specifications for inundation data collection and creation. The inundation data will help the communities in the following ways:

- Understand the extent of flood inundation from various storm events
- Mitigation and Planning - flood risk analyses
- Preparedness - "What-if" scenarios
- Timely Response - tied to real-time gauge and forecast information
- Recovery - damage assessment
- Environmental and Ecological Assessments - wetlands identification and hazardous spill cleanup

(1) **Public Facilities – Planning Only (Activity #6012)**

The Grantee shall use CDBG-DR1 funds together with Other Resources, as set out in the *Attachment B – Payment Provisions and Project Budget, 4. Sources and Uses* to hire a consultant to produce the following Work Products:

- Hydrologic analysis, flood inundation data and maps for study area

(C) **Project Delivery Costs**

The Grantee shall use CDBG-DR1 Funds together with Other Resources, as set out in the *Attachment B, Payment Provisions and Project Budget, 4. Sources and Uses*, for the project delivery of this project. Project Delivery Costs include, but are not limited to, general management, oversight, coordination, and monitoring, in accordance with 24 CFR 570.206.

(D) National Objective

The planning activity meets the requirements at 24 CFR 570.205 and as such the National Objective is presumed to be met as stated at 24 CFR 570.208(d)(4).

Activity	National Objective	Performance Indicator(s)	Proposed
Planning - Public Facility	Urgent Need	Number of Project(s)	1

(E) The following documents shall be filed with the Agency at the times specified:

- (1) Prior to the first requisition of funds, Grantee shall provide evidence of a firm commitment of Other Resources called for by **Attachment B, Section 4**.
- (2) Prior to the first requisition of funds, the Grantee shall provide a copy of the **Contract for Professional Services** with the **Consultant**. Said contract shall carry provisions which incorporate by reference this Agreement, set forth the responsibilities of each party and include all pass-through provisions required under this Agreement.
- (3) Prior to the first requisition of funds, the Grantee shall provide an opinion of counsel, satisfactory to the Agency, that each of the documents provided pursuant to Paragraphs (E)(2) hereof is a legal, valid, and binding instrument, enforceable in accordance with its terms; that such documents meet the requirements of this Agreement and provide for use of the CDBG-DR1 Funds in compliance with this Agreement; and that the **Consultant** has met all conditions required under such documents which must predate the first requisition.
- (4) Prior to executing the **Contract for Professional Services** with the **Consultant**, Grantee shall ensure that the **Consultant** has obtained DUNS number with the D&B D-U-N-S Request Service at <http://fedgov.dnb.com/webform/displayHomePage.do> and Grantee shall provide evidence of said registration to the System for Award Management "SAM" at www.sam.gov to the Agency.
- (5) Within one year of Award Date, a member of the legislative body, municipal CEO, municipal manager/administrator or a municipal designee responsible for housing issues within a municipality such as members of planning commissions, zoning boards of appeal, development review boards or local housing committees, as approved by the legislative body, shall attend an Agency-approved Fair Housing Training.
- (6) Prior to the requisition for the final ten percent (10%) of CDBG-DR1 funds, Grantee shall certify that the **Work Product** as set forth above, has been completed to its satisfaction and copies of all reports and materials produced have been received.
- (7) A complete copy of the **Work Product** shall be filed with the Agency as part of the Final Program Report.

(F) CVRPC must include in the Progress Reports an update on a) its efforts to work and communicate with the communities as the Study is being done and b) the results to date of having the Study incorporated into each community's Hazard Mitigation Plan and their Municipal Plan.

PAYMENT PROVISIONS AND PROJECT BUDGET

1. Payment Requisitions

The Agency will process requisitions on or about the first and fifteenth of the month. Grantee must submit requisitions a minimum of seven (7) business days prior to processing.

Grantee shall submit requisition requests through the Intelligrants Management System to requisition CDBG-DR1 funds. For reimbursement for Grantee's personnel, the supporting documentation must detail the expenditures by identifying the personnel, the time worked, the rate being charged per each respective individual, and a description of the work that was performed. For any other costs that are billed directly to Grantee and for which Grantee is seeking reimbursement under this Grant, Grantee shall provide supporting documentation to identify the sources of the expenditures and attach copies of the supporting invoices from the **Consultant**.

2. Reporting Requirements

The Grantee shall submit Progress and Financial Reports through the Intelligrants Management System **quarterly** to the Agency detailing the status of the Project, and in particular the activities described in Attachment A. The First Reporting period shall end **March 31, 2016** and the report shall be due no later than **April 15, 2016**. All subsequent quarterly reports shall be due no later than fifteen (15) days following the end of the quarter.

The Grantee shall develop an overall financial management system sufficient to demonstrate the tracking of all expenditures and receipts.

On an annual basis Grantee shall provide copies of annual audit reports, contractual obligations and minority business enterprise reports, Section 3 reporting requirements, and Labor Standards.

3. General Provisions

In no event will the total funds provided by the Agency exceed the Total Award. Any additional funds required to complete the activities set forth in this Agreement will be the responsibility of the Grantee.

4. Sources and Uses

The Other Resources total \$6,250, derived as follows:

Other Resources	Type	Amount	Status
Other (Other) - CVRPC work on CDBG-DR Grant	Cash-In-Kind	\$6,250	Committed

Activity	Program Area	Code	VCDP Amount	Other	Total Activity Costs
Planning - Only	Public Facilities	6012	\$60,000	\$6,250	\$66,250
Program Delivery	Public Facilities	IG	\$2,250		\$2,250
Total Costs			\$62,250	\$6,250	\$68,500
Percentage of Total			91%	9%	

5. Funding Sources for Project

Federal Funds: 91%; State/Local funds: 0%; Private Funds: 9%

**STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS (3/1/2015 Version)**

1. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to

cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence

\$1,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
10. **Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance

of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
12. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
13. **Taxes Due to the State:**
 - a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
 - d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
14. **Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:
 - a. is not under any obligation to pay child support; or
 - b. is under such an obligation and is in good standing with respect to that obligation; or
 - c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. **Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
16. **No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
17. **Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
18. **Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.
- Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>
19. **Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
20. **Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
21. **Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.
22. **Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section IX and Bulletin 3.5 Section IV.B.

(End of Standard Provisions)

OTHER PROVISIONS (CDBG-DR1 STANDARD PROVISIONS)

I. Subject Matter:

- (A) This *Agreement* is funded, in whole or in part, with federal funds authorized by Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Public Law 112-55, approved November 18, 2011) through a grant provided to the Agency by the United States Department of Housing and Urban Development ("HUD").
- (B) The Appropriations Act provides for disaster relief of unmet needs, long-term recovery and restoration of housing, economic revitalization, and infrastructure resulting from severe damaging storms that occurred in Vermont between April 23 and September 2, 2011; and declared by the President under Title IV of the Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) in FEMA Disaster Declaration 1995 (April 23-May 9, 2011 flood), FEMA Disaster Declaration 4001 (May 26-27, 2011 flood), and FEMA Disaster Declaration 4022 (August 27-September 2, 2011 Tropical Storm Irene).
- (C) The Secretary of HUD waived specific provisions of the CDBG program and published alternative requirements for the CDBG-DR in the Federal Register, Vol. 77, No. 73, on April 16, 2012. Unless otherwise waived or altered by the Secretary, the statutory and regulatory provisions governing the CDBG program, including Title I of the federal Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 *et seq.* (the "Federal Act"), and its implementing regulations promulgated at 24 C.F.R. Part 570, shall apply to the use of CDBG-DR funds.
- (D) The use of the CDBG-DR funds provided under this *Agreement* is also governed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207, as amended (the "Stafford Act"), and the "Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees," published in the Federal Register, Vol. 76, No. 221, on November 16, 2011.
- (E) Pursuant to Title I of the federal Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 *et seq.* (the "Federal Act"), the State of Vermont has elected to administer the federal program of Community Development Block Grants through the Agency.
- (F) The Agency, in accordance with the Vermont CDBG Disaster Recovery Action Plan approved by HUD on September 5, 2012, will provide CDBG-DR funds to the Grantee to support the Business Assistance Program as detailed in this *Agreement*.

(G) This *Agreement* shall be governed by all applicable provisions, as amended, of Public Law 112-55; Federal Register, Vol. 77, No. 73 (April 16, 2012); Federal Register, Vol. 76, No. 221 (Nov. 16, 2011); the Federal Act; the Stafford Act; the Vermont Community Development Act, 10 V.S.A. chapter 29 (the "State Act"); and the Grants Management Guide, including the Agency Procedures contained therein to the extent such requirements are not waived by the Secretary of the Agency (the "Secretary") as permitted therein.

(H) This *Agreement* shall be governed by all applicable provisions, as amended, contained in the Federal Act, the State Act, and the Grants Management Guide, including the Agency Procedures contained therein, whether specifically referred to in this *Agreement* or not.

II. Obligations of Grantee.

(A) Agreements to be in Writing. The activities required by this Agreement shall be performed by the Grantee or one or more subrecipients, such as a subgrantee or borrower, or one or more third parties such as a contractor or subcontractor, pursuant to one or more written contracts consistent with this Agreement. When the term "subrecipient" is used herein it shall mean a person or entity that receives a subgrant or loan from the Grantee hereunder to contribute to the achievement of the National Objective set out in Attachment A.

(B) Liability of Grantee. The Grantee shall remain fully liable and obligated for compliance with this Agreement notwithstanding the subgranting, lending or contracting with any third party(s). The Grantee shall require any third party to comply with all applicable provisions of this Agreement, shall provide a copy of this Agreement to any such third party, and shall, when appropriate, attach and incorporate by reference this Agreement to any contract with such third party.

(C) Documents. The Grantee understands that the filing of documents with the Agency does not require that the Agency review and comment upon any such documents. It shall be the Grantee's sole responsibility. Filing of such documents with the Agency or use of model documents provided by the Agency shall in no way diminish Grantee's obligations hereunder.

(D) Municipal Policies and Forms.

- (1) Grantee shall have duly adopted municipal policies as set forth below, and shall file copies of such policies with the Agency:
 - (a) Equal Employment Opportunity
 - (b) Fair Housing
 - (c) Use of Excessive Force
 - (d) Use of VCDP Funds for Federal Lobbying

- (e) Drug-Free Workplace
- (f) Code of Ethics
- (g) Subrecipient Oversight Monitoring Policy

The Grantee may have previously adopted the above policies and filed copies of the same with the Agency. No duplicate filing shall be required if Grantee certifies such facts.

- (2) Grantee shall duly adopt and file the following with the Agency: Form PM-1:
Resolution to Accept the Grant Agreement

(E) Public Hearing. If a municipality, the Grantee shall hold a public hearing prior to the Completion Date to afford its residents the opportunity to review and comment on the program results and overall performance. The hearing shall be publicly warned at least fifteen (15) days in advance, stating the purpose of the hearing, with the notice appearing in a newspaper of general circulation in the municipality. Written minutes and a summary of public comments shall be filed with the Agency with the Final Program report.

(F) Publicity. If the Grantee or Subrecipient issues a press release or public communication pertaining to the Project assisted by this Agreement, it shall include a statement that the project is funded by a VCDP grant awarded by the Agency of Commerce and Community Development, and shall reference the Total Award amount. Any construction sign posted at the Project Site shall identify that funding is provided by the U.S. Department of Housing and Urban Development through a VCDP grant awarded by the Agency of Commerce and community Development.

(G) Continuing Obligations. Grantee's obligations under Sections XI (Monitoring and Reporting), XII (Audits), XIII (Completion Certificate) and XIV (Retention of and Access to Records) shall survive the termination of this Agreement.

III. Program Costs.

(A) Allowable Costs. The Grantee may incur only such costs as are reasonable and necessary for the Project and are allocable and allowable under the Agency Procedures, Chapters 5 through 7 and the CDBG Regulations. Expenditures not specifically authorized may not be incurred without prior written approval by the Agency.

(B) Cash-in Kind. Cash and cash-in-kind contributions made by the Grantee shall follow the criteria established by the Agency Procedures, Chapter 8.

(C) Impermissible Expenditures Pending Environmental Review. The Grantee shall not incur costs for Project activities, except as provided in Subparagraph (D) below, until the

Environmental Review required by §104(g) of the Federal Act has been completed and the Agency has issued the "Notice of Release of Funds."

- (D) Allowable Expenditures Pending Grant Agreement. As of the Award Date (Award Start Date), reasonable costs may be incurred for Environmental Studies, Planning, General Administration, Program Engineering and Design, and Public Information. Any Project activities performed by the Grantee in the period between the Award Date and the execution of this Agreement shall be performed at the sole risk of the Grantee.
- (E) Completion Date. All costs other than general administration must be obligated or expended prior to the Completion Date (Award End Date), and must be liquidated or paid within thirty (30) days thereafter. No VCDP funds may be obligated after the Completion Date except for those General Administration activities required to prepare the Final Program Report, the Final Audit Report, and the Closeout Agreement.
- (F) Agency Review of Expenses. At any time during the performance of this Agreement, or upon receipt of the Final Program Report and the Final Audit Report, the Agency may review any or all costs incurred by the Grantee and any or all payments made. Upon such review the Agency shall disallow any items of expense which are determined to be in excess of approved expenditures and shall inform the Grantee of any such disallowance by written notice.
- (G) Disallowance of Expenses. If the Agency disallows costs for which payment has not yet been made, it shall refuse to pay such costs. If payment has been made with respect to costs which are subsequently disallowed, the Agency may deduct and/or withhold the amount of disallowed costs from any future payments under this Agreement or require that such costs be refunded to the Agency.

VI. Requisition of CDBG-DR1 Funds

- (A) CDBG-DR1 funds may be requisitioned as advances and/or reimbursements, except as provided in paragraph (C), below. The Grantee shall establish procedures to ensure that any VCDP funds in excess of \$5,000 are expended within ten (10) calendar days of receipt in Grantee's depository account, and shall ensure that any subrecipient shall conform to such procedures.
- (B) The Grantee shall not requisition CDBG-DR1 funds for amounts that are withheld from contractors or subcontractors to assure satisfactory completion of the work. These amounts may be requisitioned when the Grantee makes final payment, including the amounts withheld.

- (C) The Secretary may suspend the requisition of advances should it be determined that the Grantee is unwilling or unable to establish and comply with procedures to minimize the time period between cash advances and disbursement. Payments to the Grantee shall then be made only as reimbursement for actual cash disbursements.
- (D) The Grantee shall expend CDBG-DR1 funds on a pro rata basis with Other Resources, unless otherwise authorized by the Agency.
- (E) If CDBG-DR1 funds are needed prior to their availability due to CDBG-DR1 requirements or conditions, the Grantee and/or one of the project parties must seek bridge financing to meet any expenses that cannot be delayed. The expenditure of bridge financing must comply with all CDBG-DR1 requirements, including the environmental review process.
- (F) If the project's non-Project Delivery budget comes in under budget, CDBG-DR1 funds in an amount proportionate to the unused portion of the total budget (CDBG-DR1 fund and Other Resources) shall be returned to the Agency. Such amounts may not be reallocated to other activities.
- (G) If the project's Project Delivery budget comes in under budget, the unused portion shall be returned to the Agency. The expenditure of CDBG-DR1 funds for Project Delivery must be maintained at the ratio set out in the Project Budget, Attachment B.

IV. Bank Accounts for CDBG-DR1 Funds.

(A) Depository Accounts.

- (1) Funds disbursed pursuant this Agreement shall be deposited in a separate, non interest-bearing account, dedicated to CDBG-DR1 funds, and held in the name of and under the ownership of the Grantee. Any interest earned on funds in the depository account shall be remitted to the State for subsequent return to the United States Treasury. Funds held in the depository account shall be under the control of the Grantee's treasurer, and shall be paid out only on orders drawn by officials authorized by law to draw such orders.
- (2) Accounts established in the name of the Grantee and into which Program Income or housing rehabilitation escrow funds are deposited shall conform to the requirements of subparagraph (A)(1) of this Paragraph, except that such accounts may be interest bearing.
- (3) All depository accounts shall be fully insured by the Federal Deposit Insurance Corporation (FDIC) or its equivalent. Any balance exceeding such coverage must be collaterally secured by U.S. Government obligations.

(B) Fidelity Bond Requirements. All individuals who are authorized to deposit receipts and/or pay out funds from any of the accounts covered by this Paragraph shall have fidelity bond coverage in an amount commensurate with the total losses which might be incurred.

(C) Other Accounts. The Grantee shall require that accounts involved with the activities covered by this Agreement which are established by Subrecipients or entities retained for the purposes of administration of this grant be secured as required in Subparagraph (A)(3) and that persons who are authorized to make deposits into or pay out funds from any such accounts have fidelity coverage as required in Subparagraph (B).

V. Financial Management.

The Grantee shall establish and maintain a system which assures effective control over and accountability for all funds, property and other assets used for or obtained under this Agreement. Such system shall:

- (A) Maintain separate accounting records and source documentation for the activities funded under this Agreement and provide accurate financial information in the Progress Reports and any other status reports in the form specified by the Agency;
- (B) Provide for accurate, current and complete disclosure of the financial status of the Program and for the expenditure of any Other Resources listed in the Project Budget, Attachment B;
- (C) Establish records of budgets, receipts, and expenditures for each activity and demonstrate the sequence and status of receipts, obligations, disbursements, and fund balance;
- (D) Be consistent with generally accepted accounting principles and support the program and/or single audit(s) requirements set forth in Agency Procedures, Chapter 21; and
- (E) Include a subrecipient monitoring policy that requires the Grantee to exercise oversight monitoring of grant funds that are disbursed to a sub-recipient, to ensure the funds are properly managed (See Agency Procedures, Chapter 19)

VII. Procurement Procedures.

- (A) The Grantee may use established procurement procedures which reflect applicable State and local laws and regulations, provided that these procedures meet the requirements of the standards set forth in the Agency Procedures, Chapter 10. This Agreement and the

Agency Procedures shall in no way be construed to relieve the Grantee of contractual obligations outside of this Agreement.

(B) Conflict of Interest.

(1) In the procurement of supplies, equipment, construction, and services by the Grantee, all members of the legislative bodies, officers or employees of the Grantee, or their designees, Subrecipients, or agents, or other persons who exercise any functions or responsibilities with respect to the program shall be bound by the provisions of Agency Procedures, Chapters 9 and 10.

(2) The Grantee shall include or cause to be included, provisions covering conflict of interest consistent with the requirements of this Paragraph in all contracts with third parties.

(3) The Grantee shall not employ any employee of the Agency.

(C) The Grantee shall be responsible, in accordance with good administrative practices and sound business judgment, for the settlement of any contractual or other issues arising out of procurement obligations set forth herein.

(D) Prior to entering into agreements with third party recipients (contractor, subcontractor, architect, engineer, etc.), the Grantee and any subrecipient (subgrantee/borrower) shall ensure that each third party recipient of the funds provided under this Agreement is not included on the List of Parties Excluded from Federal Procurement or Non-Procurement Programs (www.sam.gov) in accordance with Executive Orders 12549 and 12689; nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment> Documentation of compliance with this requirement shall be kept with other program documents and shall be available for review upon request.

(E) Compliance with Section 3 of the Housing and Urban Development Act of 1968. Grantee and Subgrantees/Borrowers shall ensure that when employment or contracting opportunities are generated because a Covered Project (for more information on what constitutes a Covered Project see link provided below) or activity necessitates the employment of additional persons or the awarding of contracts for work, preference shall be given to low- and very low-income persons or business concerns residing in the community where the project is located. Additional information on Section 3 compliance can be found at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opportunity/section3/section3.

(F) Compliance with Davis-Bacon and Related Acts.

Grantee and Subgrantees shall ensure compliance with the Davis Bacon Act, including its prevailing wage and reporting requirements, for construction contracts paid with funds under this Agreement in excess of \$2,000.

Grantee and Subgrantees shall also ensure compliance with all other applicable federal labor requirements including the Copeland Anti-Kickback Act and the Contract Work Hours and Safety Standards Act. Additional information on these and other applicable Federal Labor Standards Requirements can be found in the Agency's Grants

Management Guide, Chapter 7 at

http://www.accd.vermont.gov/sites/accd/files/Documents/strongcommunities/cd/CDBG-DR1/grants_management/7%20Labor%20Standards.PDF and on HUD's website at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/sech/13441.

VIII. Bonding Requirements.

- (A) For construction or facility improvement where the contract is for less than \$100,000, the Grantee may follow its established procedures. In the event Grantee has no established procedures in place, the requirements of subparagraph (B) hereof shall be met.
- (B) For contracts or subcontracts exceeding \$100,000, the provisions of the Agency Procedures, Chapter 11 on bonding requirements shall be followed. If bonds are required, they shall be in such form and amount as provided in the Agency Procedures, Chapter 11.

IX. Program Income.

Except as may be provided in Special Conditions (Attachment A), Program Income and Unrestricted Revenue generated by the use of funds granted pursuant to this Agreement will be administered in accordance with the policies set forth in Agency Procedures, Chapter 22.

X. Equal Opportunity and Americans with Disabilities Act.

No person shall on the ground of race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any of the activities covered by this Agreement.

XI. Monitoring and Reporting.

- (A) The Grantee shall monitor the activities covered by this Agreement, including those of contractors and subcontractors, to assure that all program requirements are met.

- (B) From time to time, as requested in writing by the Agency, the Grantee shall submit such data and other information as the Agency may require. The Grantee shall submit or cause the submission of progress and financial reports to the Agency in a format prescribed by the Agency and according to the schedule required by the Agency.
- (C) The Final Program Report shall be submitted as the report for the period which ends with the Completion Date. The Grantee shall submit a Final Program Report no later than thirty (30) days following the Completion Date. Evidence of a public hearing held in conformance with Paragraph X of this Agreement shall be filed with the Agency as part of the Final Program Report, which shall consist of, at a minimum, the hearing notice and the minutes taken.

XII. Audit(s).

- (A) Grantees must submit a fully completed and signed Subrecipient Annual Report to the Department of Finance & Management within 45 days after Grantee's fiscal year ends. The form may be downloaded from: <http://finance.vermont.gov>. The report must be completed and signed by the Chief Financial Officer, Controller, Business Manager, Treasurer or other person responsible for the financial records of the organization and submitted to the following address: Department of Finance & Management, Financial Operations Division, 109 State Street, 4th Floor, Montpelier, VT 05609-5901.
- (B) The Grantee shall arrange for an independent financial and compliance audit (or audits) of all CDBG-DR1 costs and activities undertaken during the Period of Performance. In compliance with the Single Audit Act of 1984, as amended, the Uniform Administrative Requirements, Cost Principles, and audit Requirements for Federal Awards, 2 CFR Part 200 (Uniform Guidance, the Compliance Supplement for the Code of Federal Domestic Assistance (CFDA) 14.228, and Agency Procedures, Chapter 21, the Grantee shall determine whether a single audit or a program audit is required.
- (C) The Grantee shall submit to the Agency an Interim Audit Report(s) and/or Final Audit Report covering the Period of Performance under this Agreement. An audit that covers a portion of the Period of Performance, or a portion of all expenditures, is defined as an Interim Audit. A Final Audit is the audit that covers all CDBG-DR1 grant funds; or if there is an Interim Audit, the audit that covers the balance of any remaining unaudited CDBG-DR1 funds through the Completion Date, or beyond if necessary.
- (D) Any contract or Agreement entered into by the Grantee and a Subgrantee shall contain language requiring the Subgrantee to comply with the provisions of the Single Audit Act of 1984, as amended, as well as OMB Circular A-133 (for fiscal years ending before December 25, 2015) or the federal Uniform Guidance, 2 CFR Part 200 (for fiscal years ending on or after December 25, 2015).

- (E) If any expenditure is disallowed as a result of any Interim Audit Report(s) and/or Final Audit Report, the obligation for reimbursement to the Agency shall rest with the Grantee.

XIII. Completion Certificates.

- (A) A Certificate of Program Completion shall be issued to the Grantee when the Agency determines that all required work under this Agreement has been satisfactorily completed, including the execution of a Closeout Agreement if applicable and the submission of the Final Program Report, the Interim Audit Report(s), and/or the Final Audit Report. The Agency must determine that all program and financial compliance issues have been addressed and that the findings and/or concerns, if any, of monitoring reports, program reports, and audit reports have been resolved and cleared in writing.

XIV. Retention of and Access to Records.

- (A) Financial records, supporting documents, statistical records, and all other records pertinent to this Grant shall be retained in accordance with the Agency Procedures, Chapter 3.
- (B) Authorized representatives of the Agency, HUD, the Inspector General of the United States, or the U.S. General Accounting Office shall have access to all books, accounts, records, reports, files, papers, things, or property belonging to, or in use by, the Grantee pertaining to the receipt and administration of CDBG-DR1 funds, as may be necessary to make audits, examinations, excerpts, and transcripts.
- (C) Any contract or Agreement entered into by the Grantee that relates or pertains to this Grant shall contain language comparable to Subparagraph (B) above so as to assure access by an authorized party(s) to the pertinent records of any subrecipient, contractor, or subcontractor.
- (D) The Final Program Report, Interim Audit Report(s) and/or Final Audit Report shall be maintained with other program documents available for public review, and at least one copy must remain in the Grantee's files.

XV. Administrative Sanctions.

- (A) The Grantee shall receive notice from the Agency in the event of a failure to submit a timely progress report. No disbursement of grant funds shall be made if such failure continues after thirty (30) days from the date of notice. The Agency shall, in its discretion, determine whether to disburse funds during the notice period.

- (B) The Grantee shall receive a Notice of Delinquency from the Agency in the event of a failure to submit timely Interim or Final Audits, Final Program Reports, Closeout Agreement Proposals, or Closeout Annual Reports. The Grantee shall not be eligible for further CDBG-DR1 funds if such failure continues after thirty (30) days from the date of notice, and, in addition to the remedies provided under this Agreement, may be subject to any action available to the Agency at law or equity.
- (C) Resolution of Monitoring Findings - The Agency shall notify the Grantee of any issues identified through monitoring by providing a monitoring report containing the Agency's monitoring results, including any Findings or Concerns. No further disbursement of grant funds shall be made under this Agreement until the Agency's Findings and Concerns have been resolved in a manner satisfactory to the Agency. Grantee shall not be eligible for further CDBG-DR1 funds if such resolution is not achieved within thirty (30) days of the date of the monitoring report, and, in addition to the remedies provided under this Agreement, may be subject to any action available to the Agency at law or equity.

XVI. Termination for Convenience.

The Agency and the Grantee may terminate the grant in whole, or in part, when agreed that the continuation of the program would not produce the benefits anticipated hereunder, and shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Agency may allow full credit for non-cancellable obligations, properly incurred prior to termination.

XVII. Suspension or Termination for Cause.

- (A) Upon reasonable notice to the Grantee at any time prior to completion, the Agency may suspend this Agreement in whole or in part, may withhold further payments, or may prohibit the Grantee from incurring additional obligations of CDBG-DR1 funds if it is determined that the Grantee has failed to substantially comply with the conditions of this Agreement or that the continued costs to be incurred will not produce benefits of comparable value. The Agency shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension.
- (B) The Agency may terminate this Agreement at any time prior to completion, after reasonable notice and opportunity for hearing, when it is determined that the Grantee has failed to substantially comply with the conditions of this Agreement or that the continued costs to be incurred will not produce benefits of comparable value. The Agency shall

promptly notify the Grantee, in writing, of the determination and reasons for the termination, together with the effective date.

XVIII. Appeals and Waiver of Enforcement.

- (A) Appeals from the decisions or actions of the Agency may be made to the Secretary through the provisions of the Agency Procedures, Chapter 18.
- (B) No waiver by the Secretary of the right to enforce any provision of this Agreement shall be deemed a waiver of the right to enforce such provision upon subsequent breach or default, nor waiver of the right to enforce any other provision hereof.

XIX. Budget Revisions and Amendments.

- (A) Budget Revisions. The Grantee may, after providing written notice and justification to the Agency, make a one-time revision of the amounts listed in the "VCDP Funds" column of the Description Of Activities (Attachment B), provided that:
 - (1) the aggregate impact is no more than ten (10%) percent of the Maximum Amount, listed as the "Total" item in the "VCDP Funds" column;
 - (2) the Maximum Amount is not increased; and
 - (3) there is no change to budgeted amounts for General Administration or Program Management Activities (indicated by VCDP Code suffix of "13") without prior written approval of the Agency.
- (B) Amendments.
 - (1) Any change or deviation from this Agreement not specifically identified in subparagraph (A) hereof, including extensions of time for completion and budget revisions in excess of ten (10%) percent, shall constitute an amendment of this Agreement and shall only be effective when reduced to writing and signed by or on behalf of the Agency and the Grantee. No more than one amendment for changes which in the view of the Agency are not substantial, shall be permissible. The Agency will not allow any amendment which would substitute the funded activity.
 - (2) The Grantee shall notify the Agency if, through the use of Other Resources, there is an intention to expand, enhance, or add to the scope of the program covered by this Agreement, or if there is a proposal to undertake activities that will have an impact upon the buildings, areas, or activities of this VCDP Grant. The Agency reserves the right to require an amendment to this Agreement if such is deemed necessary.

CERTIFICATIONS AND ASSURANCES

The Grantee hereby certifies and assures that CDBG-DR Funds will be utilized in accordance with all the following, to the extent applicable, and that:

With regard to Legal Authority:

- (1) The legislative body has duly adopted and passed an official act or resolution authorizing the acceptance of and agreement to the conditions and provisions of this *Agreement*, including all understandings, certifications, and assurances contained herein; and designating and authorizing the Chief Executive Officer or designee to execute this *Agreement* and other such documents as may be necessary.

With regard to Debarment, Suspension, Ineligibility and Voluntary Exclusion from Federal Procurement and Non-procurement Programs:

It certifies that:

- (2) The Chief Executive Officer certifies that the Grantee is not listed in the Exclusions portion of Performance Information in the System for Award Management ("SAM") at www.sam.gov, in accordance with Executive Orders 12549 and 12689; nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>. In addition, it certifies that no awards will be made to any subgrantees/borrowers/contractors, or permit any award at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

With regard to Labor, the Grantee further assures that it:

- (3) Will comply with:
 - (a) Executive Order 11246 (Equal Employment Opportunities) as amended by Executive Orders 11375 and 12086 and the regulations issued pursuant thereto [24 CFR 130 and 41 CFR 60]; and
 - (b) Section 3 of the Housing and Urban Development Act of 1968 [12 USC 1701u] as amended, (equal employment and business opportunities) and the regulations at 24 CFR 135.

And if a single project involves eight or more units on contiguous parcels it:

- (4) Will administer, enforce, and comply with:
 - (a) the Davis-Bacon Act [40 USC 276a et seq.];
 - (b) the Federal Fair Labor Standards Act [29 USC 201 et seq.];
 - (c) the Contract Work Hours and Safety Standards Act [40 USC 327-333]; and

- (d) the Copeland Anti-kickback Act of 1934, [18 USC 874 and 40 USC 276c].

With regard to Relocation and Acquisition, the Grantee further assures that it:

- (5) Will comply with:
 - (a) the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, as amended [42 USC 4601 et seq.], referred to as the "Uniform Act;"
 - (b) the implementing regulations of the Uniform Act issued by the Department of Housing and Urban Development (CFR Title 49, Part 24) contained in HUD Acquisition and Relocation Handbook 1378; and
 - (c) the requirements of the Vermont Community Development Disaster Recovery Acquisition and Relocation Policy.

With regard to Equal Opportunity and Fair Housing, the Grantee further assures that it:

- (6) Will affirmatively further fair housing and will comply with Pub. Law 90-284 [Title VIII of the Civil Rights Act of 1968; 42 USC 3601 known as the "Fair Housing Act"], as amended and the regulations issued pursuant thereto [24 CFR 100 to 115].
- (7) Will comply with and will immediately take any measures necessary to effectuate compliance with Pub. L. 88-352 [Title VI of the Civil Rights Act of 1964; 42 USC 2000d] and the regulations at 24 CFR 1.
- (8) Will comply with:
 - (a) Executive Order 11063 as amended by Executive Order 12259 (Leadership and Coordination of Fair Housing in Federal Programs) and the regulations at 24 CFR 100 and 107;
 - (b) Section 109 of the Federal Act [42 USC 5309] and the regulations issued pursuant thereto [24 CFR 570.496(b)];
 - (c) the Age Discrimination Act of 1975 [42 USC 6101 et seq.]; and
 - (d) the Americans with Disabilities Act of 1990 [42 USC 12010-12213; 42 USC 225-611] and the regulations issued pursuant thereto.

Grantee further assures, that it:

- (9) Will comply with the provisions of the Hatch Act [5 USC 1501 et seq.] which limits the political activities of employees.

- (10) Will provide a drug-free workplace according to the requirements set forth in the Drug Free Workplace Act [Public Law 100-690 Title V, Subtitle D, 41 USC 701 et seq.].
- (11) Will comply with the Single Audit Act of 1984, as amended, OMB Circular No. A-133, and the State of Vermont Administration Bulletin No. 5, Certification of Audit Requirement and Schedule of Federal Expenditures.

RESOLUTION FOR DISASTER RECOVERY GRANT AGREEMENT AWARD AUTHORITY

Non-Municipal Awardee

WHEREAS, _____ (hereinafter "Awardee") has received a Grant under the Community Development Block Grant Disaster Recovery (CDBG-DR) Program; and

WHEREAS, the Agency of Commerce and Community Development has tendered a Grant Agreement # _____ to this organization for said funding:

Now, THEREFORE, BE IT RESOLVED as follows:

1. that the Board of Directors of this organization accepts and agrees to the terms and conditions of said Grant Agreement; and
2. that (Name) _____ Title _____
is hereby designated as the person with overall Administrative responsibility for the CDBG-DR activities related to this Grant Agreement; and
3. that (Name) _____ Title _____
who is either the Chief Executive Officer (CEO), is hereby designated as the Authorizing Official (AO) to execute the Grant Agreement and other such Documents as may be necessary to secure these funds.

Passed this _____ day of _____, _____.

BOARD OF DIRECTORS

_____	_____
_____	_____
_____	_____

The above resolution is a true and correct copy of the resolution as adopted at a meeting of the

_____ held on the _____ day of _____, _____.

IN WITNESS WHEREOF, I hereunto set my hand this _____ day of _____, _____.

CENTRAL VERMONT REGIONAL PLANNING COMMISSION

FY16 Mid-Year Budget Adjustment

Adopted by the Executive Committee / /

Byron Atwood, Chair

08.28.15					
	FY 16 Budget	FY 16 Adjusted	FY 16 Difference	Percent Change	FY 16 Budget Change Notes
REVENUES	0	343,890	343,890	#DIV/0!	
Economic Development		0	0	#DIV/0!	
Interest		100	100	#DIV/0!	
Municipal Contracts		0	0	#DIV/0!	
Natural Resources		0	0	#DIV/0!	
Other Income		0	0	#DIV/0!	
Public Safety		0	0	#DIV/0!	
State Allocation (ACCD)		272,253	272,253	#DIV/0!	
Town Appropriations		71,537	71,537	#DIV/0!	
Transportation		0	0	#DIV/0!	
Reserves		0	0	0.0%	
	FY 16 Budget	FY 16 Adjusted	FY 16 Difference	Percent Change	FY 16 Budget Change Notes
EXPENSES	0	10	10	#DIV/0!	
Advertising		0	0	#DIV/0!	
Consultants		0	0	#DIV/0!	
Copy/Print		0	0	#DIV/0!	
Dues/Memberships		0	0	#DIV/0!	
Equipment		0	0	#DIV/0!	
Equipment Repair/Svc		0	0	#DIV/0!	
Fringe Benefits		0	0	#DIV/0!	
Insurance		0	0	#DIV/0!	
Interest		10	10	#DIV/0!	
Meeting/Programs		0	0	#DIV/0!	
Office Rent/Util/Repair		0	0	#DIV/0!	
Other Expense		0	0	#DIV/0!	
Payroll		0	0	#DIV/0!	
Postage		0	0	#DIV/0!	
Professional Development		0	0	#DIV/0!	
Professional Services		0	0	#DIV/0!	
Reserve Contribution		0	0	#DIV/0!	
Software		0	0	#DIV/0!	
Subscriptions/Publications		0	0	#DIV/0!	
Supplies - Office		0	0	#DIV/0!	
Supplies - Billable		0	0	#DIV/0!	
Telephone/Internet		0	0	#DIV/0!	
Travel		0	0	#DIV/0!	
BAL END	0	343,880	343,880	#DIV/0!	

CVRPC FY16 Budget

As of 12/31/15

Total Revenue **\$343,890**

Economic Development		\$0
EPA Brownfields FFY15		
ACCD VERI		Gunners Brook flood resiliency planning
Interest		\$100
Municipal Contracts		\$0
Northfield Town Stormwater		FY15 ERP grant
Northfield Town Central Street Stormwater		FY16 ERP grant
Northfield Village Green Stormwater		FY16 ERP grant
Barre Town Manhole Inventory		
East Montpelier Village Masterplan		FY16 MPG; contract not confirmed
Natural Resources		\$0
VT FPR Forest Stewardship (Phase 2)		Year 3 of 3
VT FPR Northfield Forest Plan		
CCRPC Green Infrastructure		July 1 balance that will be due to CVRPC (do not include match)
VANR 604B FFY15		Mass failure analysis
Clean Water Initiative FY16		Planning and municipal education for VT Clean Water Initiative
DEC HMGP River Corridors		Mitigation project tables for Plainfield/Waterbury & river corridor maps for Waterbury
Other Income		\$0
GIS Fee-For-Service		Non-contract GIS work; estimated based on 3-year trend
Mad River Valley Planning District Bookkeeping		
Mad River Valley Planning District Pass-through		MVRPD staff are paid through CVRPC and billed back to the organization
Wrightville Beach Recreation District Bookkeeping		
Cross Vermont Trail Pass-through		Cross Vermont Trail staff are paid through CVRPC and billed back to the organization
Mad River Resource Alliance Bookkeeping		
Public Safety		\$0
DEMHS Emergency Mangmt Planning Grant (EMPG) FFY 14		
DEMHS Emergency Mangmt Planning Grant (EMPG) FFY 15		
Local Emergency Planning Committee (LEPC)		Administrative services, including expenses
DEMHS Radiological Emergency Response Plan (RERP)		State Emergency Operations Center training
NRPC PDM-C		Hazard Mitigation Plans for X Towns; Year 3 of 3
DEMHS HMGP Mega		Hazard Mitigation Plans for 9 Towns
DEMHS HMGP Mega Administration		
Waterbury Hazard Mitigation Plan		
ACCD CDBG 16 LIDAR		
ACCD CDBG 18 Elevation		Hydrologic analysis and develop flood inundation data and map
VANR Waterbury ERP FY14		River assessment and Corridor Plan
State Allocation (ACCD)		\$272,253
Town Appropriations		\$71,537
Transportation		\$0
VTrans Transportation Planning Initiative (TPI) FFY15		
VTrans Transportation Planning Initiative (TPI) FFY16		
ACCD CDBG Plainfield		Bridge study
VTrans Better Back Roads		Road erosion assessments for 4 towns
VYCC Road Erosion		

Notes: Gray shading denotes risk areas, including annual contracts that will not be confirmed until the fiscal year has begun, grant award not under contract, and prospective contracts.

CVRPC FY16 Budget

As of 12/31/15

EXPENSES

\$10

Advertising		\$0
Administrative		Job ads
ACCD		Regional Plan & Municipal Plan Approval hearings
Municipal		
Natural Resources		
Public Safety		annual flood insurance awareness; LEPC meeting calendar
Transportation		
Consultants		\$0
Admin		VADPA indirect rate recovery advocacy
ACCD		
Brownfields		
Northfield Stormwater ERP FY15		Stormwater installation
Northfield Central Street ERP FY15		Stormwater installation
Northfield Village Green ERP FY16		Stormwater installation
Waterbury ERP FY14		
CDBG 16 LIDAR		
CDBG 18 Elevation		
TPI FY15		Multiple transportation studies and products
Copy/Print		\$0
Lease		425/qtr; includes 7,000 B&W copies
Color Copies		Regional Plan
Property Tax		
Dues / Memberships		\$0
VAPDA		
VT League of Cities & Towns		
Nat'l Assoc. of Development Orgs		
Assoc. of State Floodplain Managers		Certified Floodplain Manager exam & ASFPM membership
VT Community Development Assoc.		
VT Planners Assoc.		
Equipment / Furniture		\$0
Capital: Non-Billable		printer 200; iPad 155
Capital: Billable		GIS computers 2@1400 ea; iPad 465; GPS unit 7000; booster antennae 3700
Office		file cabinet, bookcase
Other		Refrigerator
Equipment Repair & Service		\$0
Telephone System		New phone system installation
Repair & Service		Traffic counter repair

CVRPC FY16 Budget
As of 12/31/15

EXPENSES

\$10

Fringe		\$0
FICA		Medicaid & Social Security taxes
Health Ins.		
Dental Ins.		
Vision Ins.		
Retirement		5% of salary
Disability Ins.		
Life Ins.		295.88/mo for six months; 339.38/mo for six months
Unemployment Ins.		Increased for increased payroll (was 750)
Workers Comp Ins.		
MRVPD staff fringe		FICA, retirement, health, dental, life
Cross VT Trail fringe		FICA
Insurance		\$0
Employment Practices/Prof Liab		
Public Officials Liability		For-profit coverage known as Directors & Officers insurance
General Liability (Property/Vehicle/Fire)		Increased employee dishonest limit to \$100,000
Fidelity Bond		CDBG grant dishonesty bond for CVRPC officer exposure
Interest		\$10
Meeting/Programs		\$0
Admin		
ACCD		300 educational workshops; 775 Commission mtgs
Brownfields		
Municipal		
Natural Resources		
Public Safety		LEPC meetings
Transportation		TAC & project mtgs
Office Rent/Utilities/Repairs		\$0
Rent		
Office Cleaning		140/mo
Repairs & Other Maintenance		
Other Expense		\$0
Miscellaneous		Gifts, non-billable fees, etc.
AmeriCorps VISTA		Regional Plan assistance
VISTA Member Rent		Paid to landlord in lieu of paying match to VISTA
ED Move		
LEPC storage rental		

CVRPC FY16 Budget

As of 12/31/15

EXPENSES

\$10

Payroll		\$0
Gross Pay		7.5 FTE plus intern, temporary planner, and new finance staff; includes raises & bonuses
MRVPD		
Cross VT Trail		
Postage		\$0
Postage Machine		175/qtr meter lease
Postage		Regional Plan
Professional Development		\$0
Billable		
Non-Billable		
Professional Services		\$0
Audit		
Benefits Administration		Section 125 Cafeteria Plan
IT/Computer		
Legal		500 general contract/personnel; 500 Personnel Policy review
Videography		175/mo
Reserve Contribution		\$0
General		
Equipment/Capital		
Office Renovation		
Software		\$0
ESRI GIS License		1600 single; 1500 concurrent; 500 Spatial Analyst
Intuit Quickbooks Pro		Annual service plan
Microsoft Exchange 365		Remote access
TechSoup		Quickbooks license 1 @ 50; Adobe Standard 4 @ 55 each
Subscriptions		\$0
Times Argus		e-subscription
Valley Reporter		e-subscription
Front Porch Forum		Allows for unlimited postings to 23 forums in the region
Supplies - Office		\$0
General Office		
GIS		
Water		

CVRPC FY16 Budget
As of 12/31/15

EXPENSES

\$10

Supplies - Billable		\$0
ACCD		
Municipal		
Economic Development		
Public Safety		
Natural Resources		
Transportation		traffic counting
Telephone/Internet		\$0
Telephone Lease		Includes internet; includes FairPoint service thru April 2016
Domain Name		Sovernet
Email addresses		Microsoft
Web Hosting		
Travel		\$0
Administrative		VAPDA & other mtgs
ACCD		Municipal & State meetings
Economic Development		Brownfields trainings and site visits
Municipal		Municipal contract meetings
Natural Resources		Site visits, meetings
Public Safety		Site visits, meetings
Transportation		TPI 2600; BBR Rd Ero Assess 335

CENTRAL VERMONT REGIONAL PLANNING COMMISSION

Reserve Fund

As of (insert date)

Reasons for Reserve Fund:

- to ensure the Commission can continue to provide a useful level of services in times of tight budget years;
- to provide for emergency funds, should they be needed;
- to ensure sufficient funding to close down, should that ever be the case.

Recommendation: 6 months minimum operating expenses*

\$340,163.78

Current Reserves: **\$11,183**
 \$11,183 Unrestricted/Unassigned - general reserves
 Unrestricted/Committed - emergency equipment purchases & other capital expenses
 Unrestricted/Committed - accrued compensated absences (liability for Vacation and Sick time)

Balance (+/-): **(\$328,981)**

Minimum Monthly Expenses:

Total \$56,694

Equipment	\$1,242
Fringe Benefits	\$11,864
Insurance	\$390
Office Rent/Utilities	\$3,562
Other Expense	\$1,037
Payroll	\$34,167
Postage	\$308
Printing/Copies	\$519
Prof Services	\$1,317
Software (licenses)	\$413
Supplies	\$446
Telephone/Internet	\$585
Travel	\$845

Recommendations

1. During this year, contribute \$20,000 to existing reserves.
2. Recommended set aside should be reviewed at mid-year and adjusted as needed.

CVRPC FY16 Revenue Sources

As of December 30, 2015

EPA Brownfields FFY15 – Brownfield assessments and corrective action planning

ACCD VERI - Gunners Brook flood resiliency planning

ANR Northfield Town Stormwater – Stormwater installation and project management

ANR Northfield Town Central Street Stormwater - Stormwater installation and project management

ANR Northfield Village Green Stormwater - Stormwater installation and project management

Barre Town Manhole Inventory – Manhole inventory

LCPC Forest Stewardship (Phase 2) – GIS-based regional forest stewardship planning and assist two or more municipalities with plan or bylaw language and implementation tools

VT FPR Northfield Forest Plan – Municipal assistance for urban forest plan

CCRPC Green Infrastructure - Develop web-based Green Infrastructure Municipal Toolkit on best practices and ideas for on-site stormwater infiltration and management

ANR 604B FFY15 - Mass failure analysis

ANR Clean Water Initiative FY16 - Planning and municipal education for VT Clean Water Act

DEC HMGP River Corridors - Mitigation project tables for Plainfield/Waterbury & river corridor maps for Waterbury

GIS Fee-For-Service - Non-contract GIS work, mainly for municipalities

Mad River Valley Planning District - MVRPD staff are paid through CVRPC with salary, benefits and a nominal processing fee billed back to the organization

Cross Vermont Trail Pass-through - MVRPD staff are paid through CVRPC with salary, benefits and a nominal processing fee billed back to the organization

Mad River Resource Alliance Bookkeeping – Bookkeeping services for the Alliance

DEMHS Emergency Management Planning Grant (EMPG) - annual planning, training & exercise, technical assistance and response & recovery support.

DEMHS Local Emergency Planning Committee (LEPC) – CVRPC administrative services and LEPC expenses

DEMHS Radiological Emergency Response Plan (RERP) – Training to staff the State Emergency Operations Center

NRPC PDM-C - Hazard Mitigation Plan updates for multiple Towns

DEMHS HMGP Mega - Hazard Mitigation Plan updates for 9 Towns

DEMHS HMGP Mega Administration – Administrative funds; not covered by the FEMA grant

Waterbury Hazard Mitigation Plan - Hazard Mitigation Plan update

ACCD CDBG 16 LIDAR – Obtain LIDAR data for Mad River and Winooski River in Waterbury. LIDAR is a technology to make high-resolution maps from remote sensing data.

ACCD CDBG 18 Elevation – Use LIDAR data to complete a hydrologic analysis and develop flood inundation data and map

ANR Waterbury ERP FY14 - River assessment and Corridor Plan

State Allocation (ACCD) – Municipal technical assistance and training, and regional planning funds

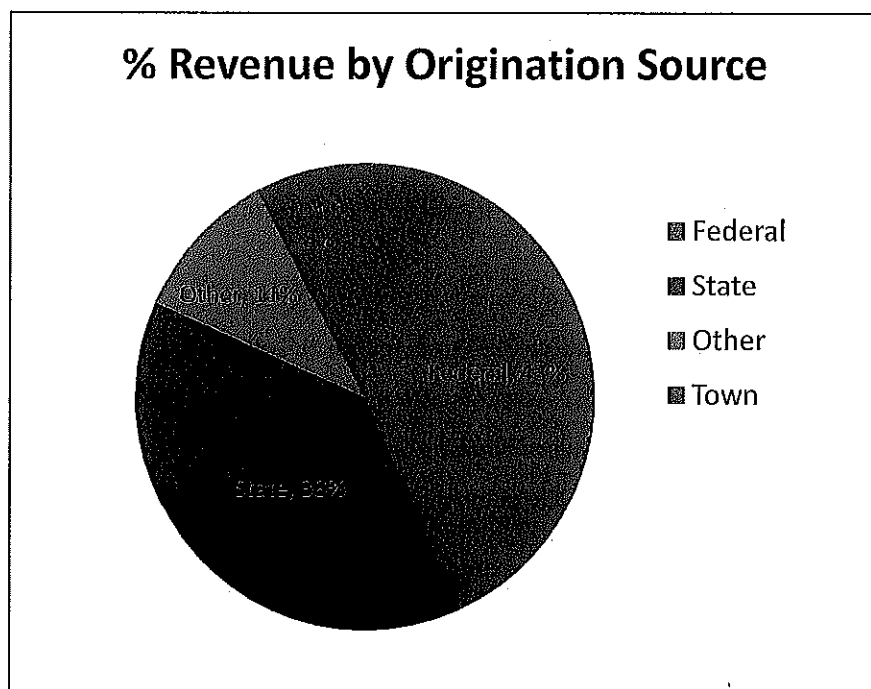
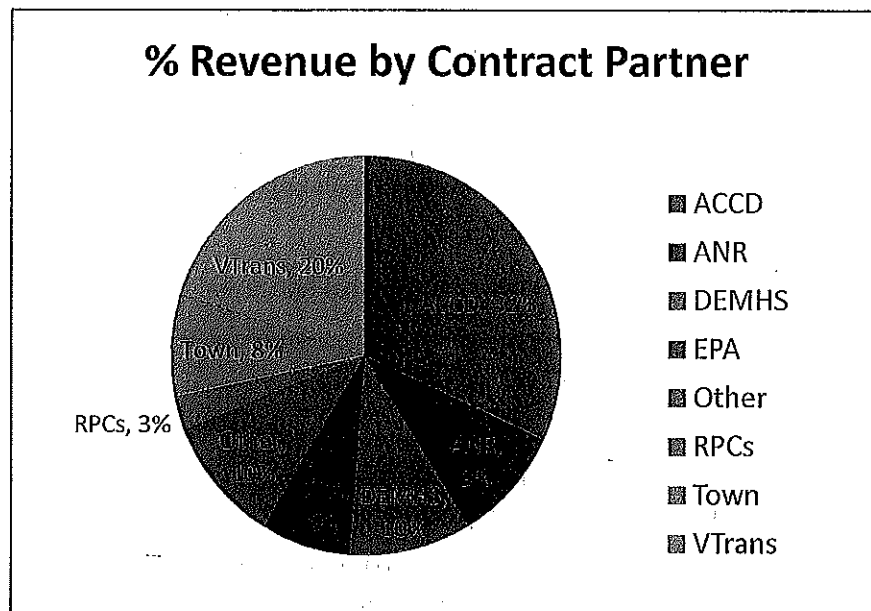
Town Appropriations – Dues from towns

VTrans Transportation Planning Initiative (TPI) - Annual public involvement coordination, transportation planning and project development, and municipal technical assistance

ACCD CDBG Plainfield – Bridge study

VTrans Better Back Roads - Road erosion assessments for 4 towns

VYCC Road Erosion – Municipal coordination





MEMO

Date: December 30, 2015

To: Executive Committee

From: Bonnie Waninger, Executive Director

Re: Request to join a VAPDA amicus brief to the Vermont Supreme Court

At the December VAPDA meeting (the monthly gathering of all RPC directors), we discussed the recent Environmental Court decision *B&M Realty Act 250 Application*. At issue is concern that the Court has disregarded the provisions and policies of the Two-Rivers Ottauquechee Regional Commission's (TRORC) regional plan. TRORC is going to file an appeal, and their Executive Director, Peter Gregory, asked that each RPC consider whether it might join in an amicus briefⁱ in defense of regional plans. The Attorney General's office has filed and will litigate on behalf of the Natural Resources Board in support of the TRORC position.

I've attached the Court's decision. The discussion about Criterion 10 begins on page 5 and ends on page 24. I believe the decision has the potential to seriously undermine or negate the standing of not only our regional plan but that of each regional planning commission, and I suggest we collaborate in the development of the brief. *Staff requests Executive Committee permission to have CVRPC join a VAPDA amicus brief in support of the Two Rivers Ottauquechee Regional Commission's appeal to the Vermont Supreme Court. The request includes having CVRPC participate in the brief as a named participant and providing up to \$1,500 in funding for attorney fees to prepare the brief.*

ⁱ An amicus brief is a document filed in a court by someone who is not directly related to the case under consideration. The additional information found in such a document can be useful for the judge evaluating the case, and it becomes part of the official case record. Many advocacy organizations act as *amici curiae*, or "friend of the court," as do some concerned individuals. States and governments may also step in if they believe that a case may impact them.

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Vermont Unit

Docket No. 103-8-13 Vtec

B&M Realty A250 Applic.

DECISION ON THE MERITS

B&M Realty, LLP (Applicant) seeks to develop an area consisting of 167.7 acres on three separately deeded lots located between Woodstock Road (U.S. Route 4) and Old Quechee Road near the I-89 southbound exit ramps in the Town of Hartford, Vermont (Town).¹ In 2005, Applicant and then-landowners David and Ernest Punt requested an amendment to the Hartford Zoning Regulations on and around lot 8-196 (the Punt property) to accommodate future development of the area. The Town of Hartford Planning Commission (the Planning Commission) voted to approve the zoning amendment on September 26, 2005, and the Town Selectboard held a public hearing on the matter in November of that year.

Six years later, on May 18, 2012, Applicant filed an application with the Planning Commission for a zoning permit, as required by the applicable provisions of the Town of Hartford Zoning Regulations, to develop the three lots into a mixed commercial and residential use development to be known as the Quechee Highlands project (the Project). The Planning commission granted the application in a written decision dated October 17, 2012. Applicant subsequently filed an application for an Act 250 permit as required by 10 V.S.A. § 6081. District Environmental Commission #3 (the District Commission) denied the application in a written decision dated July 3, 2013, and Applicant filed a timely appeal in this Court.

Applicant raises fourteen questions for our review, all addressing the Project's compliance with three of the ten Criteria for Act 250 permit review in 10 V.S.A. § 6086. The first

¹ Two lots are located on Woodstock Road (U.S. Route 4) and one, lot 8-196, is located on Old Quechee Road.

two questions address the project's compliance with Criteria 5 and 9(k). The remaining twelve questions address the Project's compliance with the Two Rivers-Ottawquechee Regional Plan (Criterion 10).

In our October 7, 2014 decision, in response to Applicant's motion for partial summary judgment, we concluded that the 2007 version of the Two Rivers-Ottawquechee Regional Plan would be relevant to our Act 250 Criterion 10 analysis. In reaching this conclusion, we answered Applicant's Questions 6 and 10. Prior to our merits hearing Applicant withdrew Applicant's Question 11.

The Court held a merits hearing on March 17, 2015. The Planning Commission and the Vermont Natural Resources Board (NRB) participated as Appellees. Interested parties David, Carol, and Charles Rataj (the Ratajs) also participated. Applicant is represented by Paul Gillies, Esq., the Planning Commission is represented by Robert E. Woolmington, Esq., and Melanie Kehne, Esq. represents the Natural Resources Board. The Ratajs are self-represented in this matter.

Before turning to our findings of fact and decision on the merits, we address the Ratajs' post-hearing motion to re-open the evidence.

Motion for New Trial

On April 14, 2015, the Ratajs filed a motion to reopen the evidence from the March 17, 2015 merits hearing and asked the Court to accept two additional exhibits and allow them to call a rebuttal witness. The Ratajs claim their proposed exhibits contradict the accuracy of evidence and testimony offered by Applicant's traffic expert, Mr. Saladino, concerning vehicle accident numbers and road safety. Further, the Ratajs argue that late disclosure of Mr. Saladino's revised memorandum warrants an opportunity to recall Mr. Saladino and offer a rebuttal witness.

At the March 17, 2015 hearing, through Mr. Saladino, Applicant offered traffic accident data from the Vermont Agency of Transportation (VTrans) reporting that between 2006 and 2010, there were ninety-eight accidents along U.S. Route 4, with an additional thirty-three accidents along U.S. Route 5. Mr. Saladino testified that a crash must result in over one thousand dollars of property damage or in serious injury or death for the accident to be reported by VTrans. Additionally, Mr. Saladino testified that, based on his 2012 report,

Applicant's proposal to add several traffic turning lanes and a traffic control light, as well as its recommendation to reduce the posted speed limit, would adequately address road safety concerns associated with the proposed development. Applicant also offered Mr. Saladino's revised report, Exhibit 1006, which incorporated traffic data made available since Mr. Saladino's previous 2012 report. The revised report concludes that the existing conditions on the northbound I-89 exit along U.S. Route 4 should be downgraded from a service level of E to F.

At the hearing, the Regional Planning Commission and the Ratajs objected to the admission of Exhibit 1006 because the revised report had not been disclosed until ten days before trial. Applicant admitted that the updated report had only been produced ten days before trial but offered that, although the updated report included more recent traffic numbers, the only revision to Mr. Saladino's substantive conclusions was to downgrade the level of service he had previously determined for the northbound exit. Applicant further argued that, since its proposed mitigation would raise the service level to B—far better than the existing congestion level—the conclusion that congestion had worsened since the 2012 report, was not material. In order to have the most recent information before it, the Court admitted the exhibit, but explained that it would leave the record open for three weeks until April 7, 2015 for the parties to file any responses or to possibly recall Mr. Saladino concerning Exhibit 1006.

In their April 15, 2015 motion, the Ratajs ask the Court to consider two exhibits as rebuttal to Mr. Saladino's testimony and revised report. The Ratajs also request that they be permitted to recall Mr. Saladino and to offer their own rebuttal witness in order to challenge the information provided in the untimely disclosure of Exhibit 1006. The Ratajs' Exhibit A, a printout from the Hartford Police Department, shows the number of accidents recorded by the Hartford Police along U.S. Route 4 to be about double the figure recorded by VTrans for the same period. The Ratajs' Exhibit B is meeting notes from the Vermont Highway Safety Alliance discussing the tendency of drivers to drive 4-7 miles per hour above the posted limit along U.S. Route 4 in the area of the proposed development.

In its response filed on April 30, 2015, Applicant opposes the Ratajs' request to reopen the evidence. Applicant argues that the Ratajs were afforded a full opportunity to participate at the hearing and should not now be permitted to file documents and present arguments that

should have and could have been presented at the hearing. Further, Applicant contends that the Ratajs' request to reopen the evidence is untimely as the deadline for all post-trial filings has passed. Moreover, Applicant argues the evidence submitted is irrelevant because the mitigation steps Applicant proposes would raise the level of service from either an E or an F to a B, and thus there is no need to challenge Mr. Saladino's conclusion in his revised report.

A motion to reopen the evidence will be treated as a motion for a new trial under V.R.C.P. 59(a). See In re Petition of Twenty-Four Vt. Utilities, 159 Vt. 339, 356–57 (1992). Rule 59(a) provides that, after a bench trial, “on a motion for a new trial . . . , the court before which the action has been tried may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.” V.R.C.P. 59(a); see also V.R.E.C.P. 5(a)(2) (providing that the Vermont Rules of Civil Procedure apply to appeals from decisions of a district commission in Act 250 proceedings “so far as applicable”). It is within the trial court's discretion whether to admit further evidence after the close of testimony. In re Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 16, 195 Vt. 586. Among several factors, the court may consider the necessity of the offered evidence to reach a just determination, the reason the evidence was not offered earlier, and the prejudice to the non-moving party. See V.R.C.P. 59(a); V.R.E.C.P. 4(a)(2); see also Town of Georgia v. King, No. 105-6-10 Vtec, slip. op. at 2 (Vt. Super. Ct. Envtl. Div. Oct. 19, 2011) (Durkin, J.).

Turning first to the Ratajs' exhibits, the Court is concerned that the Ratajs should have and could have presented this information at trial. Exhibits A and B appear to challenge Applicant's offer of VTrans accident data and Applicant's contention that adding turning lanes and an actuated traffic light and reducing the speed limit along U.S. Route 4 will adequately address the safety concerns from additional traffic caused by the Project. Applicant's position concerning this information was known and available well before March 17, 2015. While the Court recognizes the difficulty self-represented litigants like the Ratajs face at trial and acknowledges their wish to contest the evidence presented by Applicant, their choice to proceed without an attorney does not absolve them of their obligation to make timely discovery requests and to be prepared to present their full case at trial. See V.R.C.P. 26. The Ratajs were afforded a full and fair opportunity to challenge any and all evidence at the hearing and to present their own rebuttal evidence. Nevertheless, because the Court strives to consider

all relevant evidence in reaching its decision and because we see no prejudice to Applicant in our consideration of the late offered evidence, the Court will admit the Ratajs' Exhibits A and B.

The Court, however, rejects the Ratajs' request to recall Mr. Saladino and to present a rebuttal witness. The Ratajs have failed to make any proffer of the need to recall Mr. Saladino and have given no indication of what their unidentified rebuttal witness will offer. See S. Burlington School District v. Calcagni-Frazier-Zaichowski Architects, Inc., 138 Vt. 33, 52 (1980) ("Where, as here, the reasons stated [for recalling a witness] are general and no offer is made as to what will be adduced, it is within the trial court's discretion to refuse to allow the recall."). The Court's decision to admit the Rataj's exhibits does not give the Ratajs license to re-examine Applicant's expert about any matter. As was discussed at the trial, the only substantive change in Mr. Saladino's revised report was his conclusion that, based on the most recent traffic data, the level of service for the I-89 Northbound exit off U.S. Route 4 should be downgraded from an E to an F. Mr. Saladino's proposed mitigation remained consistent, as did his conclusions on the traffic safety impact of the project. Therefore, the Court finds the Ratajs' blanket assertion that they should be permitted to recall Mr. Saladino and offer a rebuttal witness, without any proffer as to need or scope, does not warrant prolonging this matter further.

The Court **GRANTS** in part and **DENIES** in part the Ratajs' motion to reopen the evidence. The Court admits the Ratajs' Exhibits A and B, but denies the Ratajs' request to recall Mr. Saladino and to offer a rebuttal witness.

We now turn to our decision on the merits, and based upon the evidence presented at trial as well as the recent addition of the Ratajs' Exhibits A and B, the Court renders the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Applicant B&M Realty, LLC owns 167.7 acres consisting of three parcels on U.S. Route 4 in Hartford, Vermont (the Property).
2. The Property is mostly undeveloped; however, it does presently contain a single-family dwelling and garage and a 2,433 square foot commercial building.
3. The Property has frontage on U.S. Route 4 and Old Quechee Road.
4. The Property is located in Hartford's Quechee Interstate Interchange (QII) and Rural Lands Five (RL-5) Zoning Districts.

5. The Property is approximately two miles from the Quechee Gorge, two miles from Quechee Village, and five miles from White River Junction.
6. The area south of the Property on U.S. Route 4 includes a former Century 21 real estate office, a country store with an upstairs apartment, a construction equipment sales business, and miscellaneous scattered businesses.
7. A convenience store/gas station is located south of the Property and adjacent to U.S. Route 4 opposite the I-89 southbound ramp and U.S. Route 4 intersection.
8. The area north of the Property on U.S. Route 4 does not have much development.
9. Both the north and southbound exits from I-89 are in the Project area and are located about one-half mile apart.
10. Applicant proposes a phased-development project on the Property, designed as a mixed-use business park including office, retail, restaurant and residential uses. There will be no "big box" stores.
11. Phase 1 of the Project entails approximately 15.5 acres for a clustered mixed-use development located in the QII Zoning District. Phase 1 includes more than 115,000 square feet of new construction to be completed in three construction cycles.
12. Phase 1A consists of 18,142 square feet of office space, 18,142 square feet of retail space, and a 5,667-square-foot restaurant.
13. Phase 1B consists of 15,110 square feet of office space, 15,110 square feet of retail space, and nine residential units.
14. Phase 1C consists of 33,000 square feet of office space.
15. Phase 2 is proposed as fifty residential units.
16. Approximately 2,700 linear feet of internal roadway designed more or less as a loop will be constructed for Phase 1 buildout.
17. The Project has a "center," which mimics a small version of the Church Street Marketplace in Burlington, Vermont.
18. Access to the Property will be via a single curb cut on U.S. Route 4 approximately 525 feet north of the I-89 southbound ramps. This access will have an island separating entering and exiting traffic.
19. Applicant retained RSG, Inc. to conduct a traffic impact study for the Project area. GSG, Inc. issued its report in May 2012; compiled a traffic overview for the District 3

Environmental Commission in January 2013; and updated its traffic analysis with a March 4, 2015 memo.

20. RSG, Inc. evaluated U.S. Route 4 and its intersections, including I-89 northbound and southbound ramps, in the area of the Project.
21. No background traffic growth is projected for the Project area.
22. U.S. Route 4 is an east-west arterial across the middle of Vermont. U.S. Route 4 is mostly a two-lane road that parallels the Ottauquechee River valley.
23. U.S. Route 4 is part of the national highway system and is part of Vermont's tractor truck network. Thus, mobility and safety issues relating to U.S. Route 4 are significant.
24. U.S. Route 4 in the area of the Property's curb cut has a speed limit of 45 miles per hour.
25. The required stop distance for traffic on U.S. Route 4 in the Project area is 360 feet. The corner sight distance for vehicles exiting the Project access is 500 feet. The Project exceeds these standards.
26. Roadside vegetation will be cut back along the inside curve of U.S. Route 4 east of the Project access road and between I-89 northbound and southbound ramps. This work will improve sight distances.
27. Costello Road intersects with U.S. Route 4 between I-89 northbound and southbound ramps. Costello Road leads to Old Quechee Road.
28. The Rataj residence is located on Old Quechee Road. The Ratajs use Old Quechee Road and Costello Road to access U.S. Route 4.
29. Traffic congestion is related to delay experienced by vehicles traveling on roadways and through intersections.
30. The Vermont Department of Transportation (VTrans) uses Levels of Service (LOS) to measure vehicle delay for signalized and un-signalized intersections. Vtrans's Highway Capacity manual defines LOS as the quantitative stratification of a performance measure or measures that represents quality of service. LOS is not a measure of safety.
31. VTrans classifies LOS's as follows:

LOS	Characteristics	Unsignalized Total Delay (Sec)	Signalized Total Delay (Sec)
A	Little or no delay	≤ 10.0	≤ 10.0

B	Short delay	10.0 – 15.0	10.1 – 20.0
C	Average delay	15.1 – 25.0	20.1 – 35.0
D	Long delay	25.1 – 35.0	35.1 – 55.0
E	Very long delay	35.1 – 50.0	55.1 – 80.0
F	Extreme delays	> 50.0	> 80.0

32. The LOS or the amount of delay that is considered reasonable varies depending on the location or context of the travel area. A rural area will accept less delay than an urban area.
33. Roadways are not typically designed to provide LOS A; rather, a balance is struck between cost, environmental impact, and travelers' and society's desires.
34. The a.m. (7:30 to 8:30) and p.m. (4:30 to 5:30) peak hour for traffic are the 60 minutes in the morning and evening with the most commuting traffic at an intersection. The traffic design hour is the thirtieth highest traffic volume for a given hour at a specific location in a year.
35. VTrans's policy is to design roadways and highways to maintain an LOS C for the prescribed design period, although for two-way-stop-controlled intersection approaches, an LOS D is an acceptable level of service.
36. Generally, longer delays increase driver frustration, and result in a corresponding increase in accidents.
37. Except for the U.S. Route 4/I-89 northbound off-ramp during the p.m. peak hour, all intersections have LOS's that exceed LOS C with or without Project buildout. The U.S. Route 4/I-89 northbound off-ramp during p.m. peak hours has a projected LOS F if the project is not built. Without any mitigating measures, the intersection would have an LOS F if the Project were built. Thus, if the Project is built, intersections either maintain present delay levels or experience relatively minor increases in vehicle delays.
38. Installing an actuated traffic signal at the U.S. Route 4/I-89 northbound ramp intersection would bring the LOS at the intersection to a B for both a.m. and p.m. peak hours.

39. There are four high-crash locations (HCL) in the Project area. Both the I-89 northbound and southbound ramp intersections are HCLs. The two other HCLs are on U.S. Route 4 west of the I-89 ramps.
40. The neighboring convenience store/gas station has two curb cuts off U.S. Route 4, the nearest being approximately 450 feet south of the Project access road. This area is a high crash site.
41. Tractor trailer trucks park from time to time between the convenience store/gas station curb cuts and obstruct sight distances for vehicles exiting and entering the station.
42. VTrans recommends the following traffic mitigation measures for the Project:
 - a. The Applicant shall request a formal speed study to examine lowering the posted speed limit on U.S. Route 4 from the I-89 southbound ramp to the I-89 northbound ramp from 45 mph to 40 mph after completion of each phase of development.
 - b. Prior to completion of Phase 1A, Applicant shall construct a westbound left turn lane at the U.S. Route 4/I-89 southbound ramp intersection for traffic entering I-89 Southbound.
 - c. Prior to completion of Phase 1B, Applicant shall construct a westbound right turn lane on U.S. Route 4 into the Project site.
 - d. Prior to completion of Phase 2, Applicant shall construct an eastbound left turn lane on U.S. Route 4 into the Project site.
 - e. Applicant shall pay its proportional share of mitigation measures for existing adverse traffic and safety condition on U.S. Route 4 including the installation of a signal at the U.S. Route 4/I-89 northbound ramp.
43. Construction of the westbound left turn lane at the U.S. Route 4/I-89 southbound ramp intersection for traffic entering I-89 southbound would narrow the shoulder of the roadway in the area of the convenience store/gas station thereby reducing the ability of tractor trailers to park on the roadside between the convenience store/gas station curb cuts.
44. Construction of the additional turning lanes recommended by VTrans is projected to reduce the rate of traffic accidents by 20 to 25 percent.

45. Installation of a signal at the U.S. Route 4/I-89 northbound ramp is projected to reduce the rate of traffic accidents by approximately 50 percent.
46. The Town of Hartford has a duly adopted municipal plan (Municipal Plan).
47. In 2003, the Two Rivers-Ottawaquechee Regional Commission adopted the 2003 Two Rivers-Ottawaquechee Regional Plan (the 2003 Regional Plan). Because the Town was not a member of the Two Rivers-Ottawaquechee Regional Commission in 2003, the 2003 Regional Plan does not recognize or address the Town of Hartford.
48. On January 9, 2004, the Town discontinued its relationship with the Upper Valley Lake Sunapee Regional Planning Commission and joined the Two-Rivers Ottawaquechee Regional Commission (the Regional Commission). As part of the new association, the Town adopted the 2003 Regional Plan.
49. On July 11, 2005, Scott Milne, acting on behalf of B&M Realty, and David and Ernest Punt, owners of the Punt property at the time, filed an application with the Planning Commission requesting an amendment to the Hartford Zoning Regulations to expand the commercially developable acreage of the Punt property by 300 percent. The application requested the conversion of 10± acres on the northwest side of the Punt property from RL-5 to RL-3 and 35± acres on the east side of the lot from RL-3, RL-5, and RC-2 to a new zoning district, the Quechee Interstate Interchange (QII).
50. On September 26, 2005, the Hartford Planning Commission approved the proposed amendments to the Hartford Zoning regulations affecting the Punt property.
51. Applicant subsequently purchased the Punt property.
52. In 2006, acting on behalf of Applicant, Scott Milne presented the Planning Commission and professional staff with a site plan for the Project.
53. In 2007, the Regional Commission adopted the 2007 Two Rivers-Ottawaquechee Regional Plan (the 2007 Regional Plan), which replaced the 2003 Regional Plan.
54. On May 18, 2012, Applicant filed an application with the Planning Commission for the zoning permits necessary to develop the Project.
55. The Planning Commission granted preliminary approval of the Project on June 25, 2012 and final approval of the Project on October 17, 2012.

56. On December 20, 2012, Applicant filed an Act 250 permit application, which the District Commission denied in a written decision dated July 3, 2013. Applicant timely appealed the denial of its application to this Court.

Discussion

Applicant has raised fourteen questions in this appeal, all related to three of the ten Criteria for permit approval under Act 250. See 10 V.S.A. § 6086. The first two questions address the Project's compliance with Criteria 5 (traffic) and 9(K) (public investment). The remaining twelve questions address the Project's compliance with the Regional Plan under Criterion 10.

I. Criterion 5 – Traffic:

Whether the Project will cause unreasonable congestion or unsafe conditions with respect to transportation?

Act 250 Criterion 5 requires that a development “[w]ill not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.” 10 V.S.A. § 6086(a)(5). We cannot deny a permit “for a project that creates unsafe conditions within the meaning of [C]riterion 5, but permit conditions can be imposed to remedy those conditions.” In re Agency of Transp., 157 Vt. 203, 207 (1991) (citing 10 V.S.A. § 6087(b)). While an opponent to a proposed development carries the burden of persuasion under Criterion 5 to show that the proposed development will cause “an unreasonable or adverse effect,” 10 V.S.A. § 6088(b), the applicant must produce sufficient evidence for the Court to make positive findings. See In re Route 103 Quarry, No. 205-10-05 Vtec, slip op. at 8 (Vt. Envtl. Ct. Nov. 22, 2006) (Durkin, J.) (stating that section 6088(b) pertains only to the burden of persuasion and that the “applicant always carries the initial burden of production”).

In reviewing a project under Criterion 5, we consider its impact on the use of highways, including whether the project may exacerbate already congested or unsafe traffic conditions. In re Pilgrim Partnership, 153 Vt. 594, 596–97 (1990). When a project creates unreasonable congestion or unsafe conditions or exacerbates preexisting unreasonable congestion or unsafe conditions, we may impose conditions to alleviate the congestion and unsafe conditions. Id.

"[An] LOS below C is generally inconsistent with Criterion 5." Re: Okemo Ltd. Liability Co., et al., No. 2S0351-34-EB, Findings of Fact, Conclusions of Law, and Order, at 10 (Vt. Envtl. Bd. Sept. 8, 2005).² For two-way-stop-controlled intersections, however, VTrans's LOS Policy is to maintain an LOS D, or better. Moreover, VTrans's policy is to design roadways and highways to maintain an LOS C for the prescribed design period, although lower levels of service may be permitted on a case-by-case basis.

At the time of our merits hearing, the parties had mostly resolved traffic issues through proposed traffic mitigation measures. The Ratajs, however, remain concerned with traffic generated by the Project. The Ratajs reside off of Old Quechee Road and use Costello Road to access U.S. Route 4. The Ratajs raise traffic safety and congestion issues on U.S. Route 4 in the area of their residence. The Ratajs offer evidence of higher numbers of crashes and higher driving speeds than the VTrans numbers offered by Applicant. The Ratajs also challenge whether adding turning lanes will improve safety and congestion issues.

With the exception of one intersection, all intersections involved in the project will maintain acceptable traffic conditions if the project is built. The one exception is the U.S. Route 4/I-89 northbound off-ramp which has an unacceptable LOS of F.

An LOS F in either the build or no-build scenarios is an unreasonable level of congestion. To be clear, Applicant and this Project have not created the existing unreasonable congestion or unsafe conditions at the U.S. Route 4/I-89 northbound off-ramp. If the Project is approved and constructed, however, the traffic conditions for the U.S. Route 4/I-89 northbound off-ramp will degrade further. Installing an actuated traffic signal at the U.S. Route 4/I-89 northbound ramp intersection is projected to accommodate the Project build scenario traffic volumes with LOS B for both a.m. and p.m. peak hours.

There are four high-crash locations (HCLs) in the Project area. Both the I-89 northbound and southbound ramp intersections are HCLs. The two other HCLs are on U.S. Route 4 west of the I-89 ramps. Adding turn lanes, removing roadside vegetation and eliminating tractor trailer roadside parking, and reviewing and potentially reducing speed limits will mitigate these safety concerns.

² Prior decisions of the Environmental Board serve as precedent in this Court. 10 V.S.A. § 8504(m).

Based upon the credible, and largely unrefuted, evidence before the Court, we impose the following conditions to mitigate traffic concerns. The conditions were recommended by VTrans and offered by Applicant:

- a. The Applicant shall request a formal speed study to examine lowering the posted speed limit on U.S. Route 4 from the I-89 southbound ramp to the I-89 northbound ramp from 45 mph to 40 mph after completion of each phase of development.
- b. Prior to completion of Phase 1A, Applicant shall construct a westbound left turn lane at the U.S. Route 4/I-89 southbound ramp intersection for traffic entering I-89 southbound. This work shall include reducing the width of the shoulder along U.S. Route 4 in the area of the convenience store/gas station to eliminate tractor trailer parking in this area. Roadside vegetation shall be cut back along the inside curve of U.S. Route 4 east of the Project access road and between I-89 northbound and southbound ramps.
- c. Prior to completion of Phase 1A, an actuated traffic signal shall be installed at the U.S. Route 4/I-89 northbound ramp. Applicant shall pay its proportional share of mitigation measures for this existing adverse traffic and safety condition.
- d. Prior to completion of Phase 1B, Applicant shall construct a westbound right turn lane on U.S. Route 4 into the Project site.
- e. Prior to completion of Phase 1C, Applicant shall construct an eastbound left turn lane on U.S. Route 4 into the Project site.³

Recent Vermont legislation empowers an Act 250 District Commission or the Agency of Transportation (and therefore this Court when considering an appeal) to assess a transportation impact fee to fund capital improvements necessary to mitigate transportation impacts of proposed developments. 10 V.S.A. §§ 6101–6111. The statute contemplates implementation through rules to be adopted by the Natural Resources Board or the Agency of Transportation. See 10 V.S.A. § 6111. We are not aware of the rules having been adopted. At trial, the parties did not specifically address this legislation; however, they do cite to it in their post-trial briefs.

³ The application before the Court seeks approval of only Phase 1 of the proposed development. We note that Applicant's traffic study evaluated impacts associated with all Project development phases and concluded that an eastbound left turn lane on U.S. Route 4 into the Project site was not warranted until completion of Phase 2. VTrans appears to adopt these conclusions. Applicant's May 2012 traffic study, however, conservatively indicated that the construction of an eastbound left turn lane on U.S. Route 4 into the Project site is first warranted with Phase 1C buildout. See Exhibit 20, pages 35 - 36. The Court requires the more conservative approach.

Our implementation of Act 250 is a continual balance between competing interests. See In re Village Associates, 2010 VT 42A, ¶ 17, 188 Vt. 113 (noting that the “goals of Act 250 have always been balanced against the economic necessity of development . . . [resulting in] a practical approach to regulation.”). In this matter, we must balance a development proposal and its associated additional traffic with an already existing traffic problem. The Court concludes that traffic mitigation measures are required. We leave it to the parties, however, to work through the financing details for the required actuated traffic signal to be installed at the U.S. Route 4/I-89 northbound ramp. To be clear, we conclude that Applicant shall pay its proportional share of this mitigation measure for the adverse traffic and safety condition at the U.S. Route 4/I-89 northbound ramp. As Applicant suggests, one potential option is for the developer to pay for the signal and then be reimbursed by future development that adds traffic to the U.S. Route 4/I-89 northbound ramp.

II. Criterion 9(K) – Public Facilities

Whether the Project will unnecessarily or unreasonably endanger the public or quasi-public investment in or materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of or access to adjacent public facilities?

Criterion 9(K) directs the grant of a permit for a development on or adjacent to public lands if the Applicant demonstrates that the development “will not unnecessarily or unreasonably endanger the public or quasi-public investment” in those lands or “materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of or access to” those lands. 10 V.S.A. § 6086(a)(9)(K). This Criterion “seeks to protect state and local governments from adverse fiscal impacts on public facilities and investments that are adjacent to the proposed project.” Re: St. Albans Grp. & Wal-Mart Stores, Inc., No. 6F0471-EB, Mem. of Decision, at 9 (Vt. Env’tl. Bd. Apr. 15, 1994).

Our analysis under Criterion 9(K) is succinct, as we have already conducted a similar review under Criterion 5. The former Environmental Board held that when considering the impact upon a state or local highway, as a public investment, review can be similar under Criteria 5 and 9(K). Re: Pittsford Enters., No. 1R0877-EB, Findings of Fact, Conclusions of Law and Order, at 36 (Vt. Env’tl. Bd. Dec. 31, 2002). The Board in Pittsford Enterprises did recognize, however, that there are important differences between the analysis under Criteria 5 and 9(K);

specifically the standard under Criterion 9(K) is higher than under Criterion 5, as Criterion 9(K) requires “material jeopardy or material interference.” Id.

Except for the U.S. Route 4/I-89 northbound off-ramp during the p.m. peak hour, all intersections have acceptable LOS with or without Project buildout. The U.S. Route 4/I-89 northbound off-ramp during p.m. peak hours projects LOS F in both the no-build and build scenarios. If the Project is built, all intersections either maintain present delay levels or experience relatively minor increases in vehicle delays. Installing an actuated traffic signal at the U.S. Route 4/I-89 northbound ramp intersection is projected to accommodate the Project build scenario traffic volumes with LOS B for both a.m. and p.m. peak hours. As stated above, there are four high-crash locations (HCLs) in the Project area. Both the I-89 northbound and southbound ramp intersections are HCLs. The two other HCLs are on U.S. Route 4 west of the I-89 ramps. Adding turn lanes, removing roadside vegetation and eliminating tractor trailer roadside parking, and reviewing and potentially reducing speed limits will mitigate these safety concerns.

As conditioned above in our Criterion 5 analysis, we conclude that the Project will not unnecessarily or unreasonably endanger the public or quasi-public investment in or materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of or access to adjacent public facilities.

III. Criterion 10 – Regional Plan

Whether the Project conforms with any duly adopted local or regional plan?

The remainder of Applicant’s questions address the requirement of Act 250 Criterion 10 that the project proponent show that its proposal is in conformance with any duly adopted local or regional plan or capital program under 24 V.S.A. Chapter 117. 10 V.S.A. § 6086(a)(10). The burden of proof under Criterion 10 is on the applicant to show conformance. 10 V.S.A. § 6088.

In order for a plan’s provisions to be binding on a project, the provisions must be mandatory in nature and not merely aspirational. In re Rivers Dev., LLC, Nos. 7-1-05 Vtec and 68-3-07 Vtec, slip op. at 9 (Vt. Env’tl. Ct. Jan. 8, 2008) (Durkin, J.). If the plan language is intended only to establish broad goals and not mandatory standards, the inquiry ends and a

project cannot be denied under Criterion 10, based upon that language alone. Id. In other words; a finding of nonconformity must be “based on a ‘specific policy’ set forth in the plan . . . and stated in language that ‘is clear and unqualified, and creates no ambiguity.’” In re John A. Russell Corp., 2003 VT 93, ¶ 16, 176 Vt. 520 (quoting In re Green Peak Estates, 154 Vt. 363, 369 (1990); In re MLB Assocs., 166 Vt. 606, 607 (1997) (internal citations omitted)).

Applicant’s Question 3 asks, in general terms, whether the Project complies with the 2007 Regional Plan.⁴ This question necessarily entails two sub-issues: (1) should the applicable plan be given effect in this case (Questions 4, 5, 7, 8, and 9); and (2) if so, does the Project satisfy all mandatory provisions of the applicable plan (Questions 12, 13, and 14).

a. Does the Regional Plan Apply? (Applicant’s questions 4, 5, 7, 8, 9)

The Regional Commission argues that Applicant’s Project does not comply with certain provisions of the 2007 Regional Plan. Applicant argues that these provisions cannot be the basis of a finding of non-conformity because these provisions do not apply to its Project under 24 V.S.A. § 4348(h) because the Municipal and Regional Plans do not conflict and the Project will not have a substantial regional impact.

24 V.S.A. § 4348(h) delineates two situations where provisions of the regional plan shall apply: first, the provisions of a regional plan shall be given effect to the extent they do not conflict with the provisions of a duly adopted municipal plan, § 4348(h)(1); second, if a conflict does exist, then the regional plan shall apply if it is demonstrated that the project will have a substantial regional impact. § 4348(h)(2). In other words, if the provisions of a regional plan do not conflict with the municipal plan, only those mandatory provisions of a regional plan will apply to the proposed project. If the regional plan does conflict with the municipal plan, however, mandatory provisions of the regional plan will only apply to the project if it is first determined that the project will have a substantial regional impact. Therefore, in the case of no conflict, or where there is a conflict and a substantial regional impact exist, we must determine

⁴ Prior to trial, we determined that the 2007 Regional Plan should be applied in reviewing the Project under Criterion 10, thus answering Applicant’s Questions 6 and 10. In re B&M Realty Act 250 Applic., No. 103-8-13 Vtec, slip op. at 7 (Vt. Super. Ct. Envtl. Div. Oct. 7, 2014) (Walsh, J.).

whether there are mandatory, not merely aspirational, provisions of the regional plan that prohibit the project.

Here, neither Applicant nor Appellees have provided enough evidence for the Court to determine whether the provisions of the Regional Plan are in conflict with the Municipal Plan. Because we find it is Applicant's burden to show that the provisions of the plan do not conflict, we proceed as if provisions of the Regional Plan are in conflict with the Municipal Plan. We therefore turn to the question of whether the Project will have a substantial regional impact.

Applicant argues that the Regional Commission's definition of "substantial regional impact" is not justified as a matter of law, and thus the 2007 Regional Plan is unenforceable and should not govern (Question 5). Applicant gives three reasons for this assertion. First, Applicant argues that 24 V.S.A. § 4345a delegates unguided discretion to the Regional Commission in violation of constitutional nondelegation principles. Second, Applicant argues that the definition of "substantial regional impact" in the Regional Plan is arbitrary and standardless, and therefore violates due process. Third, Applicant argues that the Regional Plan improperly attempts to amend Act 250 Criterion 5. We address these arguments in turn, and, for the following reasons, find that Applicant's arguments are unpersuasive.⁵

Turning to Applicant's first point, Applicant argues that, because 24 V.S.A. § 4345a (defining the duties of the regional planning commissions) directs the Regional Commission to define "substantial regional impact" without providing any specific standards, the statute improperly gives unconstrained discretion to the Regional Commission. See 24 V.S.A. § 4345(a)(17) ("As part of its regional plan, [a regional planning commission shall] define a substantial regional impact, as the term may be used with respect to its region."). It is well established that the delegation of legislative authority to zoning bodies cannot be

⁵ Related to Applicant's argument that the Regional Plan should not apply, Applicant's Question 8 asks, "Should the regional plan be given effect if the applicable planning commission has not met its obligations to review and consult with the host municipality regarding the municipality's planning efforts pursuant to 24 V.S.A. § 4350?" Applicant has provided no evidence that the regional planning commission failed to consult with the host municipality as directed by 24 V.S.A. § 4350. Furthermore, there is nothing in 24 V.S.A. § 4350 that suggests a regional plan is unenforceable if the regional planning commission does not adhere to the meeting and consultation requirements of Section 4350. Moreover, there is a two year statute of limitations from the date the plan took effect to challenge procedural defects of a regional plan. See 24 V.S.A. § 4483. Therefore, Applicant's claim is ultimately barred.

“unrestrained and arbitrary.” See Vincent v. Vt. State Retirement Bd., 148 Vt. 531, 535 (1987) (quoting State v. Chambers, 144 Vt. 234, 239 (1984)); In re Handy, 171 Vt. 336, 345–47 (2000) (noting the applicability of the nondelegation doctrine to local zoning boards).

While the structure of the regional planning commissions’ enabling statute does give us some concern in that it allows the regional planning commissions to define the scope of their own authority, see 24 V.S.A. § 4348(h)(2), we conclude that Section 4345a, in combination with the entirety of Chapter 117 of Title 24, does provide guidance to the regional planning commissions by specifying the scope of their duties as well as the requirements for their regional plans. See 24 V.S.A. §§ 4345a–4348(b). Furthermore, substantial regional impact is necessarily a region-specific concept that is likely best determined on a regional level. Ultimately, however, we need not reach the delegation issue as it is unnecessary for our holding here, since we ultimately determine that Applicant does satisfy Criterion 10. See State v. Bauder, 2007 VT 16, ¶ 28, 181 Vt. 392 (“It is, of course, a fundamental tenet of judicial restraint that courts will not address constitutional claims—least of all novel or unresolved constitutional claims—when adequate or lesser grounds are available.”).

Regarding Applicant’s second point, the Court rejects Applicant’s argument that the definition of substantial regional impact does not provide a clear and applicable standard. Like the delegation of legislative authority, zoning standards must be sufficiently clear and definitive to prevent arbitrary application and to provide adequate notice. See In re Appeal of JAM Golf, LLC, 2008 VT 110, ¶ 13, 185 Vt. 201. The 2007 Regional Plan defines substantial regional impact as any development that meets one or more of eight criteria. The relevant criteria for the proposed development are as follows:

- (2) A development that may significantly affect existing capacity of regional public facilities by:
 - (a) contributing to a reduction in the peak hour Level of Service (LOS) from D to E or from E to F;
 - (b) contributing five percent or more to the peak hour Level of Service (LOS) D on a regionally significant local or State highway in or immediately adjacent to regional growth areas or LOS C on regionally significant local or State highways in rural areas;

...

- (d) necessitating substantive capital improvements, such as widening or signalization of regionally significant local or State highways;

...

- (5) A development which impairs the continued function of significant regional facilities, including, but not limited to, Interstate highway systems, waterways, educational institutions, hospitals, recreational facilities, bridges, dams, airports and trails.

- (6) A development exceeding the following thresholds:

...

- (b) commercial or industrial construction involving 20,000 square feet or more of gross floor area.

(Two Rivers—Ottauquechee Regional Plan at 269, adopted May 30, 2007) [hereinafter 2007 Regional Plan]. These criteria are not vague or standardless, but rather are sufficiently clear to prevent discriminatory application and to adequately inform landowners of what types of projects will result in a substantial regional impact. See JAM Golf, 2008 VT 110, ¶ 13. We therefore reject Applicant's claim that the definition of substantial regional impact is vague or otherwise infirm.

Finally, Applicant takes issue with the Regional Commission's definition of substantial regional impact and claims that, by defining substantial regional impact to include projects that decrease the LOS, the Regional Plan creates an end-run around the rule that an Act 250 permit cannot be denied for failing to comply with Criterion 5's traffic requirements. See Re: Pittsford Enters., No. 1R0877-EB, Findings of Fact, Conclusions of Law and Order, at 36 (Vt. Envtl. Bd. Dec. 31, 2002) (noting that permits cannot be denied for failing to satisfy Criterion 5, they may only be conditioned on traffic mitigation measures). The Court rejects this argument. Defining substantial regional impact as a project that "contributes to a reduction in the peak hour Level of Service (LOS) from D to E or from E to F," does not improperly circumvent Criterion 5 to defeat a project on traffic impact grounds. The Regional Commission has been delegated the authority to define substantial regional impact, and so long as that definition is sufficiently particular, the Regional Commission is not precluded from employing a definition merely because it has some overlap with issues addressed under Criterion 5. Moreover, under the 2007 Regional Plan, the fact that a project will have a substantial regional impact due to its

traffic congestion impact does not, as Applicant suggests, result in an immediate denial of the project, but rather merely triggers further review. See 24 V.S.A. § 4348(h)(2).

Finding that the 2007 Regional Plan's definition of substantial regional impact is not infirm, we must next address whether the Project meets the definition (Question 9). It is uncontested that the Project as proposed will be greater than 20,000 square feet and will require substantial capital improvements of a local or State highway. Phase 1 of the Project is over 100,000 square feet of office, retail, and residential space, and as conditioned above, the Project will require Applicant to install a traffic light and turning lanes in order to mitigate Act 250 Criterion 5 concerns.⁶ Either of these facts would meet one or more of the eight criteria in the 2007 Regional Plan's definition of substantial regional impact. Therefore, because the Project will result in a substantial regional impact, the 2007 Regional Plan applies.⁷

b. Does the Plan Prohibit the Project? (Applicant's Questions 12, 13, 14)

Finding the 2007 Regional Plan applies, we must consider whether the 2007 Regional Plan prohibits the Project (Questions 12, 13, and 14). The Regional Commission argues that the Project violates five provisions of the 2007 Regional Plan. In considering the 2007 Regional Plan provisions cited by the Regional Commission, we conclude that each provision is either an unenforceable policy aspiration or provides restrictions inapplicable to the Project. We address each of these provisions.

We have been cautioned against denying an Act 250 permit based on nonconformance with "nonregulatory abstractions" in a municipal or regional plan. In re Molgano, 163 Vt. 25, 31 (1994). As we stated earlier, a determination of nonconformity requires that the relevant plan provisions are mandatory and not merely aspirational, and "stated in language that 'is clear and

⁶ The District Commission also found a substantial regional impact because the Project would contribute to a reduction in the peak hour LOS from D to E or from E to F. See In re B&M Realty, LLC, Findings of Fact & Conclusions of Law & Order, at 33-34 (Dist. Envtl. Commission, July 3, 2013). At trial, however, it was revealed that the level of service is currently an F, and the proposed traffic measures—a traffic control light and turning lanes—will improve the LOS to a B; thus there is no substantial regional impact on the basis of the Project's contribution to the LOS.

⁷ Applicant's Question 7 asks, "Which party has the burden to demonstrate that a project has a 'substantial regional impact?'" We begin with the principle that the applicant always has the burden of producing sufficient evidence to enable the Court to make the requisite positive findings on all of the criteria. Ultimately, however, the answer is not critical to our discussion here, as the parties have produced sufficient evidence for the Court to determine whether the Project has a substantial regional impact.

unqualified, and creates no ambiguity.” In re John A. Russell Corp., 2003 VT 93, ¶ 16, 176 Vt. 520 (quoting In re Green Peak Estates, 154 Vt. 363, 369 (1990); In re MLB Assocs., 166 Vt. 606, 607 (1997) (mem.) (internal citations omitted)). Furthermore, a provision of a regional plan that fails to provide adequate guidance and allows the unbridled discretion of the regional planning commission is unenforceable. See JAM Golf, 2008 VT 110, ¶ 13 (“We will not uphold a statute that “fail[s] to provide adequate guidance,” thus leading to “unbridled discrimination” by the court and the planning board charged with its interpretation.”); see also In re Application of Lathrop Ltd. Partnership I, 2015 VT 49, ¶ 29, 121 A.3d 630 (noting that ambiguous regulations risk arbitrary enforcement, and that courts will therefore construe zoning regulations strictly and in favor of the property owner); In re Kiesel, 172 Vt. 124, 140 (2000) (holding that Town plan must have “some objective measure to guide enforcement” of a stated prohibition on development).

The primary focus of the Regional Commission’s opposition to the Project is that “[p]rincipal retail establishments must be located in Town Centers, Designated Downtowns, or Designated Growth Centers to minimize the blighting effects of sprawl and strip development along major highways and to maintain rural character.” 2007 Regional Plan at 33. The Regional Commission asserts that the “principal retail establishment” (PRE) provision provides a clear and mandatory bar to the Project. The 2007 Regional Plan, however, does not define the term “principal retail establishment.” The Regional Commission argues that the PRE provision, when read in combination with the other requirements of the 2007 Regional Plan, is sufficiently clear to find it mandatory and enforceable. While the PRE provision may use mandatory language, it is not clear that the provision applies to the Project. Accordingly, we must first determine the meaning of “principal retail establishment,” before we can conclude whether the PRE provision acts as a bar to the Project.

When interpreting a provision of a regional plan, we are directed to “construe[] [the terms] according to the ordinary rules of statutory construction.” In re MBL Associates, 166 Vt. 606, 607 (1997). Therefore, we will interpret the phrase “principal retail establishment” according to the ordinary meaning of the words and refer to dictionary definitions when necessary. See Franks v. Town of Essex, 2013 VT 84, ¶ 8, 194 Vt. 595 (“Words that are not defined within a statute are given their plain and ordinary meaning, which may be obtained by resorting to dictionary definitions.”). Black’s Law Dictionary defines the term “principal” to

mean “chief; primary; most important.” Black’s Law Dictionary, principal (10th ed. 2014) (WL). Thus, the phrase “principal retail establishment” means a project where retail is the chief, leading, or most important use.

Applying that definition here, we find that the Project’s uses do not make it a principal retail establishment. Phase 1 of the Project includes 115,000 square feet of commercial, residential, and retail space. Of the 115,000 square feet, less than 40,000 are proposed as retail space. The majority of the square footage, more than 66,000 square feet, will be devoted to office space. The remaining space is residential. The Court finds that retail is not the primary or chief use of the Project, and thus, the Project does not constitute a “principal retail establishment” pursuant to the 2007 Regional Plan.⁸ The (PRE) provision does not, therefore, apply to the Project.

We next consider the provision in the 2007 Regional Plan stating that “[the] existing settlement pattern . . . [provides] a system of centers both efficient and economical for the conduct of business enterprise and for the provision of social and community facilities and services. This pattern must be protected and enhanced and is supported by state planning law.” 2007 Regional Plan at 26. While this provision directs that existing settlement patterns must be protected, it provides no clear guide or criteria to be met in order to protect the existing settlement pattern. Instead of a mandatory requirement, this provision is more appropriately considered an overarching theme for the Regional Plan. Indeed, the provision appears under the subsection labeled “Goals-The Future Pattern of Settlement,” 2007 Regional Plan at 26, confirming its merely advisory nature. We conclude that this provision does not bar the Project because it is merely an aspirational policy statement.

Similarly, the provision stating that “[a]ny development planned for interchange development must be constructed to . . . discourage creation or establishment of uses deemed

⁸ Question 12 asks, “Can a regional plan permissibly restrict ‘principal retail establishments’ to only Town Centers, Designated Downtowns, or Designated Growth Center or is such zoning function reserved to municipalities?” (Applicant’s SOQ 12). Applicant points to no case law or authority, and the Court is not aware of any, that prohibits a regional commission from limiting principal retail establishments to town centers, designated downtowns, or designate growth centers. 24 V.S.A. §§ 4345–50 and Act 250 Criterion 10 clearly envision that the regional plan may conflict with the municipal plan, and often, the regional plan is given superiority. See 24 V.S.A. § 4350(b)(1) (“The Commission shall approve a plan if it finds that the plan . . . is compatible with its regional plan.”). Ultimately, however, we need not answer this question as the Court concludes that the Project is not a principal retail establishment.

more appropriate to regional growth areas,” *Id.* at 46–47, is unclear and leaves unbridled discretion with the Regional Commission. Again, while this statement may evince a worthy aspiration, it fails to establish clear and mandatory criteria, but instead leaves the decision of what is “appropriate” to the Regional Commission. Thus, this provision is unenforceable as it fails to provide adequate guidance and allows the unbridled discretion of the regional planning commission. See JAM Golf, 2008 VT 110, ¶ 13

The Regional Commission also points to a provision under the subsection, “Goals-The Future Pattern of Settlement,” which states, “Major growth or investments must be channeled into or adjacent to existing or planned settlement centers and to areas where adequate public facilities and services are available.” *Id.* at 27. While this statement appears to create a mandatory standard, the critical words are undefined and subject to interpretation, rendering the Court unable to “discern a specific policy” or prohibition of the Project from this statement. See In re John A. Russell Corp., 2003 VT 93, ¶ 19 (holding that where a plan fails to convey a specific policy preventing the proposed development, the boards interpretation of the plan is not grounds to deny the project). The 2007 Regional Plan does not define the term “major growth or investment,” and its meaning is subject to a wide degree of interpretation. Therefore, this standard gives unfettered discretion to the Regional Commission, and thus, cannot be grounds for denying a proposed development. See JAM Golf, 2008 VT 110, ¶ 13.

Similarly, the provision requires that major development must be located in a planned settlement area, yet the term “planned settlement area” is also undefined. While the Regional Commission argues that the terms “major growth” and “planned settlement area” are sufficiently clear to provide mandatory and applicable standards, and that the Project is certainly major development outside of any planned settlement area, these conclusion are not clear from the Regional Plan itself. See Re: EPE Realty Corporation and Fergessen Management, Ltd., No. #3W0865-EB, Findings of Fact, Conclusion of Law, and Order, at 40 (Vt. Envtl. Bd. Nov. 24, 2004) (noting that the plan speaks for itself and the court must make its own judgment on whether a project conforms to the plan). Because we find this provision fails to establish a clear, unqualified, and unambiguous standard, the Court cannot deny the Project on the grounds that it constitutes major growth outside of a planned settlement area. See In re John A. Russell Corp., 2003 VT 93, ¶ 16.

Lastly, the Regional Commission focuses on the provision of the 2007 Regional Plan that concludes that Exit 1 is not an appropriate location for a growth center. 2007 Regional Plan at 27. The Plan designates two types of growth centers; Regional Growth Centers and Designated Growth Centers. Regional Growth Centers are “the traditional developed areas in the region.” Id. Designated Growth Centers are areas that a municipality seeks designation for based on a number of criteria and that must receive approval from the Vermont Downtown Board before the designation may take effect. Id. at 28. While the prohibition of growth centers from Exit 1 appears clear and unambiguous, it is inapplicable to the Project. The Project is not located in an area where traditional development has occurred, and no party is seeking to have the Project receive a growth center designation. Therefore, the 2007 Regional Plan’s limitation on growth centers at Exit 1 does not prohibit the Project.

As we find that there are no applicable mandatory and unambiguous provisions of the 2007 Regional Plan that prohibit the Project, we conclude that the Project conforms to the Regional Plan, and thus, complies with Act 250 Criterion 10.⁹

Conclusion

Regarding the post hearing motion, the Court **GRANTS** in part and **DENIES** in part the Ratajs’ motion to reopen the evidence. The Court admits the Ratajs’ Exhibits A and B, but denies the Ratajs’ request to recall Mr. Saladino and to offer a rebuttal witness.

On the merits, the Court concludes, for the above reasons, that the Project complies with Act 250 Criterion 5 with the imposition of the following conditions to mitigate traffic concerns.

- a. The Applicant shall request a formal speed study to examine lowering the posted speed limit on U.S. Route 4 from the I-89 southbound ramp to the I-89 northbound ramp from 45 mph to 40 mph after completion of each phase of development.
- b. Prior to completion of Phase 1A, Applicant shall construct a westbound left turn lane at the U.S. Route 4/I-89 southbound ramp intersection for traffic entering I-89 southbound. This work shall include reducing the width of the shoulder along U.S. Route 4 in the area of the convenience store/gas station to eliminate tractor

⁹ We note that our conclusion would have been the same if we had found that the Municipal and Regional Plans did not conflict.

trailer parking in this area. Roadside vegetation shall be cut back along the inside curve of U.S. Route 4 east of the Project access road and between I-89 northbound and southbound ramps.

- c. Prior to completion of Phase 1A, an actuated traffic signal shall be installed at the U.S. Route 4/I-89 northbound ramp. Applicant shall pay its proportional share of mitigation measures for this existing adverse traffic and safety condition.
- d. Prior to completion of Phase 1B, Applicant shall construct a westbound right turn lane on U.S. Route 4 into the Project site.
- e. Prior to completion of Phase 1C, Applicant shall construct an eastbound left turn lane on U.S. Route 4 into the Project site.

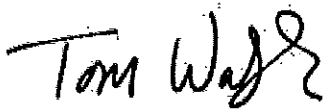
The Court imposes these traffic mitigation measures; however, we leave it to the parties to work through the financing details for the required actuated traffic signal to be installed at the U.S. Route 4/I-89 northbound ramp.

As conditioned, we also conclude that the Project will not unnecessarily or unreasonably endanger the public or quasi-public investment in or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to adjacent public facilities, and therefore, complies with Act 250 Criterion 9(k). Lastly, we conclude that there are no applicable mandatory and unambiguous provisions of the 2007 Regional Plan that prohibit the Project. Thus, the Project conforms to the Regional Plan and complies with Act 250 Criterion 10.

This matter is remanded to the District Environmental Commission #3 for the ministerial act of issuing an Act 250 Land Use Permit consistent with this merits decision and the unappealed portions of the Commission's July 3, 2013 decision.

This concludes this matter.

Electronically signed on November 12, 2015 at 1:31 PM pursuant to V.R.E.F. 7(d).



Thomas G. Walsh, Judge
Superior Court, Environmental Division

Central Vermont Regional Planning Commission

FY16 DRAFT Strategic Goals

Mission:

The mission of CVRPC is to assist member municipalities in providing effective local government and to work cooperatively with them to address regional issues.

Goal 1: Enhance Financial Security

Strategies:

- a) Manage budget and grant funds in a sustainable and transparent manner
- b) Restructure financial system to more fully utilize Quickbooks
- c) Increase reserve fund to \$30,000
- d) Budget grant proposals to cover the most administratively efficient level of expenses as direct costs
- e) Refresh and expand policies to strengthen organizational oversight and comply with 2 CFR Part 200 requirements

Measurements:

- a) Executive Committee members evaluate budget and financial reports as transparent and understandable
- b) Exceeded or meet overall budget targets (reported on annually after audit)
- c) Train staff in requirements of 2 CFR Part 2, as applicable to individual positions
- d) Maintain unqualified audit reports
- e) Exceeded or meet reserve fund target
- f) Reduce indirect expenses by 10%
- g) Create/update the following policies/procedures by June 30, 2016:
 - Subrecipient Oversight Monitoring Policy
 - Contract Administration Procedure
 - Travel Policy
 - Procurement Policy
 - Records Retention and Access Policy
 - Grants Management Manual
 - Expense Allocation Policy
 - Personnel Policies

Goal 2: Create Operational Excellence

Strategies:

- a) Stabilize staffing at 7.5 FTE
- b) Build a knowledgeable and professional staff and recognize staff accomplishments
- c) Build an interdisciplinary staff
- d) Strengthen Commissioner understanding of Commission activities

Measurements:

- a) Fill vacant Regional Planner position with senior level staff
- b) Fill Finance/Office Manager position by March 1
- c) Develop new staffing structure, including job descriptions with staff development paths
- d) Provide at least three professional development opportunities for all staff, one of which is outside their current project discipline
- e) Revise performance appraisal system
- f) Develop annual work program and distribute to Commissioners
- g) Provide written ED updates to highlight issues of interest to Commissioners
- h) Enhance readability of staff reports
- i) Conduct Commissioner survey regarding Commission meeting effectiveness and understanding of role of Regional Commissioner

Goal 3: Service Enhancement

Strategies:

- a) Move organization to be more strategic in pursuing funding opportunities
- b) Align organizational thinking to anticipate municipal needs
- c) Increase plan implementation activities by building CVRPC project development services

Measurements:

- a) Work with Commission to define Regional Plan priorities and target 10% of funding applications to them
- b) Complete a municipal survey to assess local assistance and regional needs
- c) Work with staff to define at least three plan implementation activities that CVRPC can assist municipalities to move forward in CY2016 grant funding cycles

Goal 4: Increase Perception of CVRPC as Leader and Partner

Strategies

- a) Increase visibility for activities at local, regional, state, federal levels
- b) Increase work with State/Federal Legislators
- c) Enhance CVRPC relationship with CVEDC

Measurements:

- a) Have staff create 1-2 page project briefs at the conclusion of projects; distribute to Commissioners and post to website
- b) Meet with one or more boards (SB, PC, CC) in each municipality by June 30, 2016; invite Regional Commissioner to participate
- c) Participate in or lead two or more VAPDA shared activities or initiatives
- d) Spend two days per month in the Statehouse during the 2016 legislative session
- e) Participate in CVEDC Board meetings and provide updates on CVRPC activities
- f) Meet monthly with CVEDC Director on issues of mutual interest