

Sixth Supplemental Written Comments of Stephen Whitaker

Preapplication RPC03-0001 — Central Vermont Regional
Planning Commission (CVRPC)

Draft Regional Plan and Regional Future Land Use Map

To: Vermont Land Use Review Board —
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Continues Parts 1–34 of my July 24, July 27, July 31, August 4, and August 5, 2026 comments, and Parts 35–38 of my Fifth Supplemental filed August 6, 2026, under this docket, opening at Part 39.

39. Brownfield remediation timing, traffic impacts, and capital-budgeting certainty should be resolved before Planned Growth Area designation, as a matter of logical sequence, for any brownfield parcel proposed in this draft Plan

Where a parcel proposed for Planned Growth Area status is a brownfield enrolled or eligible for enrollment in Vermont's Brownfields Reuse and Environmental Liability Limitation Act (BRELLA) program, 10 V.S.A. §§ 6641–6656, state law and DEC's Investigation and Remediation of Contaminated Properties Rule establish a fixed sequence: site investigation, then a Corrective Action Plan (CAP), then DEC approval of that CAP, then implementation. Until a CAP is approved, the remedy that will govern the site — excavation depth and extent,

capping versus removal, groundwater treatment, and the compliance points that follow from it — does not yet legally exist. The state's own Brownfields Revitalization Fund reflects the same principle in its own funding rules: applications may be submitted with a CAP pending, but no remediation award issues without one.

This is not merely a general planning risk CVRPC is positioned to observe from a distance. 24 V.S.A. § 4302(c) Goal 12(B) requires that the rate of growth planned for should not exceed the ability of the community and the area to provide facilities and services. Where CVRPC itself functions as the administering body for brownfield assessment and remediation funding — as it does for Country Club Road, and as this draft Plan's own General Land Use Goal 1 commits CVRPC to encouraging regionwide — CVRPC has direct, firsthand knowledge of realistic remediation timelines through its own Brownfields Advisory Committee: the work plans it approves, the budgets it authorizes, and the schedule slippage it tracks as the administering body. Goal 12(B) does not permit CVRPC to plan a rate of growth exceeding a service-provision timeline that CVRPC's own committee structure is positioned to know, better than almost any other party to this docket, is unrealistic.

This sequencing bears directly on two things a Planned Growth Area designation implicitly represents. First, capital budgeting: § 4430(b) requires a capital program to be arranged by order of priority among all other capital projects and to state, for each project, its estimated total cost, its proposed method and source of financing — whether by budgetary appropriation, reserve funds, federal or state amounts, impact fees, or issued obligations — and its estimated effect on municipal operating costs. None of that can be done credibly for infrastructure that must be routed through, or connected across, a site without an approved CAP: not the cost, because the physical remedy governing what lies beneath the ground has not yet been chosen; not the financing source, because the scope of work it would need to finance is still unknown; and not the priority ranking, because a project cannot be honestly ranked against the municipality's other capital needs until its cost and timeline are more than a placeholder. Second, traffic impact: remediation method drives remediation traffic — excavation and off-site disposal of contaminated soil generates a materially different truck-trip count, duration, and road-wear profile than in-place capping — and neither the scale nor the duration of that impact is knowable before a CAP is approved.

There is also a structural timing mismatch worth the Board's attention, illustrated concretely by Country Club Road though the underlying problem is general. § 4430 itself sets the capital-planning instrument's forward horizon: a one-year capital budget plus a five-year capital program, six years total from the date of adoption. CVRPC's own consultant, Stone Environmental, has put BRELLA project completion for the Country Club Road brownfield at 2030, a schedule CVRPC received through its own Brownfields Advisory Committee process and that I placed on the record at CVRPC's August 3, 2026 meeting. A six-year statutory window, even if fully and diligently used, cannot credibly capture a project whose defining input — an approved Corrective Action Plan — is not expected until at or beyond the edge of that window, unless the capital program is continuously re-adopted and rolled forward every year between now and then, with updated cost, financing, and priority findings each time. Nothing in this draft Plan or CVRPC's designation methodology shows that ongoing re-adoption is planned, required, or even contemplated. A parcel whose remediation timeline structurally outruns the capital-planning instrument's own statutory reach is not a parcel for which “planned infrastructure” can presently be shown at all.

I am not asking the Board to evaluate any specific parcel's remediation status here; that determination belongs to DEC, not this Board, and is outside the scope of a regional plan. I am asking the Board to recognize the logical conclusion this sequencing compels: a capital budget and program under § 4430 is only ever as credible as the facts it is built on, and for a brownfield parcel, an approved Corrective Action Plan is one of those foundational facts — without it, the cost, financing source, and priority ranking § 4430(b) requires are not merely incomplete, they have no valid basis to rest on at all. A capital program that cannot be credibly built cannot supply criterion (vii)'s planned-infrastructure showing, and without that showing, no Planned Growth Area designation resting on it can be supported or justified as compliant. This is not a request to hold a designation open pending better information; it is a conclusion that the designation is not presently supportable for any brownfield parcel lacking an approved CAP, and that conclusion applies to every such parcel proposed for Planned Growth Area status in this draft Plan, not to any single one.

40. Primary agricultural soils protection should be part of the Planned Growth Area designation determination for any brownfield parcel carrying primary agricultural soils,

and food-grade remediation adequacy is a related gap the Board should ask CVRPC to address

24 V.S.A. § 4302(c) Goal 9(B) commits the state to the protection and continued productivity of viable primary agricultural soils. CVRPC's own draft Plan reflects this goal directly. Act 250 Criterion 9(B) is the existing regulatory mechanism that enforces it today — a mandatory, judicially enforceable permit condition applied by a District Commission, carrying a fixed mitigation ratio of no less than 2:1 and no more than 3:1 for impacted primary agricultural soils. A Tier 1A designation removes Criterion 9(B) review from the process entirely. Consistent with the sequencing principle raised in Part 39, I ask the Board to require that this draft Plan's own Planned Growth Area criteria, or the § 6034 Tier 1A checklist, identify what — if anything — replaces Criterion 9(B) review before, not after, a parcel carrying primary agricultural soils is designated as a Planned Growth Area. A designation made first, with the replacement mechanism identified afterward, leaves exactly the gap Criterion 9(B) exists to close open for as long as that identification takes — and once Tier 1A is granted, there may be no remaining forum in which to close it. This requirement stands independently of Part 39's Corrective Action Plan requirement and is not satisfied by it: an approved CAP resolves contamination remediation generally, evaluated against DEC's Residential or Commercial Soil Values, neither of which — as discussed below — addresses food-crop exposure. A parcel could clear Part 39's requirement in full and still leave the question this Part raises entirely unanswered.

CVRPC or Montpelier may respond that the City retains the capacity to comply with agricultural soils protection on its own, even without Act 250 Criterion 9(B) review. That response does not answer the question a Planned Growth Area designation actually raises. Capacity to comply is not the same as a binding requirement to comply — the same distinction raised in Part 36 of my Fifth Supplemental regarding water and wastewater service, where a parcel's technical capacity to do something is not evidence that anything requires it to be done. Criterion 9(B) is a mandatory, judicially enforceable permit condition, applied by a District Commission with a fixed mitigation ratio the applicant cannot evade by assertion. A Tier 1A designation removes that enforceable mechanism. Unless this draft Plan's own Planned Growth Area criteria, or the Tier 1A checklist under § 6034, impose an equivalent binding requirement in its place — and nothing in the current record shows that they do — an assertion of capacity

to comply is a claim with no forum left in which it would ever be tested, verified, or enforced.

Separately, and on a related but distinct point I ask the Board to be aware of rather than treat as a settled requirement: Vermont's soil cleanup framework, administered by DEC under the Investigation and Remediation of Contaminated Properties Rule, evaluates remediation adequacy against Residential Soil Values and Commercial Soil Values. Neither addresses a food-crop ingestion exposure pathway. A site remediated to a standard sufficient for residential or commercial reuse is not thereby shown to be safe for continued food cultivation, because the state's own soil-value framework was not built to evaluate that pathway. Where a brownfield parcel carrying primary agricultural soils involves continued or resumed food production, I ask the Board to recognize this gap and ask CVRPC to address, before that parcel is designated rather than afterward, whether applicable remediation standards account for food-crop exposure — not because state law currently requires that specific evaluation, but because the absence of such a standard means no existing framework currently answers the question at all, and a designation made before the question is even asked forecloses the forum in which it would otherwise be asked.

41. A Planned Growth Area designation should not credit site-specific planning intent, under criterion (v) or otherwise, unless that planning was actually adopted through the process 24 V.S.A. §§ 4384–4385 require

24 V.S.A. § 4348a(a)(12)(B)(v) asks whether “the municipal plan indicates” that an area is planned for compact, higher-density development relative to the surrounding area. That criterion refers to the municipal plan — the document Chapter 117 defines and governs, whose required content is set by 24 V.S.A. § 4382(a) and which becomes part of the plan only through the warned public hearings before the planning commission and legislative body that 24 V.S.A. §§ 4384–4385 require. A concept map, site design, or consultant deliverable that has not gone through that adoption process is not the municipal plan, whatever its quality or however closely it resembles one.

This distinction matters region-wide because concept-level site plans commissioned by a municipality, or by a private planning and engineering firm on a municipality's behalf, are common precursors to actual plan amendments —

and are not equivalent to one. A rendering showing proposed densities, building footprints, or road networks may usefully inform a future plan amendment, but it does not itself satisfy criterion (v), and it does not substitute for the utility and facility planning, capital-program integration, and public hearing record that a properly adopted plan amendment would carry with it. I ask the Board to require, for any parcel where criterion (v) is asserted to be met, confirmation that the specific planning relied upon was actually adopted as part of the municipal plan through the §§ 4384–4385 process — not merely produced, published, or referenced as a concept.

I raise this as a general principle applicable to any Planned Growth Area candidate in this draft Plan relying on site-specific concept-level planning rather than an adopted plan amendment. I am not asking the Board to evaluate the adoption status of any particular parcel's planning documents here; that is a factual question outside a regional plan's own text, and one I may bring to the Board's attention in a later forum specific to any parcel where it arises.

This problem compounds where the parcel is also a brownfield, as discussed in Part 39. A concept-level site plan for a brownfield necessarily depicts road alignments, building footprints, and infrastructure routing before a Corrective Action Plan has been approved — meaning the very layout it shows is provisional by definition, subject to revision once the actual remedy governing the site is chosen. Even if such a concept plan had been adopted as part of the municipal plan, which the record does not show it was, it could not support the precise capital budgeting § 4430(b) requires, because a plan drawn before the CAP is approved is a placeholder for what the site's remediation will ultimately allow, not a fixed design capable of being costed. Criterion (v) and criterion (vii) fail together on this record, for the same underlying reason: neither an adopted plan nor a credible capital program can rest on a site whose physical remedy has not yet been determined.

Requested actions

- Do not designate, and do not credit under criterion (vii), any brownfield parcel as a Planned Growth Area or Tier 1A-eligible without an approved Corrective Action Plan — a capital program under § 4430 cannot be credibly built, and criterion (vii)'s planned-infrastructure showing cannot be made, on a site whose remediation-driven cost, financing, and priority

remain undetermined. This is consistent with 24 V.S.A. § 4302(c) Goal 12(B), which requires the rate of growth planned for to stay within the community's actual ability to provide facilities and services — an ability CVRPC itself is positioned to know through its own Brownfields Advisory Committee. Priority should go to parcels whose remediation is complete or substantially advanced over parcels where it is not.

- Require this draft Plan's Planned Growth Area criteria, or the § 6034 Tier 1A checklist, to identify what replaces Act 250 Criterion 9(B) review for any parcel carrying primary agricultural soils, and require that identification — including whether applicable remediation standards account for food-crop exposure where continued food production is contemplated — occur before, not after, that parcel is designated as a Planned Growth Area.
- Require, for any Planned Growth Area parcel where criterion (v) is asserted to be met, confirmation that the site-specific planning relied upon was actually adopted as part of the municipal plan through the 24 V.S.A. §§ 4384–4385 process, not merely produced or referenced as a concept.

Respectfully submitted,

Stephen Whitaker

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