

WRITTEN MEMORANDUM

Section 1.106(A) of the Board's Application Guidelines Cannot Narrow the Conjunctive, Itemized Requirements of 24 V.S.A. § 4348(d)(1)

Date: August 18, 2026

To: Vermont Land Use Review Board — Act250.Board@vermont.gov

From: Stephen Whitaker, Montpelier, Vermont, on behalf of himself and ASAP4CV (Accountable, Sustainable, Affordable Planning 4 Central Vermont)

Re: Docket RPC03-0001 — Central Vermont Regional Planning Commission preapplication; and, more broadly, Section 1.106(A) of the Board's Regional Planning Commission Application Guidelines

I. Purpose of this memorandum

This memorandum accompanies brief oral remarks delivered today and sets out, in full, an argument that does not fit a short comment slot: that Section 1.106(A) of the Board's Application Guidelines — in the version effective August 19, 2026, and, on the available evidence, largely unchanged for close to a year before that — narrows a statutory requirement the Board has no authority to narrow, and that the practical effect in this docket is a Future Land Use Map change description that does not do the job the statute assigns it.

II. The statutory text is conjunctive and itemized

24 V.S.A. § 4348(d)(1) requires that, at least 30 days before the first hearing, the following be delivered together to the statutory notice list:

"...a copy of the proposed plan or amendment, a report documenting conformance with the goals established in section 4302 of this chapter and the plan elements established in section 4348a of this chapter, and a description of any changes to the Regional Future Land Use Map..."

Three items, joined by commas and "and": a copy of the plan; a conformance report; and a description of Future Land Use Map changes. This is standard conjunctive statutory drafting — each item is a distinct noun phrase, not a single combined concept. Nothing in the text authorizes treating one document as capable of satisfying all three, and nothing limits the third item ("any changes") to

a single Future Land Use category. It applies across every category on the map — Downtown Center, Village Center, Planned Growth Area, Village Area, Transition/Infill, and the Rural categories alike.

III. Section 1.106(A) treats these as one document

Section 1.106(A) of the Board's Application Guidelines, effective August 19, 2026, states:

"The draft Regional Plan Review Checklist will serve to meet the statutory requirement of 24 V.S.A. §4348(d)(1) for a preliminary report that documents conformance with the goals in 24 V.S.A. § 4302, for compliance with 4348a, and for description of any changes to the FLU map."

This collapses the second and third statutory items — the conformance report and the map-change description — into a single Checklist document. A Guidelines provision is the Board's own interpretive and administrative tool for how it will process applications; it is not a vehicle for redefining what a legislatively enacted statute requires. Where the statutory text is plain and itemized, as it is here, guidance describing a single document as satisfying multiple distinct statutory items does not change the underlying obligation — it describes, at most, the Board's chosen method of administering it, and that method should not be read to excuse the applicant from producing content that actually satisfies each item.

IV. This is not a new provision introduced to meet this year's deadline

It would be a stronger and simpler story if this language had been quietly inserted this summer to ease Regional Planning Commissions toward the December 31, 2026 statutory deadline. The evidence does not support that. Comparing the July 17, 2026 draft Guidelines against the version adopted today, the "will serve to meet" language in Section 1.106(A) is unmarked as a change — it reads as carried-forward text, not a new insertion. The document's own changelog confirms this further back: Version 1.2 (December 15, 2025) already references edits to "Sections 1.106(A)" with substantive content in place. Across all six recorded revisions from September 2025 to today, no changelog entry ever describes adding or introducing the consolidation language itself — only, in the

July 22, 2026 revision (Version 1.5), a narrower edit clarifying that Board review asks whether a plan "appears to" conform.

The more accurate description, then, is not that this provision was inserted to meet this year's pressure. It is that a substantive consolidation of three statutory deliverables into one document has been operative for close to a year, through six revision cycles, without ever once being surfaced in the Guidelines' own change history as a substantive item — meaning no comment period, board discussion, or public notice has ever been specifically aimed at this consolidation. That is a longer-standing structural gap than a rushed shortcut, and arguably more concerning for being invisible rather than recent.

V. Why this matters most for Planned Growth Areas specifically

Section 4348(d)(1)'s "any changes" language is not limited to Planned Growth Areas — it reaches every Future Land Use category. But the categories carry very different substantive tests. Downtown Center and Village Center changes carry "no municipal plan needed" under the Board's own methodology — a thin description costs little there, because there is no multi-factor criteria list to compare it against. Planned Growth Area changes are different: 24 V.S.A. § 4348a(a)(12)(B) sets out seven distinct criteria, including, at (v), that "the municipal plan indicates that this area is intended for higher-density residential and mixed-use development." A genuine description of changes for a proposed Planned Growth Area needs to show, criterion by criterion, why the change is warranted. A five-sentence, largely conclusory narrative — the kind this docket's record already contains for Montpelier's Planned Growth Area — does not do that work, regardless of what Section 1.106(A) says it accomplishes.

This is also the category with the highest stakes: a Planned Growth Area is the gateway to Tier 1A status, and Tier 1A removes Act 250 review entirely under 10 V.S.A. § 6081(z)(1). A thin description here does not merely under-inform the public about a minor reclassification — it under-informs the public and the Board about a designation that permanently switches off an entire layer of state land use review for whatever is built while it is in effect.

VI. Without a genuine narrative, review depends on tools the public does not have

In the absence of a genuine, criterion-based description of changes, a member of the public attempting to evaluate a proposed Planned Growth Area boundary has no practical way to do so without GIS software, layered municipal and regional map data, and the time to reconcile them — resources most residents and volunteer community groups do not have. Estimating acreage from a printed map's scale bar, as this filer has done elsewhere in this docket, is a workaround for the absence of the description the statute requires, not a substitute for it. The statutory description-of-changes requirement exists precisely so that this kind of analysis is not necessary — so that the basis for a change is stated in words a member of the public can read and evaluate, not reconstructed from a colored polygon.

VII. Requested actions

- Confirm when the consolidation language in Section 1.106(A) was first adopted, and address why it has never been identified as a substantive item in the Guidelines' own change history.
- Clarify that Section 1.106(A) describes the Board's administrative practice and does not narrow the independent, conjunctive requirements of 24 V.S.A. § 4348(d)(1) — in particular, that a Checklist entry does not satisfy the statute's "description of any changes to the Regional Future Land Use Map" requirement unless its content actually describes, criterion by criterion where applicable, what changed and why.
- Apply this clarification specifically to Planned Growth Area changes, given the seven-criteria test at 24 V.S.A. § 4348a(a)(12)(B) and the Tier 1A/Act 250 stakes attached to that designation.
- In this docket, require CVRPC to supplement Exhibit 005 with a genuine, criterion-based description of changes for each proposed Planned Growth Area, rather than relying on Section 1.106(A) to treat the existing Checklist entries as sufficient.

Respectfully submitted,

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