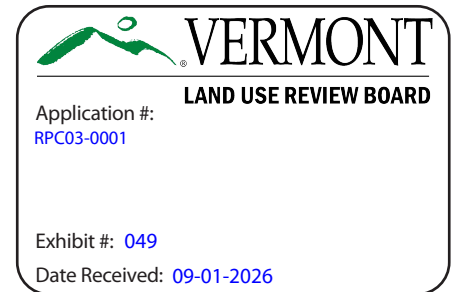


From: Stephen Whitaker <whitaker.stephen@gmail.com>
Sent: Tuesday, September 1, 2026 12:22 PM
To: Act250 - Board
Cc: Dingledine, Brooke
Subject: Second Supplemental Comment

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Stephen Whitaker — Second Supplemental Comment

Land Use Review Board — RPC03-0001 (CVRPC Regional Plan Preapplication Review)

Submitted September 1, 2026, in advance of the Board's continued consideration on September 8, 2026

This supplemental comment makes two points arising from the Board's August 31, 2026 meeting: one elaboration of an argument I raised only verbally that I want on the written record in full — including a connection between that argument and my prior participation comments that I did not draw out loud on August 31 — and one factual correction to a statement I made during that meeting.

1. Statutory primacy over Board guidance and RPC checklist practice

At the August 31 meeting, immediately after raising the Section 1.106(A) point discussed below, I noted on the record that the same principle applied to a prior growth center decision for the Country Club Road parcel: a reviewing body's decision that had relied on agency guidance rather than on the governing statute itself. I elaborate on that point here because it is directly relevant to how the Board should treat Section 1.106(A).

The history is this: on October 28, 2024, the reviewing body that had granted an expansion of the Montpelier growth center to include the entire 203 Country Club Road parcel only a month earlier voted to revoke that expansion, after recognizing that the governing statute was more specific than the guidance it had applied in granting it. I offer that history not as commentary on this Board's guidelines generally, but as a concrete example, from a sister land-use process operating under a related statutory framework, of a reviewing body correcting course once it recognized that a more specific statutory requirement had not been satisfied by the guidance it had relied on.

I raise this because Section 1.106(A) presents a comparable divergence. As I noted on August 31, Section 1.106(A) states that 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. A checklist and a report documenting conformance are not the same instrument, and Section 1.106(A) does not explain how one substitutes for the other across the three distinct items 24 V.S.A. § 4348(d)(1) requires: a copy of the plan, a report documenting conformance with the

§ 4302 goals and § 4348a elements, and a description of any changes to the Regional Future Land Use Map.

In preparing this supplemental comment, I also identified a second, related gap. 24 V.S.A. § 4348(d)(2) imposes a separate and more specific obligation on regional planning commissions: at least 30 days prior to the first hearing, the RPC must provide each of its member municipalities with a written description of map changes within that municipality, a municipality-wide map showing old versus new areas with labels, and information about the new Tier structure and how to obtain Tier 1A or 1B status. Section 1.106(A) does not reference § 4348(d)(2) at all, and I am not aware of any other provision in the Guidelines that addresses it. If the Guidelines' review checklist does not reach this separate, more specific statutory obligation, I would ask the Board to confirm on the record whether and how compliance with § 4348(d)(2) is being assessed in preapplication review — for CVRPC's plan and as a matter of general practice going forward.

Why this gap is not a formality: it is the same gap underlying my participation comments

I want to draw the connection explicitly, because I do not think it should be treated as two separate concerns. The 24 V.S.A. § 4348(d)(1) report that Section 1.106(A) treats as satisfied by the checklist is supposed to document conformance with the § 4348a elements and describe changes to the Regional Future Land Use Map. Those are not abstract compliance items. For a member of the public to evaluate whether a specific parcel qualifies for inclusion in a Planned Growth Area, they need parcel-level documentation of how that parcel meets each of the seven criteria at 24 V.S.A. § 4348a(a)(12)(B) — not a regional narrative asserting that criteria are generally met. And for a member of the public to understand what is changing and why, they need the description of future land use map changes that § 4348(d)(1) itself calls for, not a map they must independently compare against a prior version with no accompanying explanation.

This is the material the checklist-as-report substitution appears to have allowed CVRPC to omit, and it is also the material my prior comments identified as absent from the record: no parcel-level criteria documentation, and no description of map changes accompanying the materials delivered on August 10. Framed together, the point is this: if Section 1.106(A) permits a checklist to stand in for the § 4348(d)(1) report, and the report is what would otherwise have required this information, then the participating public has neither the information needed to examine whether specific parcels are eligible for Planned Growth Area designation, nor the information needed to participate meaningfully in commenting on that eligibility. That is not two problems — a guidance question and a participation question — but one problem with two visible symptoms.

2. Correction: this is the last, not one of several remaining, Regional Plan pre-application reviews

During the August 31 meeting I stated that there were four or five more regional plans yet to complete this preapplication review process. That was incorrect. Board Member Dingledine correctly stated on the record that CVRPC's plan is the last of the eleven regional plans to go through preapplication review; the plans remaining to come before the Board are at the plan

adoption stage, not preapplication. I want to correct my own misstatement for the written record.

I raise this correction not merely for accuracy, but because it bears on the stakes of getting the preapplication record right here. If CVRPC's is the last regional plan to complete preapplication review, then whatever standard the Board applies — on the Section 1.106(A)/§ 4348(d)(1) checklist question, on § 4348(d)(2), and on the meaningful participation findings I raised in my primary and prior supplemental comments — is being set at the close of this process rather than at its outset, with no remaining preapplication review still to come where an inconsistency could be caught and corrected before any plan reaches adoption.

Requested actions

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- Confirm on the record whether Section 1.106(A)'s checklist is intended to satisfy all three items required under 24 V.S.A. § 4348(d)(1),
- and explain the basis for that determination if so.
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- Confirm on the record whether and how compliance with 24 V.S.A. § 4348(d)(2)'s separate municipal-notice requirement is being assessed,
- given that Section 1.106(A) does not reference it.
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- Recognize that the absence of parcel-level § 4348a(a)(12)(B) criteria documentation and a description of Regional Future Land Use Map
- changes — the content the § 4348(d)(1) report would otherwise require — is not a separate concern from the participation deficiencies I raised in my primary and prior supplemental comments, but the direct consequence of the same checklist-for-report substitution
- addressed above.
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- Note for the record that CVRPC's plan is the last of the eleven regional plans to complete preapplication review, correcting my own August
- 31 misstatement.
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Respectfully submitted,

Stephen Whitaker

Montpelier, Vermont