

Gott, Catherine

From: Stephen Whitaker <whitaker.stephen@gmail.com>
Sent: Thursday, September 3, 2026 5:32 PM
To: Act250 - Board
Cc: Dingledine, Brooke
Subject: Regional Plan Compliance Determinations — The Board's Duty Under Section 4348(h)(4)
Applies to Its Own Guidelines, Not Only the VAPDA Methodology

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To the Land Use Review Board:

This letter addresses a single structural question that applies to every regional plan the Board will review under this cycle, not only CVRPC's, and I raise it now because the Board's answer will govern the determinations still pending.

Under 24 V.S.A. section 4348(h)(4), the Board's determination of a regional plan's compliance turns on whether the plan conforms with sections 4302, 4348a, 5803, and 5804 — the statutory text itself. That determination is the Board's own, and it is not satisfied by a regional planning commission's conformance with a third party's methodology, however useful that methodology may be as a starting tool.

The Vermont Association of Planning and Development Agencies' Statewide Future Land Use Methodology was developed under section 4348a(e), which directs VAPDA to develop it "in consultation with" the Department of Housing and Community Development and this Board. Consultation is not adoption, and nothing in section 4348a(e) or elsewhere states that conformance with VAPDA's methodology satisfies conformance with the statute. Where the two diverge, the statute controls, and reconciling that divergence is the Board's obligation under its own section 4348(h)(4) duty — not an obligation VAPDA can discharge on the Board's behalf, and not one the Board can decline on the ground that the methodology said otherwise.

One concrete divergence, to make this specific rather than abstract: the methodology's mapping process states that "capacity of sewer and water systems need not be considered" in verifying whether an area is served by public water or wastewater. The statute itself, 24 V.S.A. section 4348a(a)(12)(B)(ii), contains no such qualification. It asks only whether the area "is served by public water or wastewater infrastructure," in the present tense, with no capacity carve-out and no planned-infrastructure allowance of the kind the Legislature did write into criterion (vii) for transportation infrastructure. A plan found compliant on the methodology's reading, without the Board independently confirming the statutory text is actually satisfied, has not received the determination section 4348(h)(4) requires.

The same scrutiny the Board owes to VAPDA's methodology, it owes to its own Application Guidelines. Section 4348(d)(1) requires that a proposed plan or amendment be accompanied by three distinct items: a copy of the plan or amendment itself, a report documenting conformance with the goals of section 4302 and the plan elements of section 4348a, and a description of any changes to the Regional Future Land Use Map. These are three separate, conjunctive requirements. The Board's own Application Guidelines, at section 1.106(A), treat the Regional Plan Review Checklist as sufficient to satisfy this

requirement, collapsing three itemized statutory deliverables into one document of the Board's own design. I raised this specific provision in my written memorandum to the Board on August 18, 2026, submitted along with oral comment the same day; the item was on a prior meeting agenda for Board discussion and was not reached for lack of time. I raise it again here because it remains unresolved, and because it bears directly on the same structural question this letter addresses: whatever the convenience of the Guidelines' approach, convenience is not the statutory standard, and a guidance document the Board wrote for itself is not entitled to any more deference against the statute than a methodology document VAPDA wrote.

I raise this now, rather than after any determination issues, because the two documents discussed above — the VAPDA methodology and the Board's own Guidelines — are not shielded by section 4348(m) in the way an approved regional plan is. That section's non-appealability applies to the plan once approved; it does not extend to the validity of the guidance documents the Board uses to reach that approval, nor to the Tier 1A determinations that follow it, which carry no comparable finality provision and remain subject to the Board's own recurring review under section 6034(d). A designation built on an unresolved conflict between guidance and statute does not become more defensible with time — it becomes harder to unwind, precisely because so much will have been built on top of it. Resolving the question now, while it is still a paper question, is considerably simpler than resolving it later, when it will not be.

This Board is not the first Vermont body to confront a guidance-versus-statute divergence in a designation program. In October 2024, the Community Investment Board found that its own 2012 boundary-amendment policy — which had allowed an existing growth center's boundary to be amended on a lighter showing than the growth center statute's requirement that such amendments proceed in the same manner as a new application — was, in a board member's words on the record, "in direct conflict with the governing statute." That board did not treat the conflict as the guidance's problem alone. It repealed the policy and revoked the boundary approval already granted under it, notwithstanding that the approval had already issued.

I raise this not to suggest any parallel in outcome, but because it establishes that a designation body's responsibility to reconcile its own guidance with the statute it administers does not end once an application has been decided, and does not depend on who authored the guidance — whether a third party's methodology or the Board's own Application Guidelines.

Multiple regional plans have already been adopted by their regional planning commissions and remain before this Board awaiting final determination of compliance ahead of the December 31 deadline. An answer to this question now, applied consistently to both the VAPDA methodology and the Board's own Guidelines, would meaningfully assist those determinations, not only CVRPC's, without requiring reconsideration of any determination already issued.

Requested actions:

- Confirm on the record that the Board's section 4348(h)(4) compliance determination is independent of, and controls over, the VAPDA methodology where the two diverge.
- State whether the Board's own Application Guidelines, section 1.106(A) in particular, will be revised to require the three separate items section 4348(d)(1) itemizes, rather than treating a single checklist as sufficient, and whether this can be taken up at the Board's next available meeting given it was not reached previously.

- State whether either divergence — the VAPDA methodology's treatment of water/wastewater capacity, or the Guidelines' checklist substitution — has been raised in any other region's preapplication or plan review to date.
- Clarify, for consistent application across all pending regional plan determinations, how an applicant is expected to demonstrate statutory conformance where either document's guidance would otherwise excuse it.

Respectfully submitted,
Stephen Whitaker
Montpelier, Vermont