VERMONT
LAND USE REVIEW BOARD
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Supplemental Written Comments of Stephen Whitaker — September 15, 2026

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

Draft Regional Plan and Regional Future Land Use Map

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

From: Stephen Whitaker, Montpelier, Vermont, on behalf of himself and ASAP4CV

Re: The Board's own September 8, 2026 Preapplication Response confirms, rather than resolves, the undocumented-criteria problem this record has already raised — and forecloses any claim that the gap is minor or theoretical.

This filing is direct because the stakes require it to be. The Board's own issued Preapplication Response for this docket now makes it possible to state, without qualification, that no Planned Growth Area proposed in this plan has been evaluated against the seven criteria of 24 V.S.A. § 4348a(a)(12)(B) on any record the Board, CVRPC, or the public can point to. This is no longer an inference from absence. It is what the Board's own response shows on its face, and what CVRPC has independently admitted in writing.

1. The Board's own response shows the checking never happened

The Preapplication Response addresses six Planned Growth Areas across six municipalities. For five of them — Barre City, Barre Town, Montpelier, Northfield, and Waterbury — the entire finding is one sentence: that the area "appears to meet the statutory standards for a planned growth area." No criterion is named. No finding is made as to water or wastewater capacity, flood hazard exclusion, walking-distance measurement, housing diversity, or planned transportation infrastructure. Nothing in the document indicates any of the seven criteria was checked, individually or collectively, for any of these five areas.

The sixth, Berlin, receives the only criterion-level finding in the entire section: that the area along Route 62 and Airport Road lacks sidewalks, implicating criterion (vii). That is one criterion, for one of six areas. It is not evidence that the other six criteria were checked for Berlin, and it is not evidence that any criterion was checked for the other five municipalities. A single documented finding, surrounded by five blank passes, is not a demonstration of methodology. It is the exception that shows the rule was never applied.

2. The Board's own document proves granular review was available and simply wasn't used for Planned Growth Areas

This is not a capability question. In the same response, addressing Village Areas, the Board named all twenty-three proposed sub-areas individually, town by town — for example, Barre Town broken into East Barre, Lower Graniteville, Upper Graniteville, and Upper Websterville — and issued a separate finding for each, clearing twenty-two and flagging one, Upper Graniteville, by name. That is the standard the statute contemplates and the standard this Board is capable of applying. It was applied to Village Areas in this same document. It was not applied to Planned Growth Areas.

Montpelier's Planned Growth Area is the clearest casualty of that omission. Unlike Barre Town's PGA, which the response names as a single, specific place — the South Barre PGA Area — Montpelier's designation is reported as one undifferentiated "Montpelier PGA Area," despite comprising multiple genuinely distinct proposed growth areas across a municipality that is, by land area, the smallest of the six. A single pass-fail label covering several unrelated sites is not a finding about any of them. It is the absence of a finding, formatted to look like one.

3. CVRPC has already admitted, in writing and on four separate occasions, that there is nothing behind the label

This is not a single admission. It is a pattern, built across four written responses from CVRPC's own Executive Director to public records

requests submitted between September 3 and September 15, 2026 — the same window surrounding the Board's Preapplication Response.

September 9, 2026 — no methodology exists beyond a statewide template. Asked for any written methodology, protocol, or internal guidance document, beyond the Vermont Association of Planning and Development Agencies' (VAPDA) statewide methodology, that CVRPC has adopted or developed for applying the seven criteria to specific parcels, CVRPC responded: "No such documents exist beyond the above cited 'VAPDA statewide methodology.'"

September 9, 2026 — no record of who evaluated any parcel, or when. Asked for any records identifying who performed a criteria evaluation for any given parcel, and when, CVRPC responded: "No such records exist."

September 9, 2026 — no record CVRPC ever recognized the statewide template conflicts with the statute. Asked separately whether any record acknowledges that the VAPDA methodology's treatment of water and wastewater capacity, or its crediting of merely "planned" infrastructure, departs from the plain text of § 4348a(a)(12)(B), CVRPC responded, to both questions: "No such records exist." Every other regional planning commission in Vermont that responded to the same question — Addison, Bennington, Chittenden County, Mount Ascutney, Northeastern Vermont, Northwest Regional, Rutland, Two Rivers-Ottauquechee, Windham, and Lamoille County — gave the same answer. Not one regional planning commission in the state has any record of ever having acknowledged, in writing, that the template it is using may not match the statute it is supposed to be implementing.

September 15, 2026 — CVRPC's own Board never adopted the methodology in the first place. Asked for any record showing that CVRPC's Board of Commissioners — with or without a prior recommendation from the Regional Plan Committee — voted to adopt or otherwise formally approved the use of the VAPDA methodology as CVRPC's methodology for mapping Future Land Use Areas under § 4348a, CVRPC responded: "No such records exist."

Read together, these are not four instances of the same gap. They are four different gaps stacked on top of one another. There is no criteria-specific methodology beyond a generic statewide template. There is no record of that template ever having been evaluated against the statute it is meant to implement. There is no record of anyone applying it, parcel by parcel, anywhere in this docket. And now, most fundamentally: there is no record that CVRPC's own governing Board ever voted to use this template at all. Whatever produced the designations in this plan was never adopted by the body statutorily responsible for adopting the plan. That is not a documentation failure at the margins. It is an absence of institutional authorization running under the entire Future Land Use Map.

That unanimous silence is worth sitting with. Every regional planning commission in Vermont is, right now, building toward the same December 31, 2026 deadline, using the same statewide template, on the same criterion the Legislature wrote into § 4348a(a)(12)(B)(ii): that a Planned Growth Area be served by public water or wastewater infrastructure. Not one region in the state has ever written down whether that requirement means anything more than a box to check. This Board does not need an analogy to see the problem, but the one already in circulation around this docket fits it precisely. If regional planning commissions are building the plane while flying it, this is not a loose bolt discovered mid-flight. This is eleven separate flight crews agreeing to build the plane without ever confirming the fuel tank is sized for the trip — and none of them keeping a record of having asked the question. A plane can fly for a while on an unexamined assumption. It cannot land on one.

None of this is a coincidence of timing relative to the Board's Preapplication Response. It explains it. The Board's five one-line passes on Planned Growth Areas are not a summary of analysis that exists somewhere else in CVRPC's files, applied by a body that adopted the standard it was applying. CVRPC's own admissions establish that no such analysis, and no such adoption, exists to summarize.

4. Without a documented basis, the public cannot participate — it can only guess and defer

Meaningful participation, as 3 V.S.A. § 6002(6) defines it and 24 V.S.A. § 4348(a) requires it, presumes there is something for a resident to examine, question, and respond to. A one-line conclusion resting on an unwritten judgment inside a single GIS staff member's assessment gives a resident nothing to engage with. Nobody can meaningfully object to a determination whose basis was never recorded. The predictable result is what this docket has already shown: participation collapses into either silence or generalized complaint, because there is no specific, documented claim available to test, confirm, or rebut. A public asked to trust an unwritten judgment is not a public being asked to participate. It is a public being asked to defer.

5. The asymmetry that makes this the last real opportunity to require it

Once the Board issues an affirmative determination of compliance on the regional plan, that determination — and the Future Land Use Map adopted with it — is not appealable. 24 V.S.A. § 4348(m). Whatever is designated a Planned Growth Area without a documented basis becomes, at that moment, effectively permanent.

Tier 1A status built on that designation is not similarly protected by an equivalent safeguard in the other direction. Nothing in 10 V.S.A. § 6034 states that a Board determination of Tier 1A status is itself subject to any appeal, by any party, to any forum. Section 6034(b)(2) requires that concerns raised by residents or notice-requesting parties be "addressed" as part of a municipality's Tier 1A application — but addressed is not defined, carries no standard of adequacy, and creates no right to challenge the outcome once the Board rules. The Board's own November 2025 Appeals Study Report, prepared under this Act's own legislative charge, does not resolve this question either; it addresses appeals of individual Act 250 permits and municipal zoning decisions within already-designated Tier 1A and Tier 1B areas, not whether the designation decision itself can be appealed.

The result is a one-directional asymmetry the Board should not allow to stand unaddressed: the regional plan and its Future Land Use Map are

unappealable the moment they are approved, while the later, more consequential act of converting a designation into an Act 250 exemption may have no appeal path at all. If that is correct, the § 4348(i) objection to the Planned Growth Area designation itself is not merely the cleanest opportunity to require documented criteria — it may be the only one that will ever exist for any given parcel. A designation that later proves to have rested on nothing is one this Board, and no one else, will ever have the occasion to revisit.

6. A second, undocumented consequence of non-approval: legacy Act 250 exemptions outliving the designations they depend on

Existing, pre-2026 Downtown Development District, Growth Center, and Village Center designations retain their current benefits only until December 31, 2026, or until the Board approves the regional plan's Future Land Use Map, whichever comes first. If a region's plan is not approved by year end, those legacy designations lapse on that date, and nothing in current law establishes a process to reapply for a lapsed Growth Center designation under the prior program.

Several Act 250 exemptions available to parcels within a designated Growth Center are not tied to that same deadline. 10 V.S.A. § 6081(dd), as extended by 2026 Acts and Resolves No. 152, does not sunset until January 1, 2028 — a year past the point at which the underlying Growth Center designation it depends on may already have expired. Nothing in either title states what becomes of an exemption defined by reference to a designated status once that status itself has lapsed. This is not a theoretical drafting gap. Parcels are relying on this exemption today, in reliance on a designation that could cease to exist in just over three months, while the exemption's own statutory text says nothing lapses until more than a year after that.

The Board should not leave this question to be discovered the first time a permit applicant and a district coordinator disagree about it. It is squarely within the Board's competence to state, before December 31, 2026, whether a Title 10 Act 250 exemption tied to a designated Growth Center

survives the lapse of that designation under Title 24 — and if the answer is uncertain, that uncertainty is itself a reason for regional planning commissions to treat approval of a compliant plan, not a defensible non-decision, as the priority between now and year end.

Requested actions

- Require, before any affirmative determination of compliance issues under 24 V.S.A. § 4348(h), that every proposed Planned Growth Area carry a documented, criterion-by-criterion finding for each of the seven standards in § 4348a(a)(12)(B) — met, not met, or not evaluated — not a single undifferentiated pass or fail.
- Apply to Planned Growth Areas the same sub-area identification standard the Board's own Preapplication Response already applied to Village Areas: name each geographically distinct proposed growth area individually, and issue a separate finding for each, rather than one label covering a municipality's entire designation.
- Require CVRPC to state, on the record and municipality by municipality, who evaluated each parcel against each criterion and when — consistent with CVRPC's own September 9, 2026 admission that no such record currently exists.
- Direct that any parcel lacking a documented criteria evaluation be excluded from Planned Growth Area status in this adoption cycle and identified instead as a candidate for the streamlined amendment process under 24 V.S.A. § 4348(j) or § 4348(n), to be designated once the record actually supports it.
- Clarify, on the record, whether a Board determination of Tier 1A area status under 10 V.S.A. § 6034 is subject to appeal, by whom, and to what forum — given that this question bears directly on whether the § 4348(i) objection to a Planned Growth Area designation is the only opportunity any party will have to test whether that designation was properly supported.
- Clarify, on the record and before December 31, 2026, whether a Title 10 Act 250 exemption tied to a designated Growth Center —

including but not limited to 10 V.S.A. § 6081(dd) — survives the lapse of that designation under Title 24 when a regional plan is not timely approved, given that at least one such exemption's own statutory sunset postdates the designation's lapse date by more than a year.

Respectfully submitted,

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