VERMONT
LAND USE REVIEW BOARD
Application #:
RPC03-0001
Exhibit #: 070
Date Received: 10-23-2026

BEFORE THE VERMONT LAND USE REVIEW BOARD

IN RE: Central Vermont Regional Planning Commission — Docket No. RPC03-0001

Regional Plan and Regional Future Land Use Map, adopted October 20, 2026

OBJECTION OF STEPHEN WHITAKER AND ASAP4CV TO THE ADOPTED CENTRAL VERMONT REGIONAL PLAN

Submitted pursuant to 24 V.S.A. § 4348(i)

I. INTRODUCTION AND SCOPE

This objection is confined, as 24 V.S.A. § 4348(i)(3) requires, to whether the adopted regional plan is consistent with the regional plan elements and future land use areas described in 24 V.S.A. § 4348a. It is not.

Objectors' standing and interested-party status are set out in a separate Notice of Appearance and Statement of Interested-Party Status, filed concurrently and incorporated by reference; this document addresses the merits only.

This objection does not restate the participation, map-governance, environmental-justice, or brownfield-sequencing concerns raised during the preapplication comment period, nor the DEC/DOH/VAAFM brownfield and prime-agricultural-soils notification history. Those matters, and why they fall outside this objection's statutory scope, are preserved separately in the accompanying Chronicle of Deficiencies, filed concurrently for the record.

Before the counts, Objectors raise a threshold objection: CVRPC has not provided the report documenting conformance, or the description of map changes, that 24 V.S.A. §

4348(d) and (h)(1) require, and the omission leaves undescribed the largest change this plan makes in Montpelier (Section IV, Threshold Objection).

Objectors bring thirteen counts. The first three — absence of the § 4348a(a)(7) capacity study, failure to satisfy the § 4348a(a)(12)(B)(vii) Complete Streets criterion, and land counted as "served" that is not, under § 4348a(a)(12)(B)(ii) — are facial and region-wide: they attack a defect in the plan's structure, not any single designation, and do not require parcel-by-parcel proof. The fourth and fifth apply these defects, and independent defects of their own, to the Country Club Road parcel specifically, where Objector Whitaker has a particularized, documented interest. The sixth — failure to include the § 4348a(a)(9) housing element's required recommended actions to satisfy established need — is likewise facial and region-wide. The seventh — failure to support the § 4348a(a)(12)(B)(vi) housing-target criterion with parcel-level findings — is likewise facial and region-wide. The eighth — failure to satisfy the § 4348a(a)(11) flood resilience element — is likewise facial and region-wide. The ninth — failure to verify each Planned Growth Area designation against the § 4348a(a)(12)(B) criteria on a parcel-specific record — is likewise facial and region-wide, and supplies the standard the fourth and fifth counts apply to Country Club Road. The tenth — failure to set forth future land uses "in relation to the provision of necessary community facilities and services," as § 4348a(a)(12) requires, and to correlate the plan's elements as § 4348a(b) requires — the eleventh — failure to satisfy the § 4348a(a)(4) transportation element — the twelfth — failure to include the § 4348a(a)(5) recommendations to meet future needs, with indications of priority of need — and the thirteenth — failure to satisfy the § 4348a(a)(2) requirement that the natural resources map indicate agricultural lands and aquifer protection areas — are also facial and region-wide.

Each count below is argued from the statute and the record in this docket alone; nothing in this Objection depends on how any other regional plan or docket was treated (Section II.G).

Where this Objection refers to the planning goals of 24 V.S.A. § 4302, it does so because § 4348a(a) itself opens by requiring that a regional plan "shall be consistent with the goals established in section 4302 of this title." The goals are cited in support of the element counts. No count rests on a goal alone.

II. STANDARD OF REVIEW

Two interpretive principles govern the Board's review of every count below, and Objectors ask the Board to apply them expressly rather than by implication.

> *"Any objection under this section shall be limited to the question of whether the regional plan is consistent with the regional plan elements and future land use areas as described in section 4348a of this title."* **24 V.S.A. § 4348(i)(3)**

A. Agency guidance does not narrow a statutory element.

The VAPDA statewide methodology and the Board's own Application Guidelines are administrative tools for implementing 24 V.S.A. § 4348a; they are not a substitute for it, and where either conflicts with the statute's actual text, the statute controls. This matters concretely here: the methodology's instruction that "capacity of sewer and water systems need not be considered" cannot narrow the plain text of § 4348a(a)(12)(B)(ii) or the independent requirement of § 4348a(a)(7). An agency cannot use its own guidance to excuse compliance with the statute the guidance was written to implement. The same principle governs the Board's own Application Guidelines § 1.106(A), which states that CVRPC's Regional Plan Review Checklist "will serve to meet" the § 4348(d)(1) reporting requirement. By its own terms, that provision reaches only the preliminary stage; it does not purport to satisfy § 4348(h)(1)'s independent reporting duty at the adoption-submission stage now before the Board, a gap the Guidelines' own drafting confirms rather than fills. Where the Counts below identify a conflict between what guidance instructs and what the statute requires, Objectors ask the Board to resolve that

conflict in favor of the statute, as a matter of ordinary principles of statutory construction. This determination rests with the Board; it is not one the Board may treat as resolved by CVRPC's own certification of compliance, nor by the Guidelines' own procedural shortcuts.

On October 21, 2026 the Board's Chair answered Objector's September 17, 2026 request that the Board adopt prospective guidance for Planned Growth Area designations (Ex. 62; Ex. 63). The Board declined, stating that "any guidance cannot be stricter than the statutory requirements" and that the statute "only requires that the PGA 'generally meet' the seven sub criteria" (Ex. 63, pp. 2–3). That request asked what the Board will require of regional commissions in future filings, and the Board answered that question. It did not address what the Board must determine in this docket. Objectors do not ask the Board here to apply a standard stricter than the statute. Each Count rests on the statute's text and on this record: on what § 4348a requires the plan to contain (Counts I, XI, XII and XIII), and on what the Board must itself find under § 4348(h)(4) (Count IX).

Silence on method is not silence on result. The Board's October 21 letter observes that §§ 4302, 4347 and 4348a "do not prescribe specifically how to meet these requirements" (Ex. 63, p. 2). That is true of method and beside the point. Each Count asks whether something the statute says the plan "shall include" is in the plan: a capacity study, recommendations with indications of priority, a map that indicates agricultural lands. Whether an element is present is a question of fact. It does not depend on the Legislature prescribing how the element is built. Where the text leaves room, as in "indications of priority of need" or "generally within walking distance," Objectors have read the words modestly, asked only for what they say, and, where it matters, set out what a decision rejecting the Count must answer (Counts I, IX and XII). If a word is too general to apply, the Board must still apply it, in the written evaluation of each objection that § 4348(i)(4) requires. Generality in the statute is not a reason not to decide.

How each Count is framed. Each Count below is a separate objection under § 4348(i), and each is stated so that it can be answered. Most close with the findings a decision on

that Count would need to make. Objectors offer them in aid of the Board, not against it: a written evaluation that answers them applies the Act as the Legislature wrote it, and it can be reviewed and relied on in later dockets. A decision that does not answer them leaves the objection unevaluated under § 4348(i)(4).

The methodology describes itself the same way. It states that regional commissions "will highlight and explain deviations from this guidance"; its first page is labeled "Revised Draft 2/24/26" (Statewide Future Land Use Methodology, first page). In February 2024 the same drafters wrote to the Legislature that they hoped "the statute language provides enough direction to do our work with guidance developed by the [Board], as necessary" (VAPDA Comments on H.687 (Draft No. 2, 2/6/2024), House Committee on Environment and Energy, Feb. 13, 2024, item 2, p. 9). VAPDA's September 22, 2026 memorandum to the Board on the draft Guidelines takes the same position from the other side, objecting to any "separate requirement" for regional commissions "unless that requirement is clearly grounded in statute" (VAPDA Memo to LURB, Sept. 22, 2026, Requested Changes, item 3).

B. Self-certification is not the Board's determination, and does not receive deference as though it were.

CVRPC's own checklist confirming its compliance with a given § 4348a element is CVRPC's assertion, not independent evidence, and not a finding the Board may treat as already resolved. The Board's Guidelines say the same: "It is the RPC's burden to establish that the statutory standards are met" (§ 1.008). This is not a hypothetical concern in this docket. No record exists of CVRPC's Board of Commissioners ever voting to adopt the VAPDA methodology as the Commission's own operating approach — staff applied it, including the untraced sidewalk threshold at issue in Count II, without bringing it to the Board (see Chronicle of Deficiencies, Section VII). And the same threshold was flagged in writing as unsafe and non-compliant with § 4430 by DHCD's own Community Planning & Policy Manager over a year before CVRPC adopted it unchanged (Count II, below). A self-certification process that did not catch a defect

DHCD had already identified in writing is not a process the Board can rely on as a substitute for its own review.

The methodology is not a neutral document. It was written by the association of the regional commissions, the bodies whose maps it governs. CVRPC's Executive Director has described staff as applying the methodology "as we've been instructed to implement it" (Count IX). Guidance written by the regulated parties and applied by their staff as though it were an instruction is the reason the Board's own independent determination matters.

The association's own February 18, 2026 draft amendments proposed deleting 24 V.S.A. § 4476, which provided formal review of the sufficiency of an adopted regional plan, of a regional commission's confirmation of a municipal planning effort, and of its approval of a municipal plan. The association's comment describes it as "[l]egacy language related to the former Council of Regional Commissions that no longer exists and should have been deleted … years ago," and says it "conflicts with newly adopted LURB process" (Ex. 54, p. 9, comment CD22). The comment describes the provision by its administrative history. It does not mention that § 4476(b)(4) allowed any twenty persons who own or occupy property in an affected or adjoining municipality to request formal review of a plan's sufficiency. When the comment was written, § 4476 had not been repealed, and its status was before the courts (No. 25-CV-3918; No. 26-AP-064; Count V, criterion (i)). Nothing in the record shows that the proposal was put to CVRPC's Board of Commissioners. Act 152, Sec. 16, repealed § 4476 effective July 1, 2026 and provides no substitute review. Review of a regional plan's consistency with § 4348a now lies with this Board, and the Board has stated in its affirmative determinations on other regions' plans that they are not appealable under § 4348(m). Objectors reserve the constitutional question stated in Section VI.

CVRPC is also not a disinterested certifier of the Country Club Road designation. The Northern Border Regional Commission grant agreement for that site's infrastructure names CVRPC as the project's local development district (Ex. 26). The City's contract

with CVRPC for that role provides for payment "for an amount not to exceed $60,000 based on the number of hours worked" (Ex. 48, contract § 2). The City told developers in January 2026 that CVRPC "is leading the forthcoming Montpelier Housing Assessment" (Ex. 14, No. 14). And when asked in September 2026 for its records as local development district on the reported removal of the project's pump station, CVRPC answered, for each of four categories, "No such records exist" (Ex. 6).

This determination rests with the Board; it is not one the Board may treat as resolved by CVRPC's own certification of compliance.

C. Deadline pressure and third-party reliance are not a basis for finding compliance.

The Board's own December 31, 2026 statutory deadline, and the reliance interests of applicants who have structured Act 250 filings around existing designations, are real considerations — but they bear on the consequences of the Board's determination, not on whether the plan actually satisfies § 4348a. A finding of consistency is either supported by the record or it is not; the Board's discomfort with the practical fallout of an accurate negative finding is not itself evidence of compliance, and cannot substitute for the showings Counts I through V require. If anything, the existence of reliance interests already built on unresolved designations is a reason for rigor now, not haste: every month a designation goes unexamined is a month in which more reliance accumulates on a foundation the record does not yet support.

D. The consequences of a negative determination are real but not permanent, and the Board should weigh them accordingly.

Objectors recognize that a sustained objection or negative determination has consequences beyond Country Club Road: the plan's legacy designations lapse under 24 V.S.A. § 5804(b) if the Regional Future Land Use Map is not approved by December 31, 2026. That consequence is real, and Objectors do not minimize it. But it is not permanent, and the Board should not treat it as though it were. Section 4348(l) gives a regional

planning commission up to eighteen months to obtain an affirmative determination following a negative one — a ceiling, not a required waiting period. Under the Board's Guidelines a regional planning commission may submit a request for a new determination "[w]ithin 18 months of the Board's issuance of a negative determination," and the scope of review is the items that received the negative determination (§ 1.400, Version 1.5). Nothing prevents CVRPC from returning to the Board well before that deadline with a corrected regional plan, once the capacity study, the § 4430 capital budget, and the other showings this Objection identifies actually exist.

What that correction period would actually require of CVRPC and its member municipalities is not a burden imposed by this Objection; it is the work § 4348a(a)(7) and § 4430 already contemplate. Staff would need to identify the areas genuinely intended for near-term development and build a real capacity study and capital budget and program for those areas specifically — water, sewer, stormwater, roads, priority, and cost — rather than a color applied uniformly across a map. That is not a detour from what regional planning is supposed to produce. It is precisely what regional planning is supposed to produce. Objectors take no position here on which specific properties would or would not retain Planned Growth Area or growth-center-derived status once that work is done — that is exactly the determination a genuine capacity study and capital budget and program exist to make, not an outcome to be assumed in advance by CVRPC, the City, or this Objection. The plan returned to the Board would remain a region-wide plan; the point is that Planned Growth Area status is drawn only where that work has been done. A Board that holds this plan to the standard § 4348a requires is not choosing between rigor and continuity for the region. It is choosing the only path that reliably delivers both — and the corrective work that choice requires is the same work this framework was designed to demand of every region, on every cycle, whether or not an objection ever forces the question.

E. Approving under pressure has a cost the Board should weigh, not only a benefit it is being asked to deliver.

A designation granted because the calendar demanded it, rather than because the record supported it, does not stay contained to this docket. It teaches every resident who has engaged with this process in good faith — through written comment, oral testimony, records requests, and repeated attempts to be heard, all documented in the accompanying Chronicle of Deficiencies — that participation does not actually affect the outcome, and that the institutions asking them to participate will approve what they intended to approve regardless. That lesson, once taught, is difficult to unteach, and it directly undermines the very participation § 4302(b)(2) and § 6002 direct the Board and CVRPC to encourage: residents do not continue showing up to a process they have concluded is decided in advance. Requiring the showings this Objection identifies — even at the cost of delay — does the opposite. It demonstrates to CVRPC, to the City, and to every resident watching this docket that the process means what it says, which is the only foundation on which the Board's, the region's, and the City's credibility for the next plan, and the one after that, can actually be built.

F. "Shall include" is mandatory, not directory, as to §§ 4348a(a)(4), (a)(7) and (a)(9), and nothing in the statute or its 2026 amendments signals otherwise.

Section 4348a(a)(7) requires the plan's implementation program to include "a recommended investment strategy … based on a capacity study." Section 4348a(a)(9) requires the housing element to include "a set of recommended actions to satisfy the established needs." Section 4348a(a)(4) requires the transportation element to include recommendations "with indications of priorities of need, costs, and method of financing" (Count XI). Section 4348a(a)(12)(B)(vii) requires that the area be "served by planned or existing transportation infrastructure that conforms with 'complete streets' principles," and provides that planned infrastructure "includes" those investments in the municipality's capital improvement program. In (a)(4), (a)(7) and (a)(9) the operative

verb is “shall,” attached to a specific, textually bounded requirement — not a general aspiration the agency may satisfy in whatever measure it chooses.

Vermont’s ordinary canon of construction treats “shall” as mandatory unless the statute’s text or structure signals a directory intent. Nothing in § 4348a signals that intent for (a)(4), (a)(7) or (a)(9). To the contrary: the Legislature knew how to write flexibility into this framework when it meant to. Section 4348(j)’s minor-amendment provision expressly tolerates boundary changes under ten acres without a full plan amendment; § 4348(n), added by 2026 Acts and Resolves No. 152, expressly creates an abridged, one-hearing amendment path for larger changes. Where the Legislature wanted an easier compliance route, it built one, by name, with its own procedure. It built no equivalent relief valve for § 4348a(a)(4), (a)(7) or (a)(9) — no substantial-compliance standard, no phase-in period, no provision allowing the Board to find an element “generally” met. The absence of any such mechanism, set against the Legislature’s demonstrated willingness to write one elsewhere in the same section, confirms these elements are not negotiable by degree. A plan either includes the required capacity study and the required recommended actions, or it does not.

Section 4302(f) does not supply that mechanism. The Board’s Guidelines state that, to determine consistency and compatibility, the Board “will apply the standard of review laid out in 24 V.S.A. § 4302(f)” (§ 1.305(A), Version 1.5). But § 4348(h)(4) assigns that standard to two of its four findings only. Subdivisions (A) and (D) provide:

> *“Consistency with the State planning goals as described in section 4302 of this chapter with consistency determined in the manner described under subdivision 4302(f)(1) of this chapter.”* **24 V.S.A. § 4348(h)(4)(A)**
>
> *“Compatibility with adjacent regional planning areas in the manner described under subdivision 4302(f)(2) of this chapter.”* **24 V.S.A. § 4348(h)(4)(D)**

Subdivision (C) — "[c]onsistency with the regional plan elements as described in section 4348a" — carries no such reference. Section 4302(f)(1) provides that "consistent with the goals" "requires substantial progress toward attainment of the goals established in this section." That is the Legislature's test for the goals. It is not the test for whether a plan includes an element that § 4348a says it "shall include."

Acts 181 and 152 gave CVRPC eighteen months, a streamlined amendment path, and — as Section D above documents — no live urgency forcing this docket's outcome before that work is done. The absence of a relief valve here is not an oversight the Board may supply by treating "shall" as if the Legislature had written "should," and no exercise of the Board's discretion under § 4348(i)(4) to "suggest modifications" may substitute a directory reading for the mandatory one the text requires. A suggested modification is available once a plan is found inconsistent; it is not a vehicle for finding a plan consistent that is not.

The Planned Growth Area criteria at § 4348a(a)(12)(B) are worded differently — such areas "should generally meet" them — and Count IX addresses what that language does and does not permit. It does not permit the Board to find the criteria generally met without determining, criterion by criterion, whether they are.

G. Other dockets and earlier practice are not the standard.

The Board's determination in this docket turns on the statute as applied to this plan and this record. Nothing the Board has approved, or has said in a preapplication response, in another region's docket sets the standard here, and this Objection asks for no result that depends on any other docket.

First, § 4348(i)(4) requires the Board's decision to "expressly evaluate any objections and state the reasons for their decisions in writing." That duty runs to the objection before it. It is not discharged by pointing to how a different plan on a different record was treated.

Second, the Board's own preapplication responses are "advisory only" and do "not guarantee an affirmative determination" (Preapplication Response, p. 1). A preliminary

finding is not a ruling, and no applicant may rely on one as a settled interpretation of the statute.

Third, consistency is served by applying the statute correctly here. If an earlier determination passed a plan with a comparable gap, the remedy is to decline to repeat the gap, not to extend it. Section 4348(i)(4) requires the Board to evaluate each objection and state its reasons in writing, and that written evaluation of each objection is what Objectors ask of the Board in this docket.

Where this Objection refers to determinations or plans in other regions (Counts I, II and V), it does so only to show that the Board has applied the criteria in question or that a gap is structural, not to rest any count on them.

H. The Board's Guidelines on areas planned for growth and on walkability do not relieve CVRPC of the statutory criteria.

The Guidelines quoted in this Objection are Version 1.5 (dated 07/22/2026), posted by the Board on July 24, 2026 and in force as of the date of this Objection. A draft Version 1.6 dated September 10, 2026 is before the Board and had not been adopted as of that date. The passages discussed in this Section appear without change in that draft.

Two passages in the Board's Application Guidelines are likely to be cited in support of the designations this Objection challenges. Neither supports them on this record.

First, § 1.007(A)(1) states that proposed future land use areas "are intended to reflect future plans for those areas," and that "[w]here areas planned for growth are depicted as lacking infrastructure and dense zoning, municipal plans, capital plans, or scoping studies may demonstrate that these areas are planned for denser development and appropriately mapped in a growth FLUA." Objectors do not dispute that a Planned Growth Area may be a future growth area (Count V). But the passage names what the showing consists of: a municipal plan, a capital plan, or a scoping study. It does not say that a municipality's request is enough, and § 1.008 leaves the burden on the regional commission. For most of

the Planned Growth Area additions in this plan, the record identifies none of the three (Count IX). For Country Club Road, the municipal plan relies on an Actionable Plan whose master-planning phase the City gave up in May 2025 (Count V); there is no capital plan; the nearest thing to a scoping study, the City's engineering layout, stops at the clubhouse (Ex. 21); and the City's own plans put about 20 of the parcel's 133 acres in play for building (Ex. 13). CVRPC's checklist says of Montpelier's Planned Growth Area that "[m]ost of the proposed area is served by municipal water and wastewater" and that locations outside the service area are "generally close enough to existing infrastructure that future connections are possible" (Ex. 2), which is none of the three. The passage also speaks only to whether an area is planned for growth. It does not speak to criteria (ii), (iii), (iv), (vi) or (vii), each of which the statute states separately.

Second, § 1.007(A)(3) states that the Board "will not use a particular distance measure" for walking distance, that walkability "in a rural setting with low traffic volumes along the shoulder of a road is different than in an urban setting with high traffic volumes," and that "[d]eference will be given to municipal and regional planning efforts in applying this standard." Deference to a planning effort presupposes one. Where the record shows no walkability analysis for an area, as CVRPC's one-line change entry for Country Club Road shows, there is nothing to defer to. If deference is owed to the municipality's planning efforts, there is no municipal walkability finding to defer to either. The City's own solicitation to developers says the site "is not walkable downtown," reports that developers told it so, and adds that "the City has not vetted this information" (Ex. 13, p. 10 and n.6). Google Maps reports a 2.3-mile walking route (Count V). Deference also cannot shift the burden § 1.008 assigns or stand in for the Board's own finding (Section II.B). And a low-traffic rural shoulder is not the case this Objection presents. The areas at issue are proposed for the highest-density category the statute provides, and criterion (vii) separately requires complete streets infrastructure that "establishes pedestrian access directly to the downtown or village center."

Neither passage can excuse a showing the statute requires. As Section II.A ("Agency guidance does not narrow a statutory element") explains, where the Application Guidelines and the statute differ, the statute prevails, not the Guidelines.

III. STATEMENT OF FACTS

- Preapplication RPC03-0001 deemed complete: July 8, 2026.
- Comment period: July 24–August 7, 2026 (42 numbered points across nine filings; Board docket Exs. 008–011, 015, 017, 018, 025, 029, 031).
- Supplemental comments continuing the numbering, Parts 42–49: September 17, 2026 ("The Double Defect Underlying Planned Growth Area Designations").
- September 17, 2026, during CVRPC's comment period: Objector's memorandum, addressed to CVRPC's Commissioners and sent to its Executive Director with a request to share it, asking in ten numbered items for, among other things, per-parcel documentation of each § 4348a(a)(12)(B) criterion; water and wastewater capacity "in demonstrated flow or connection capacity, not merely presence of service"; the calculation connecting the 40/20/40 housing-target formula to the acreage drawn for any Planned Growth Area; "priority of need, cost, and financing" for the utility investments that growth would require; and evaluation of non-congregate shelter as a housing type (Ex. 11). CVRPC's staff answered item by item in the October 20, 2026 Board of Commissioners packet (Ex. 59, pp. 27–31), after the draft was fixed under § 4348(f). The answers are quoted in the Counts below. Objector made overlapping requests to the Board in a separate letter of the same date (Ex. 62), and the Board declined to adopt them as guidance (Ex. 63). The Counts below rest on the statute, not on those requests.
- CVRPC Regional Plan Committee meeting: September 1, 2026 — staff described the 2026 draft plan internally as "an interim plan intended to meet current statutory

requirements and preserve the region's existing designations, with a full rewrite to begin in 2027." (Ex. 50, draft minutes.)

- CVRPC Municipal Plan Review Committee meeting: September 8, 2026.

- Public hearings: September 8, 2026, a hearing before CVRPC's Board of Commissioners (6:30 p.m.); September 14, 2026, a hearing before the Regional Plan Committee at a special meeting (opened 6:45 p.m., closed 7:13 p.m.); and October 20, 2026, the adoption meeting of the Board of Commissioners. CVRPC's posted notice called September 14 the "first of two statutorily required public hearings" and September 8 an "additional public hearing, beyond what is statutorily required" (as quoted in Objector's August 18, 2026 email, Ex. 4). At the September 14 meeting staff called it "the second hearing" (Ex. 8). CVRPC's application form lists September 14 and October 20 only (Board docket No. 055, p. 9).

- Records requests: on September 9, 2026 CVRPC answered Objector's request for records showing which criteria were evaluated for each parcel by stating that "GIS files are being sent independently through separate link." As of the date of this Objection Objector has received no such link or files (Ex. 5).

- Participation: Objector Whitaker testified, for himself and for ASAP4CV, at CVRPC's September 8 and September 14, 2026 hearings, and on September 14 handed CVRPC his compiled written comments on paper (Ex. 7, 8; Board docket Exs. 008–011, 015, 017, 018, 025, 029, 031). CVRPC's Executive Director had confirmed in writing on August 19, 2026 that "regardless of which hearing a member of the public attends, these interested parties will be participating in the regional plan adoption process" (Ex. 4).

- The operative regional plan classifies the Country Club Road parcel Rural. CVRPC's August 6, 2026 memorandum describing map changes against that plan lists three Montpelier changes and does not list this one (Ex. 1; Threshold Objection).

- The September 20 draft's list of Commissioners (p. 3) names Mike Miller as Montpelier's commissioner. The Montpelier City Council appointed Aaron Kisicki as Montpelier's commissioner to CVRPC on June 24, 2026, by a vote of 5–0, for a one-year term beginning July 1, 2026 (City Council minutes, June 24, 2026). Objector states that Mike Miller serves as the alternate.

- Adoption schedule as of September 1, 2026: the Committee recommended to the Board that public comment remain open through September 18, that the final CVRPC hearing and adoption be warned for October 21, 2026, and that staff seek LURB feedback on returning a decision within a compressed timeframe — the stated purpose being to meet a December 31, 2026 deadline preserving legacy state designation benefits. Commissioner Farrell raised, on the record, that the compressed timeline itself creates "opportunities for mistakes." Commissioner Brabant stated that finalizing the plan immediately after the second hearing risks making that hearing "appear a formality," and expressed frustration that a three-year revision process was, in his view, now being rushed. (Ex. 50, draft minutes.)

- Jurisdictional Opinion JO 5-208 (Act 250, District 5): issued August 27, 2026, determining an Act 250 permit is required for the Country Club Road housing component; Request for Reconsideration filed by the City September 11, 2026; Objector's response in opposition filed September 16, 2026; **reconsideration denied by District 5 Coordinator Peter Kopsco, September 25, 2026** — Act 250 jurisdiction over the housing component is now confirmed, not pending. Kopsco's Response to Reconsideration also confirmed JO 5-208 applies only to the housing project on the specified tract and does not decide whether the City's associated infrastructure work independently requires a permit; Objector filed a new, separate Request for Jurisdictional Opinion on that question the same day, September 25, 2026. (Ex. 30, 31.) CVRPC is on the certificate of service for the September 25 response.

- Vermont Community Investment Board: conditionally approved an amendment to Montpelier's state Growth Center boundary to include the Country Club Road parcel on September 23, 2024, by a vote of 12 to 1, and voted 11 to 0, with one member recused, to revoke that conditional approval on October 28, 2024. The State's Growth Center application window closed permanently in October 2025. (Ex. 23, 24; the history is set out in Count V.)

- City of Montpelier developer process for the Country Club Road parcel: on August 13, 2025 the City Council voted unanimously to stop pursuing growth center designation for Country Club Road and, in a second unanimous motion, directed the City Manager to invite White + Burke to discuss the RFP (Minutes, item 2025-320); Request for Qualifications issued October 27, 2025; Country Club Road Subcommittee memorandum recommending five developers for the RFP stage, December 10, 2025; Request for Proposals "For Development of Housing on the Country Club Road Site" issued December 19, 2025 (approved unanimously by the City Council on December 17, 2025, Minutes, item 2025-512); City's written responses to developer questions issued January 12, 2026 (updated January 13), extending the proposal deadline to February 18, 2026 and setting a Council selection vote for April 22, 2026 and a target date for a letter of intent of June 24, 2026. (Ex. 19, 20; Ex. 13; Ex. 14.) On July 22, 2026 (item 2026-298) the Council authorized the City Manager to enter into exclusive negotiations with DEW Properties, any resulting Letter of Intent or Development Agreement to return to the Council for approval before execution (Ex. 47). On September 9, 2026 the Council was told that a letter of intent would come "at the next meeting." A proposed letter of intent between the City and DEW Properties appears in the Council's October 14, 2026 agenda packet (pp. 4–11) (Ex. 35). By its own terms it creates no binding obligation except to negotiate in good faith (p. 6). The agenda cover sheet lists the "Source of Funds" as "N/A" (p. 4) and expects a development agreement in the first quarter of 2027. Objectors offer the letter as the City's own statement of what it proposes, not as a binding commitment

and not as proof that any criterion is met. The DEW Properties Development Proposal of June 1, 2026, which the letter incorporates, is Ex. 36; the White + Burke memorandum of July 15, 2026 on the financing of the site's infrastructure is Ex. 37. On October 14, 2026 the Council voted unanimously to adopt the letter of intent as presented (Ex. 65, item 2026-386; Ex. 55). A representative of White + Burke, the City's consultant, told the Council the letter is not binding on anyone (Ex. 55). The packet copy is unsigned.

- September 9, 2026: by a 5-0 vote (item 2026-350), the Montpelier City Council approved a resolution "authorizing the CVRPC to include eligible Tier 1B areas in the City of Montpelier in the Regional Plan and Future Regional Land Use Map." The minutes record that "[t]he plan is to start working on 1A in the future" (Ex. 41). The resolution as presented requests that "the Downtown Center and Planned Growth Area, identified on the CVRPC Future Land Use Map to be submitted to the Land Use Review Board later this year," be included for Tier 1B status, and recites, in the words of the statute, that the City "has municipal staff, municipal officials, or contracted capacity adequate to support development review and zoning administration in the Tier 1B area." (Ex. 41, minutes; Ex. 42, resolution.)

- Funding for the Country Club Road infrastructure: the Northern Border Regional Commission grant agreement puts the project at $11,091,098 and requires the City to document $8,096,501 in other funds, "together with letters of commitment for each funding source," before any notice to proceed (Ex. 26). The State's award of federal disaster-recovery funds is "up to $5,000,000," and no grant agreement issues until its conditions are met (Ex. 27). On July 1, 2026 State staff extended the deadline for those conditions to November 30, 2026 (Ex. 28, 29). Objector has located no vote of the City Council or of the voters, no adopted capital budget and program, and no bond authorization committing the remainder. The proposed letter of intent makes the project conditional on approval by the Vermont Economic Progress Council and voter

bond authorization (Ex. 35, p. 9) and puts the CHIP contribution at approximately $5,540,000 (p. 8).

- Draft plan reviewed as of September 20, 2026 ("2- Draft Regional Plan_Compressed_2026_09_20," 338 pages per its own pagination, plus Appendices A through E), full-text searched for the elements at issue in every count.
- Final public hearing notice issued by CVRPC (Kari Pelletiere, Planner), September 19, 2026, under 24 V.S.A. § 4348(f): final hearing warned for Tuesday, October 20, 2026, 6:30 p.m., CVRPC offices, 29 Main Street, Suite 4, Montpelier, and via Zoom/phone; comments accepted through 5:30 p.m. that day.
- CVRPC's own "Summary of Substantial Changes – FLU Map," distributed with that notice, confirms: "The Planned Growth Area for 203 Country Club Rd was expanded to include the entire parcel" — tracking changes only since the June 25, 2026 preapplication draft, with no comparison to the currently-adopted regional plan's classification of the parcel as rural (Ex. 1).
- The same summary records Planned Growth Area additions made after the June 25, 2026 draft the Board reviewed, in Barre City, Northfield and Montpelier (listed at Count IX), and a region-wide reclassification of developed land in flood hazard and river corridor areas from Rural Conservation to Transition/Infill, Enterprise or Rural General in thirteen municipalities (Count VIII).
- Appendix C of the September 20 draft ("Future Land Use Area Acreage by Municipality") shows Planned Growth Area acreage in four municipalities: Barre City (1,112.18), Montpelier (2,150.73), Northfield (299.63) and Waterbury (66.06), for a regional total of 3,628.59 acres.
- CVRPC's companion "Summary of Substantial Changes – Narrative" states, under Appendix – Housing Target Methodology, that the housing-target methodology includes an "explanation of the exclusion of infrastructure capacity and infill as

factors in determining municipal housing targets" — CVRPC's own acknowledgment, in its own change log, that infrastructure capacity was not a factor in the methodology underlying this plan's designations.

- At the October 20, 2026 final hearing Objector submitted written comments on the draft regional plan addressing the § 4348a(a)(7) capacity study, the correlation of the land use element with facilities and services under § 4348a(a)(12) and (b), and the § 4348a(a)(4) transportation element, and asked the Board of Commissioners to hold the adoption vote (Ex. 66).
- Objector separately raised, by letter to the Board dated September 18, 2026 (cc: Board Member Brooke Dingledine), a prospective question concerning the interaction of §§ 4348(l), 5804(b), and existing Act 250 reliance interests arising from Jurisdictional Opinion 5-236 — raised generally, without seeking Board comment on any specific applicant's rights.
- On October 20, 2026, CVRPC's Board of Commissioners voted 21–1 to adopt the regional plan and Regional Future Land Use Map as presented in the September 20 draft, without changes. Cabot's representative, Harrison Merchant O'Brien, voted no. Aaron Kisicki, Montpelier's commissioner, recused himself, and Mike Miller voted as Montpelier's alternate. The Board's packet for that meeting, including staff's written answers to comments, is Ex. 59 and is cited by the packet's own page numbers.

IV. COUNTS

THRESHOLD OBJECTION — CVRPC Has Not Provided the Conformance Report and Map-Change Description § 4348(d) and (h)(1) Require

What the statute required CVRPC to put forward. Section 4348(d)(1) required CVRPC to deliver, with the proposed plan:

> *"At least 30 days prior to the first hearing, 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 … shall be delivered …"* **24 V.S.A. § 4348(d)(1)**

Section 4348(d)(2) required it to give each member municipality:

> *"At least 30 days prior to the first hearing, the regional planning commission shall provide each of its member municipalities with a written description of map changes within the municipality, a municipality-wide map showing old versus new areas with labels …"* **24 V.S.A. § 4348(d)(2)**

Section 4348(h)(1) imposes the report duty again at adoption:

> *"Within 15 days following adoption, a regional planning commission shall submit its regionally adopted regional plan to the Land Use Review Board for a determination of regional plan compliance with 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 plan future land use map."* **24 V.S.A. § 4348(h)(1)**

The burden of establishing that the statutory standards are met is CVRPC's (Guidelines § 1.008).

What CVRPC provided. A checklist. On August 10, 2026 Objectors asked CVRPC for the conformance report, "distinct from the plan itself, the maps, or the review checklist." CVRPC's Executive Director answered on August 19 that CVRPC "has followed section 1.106" of the Board's Guidelines, under which the checklist "will serve to meet the statutory requirement of 24 V.S.A. §4348(d)(1)," and that "[w]e do not intend to submit another document at this time" (Ex. 3). The checklist marks each element met. For Planned Growth Areas it checks "RPC mapped this area consistent with the mapping

process and standards," and its Montpelier narrative states that most of the area is served by municipal water and wastewater, that locations outside the service area are "generally close enough to existing infrastructure that future connections are possible," and that zoning is "consistent with high-density, mixed use development." It does not cite § 4348a(a)(12)(B), address the seven criteria one by one, or mention Country Club Road (Ex. 2) (Count IX). Whatever § 1.106 allows at the preapplication stage, it does not reach § 4348(h)(1) (Section II.A). And a list of boxes marked "Met" does not document conformance. It asserts it.

What CVRPC filed on October 21, 2026. With its application CVRPC filed the Application Form, the Regional Plan Review Checklist, and two change summaries (Board docket Nos. 055, 057, 059 and 060). The Board's form lists the attachments an adopted-plan application requires. None is a report documenting conformance, and none is described as one. The checklist is the document described above. By its own first page it documents "how the CVRPC plan dated June 12, 2026 meets the requirements for approval," not the plan adopted on October 20 (Board docket No. 057, p. 1). Its Montpelier Planned Growth Area narrative is unchanged and does not mention Country Club Road (id., p. 37). Each change summary begins: "Since the Pre-Application draft … was submitted to the Land Use Review Board (LURB) on June 25, 2026" (Board docket Nos. 059, 060). Each therefore measures change against the June draft, not against the operative plan. The only entry for the parcel reads: "The Planned Growth Area for 203 Country Club Rd was expanded to include the entire parcel" (Board docket No. 060, Montpelier ¶ 1(d)). On the form CVRPC certifies that it sent each municipality "[a] description of map changes within the municipality" on August 10, 2026 (Board docket No. 055, p. 8). The description CVRPC distributed is the August 6 memorandum (Ex. 1), and it omits the parcel.

The hearings the form certifies. Section 4348(c) provides that "[t]he regional planning commission shall hold two or more public hearings within the region after public notice on any proposed plan or amendment." The form lists two hearings, September 14 and

October 20, 2026, and gives September 14 as the date of the first public hearing (Board docket No. 055, p. 9). September 14 was a meeting of CVRPC's Regional Plan Committee, not of its Board of Commissioners, and a quorum of the Commission was not present. CVRPC's own calendar lists it as "Regional Plan/Executive Committee w/ Regional Plan Public Hearing" (Ex. 59, packet p. 97). The form does not list September 8, 2026, when the Board of Commissioners itself heard the plan, a hearing CVRPC's notice called "additional … beyond what is statutorily required" (Ex. 4). Objectors do not ask the Board to decide in this paragraph whether a committee hearing satisfies § 4348(c). They ask the Board to state, as part of its evaluation of this objection under § 4348(i)(4), which hearings it found to be hearings of the commission under § 4348(c), and why.

What is missing: the largest change in Montpelier. The operative regional plan classifies the Country Club Road parcel, about 133 acres, as Rural. CVRPC's August 6, 2026 memorandum, "Summary of Proposed Regional Future Land Use Map Changes," describes the draft map's changes from the 2024 map, town by town. It was addressed to the region's municipalities and to "DHCD, CIB, ANR, AAFM, VTrans, DPS, VEM, LURB, abutting RPCs." It lists single-parcel changes out of Rural elsewhere: a sawmill in Duxbury, a gravel quarry in Waitsfield, quarries in Berlin, Williamstown and Woodbury, and a private airport in Warren. For Montpelier it lists three areas: downtown, the southeastern corner near Gallison Hill Road, and Northfield Street and Berlin Street. Country Club Road is not among them. The memorandum describes Montpelier's Planned Growth Area as part of the former "Regional Center" that "largely aligns with the legacy State Designated Growth Center Boundary." Country Club Road was neither. It was Rural on the 2024 map, reproduced at the end of Ex. 1, and the State revoked its growth center expansion in October 2024 (Ex. 1; Ex. 24). The move of a 133-acre, publicly owned Rural parcel into the plan's highest-density category is therefore described nowhere in the document the statute requires to describe it. When CVRPC later

expanded the designation to “the entire parcel,” its September change summary measured that change only against its own June draft (Statement of Facts).

CVRPC had notice. On August 21, 2025, during CVRPC’s review of Montpelier’s City Plan, Objector Whitaker read a memorandum to CVRPC’s Board of Commissioners stating that the regional plan designates the parcel Rural (Ex. 9, 10). At CVRPC’s September 8, 2026 hearing Objector stated that the conformance report had never been produced and that the August 6 memorandum omits Country Club Road and other Montpelier areas (Ex. 7). At the September 14 hearing he renewed the objection and cited § 4348(d)(1) and (h)(1) (Ex. 8).

Why this comes first. Each count below identifies something the plan was required to contain or show and does not. This objection concerns the document that was supposed to make those showings in one place. Without it, the Board and the public are left to reconstruct, from a 338-page draft, two change summaries and a checklist, what CVRPC was required to state. An objector can test a conformance report. An objector cannot test a box marked “Met.” The omission bears on every count, and on Count IX most directly.

Relief requested. That the Board find that the checklist is not the “report documenting conformance with … the plan elements established in section 4348a” that § 4348(h)(1) requires, and that CVRPC’s October 21, 2026 filing contains no such report and no “description of any changes to the regional plan future land use map” measured against the operative plan (“changes” presupposes a baseline); and that the Board require both before any affirmative determination. Objectors ask for nothing beyond the text of § 4348(d)(1) and (h)(1). They do not ask the Board to adopt guidance or a standard stricter than the statute (Ex. 63). They ask it to enforce the filing the statute already requires. Objectors accept that Planned Growth Areas need only “generally meet” the criteria (Count IX). A report documenting conformance with § 4348a(a)(12) states the result for each area under review. The Board must say in its determination which criteria it found met for the Country Club Road parcel, and the change of that parcel out of Rural must appear in the description. The Board must also state which public hearings of the

commission it found satisfied 24 V.S.A. § 4348(c), and the basis for treating a committee hearing, if any was counted, as a hearing of "the regional planning commission."

COUNT I — Failure to Include the § 4348a(a)(7) Capacity Study and Investment Strategy

The statutory element. 24 V.S.A. § 4348a(a)(7) requires "[a] program for the implementation of the regional plan's objectives, including a recommended investment strategy for regional facilities and services based on a capacity study of the elements in this section" — including the utility and facility element (water supply, sewage disposal) at § 4348a(a)(5). This is a mandatory element of every regional plan, independent of the FLU "served by" criterion at (a)(12)(B)(ii).

> *"A program for the implementation of the regional plan's objectives, including a recommended investment strategy for regional facilities and services based on a capacity study of the elements in this section."* **24 V.S.A. § 4348a(a)(7)**
>
> *"A utility and facility element, consisting of a map and statement of present and prospective local and regional community facilities and public utilities, whether publicly or privately owned…"* **24 V.S.A. § 4348a(a)(5)**
>
> *"…an inventory of available natural and human-made resources, based on detailed data collection, that identifies the capacities and limits of those resources to absorb land development."* **24 V.S.A. § 4303(5)**

Section 4348a(a)(5) is the utility and facility element, one of "the elements in this section" that (a)(7)'s capacity study must cover. Section 4303(5) defines "capacity study."

"Capacity" has three distinct senses in this statutory scheme, and VAPDA's methodology narrows only one of them. Physical infrastructure capacity — water, sewer, electric grid, road and intersection congestion — is the sense CVRPC's

methodology addresses, and dismisses, in its instruction that "capacity of sewer and water systems need not be considered." But § 4348a(a)(7) requires "a capacity study of the elements in this section" — not a capacity study of water and sewer. "The elements in this section" is § 4348a itself, and at minimum reaches the energy element's "analysis of resources, needs, scarcities" at (a)(3) and the transportation element's "anticipated points of congestion" at (a)(4), alongside the utility and facility element at (a)(5) already quoted above. Beyond physical infrastructure, this statutory scheme separately contemplates administrative and institutional capacity — municipal staff and process capacity to administer development review, the express subject of 10 V.S.A. § 6033(c)(6) and its Tier 1A analogue — and fiscal capacity, the subject of 24 V.S.A. § 4302(c)(12)(B)'s requirement that "the rate of growth should not exceed the ability of the community… to provide facilities and services." A plan can pass every physical-capacity test CVRPC's methodology applies and still fail this one, if the infrastructure a designation requires would impose debt or ongoing costs the municipality cannot sustain.

Administrative capacity is documented in this record only by recital. CVRPC's method is a municipal resolution reciting capacity in the statute's own words, which the methodology calls "self-certifying" (Statewide Future Land Use Methodology, "Process Considerations"). Montpelier's resolution recites that the City "has municipal staff, municipal officials, or contracted capacity adequate to support development review and zoning administration in the Tier 1B area," and states no staffing fact, position, or document (Ex. 42). In its preapplication response on the Chittenden plan, the Board looked for "municipal-specific information … in particular its plan to ensure adequate staffing" and required supplemental confirmation where a resolution did not address municipal capacity (LURB Preapplication Response, Chittenden County Regional Planning Commission, Docket RPC04-0001, Dec. 22, 2025, pp. 44–45). Objectors ask that the same be required here.

VAPDA's methodology instruction reaches neither of the other two senses. It speaks only to whether a parcel is "served by" existing sewer and water infrastructure — a physical-

capacity, mapping-criterion question. Section 4348a(a)(7)'s capacity-study requirement is not scoped to mapping criteria at all; it is a plan-level obligation independent of any single designation. Even if the Board credits in full CVRPC's position that capacity need not gate a Planned Growth Area boundary — a position Objectors dispute on other grounds, see Counts III and X — that position, taken on its own terms, leaves the (a)(7) capacity-study failure this Count identifies completely untouched. The Board cannot resolve Count I by resolving Count III; they test different statutory obligations.

Physical infrastructure capacity, sense (1), also reaches telecommunications and electric power — and the record now shows why that matters. Section 4348a(a)(5)'s utility and facility element explicitly names "wireless telecommunications facilities and ancillary improvements" and "power generating plants and transmission lines" among the facility types requiring "recommendations to meet future needs… with indications of priority of need." Because (a)(5) is one of "the elements in this section" (a)(7)'s capacity study must cover, telecommunications and electric grid capacity sit inside this Count's scope on the same footing as water, sewer, energy, and transportation.

CVRPC's draft Plan does not meet even the standalone (a)(5) requirement for telecommunications, let alone supply a capacity study reaching it. The Plan's Communications section acknowledges, on its own terms, that "[c]oncerns over E-911 and the reliability of wireless service in a power outage are valid and should be carefully considered" (p. 232), and then states no recommendation to address it. A statement of concern is not a recommendation to meet a future need, and it is not a capacity study.

The consequence of that gap is not hypothetical. On September 10, 2026 — four days before this docket's own September 14 public hearing — Fidium Fiber's network failed across Vermont beginning around 3:00 p.m., substantially restored by 5:05 p.m., affecting more than 8,000 subscribers by the Vermont Enhanced 911 Board's own contemporaneous internal tracking. Six days later, per records the Board produced under a September 14, 2026 public records request, the Board had no record of any outage notification from Fidium, no assessment of the outage's impact on 911 call delivery, no

identification of which Communications Union District territories were affected, no after-action report, and no determination of whether backup or diverse-path 911 call-handling was activated. The Board's own IT Manager separately asked the Department of Public Safety, on September 16, why the event "was not reportable or not reported to us under our outage reporting requirement." The reason traces to a reporting and capacity framework built around a carrier's retail billing relationship, not around which facility actually carries the service the public depends on in an emergency: a household that receives broadband from Fidium but voice service from an unaffiliated third-party application is not Fidium's "subscriber" under the Board's own rule, so when the underlying fiber fails, no entity is obligated to report it.

This is precisely why § 4348a(a)(7)'s capacity study cannot be treated as satisfied by an inventory of what exists. An inventory would have shown Fidium's network present and serving Central Vermont on September 9, 2026. It would not have shown, and did not show, that the network's failure the following day would leave an unknown number of households unable to reach emergency services, with no state or regional body positioned to say how many or where. Electric grid capacity is subject to the identical gap: nothing in the record assesses generation, transmission, or distribution capacity, or outage resilience, for any Planned Growth Area, despite (a)(5) naming power generation and transmission in the same clause as the utility and facility element's other required contents.

The City's own developer materials for Country Club Road illustrate the gap. Its December 19, 2025 Request for Proposals told developers that "[u]tilities, including water, sewer, and electric, have been preliminarily assessed" (Ex. 13, RFP p. 4). Yet when a developer asked in January 2026 whether the City's infrastructure contribution would include electrical service, the City answered that "the electrical had not been considered as part of the infrastructure up to the site," that the scale of power and telecommunications upgrades "needs to be coordinated with the providers before they can be added to the design," and that the cost "has not been factored into the existing

estimate" (Ex. 14, No. 18). A preliminary assessment that had not yet reached whether the site has electrical service is not a capacity study of it.

Fiscal capacity specifically cannot be assessed on this record — not merely was not assessed — because the only instrument that could supply the necessary data does not exist. Section 4302(c)(12)(B)'s "ability of the community… to provide facilities and services" finding depends on knowing what providing those facilities and services will actually cost the municipality on an ongoing basis. The only place that figure is required to be quantified anywhere in this statutory scheme is § 4430(b)'s mandate that a capital program include "an estimate of the effect, if any, upon operating costs of the municipality." No § 4430-compliant program exists for any Planned Growth Area in this plan, including Country Club Road. The consequence is not that the § 4302(c)(12)(B) fiscal-capacity finding was made incorrectly; it is that the finding cannot currently be made at all, by the Board or by anyone, because the one document that would supply the input does not exist.

Country Club Road illustrates why this is not an academic gap. The parcel sits approximately 2.3 routed miles from City Hall — the distance and 13.5% maximum road grade already documented at Count V — reachable by a single access road. Every Public Works response to that site, whether routine maintenance, water or sewer emergency repair, or winter plowing, costs drive time and crew time a downtown-adjacent parcel would not. That is not a one-time capital expense measured in Count II's missing § 4430 line items; it is a permanent addition to the Department's ongoing operating burden, and every dispatch to Country Club Road is drive time and crew time unavailable to the rest of the city for the duration of that response. Nothing in the record quantifies this cost, consistent with the same § 4430(b) operating-cost-impact gap Count II already identifies for Complete Streets infrastructure — the same missing line item, applied here to a different and more basic municipal function. A designation that predictably imposes this cost, without requiring anyone to quantify or disclose it, is precisely the outcome § 4302(c)(12)(B) and § 4430(b) exist together to prevent.

The Board's preliminary review. The Board's September 8, 2026 preapplication response stated that the draft plan "appears to meet" § 4348a(a)(7) (p. 14). That response "is advisory only and does not guarantee an affirmative determination," and the Board's preapplication review "does not encompass nor reflect its position with respect to comments received" (p. 1); it also does not discuss whether a capacity study exists. In the same response the Board found that the plan "appears not to conform" with § 4348a(a)(4), which calls for "indications of priorities of need, costs, and method of financing," and required "[t]he prioritization of projects" (p. 13) (Count XI), and recommended updating the water supply and wastewater map, "created 18 years ago" (p. 14). Objectors ask the Board to make the (a)(7) determination on the adopted plan and this record.

The defect. A full-text search of the September 20, 2026 draft plan and its appendices returns no hits for "capacity study," "capital budget," or "4430." "Investment strategy" appears twice, both in passages about municipalities aligning "public investment strategies" with infill goals, and "capital program" appears only as "VTrans Capital Program." CVRPC's own Regional Plan Review Checklist cites Chapter 9, "Implementation Plan," as satisfying (a)(7) — but Chapter 9 is a table of CVRPC's own staff/organizational work-program items ("CVRPC will continue to provide technical assistance," "$600,000 - 800,000 annually"), not an investment strategy based on a capacity study, and not tied to any § 4348a(a)(5) utility/facility capacity data. One row of that table is itself the missing program: "A Regional Plan implementation schedule, which will establish priorities of key Plan goals for implementation," with a stated timing of "5 years" (p. 336). The plan's only water and wastewater map, Map 23 (p. 217), shows infrastructure region-wide and carries no capacity data (Count III).

The plan itself says the study does not exist. The September 20 draft's housing chapter, in text added after the Board's preapplication response, states that "CVRPC recognizes the need to understand the current status of existing municipal water and wastewater systems. This data is surprisingly difficult to come by and there currently is no comprehensive state-wide data on capacity or usage for either service" (p. 296), and that

a Vermont Bond Bank program is "working to collect this data" (p. 297). Its utilities chapter lists the study as something to look into: "Explore opportunities to develop a region-wide water and wastewater study to identify priority investments to supporting desired growth patterns" (Wastewater Policy 6.A, p. 263). A plan that says the capacity data is not available, and that a study to identify priority investments is an opportunity to explore, does not include "a recommended investment strategy … based on a capacity study." The absence of a statewide dataset is no answer. Section 4348a(a)(7) places the capacity study in the regional plan; it is regional work, built from the municipal data CVRPC has already certified under § 4350(b) (below). "Explore opportunities" is a deferral of work the statute required this plan to contain. Montpelier's own filing with the State shows what such a study would have had to confront (Count III).

The Board's preliminary map-vintage finding has been answered with undated maps, not with a capacity study. The Board's September 8, 2026 preapplication response found it "unable to determine whether the draft regional plan meets" the § 4348a(a)(2) natural resources requirement because the natural resources maps "were created in 2007, 2008, and 2018," and separately recommended updating the water supply and wastewater map. The Agency of Natural Resources' August 7, 2026 comments said the same: "many of the maps appear to have been created in 2007" (Board docket Ex. 028). The September 20 draft removed the map appendix and placed new maps in the text, including Maps 3 through 10 in the natural resources chapter and Map 23 for water and wastewater. Maps 9, 23 and 29, as they appear in the September 20 draft, state no date and no data source on their face. The Board could not determine the age of the data behind the earlier maps; CVRPC's answer was maps that do not state it. Objectors do not concede that the new maps rest on new data, and nothing in the draft shows that they do. But the point does not depend on their age. A map of where pipes and service areas are, however current, is an inventory of presence. It is not the inventory "that identifies the capacities and limits of those resources to absorb land development"

that § 4303(5) defines as a capacity study. The adopted plan does not differ from the September 20 draft on these points.

The § 4350(b) catch-22. Under § 4350(b), a regional planning commission "shall approve a [municipal] plan if it finds that the plan… contains all the elements included in 24 V.S.A. § 4382(a)(1)–(12)" — including (a)(4)'s cost/priority/financing data. CVRPC has done this repeatedly, in writing, via signed resolutions (Washington, Plainfield, Fayston resolutions; Montpelier's 2025 Master Plan confirmation (currently under appeal, Vermont Supreme Court Docket No. 26-AP-064) and its 2017 Master Plan approved/confirmed 2018; and, per CVRPC's own September 8, 2026 Municipal Plan Review Committee minutes, unanimous recommendations confirming the municipal planning processes and approving the town plans for Waitsfield and East Montpelier the same day). CVRPC therefore cannot credibly claim it lacked the municipal-level data to produce its own (a)(7) regional capacity study and investment strategy — it already certified, repeatedly and as recently as this docket's own review period, that this exact data existed and met the statutory bar.

Forced-choice question for the Board. CVRPC has certified, under § 4350(b), that every member municipality's § 4382(a)(4) utility and facility plan — including cost, priority, and financing data — meets statutory requirements. Given that certified data, where in the adopted regional plan does the § 4348a(a)(7) capacity study synthesize it into a regional investment strategy? If no such synthesis exists, on what basis were the § 4382(a)(4) certifications made?

The identified funding mechanism confirms the gap is not immaterial. The § 4348a(a)(7) investment strategy this Objection finds missing is not merely absent in form; the funding mechanism the record identifies for Country Club Road — Tax Increment Financing, including the State's new Community and Housing Infrastructure Program (CHIP) — requires approval by the Vermont Economic Progress Council before infrastructure costs may be incurred, a review that necessarily scrutinizes the same cost, financing, and priority data § 4348a(a)(7) and § 4430 already require. This is not a

hypothetical concern: because a Planned Growth Area designation is, as a practical matter, permanent — § 4348(m) makes an affirmative determination not appealable, and the designation is a predicate for Tier 1A status that removes Act 250 review — while declining to designate now remains curable under §§ 4348(j) and (n) as readiness is documented, the Board's failure to require the capacity study now cannot be corrected later if a designation made without it fails to withstand the Economic Progress Council's own scrutiny of the same cost and financing data. The asymmetry the Legislature built into this framework exists precisely to prevent that outcome. The City's proposed letter of intent identifies the same mechanism: CHIP of approximately $5,540,000 (Ex. 35, p. 8), conditioned on approval by the Vermont Economic Progress Council and voter bond authorization, with the City to "identify any funding requirements… not already identified" (p. 9). The White + Burke memorandum supports CHIP only for "internal infrastructure… subject to final project design, assessed values, financing terms, and future approvals" (Ex. 37, memo p. 2). At the Council's October 14, 2026 meeting, asked who backs the CHIP debt, a White + Burke representative said the components of the CHIP deal were not yet in place, that the City has not decided whether it will back the debt, and that whether the City or the developer issues it remains open (Ex. 55). Neither document is an adopted capital budget and program.

This is not a capacity study falling short of the standard; it is not the same kind of document at all. A § 4430(b) capital budget and program is adopted by the municipal legislative body after public hearing, states cost, financing, priority, and operating-cost impact for each project, and is revised when a project's scope changes. The Northern Border Regional Commission grant agreement states a total project cost of $11,091,098 for Country Club Road infrastructure, of which $2,994,597 is the Commission's award (Ex. 26). That total has never been adopted by anyone as a capital program, was never subjected to § 4443(a)'s hearing requirement, and did not move by a single dollar when the City reported removing an entire cost component — the pump station — from the project's scope, as the State recorded on July 1, 2026 (Ex. 28). A total that survives the

removal of the pump station unchanged is not evidence of careful planning; it is evidence that the number was never actually built from the underlying costs it purports to total. Whatever this figure is, it is not, and has never functioned as, the investment strategy § 4348a(a)(7) requires.

The federal disaster-recovery award is conditional. The City's extended deadline to satisfy its conditions is November 30, 2026, and by its terms no grant agreement issues unless they are met (Ex. 27, 28, 29). The principal funding for the infrastructure this designation depends on may therefore lapse before the Board decides.

Even if that $11,091,098 total were fully reconciled, adopted, and funded tomorrow, it would not resolve criterion (ii). The infrastructure it funds does not stop at the site boundary — the City's own design sheets (VHB Layout Sheets, Alternative 4a; Ex. 21) show the marked town highway right-of-way ending at station 107+70 while designed water, sewer, and road work continues roughly 380 feet further, to station 111+50, past the clubhouse and onto the parcel itself. But reaching inside the boundary is not the same as reaching every lot: this is still only the pump station and main upgrade serving the parcel generally, not the distribution network — mains sized and routed to each area the designation contemplates for development — required to satisfy criterion (ii). As Count IV explains, "served by" cannot mean served at the clubhouse; it requires water, sewer, and stormwater mains sized and routed across the site itself, which no document in this record — funded, proposed, or otherwise — has ever attempted to design. The City says that order-of-magnitude infrastructure cost estimates exist in its Actionable Plan (Ex. 14, No. 19); Table 1 of that plan gives only order-of-magnitude totals (Ex. 49). Resolving the funding dispute over the $11 million figure would not manufacture the distribution plan that figure was never meant to produce.

This gap is not unique to CVRPC, and at least one region has admitted it in writing after adoption. No § 4430-compliant program is cited, referenced, or synthesized into the plan for any Planned Growth Area, including Country Club Road — a full-text search of the plan and its appendices confirms this document-level fact regardless of what any

individual member municipality may separately maintain for its own ordinary capital purposes. At Country Club Road specifically, that absence has been independently verified at the source: no such program appears anywhere in the City's own materials either, not merely in CVRPC's plan. Direct full-text review of the adopted plans for Rutland (RPC09), Chittenden (RPC04), and Northwest (RPC08) — three of Vermont's eleven regional planning commissions — shows the same absence of the literal statutory element in each, confirming this is a structural blind spot in how regional plans are built under this framework, not a CVRPC-specific failing that excuses it here. Chittenden's own July 22, 2026 presentation to this Board, months after its plan was approved, lists a "Regional Wastewater Study" as future work, with scope to be developed with the Agency of Natural Resources in FY27 and funding to be identified in FY28 — a contemporaneous written admission, by a different regional planning commission, that the § 4348a(a)(7) capacity study this framework requires did not exist at the time of adoption and will not exist for at least another year. CVRPC's September 20 draft makes the same admission in its own text (Wastewater Policy 6.A, quoted above). [Fuller comparative detail reserved for the Chronicle of Deficiencies.]

Staff's answer and the adoption memo. Staff's answer to the capacity-study comment was that the Implementation Plan's priority and timing were informed by "current capacities" (Ex. 59, p. 21). It identifies no capacity study. The Executive Director's adoption memo lists the plan's changes as data and map updates, housing-target disaggregation, an environmental justice analysis, and the statewide future land use areas (Ex. 59, pp. 47–48). A capacity study and an investment strategy are not on the list.

What a decision rejecting this Count must say. Section 4348(i)(4) requires the Board to "expressly evaluate" this objection and state its reasons. To find that § 4348a(a)(7) is met, the decision must identify: (1) the document or passages in the adopted plan that the Board treats as the "capacity study," by page; (2) where in them the plan identifies "the capacities and limits of those resources to absorb land development," § 4303(5), for water supply and wastewater, given the plan's own statements that "[i]t should not be inferred,

however, that operating at less than hydraulic capacity represents available capacity" (p. 214) and that the data is "surprisingly difficult to come by" (p. 296); (3) the "recommended investment strategy for regional facilities and services" that is "based on" that study, by page, and how a table of CVRPC's own work items (Chapter 9) is one; (4) if the Board finds the study may follow the plan, the text of § 4348a(a)(7) that permits it, since the statute says the plan "shall include" the program; and (5) why the Board's preliminary "appears to meet" (p. 14), which does not discuss whether a capacity study exists, is a finding on this record.

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(7) and require CVRPC to produce a regional capacity study and investment strategy — synthesizing the § 4382(a)(4) data it has already certified as adequate, and reaching physical capacity (including water, sewer, energy, transportation, telecommunications, and electric grid capacity), administrative capacity, and fiscal capacity alike — before the plan's future land use areas retain effect.

COUNT II — Failure to Satisfy the § 4348a(a)(12)(B)(vii) Complete Streets Criterion

The statutory element. § 4348a(a)(12)(B)(vii) requires that "[p]lanned transportation infrastructure includes those investments included in the municipality's capital improvement program pursuant to section 4430." Unlike the water/sewer criterion, the Legislature drafted an explicit regional-to-municipal capital-budget bridge here. Under § 4430(b), a compliant capital budget and program must state, for each project, its description and cost, the order of priority among all projects, its method of financing, and — a requirement equally mandatory and equally absent from this record — "an estimate of the effect, if any, upon operating costs of the municipality."

> *"The area is served by planned or existing transportation infrastructure that conforms with 'complete streets' principles as described under 19 V.S.A. chapter 24 and establishes pedestrian access directly to the*

downtown or village center. Planned transportation infrastructure includes those investments included in the municipality's capital improvement program pursuant to section 4430 of this title." **24 V.S.A. § 4348a(a)(12)(B)(vii)**

"…safe and accessible options for multiple travel modes for individuals of all ages and abilities, including walking, cycling, public transportation, and motor vehicles." **19 V.S.A. § 2401**

"(a) A capital budget shall list and describe the capital projects to be undertaken during the coming fiscal year, the estimated cost of those projects, and the proposed method of financing. A capital program is a plan of capital projects proposed to be undertaken during each of the following five years, the estimated cost of those projects, and the proposed method of financing. … (b) The capital budget and program shall be arranged to indicate the order of priority of each capital project and to state for each project all the following: … (3) An estimate of the effect, if any, upon operating costs of the municipality." **24 V.S.A. § 4430(a)–(b)**

Section 2401 of Title 19 defines "complete streets."

The defect — the sidewalk threshold. The VAPDA methodology CVRPC applied states that "[m]unicipal streets with less than 1,000 cars per day and a speed limit of 25 mph or less do not generally require sidewalks" — a presumption that circulated in a public meeting (Montpelier Housing Committee, August 4, 2026) without verification against 19 V.S.A. § 2401's complete-streets standard, and apparently informed which parcels were proposed for designation. DHCD's own Community Planning & Policy Manager, Jacob Hemmerick, flagged this exact threshold in writing over a year before it was raised independently in this record. His email to Charles Baker (CCRPC) and Catherine Dimitruk (NRPC), sent Friday, November 22, 2024, at 4:54 p.m., subject "Draft Comments on RPC FLUA Methodology," was copied to Alex Farrell, Peter Gill,

and Chris Cochran (Ex. 25). It states that the threshold "seems like a high a [sic] dangerous threshold for safety and comfort… unsafe for active transportation users, especially vulnerable users like those with disabilities," and, separately, that reliance on sidewalk investment "seems to veer off the statutory expectation of a capital plan program and budget for multi-modal transportation choice under 4430" (Ex. 25). Baker's reply was non-substantive ("we'll review all of these"). The threshold was adopted into methodology v1.0 unchanged and remains word-for-word identical through the current v4.0 (Ex. 45; Statewide Future Land Use Methodology, v4.0). Hemmerick's warning carries additional weight on this record: he is the same DHCD official who authored the memo behind the Community Investment Board's October 2024 revocation of Montpelier's growth center expansion for this same parcel, so his November 22, 2024 email is not a stranger's speculative objection but a second, independent flag from someone with direct, personal history finding this exact site's planning documentation inadequate. That memorandum, dated October 21, 2024, recommended that the Community Investment Board revoke its September 23 approval because "there is no evidence of the adoption of a capital program and budget that identifies investments to implement the 'actionable [concept] plans' for the country club site" (Ex. 23, p. 7). The Community Investment Board voted 11–0, with one member recused, on October 28, 2024, to revoke its approval (Ex. 24, October 28, 2024 minutes).

The proxies appear in CVRPC's own statements. CVRPC's September 19, 2026 "Summary of Substantial Changes – FLU Map" shows traffic volume and sidewalk presence used as mapping factors. For Barre Town, it reports that the Richardson Road neighborhood was mapped as a Village Area in part because it "experiences low traffic volumes." For Berlin, it reports that the Airport Road area was reclassified "because it lacks sidewalks/walkability." For Montpelier, one entry reports that "[w]here sidewalks are present along Independence Drive and Northfield Street, the Planned Growth Area was expanded." The next entry reports that the Planned Growth Area for 203 Country Club Road "was expanded to include the entire parcel," and gives no sidewalk, traffic or

walkability reason. CVRPC's Executive Director described the methodology's test at CVRPC's September 8, 2026 committee meeting: "Our methodology states that an area [that] is not served by sidewalk can be included if it has a speed limit of 25 miles per hour or lower, and has fewer than a thousand average annual daily trips." Of Independence Drive he said, "we don't have that data" (Ex. 7). These are CVRPC's statements about where sidewalks are and what traffic is; Objectors do not vouch for them. Neither proxy appears in 19 V.S.A. chapter 24, and the methodology that supplies them is not a rule. None of the entries refers to complete streets principles or to any capital program.

The threshold's source is not the statute it claims to implement. The underlying methodology file — the working .docx version circulated among RPC staff, obtained via records request to Two Rivers-Ottauquechee Regional Commission — shows the parenthetical "(sidewalk guidance)" following the 1,000-car/25-mph threshold is a live embedded hyperlink, not a citation to 19 V.S.A. chapter 24. It resolves to https://ruraldesignguide.com/physically-separated/sidewalk, the web edition of FHWA Publication No. FHWA-HEP-17-024, Small Town and Rural Multimodal Networks (Alta Planning + Design, Dec. 2016) — a national practitioner resource that states on its own face that it "does not constitute a standard, specification, or regulation." Neither 19 V.S.A. § 2401's definition of "complete streets" nor § 2402's complete streets principles contains any vehicle-count or speed exemption. Title 19 does contain a documented-exemption mechanism — § 2403 — but it applies only to an actual transportation project under active management, requiring a written determination by that project's manager; no such project exists at the future-land-use-mapping stage, and § 4348a(a)(12)(B)(vii) does not cross-reference § 2403 or any exemption process at all. The regional planning statute offers exactly two paths to satisfying the criterion: infrastructure that already conforms to complete streets principles, or planned infrastructure evidenced by an adopted § 4430 capital improvement program line item. CVRPC's methodology manufactures a third

path — a presumption that streets below a traffic-volume and speed line need no sidewalk — that has no basis in either statute.

Objectors do not concede that a capital budget or program limited to a single project would satisfy this second path, and the statute's own text cuts against it. Section 4430(b) requires the capital budget and program to be "arranged to indicate the order of priority of each capital project" — a requirement that presupposes multiple projects ranked against one another. A document listing only the project at issue has nothing to prioritize it against, and cannot on its own terms satisfy a provision whose function is comparative ranking. Section 4430(a) reinforces the same reading: it defines a capital budget of "the capital projects to be undertaken during the coming fiscal year" and a capital program of "capital projects proposed to be undertaken during each of the following five years" — one instrument for the municipality, not one per project — meaning the document capable of satisfying § 4430(b)'s priority-ranking requirement is the municipality's actual, comprehensive capital planning instrument, not a filing assembled to answer a single parcel's designation. If CVRPC or the City produces, in response to this Objection, a capital budget or program covering Country Club Road — or any other single PGA parcel — and nothing else, Objectors reserve the right to argue that document does not satisfy § 4348a(a)(12)(B)(vii)'s second path, precisely because it cannot perform the priority-ordering function § 4430(b) requires of it.

The City's proposed letter of intent cites no capital program. Its agenda cover sheet lists the "Source of Funds" as "N/A" (Ex. 35, p. 4). The letter commits the City to build "to-be-agreed-upon infrastructure improvements to the boundary of the Phase 1 Property" (p. 7), without stating their cost, priority or financing. Objectors found in it no reference to a capital budget and program under § 4430.

Independent state-agency confirmation that transportation infrastructure isn't costed — updated against the current draft, not overtaken by it. The Vermont Agency of Transportation's own August 6, 2026 comment letter to the Board (Board docket Ex. 021), reviewing an earlier draft, stated: "some general recommendations to

meet future transportation infrastructure needs are identified in the Transportation Element and in the implementation section of the Regional Plan, but specific projects, project locations, and anticipated costs are not identified." The September 20, 2026 draft has since added Table 25 ("Priority Projects – VTrans Capital Program") and Table 26 ("Priority Projects – Not in the VTrans Capital Program"). Table 25 names each of its eleven projects by VTrans project number. Table 26 names its fourteen projects by location and description, without project numbers. Together the tables name specific projects and locations. AOT's concern about projects and locations is accordingly narrower than it was in August, but its concern about cost is not: neither table lists a dollar figure for any project, and Table 27 (Transportation Funding Programs) gives only generic match-rate percentages by program type, not a cost estimate for any specific project in Tables 25 or 26. "Anticipated costs are not identified" remains true of the current draft even though "specific projects, project locations… are not identified" no longer is. Count XI addresses the same tables under § 4348a(a)(4).

The plan substitutes a recreational-trails map for the facilities inventory criterion (vii) actually requires. The current draft's list of maps has no dedicated bicycle or pedestrian facilities map; its Bicycle and Pedestrian narrative section, in the transportation chapter, directs the reader instead to "Map 29: Recreation Trails and Scenic Byways" (p. 173). That map sits in a different element, the utilities, facilities and services chapter (p. 250). Its legend lists the Long Trail, hiking trails, the Cross Vermont Trail, the Lamoille Valley Rail Trail, the Catamount Trail, Vermont Association of Snow Travelers trails, scenic byways and major roads. It shows no sidewalk, bicycle lane, crosswalk or municipal pedestrian network, and at regional scale it could not. It states no date and no data source. Two of the listed trails are regional multi-use paths, and Objectors do not suggest otherwise. But a regional recreation map is not an inventory of complete streets facilities — paved, graded to accessible standards, and usable by wheelchairs, strollers, and scooters as well as pedestrians and cyclists — serving any Planned Growth Area. Redirecting a complete-streets facilities inquiry to a recreation and

scenic-byways map is not evidence that planned transportation infrastructure meeting criterion (vii)'s standard exists; it is evidence that no such dedicated inventory does.

This gap is not unique to CVRPC. Direct review of the adopted plans for Rutland, Chittenden, and Northwest shows that none anchors a "planned" transportation finding to an adopted § 4430 capital program. That other regions did the same does not excuse the absence here (Section II.G). [Fuller comparative detail reserved for the Chronicle of Deficiencies.]

What a decision rejecting this Count must say. To find criterion (vii) met for any Planned Growth Area, the decision must identify: (1) the street or streets that give the area "complete streets" infrastructure and "pedestrian access directly to the downtown or village center," by name; (2) whether that infrastructure is existing or planned; (3) if planned, the line item in the municipality's § 4430 capital program, with its priority, cost, financing and operating-cost estimate, since the statute defines planned infrastructure by that program; (4) if the finding rests on the under-1,000-cars, 25-mph presumption, the text of § 4348a(a)(12)(B)(vii) or 19 V.S.A. chapter 24 that makes a traffic count a substitute for either showing; and (5) for Country Club Road, the § 4430 line item that supplies the connection, given that the City's letter of intent lists the source of funds as "N/A" (Ex. 35, p. 4).

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(12)(B)(vii) and require CVRPC to identify, for each PGA designation relying on "planned" transportation infrastructure, the specific adopted § 4430 capital program line item, priority ranking, cost, financing method, and estimated impact on municipal operating costs supporting that finding. Objectors further ask the Board to find that, for any PGA designation relying on the under-1,000-cars-per-day, 25-mph-or-less sidewalk presumption in place of either showing, the record contains no evidence satisfying either statutory path — existing conformance or an adopted § 4430 capital-program line item — and that the criterion is accordingly unmet for that designation, without regard to whether

the underlying street might independently qualify for some future project-level exemption under 19 V.S.A. § 2403.

COUNT III — Land Counted as "Served" That Is Not, Under § 4348a(a)(12)(B)(ii)

The statutory element. § 4348a(a)(12)(B)(ii) requires that a proposed Planned Growth Area "is served by public water or wastewater infrastructure."

> *"This area is served by public water or wastewater infrastructure."* **24 V.S.A. § 4348a(a)(12)(B)(ii)**

The defect — presence treated as service at any scale. As written, and as CVRPC's methodology applies it, this criterion is treated as a binary: any water and sewer connection scores a parcel as served, regardless of the scale of development the designation contemplates relative to what that connection can support. That reading assumes a fact the statute does not state — that existing service implies existing capacity. A connection sized for a golf-course clubhouse and restaurant is a real, existing service and is not evidence of capacity to serve the housing scale a Planned Growth Area designation is understood to enable. Where expanding that capacity would require tens of millions of dollars in infrastructure investment, with no § 4430 capital program identifying it, "served" and "capable of serving the contemplated development" are materially different findings. Count X shows that the future land use element's own main clause makes the same connection in express terms. Objectors do not ask the Board to read a capacity test into criterion (ii). The Board has said guidance may not require "demonstrated water/wastewater capacity" beyond the statute (Ex. 63, p. 3: "requiring demonstrated water/wastewater capacity is stricter than the statutory standard"). The text asks whether the area "is served." An area reached only by a clubhouse connection, or by a line that might someday be extended, is not one the statute describes as served. The question of capacity belongs to § 4348a(a)(7) (Count I) and to the main clause of § 4348a(a)(12) (Count X), both of which are in the statute.

The regional planning commissions' own drafting record confirms the presence/capacity conflation, and why it happened. The earliest located VAPDA methodology draft — "FLUConsistency_VAPDA_20230713.docx," circulated one month after Act 181's enactment — proposed a data model with granular, capacity-sensitive water and sewer categories ("fully/partially/none") and stated that "VAPDA will clarify how planning (including capacity studies) and investments for public infrastructure would support specific regional land use designations." Capacity was originally within the methodology's scope. Two Rivers-Ottauquechee Regional Commission's own internal methodology explainer, dated July 16, 2025, states plainly why that scope narrowed: "We do not take into account whether owners want to develop or whether systems have capacity (due to the poor data available on overall capacity and the capacity of particular mains), merely if a system is there." (Ex. 40.) That is a regional planning commission's own admission that the "served" finding this Count challenges rests on a known and acknowledged data gap, not on a considered judgment that capacity is immaterial to whether an area is fit for the density a Planned Growth Area designation contemplates.

The methodology also counts as "served" land that is not. Its step includes areas "where expansion of service or extension of a connection line is generally feasible (within 1000'?)." The parenthetical is an unresolved drafting question. It appears in the December 2, 2024 draft and in Version 1.0 (Ex. 45), and it remains in the published v4.0. Section 4348a(a)(12)(B)(ii) asks whether the area "is served," not whether it could be.

The methodology cannot rewrite criterion (ii). The statute requires that a Planned Growth Area "is served by public water or wastewater infrastructure." 24 V.S.A. § 4348a(a)(12)(B)(ii). It does not say "planned" or "could be served." The Legislature used those words where it meant them. Criterion (vii) of the same subdivision reaches "planned or existing transportation infrastructure." § 4348a(a)(12)(B)(vii). The Transition or Infill category covers areas "served by, or planned for, public water or wastewater." §

4348a(a)(12)(D). Criterion (ii) contains neither phrase. Planned water and wastewater service qualifies an area for Transition or Infill, not for Planned Growth Area.

The Future Land Use Methodology treats feasible extension of service lines as service. It counts land where extension of a connection line is "generally feasible (within 1000'?)," and adds that "[c]apacity of sewer and water systems need not be considered" (Mapping Process, step 4(b), p. 9). That substitutes the (D) standard for the (B)(ii) standard. The Legislature charged VAPDA with developing a "standard methodology and process for the mapping" of eligible areas. § 4348a(e). That is a mapping process. It is not authority to redefine criteria the Legislature wrote into § 4348a(a)(12)(B). The statute also requires the map to identify planned growth areas "in a manner consistent with this section." § 4348a(c). Where the methodology and the statute conflict, the statute controls, and a plan mapped under the methodology's test fails § 4348a(a)(12). When Thomas Weiss raised this with CVRPC, staff answered by citing the methodology (Ex. 59, p. 22). The methodology is the thing under challenge.

The same substitution of methodology for statute appears a second time in the mapping steps. CVRPC's Executive Director explained the addition of the rest of Country Club Road as "one parcel" and "consistent with the methodology" (Ex. 7), and the Montpelier Planning Commission's request rests on a methodology step (Board docket Ex. 023, item 6). The step says only to "snap to parcel lines where reasonable" (Mapping Process 4(d), p. 9). Subsection (ii) asks whether "the area" is served, and a parcel line cannot supply service. See Count IX.

The methodology's principal authors proposed the "served by" criterion to the Legislature themselves. In February 2024, writing for VAPDA (the association of the regional planning commissions, not the Land Use Review Board), Charles Baker and Catherine Dimitruk proposed adding to the Planned Growth Area criteria, in draft statutory text, that "[t]he area is served by municipal sewer and water infrastructure," and wrote to the House Environment Committee that they hoped "the statute language provides enough direction to do our work with guidance developed by the [Board], as

necessary" (VAPDA Comments on H.687 (Draft No. 2, 2/6/2024), House Committee on Environment and Energy, Feb. 13, 2024, items 20 and 2, pp. 77 and 9). The enacted criterion differs in wording ("public water or wastewater"), but the drafters cannot claim they did not understand "served by" to be a statutory test. Ten months later, VAPDA's own methodology told regional planning commissions that capacity "need not be considered" (Final Draft, December 2, 2024; Version 1.0, December 20, 2024, Ex. 45; Mapping Process, step 4(b), p. 9).

CVRPC's September 20 draft says the same thing in its own words. Its wastewater treatment table (p. 214) reports 2022 flows against permitted design flow and then warns: "It should not be inferred, however, that operating at less than hydraulic capacity represents available capacity," because of capacity already allocated or held in reserve, phosphorus limits, and local operating decisions. The plan promises "a brief summary of the individual systems" after the table; none appears. Its water system table carries a footnote that the 2023 data "may not reflect the current status of permitting for systems to expand, or the ability to meet the demands of increased capacity" (p. 218, n.57). Its housing-target appendix states that "a Future Land Use classification is not necessarily a measure of capacity" (Appendix B, p. 1). And where the plan lists the factors CVRPC used to map Planned Growth Areas, public water and wastewater are not among them (pp. 71–72), although the Board's preapplication response recommended adding "presence of water/sewer" to that list (p. 23). The plan has plant-level numbers it tells the reader not to rely on, and no figure at all for any Planned Growth Area.

Montpelier's own regulatory filing shows why excess capacity cannot be assumed, even downtown. The City has been under a State order since 2017 to bring its remaining combined sewer overflows into compliance. Its annual report of January 30, 2026 lists six active overflow structures and 34 overflow discharges in 2025, two of them in dry weather (Ex. 22, pp. 4, 8–9). It states that "[c]apacity at the [treatment plant] is not the reason" for the overflows; they result from overwhelmed siphons, "insufficient collection line capacity," and stormwater inflow and infiltration. The regional plan's wastewater

table reports Montpelier's plant as operating below its design flow and says nothing about the collection system. For the municipality holding 59% of the region's Planned Growth Area acreage, the plan measures the one component the City says is not the constraint and omits the one the City says is.

Objector raised this during the preapplication comment period. Part 18 (July 31, 2026) identified Montpelier's six permitted overflow outfalls and noted that none appears on the Future Land Use Map. Part 30 (August 4, 2026) asked that combined-sewer status be a readiness criterion for growth-area expansion. Part 38 (August 6, 2026) asked the Board to require CVRPC to address, region-wide, whether the pace of growth-area designation accounts for combined sewer overflow constraints "before adding sanitary sewer demand" (Board docket Ex. 018, Part 38). The September 20 draft does none of this. Its water and wastewater map shows no overflow structure or combined-sewer area, and its policies go no further than encouraging separation. Objectors do not contend that Country Club Road's own service runs through a combined line; nothing in the record says either way. The point is about Montpelier's Planned Growth Area as a whole.

Fire-flow, not domestic demand, is the actual binding constraint. Fire-suppression flow (ISO-rated gpm) drives water-main capacity planning for denser development, not domestic demand. Lamoille's own adopted plan proves the threshold is known and not applied elsewhere: its Hyde Park entry states the system is "adequate to serve current and future residential needs," but flags in the same breath that "additional reserve capacity and pressure may be needed to support fire suppression systems required in larger commercial development," and separately commits to assisting municipalities with ISO fire-flow ratings as a standing policy action. No other region examined — including CVRPC — applies that same threshold to any proposed Planned Growth Area. CVRPC's own draft acknowledges the constraint without applying it: "Some systems that provide fire protection are under strain as they weren't necessarily designed with adequate distribution systems/pipes for use in fire protection" (p. 221). The systems are not named, and no Planned Growth Area is tested against the point.

The plan's own replacement map confirms the defect rather than curing it. CVRPC's "Summary of Substantial Changes – Narrative" states that the map appendix "was removed" and that "[a]ll maps required by statute were created and integrated into the text to reflect updated data and statutory requirements." The resulting figure, Map 23 ("Water Supply & Wastewater Infrastructure," p. 217), carries no date, no data-vintage note, and no source citation anywhere on the page or elsewhere in the document — a defect the reorganization did not cure and arguably deepened, since a reviewer can no longer even identify which year's data is being relied upon. The map's legend has four entries: public water sources, water service areas, sewer service areas, and combined water and sewer service areas. It shows no treatment plant, main, pump station or overflow structure. Map 23 is also the only water/wastewater infrastructure map in the plan, at regional scale across all twenty-three municipalities; no larger-scale map exists for any municipality — including Barre City, Waterbury, Montpelier, and Berlin, the region's principal water and wastewater providers — at a resolution where main sizes, plant capacity, or distribution routing could actually be evaluated against a specific Planned Growth Area boundary. At the scale provided, a designation boundary can be drawn to align with a service-area polygon with no way for the Board, CVRPC, or the public to confirm that alignment reflects anything about the infrastructure's actual capacity to serve it.

Design records show a single main, not a redundant one, concentrating risk. Where the underlying engineering record for a specific parcel is available, it confirms a single water main serves the site, with no redundant or secondary main documented anywhere in the design. Given that a site's only vehicle access can itself fail — as documented at Country Club Road in the July 2023 flood, discussed at Count V below — a design that routes both fire-flow water service and the sole access route through the same single corridor concentrates two independent risks into one point of failure, with no engineering evaluation of that concentration anywhere in the record reviewed.

The station the Country Club Road site depends on is neither funded nor withdrawn. The Northern Border grant agreement describes the project as including "a new pump station, utility upgrades, and road construction to enable 300 new housing units" (Ex. 26). The State's record of July 1, 2026 says "[t]he City will be removing the pump station element from the scope of work" (Ex. 28). CVRPC, the grant's local development district, states that it holds no record of any such removal, of any scope amendment, or of where replacement funding would come from (Ex. 6). An area whose service depends on a station that one funder's record includes and another funder's record removes has not been shown to be "served."

What a decision rejecting this Count must say. To find criterion (ii) met for any Planned Growth Area, the decision must identify: (1) the public water or wastewater infrastructure that serves the area today; (2) if the Board reads "is served" to include land that a line could reach, the text of (B)(ii) that says so, given that (B)(vii) and (D) say "planned" and (B)(ii) does not; (3) how a mapping step stating that "[c]apacity of sewer and water systems need not be considered" is consistent with § 4348a(c), which requires designation "in a manner consistent with this section"; (4) whether a connection of any size, including one sized for a clubhouse, satisfies "served," and why; and (5) for Country Club Road, what serves the site beyond the clubhouse, and whether the pump station is in or out of the project, given Exs. 26, 28 and 6.

Relief requested. That the Board require CVRPC to state, for each PGA, whether it is served by public water or wastewater infrastructure today, by what connection, and, where the plan relies on capacity, the figure, its source, and whether it determined the boundary or the assumed housing-unit share.

COUNT IV — Application of Counts I–III to the Country Club Road Parcel

The parcel-specific record. A full-text search of the September 20 draft plan and its appendices returns zero hits for "Country Club." The parcel appears only in CVRPC's separate FLU change summary, in one line ("expanded to include the entire parcel"), and

in the City's request to CVRPC that the rest of the parcel be added, one of twelve map changes the City sought. The Planning Director reported to the Planning Commission on September 14, 2026 that "[t]hey have agreed to add the rest of Country Club Road" (Ex. 8). CVRPC's Executive Director gave the reason at CVRPC's September 8 meeting: "This is one parcel, and so it does in this case make a lot of sense to keep that consistent. That certainly is consistent with the methodology, as we've been instructed to implement it" (Ex. 7). The two Montpelier entries before it in CVRPC's change summary were tested for sidewalks and traffic counts (Count II). This one was tested for neither. The land added is forest the City's own plans reserve from development (Count V). No § 4430 CIP citation, no water/sewer finding, appears anywhere for this parcel. The Tier 1B memo's Montpelier entry offers only hedge language — "most… is served," "close enough to… consider," "can accommodate" — municipality-wide, no parcel IDs, no capacity figures.

"Served by" cannot mean served at the clubhouse. The parcel is publicly owned and, beyond the existing clubhouse building, undeveloped. The designation under review does not contemplate service to that single structure — it contemplates a residential neighborhood of the scale described in the City's own solicitation materials. "Served by," properly applied to that contemplated use, requires a distribution plan reaching every lot the designation anticipates: water and sewer mains sized and routed across the site, and Complete Streets infrastructure — sidewalks, curb ramps, and routes usable by pedestrians, wheelchair users, and cyclists alike, not vehicular access alone. No such distribution plan exists in the record. The City's engineering layout for the work is titled "Alternative 4a – Center Country Club Road in R.O.W. & Raise US-2"; its road, water and sewer work ends at the clubhouse (Ex. 21). The City's own January 2026 responses to developers divide the work the same way: the City intends to fund infrastructure "to the site," while "[t]he funding for the improvements within the site will depend on the private development (likely using CHIP)" (Ex. 14, No. 3). The infrastructure "served by" requires is, on the City's own account, the part not yet funded or committed. The

proposed letter of intent draws the same line: the City builds to the boundary of the Phase 1 property (Ex. 35, p. 7), and the infrastructure inside depends on CHIP (p. 8). The White + Burke memorandum addresses "internal infrastructure" only and does not mention the Route 2 signal or any off-site work (Ex. 37).

No lawful mechanism currently exists to commit to one. This is not merely a documentation gap CVRPC could cure by producing a memo. The only instrument that could bind a developer to design and build that distribution infrastructure — a development agreement — is a choice-limiting action under 24 CFR 58.22, barred until the federal environmental review governing the CDBG-DR and NBRC funds attached to this site is released. Under the parcel's own funding posture, the City cannot lawfully commit to the infrastructure "served by" requires until that review concludes. The State's award letter imposes the same bar in its own terms: "No HUD funds or non-HUD funds may be committed, nor can any legally binding agreements be made prior to the release of the ER, unless they are for planning related activities associated with the completion of the ER" (Ex. 27). The exception is for planning-related activities associated with completing the environmental review, and the letter's next sentence, on bidding, gives "an engineering study" as an example of a planning-related activity. Objectors have found nothing in the letter that places a development agreement within it. A designation resting on infrastructure the City is not yet permitted to commit to is not a designation resting on a "served by" finding at all — it rests on an assumption that a future, currently-barred commitment will eventually be made.

The City removed the site-level geotechnical work from its own scoping contract. VHB's October 18, 2024 proposal ($218,674) included a Sanborn Head geotechnical program of twelve test borings: seven to 25 feet "in building locations" and one to 100 feet "at crest of slope (and building location)" (Ex. 61, original authorization, Task 5 and cost proposal). Staff told the Council the contract "was much higher than what was budgeted," and the Council approved a $106,800 revision (Ex. 61, Council agenda item of Dec. 18, 2024, packet p. 38 of 428). Its Assumption 3 reads: "No geotechnical boring

program will be undertaken under this authorization" (id., packet p. 43 of 428). The 13 auger borings that remain are for ledge quantities along the water and sewer line, not the building sites (id., Attachment 1, § III.B, packet p. 46 of 428). Objector has found no record that the building-site borings were later performed. Whether the proposed building areas can bear the buildings the designation assumes is a site-level technical showing of the kind Count I finds missing.

Act 250 jurisdiction over the housing component is now confirmed, not merely live, and that confirmation raises the stakes of this designation directly. JO 5-208 determined, independent of any regional-plan designation, that the housing component on this parcel requires an Act 250 permit (Ex. 30). On September 25, 2026, District 5 Coordinator Peter Kopsco declined to modify that determination, stating that "absent a designation that enables additional housing units to be constructed without a permit, such as a downtown designation or the adoption of a tier 1 area or status, then an Act 250 permit will be necessary for the construction of ten or more units" (Ex. 31). CVRPC is on that decision's certificate of service. A Planned Growth Area designation for this parcel would not undo JO 5-208 directly, but it would make the parcel eligible for Tier 1A status, which under 10 V.S.A. § 6081(z)(1) removes Act 250 review going forward — including review under Act 250 Criterion 9(B) (10 V.S.A. § 6086(a)(9)(B)), which governs development on primary agricultural soils and now applies to this parcel because Act 250 jurisdiction is confirmed.

Section 6081(z)(1) provides:

> *"Notwithstanding any other provision of this chapter to the contrary, no permit or permit amendment is required for any subdivision, development, or change to an existing project that is located entirely within a Tier 1A area as established in section 6034 of this chapter."* **10 V.S.A. § 6081(z)(1)**

Unlike the other showings this Objection identifies, the consequence of granting Tier 1A status before Criterion 9(B) review occurs is not curable later: prime agricultural soil

classification cannot be restored once contaminated and clean soil horizons are mixed during site investigation, a process already underway at this parcel under a Supplemental Site Investigation work plan submitted to DEC on September 23, 2026 that contains no prime-agricultural-soils delineation, preservation protocol, or coordination with the Vermont Agency of Agriculture, Food and Markets, notwithstanding written requests to DEC that it do so. Every other defect Counts I through III identify can be cured after the fact by CVRPC producing the missing study or program; this one cannot. If the Board grants Planned Growth Area designation — and the Tier 1A eligibility that comes with it — before this showing exists, the risk isn't just a delay that can be fixed later. The risk is that a legally required review of harm that can't be undone gets skipped permanently, instead of simply postponed until a problem that could still be corrected is addressed.

Relief requested. That the Board decline to credit the Country Club Road parcel's Planned Growth Area designation absent the specific § 4348a(a)(7), (a)(12)(B)(vii), and (a)(12)(B)(ii) showings Counts I–III require, absent a lawfully committed distribution plan for the infrastructure the designation assumes, and absent a showing that Act 250 Criterion 9(B) review of primary agricultural soils will occur before any Tier 1A eligibility this designation would confer is exercised.

COUNT V — The Country Club Road Parcel Fails the Threshold Description, Smart Growth Principles, and Mixed-Use Requirement § 4348a(a)(12)(B) Independently Imposes

The statute's introductory paragraph, independent of the numbered criteria. Before reaching the seven numbered criteria at § 4348a(a)(12)(B), the statute's own introductory paragraph describes what a Planned Growth Area is:

> *"These areas include the high-density existing settlement and future growth areas with high concentrations of population, housing, and employment in each region and town, as appropriate. They include a mix of historic and nonhistoric commercial, residential, and civic or cultural sites with active*

> *streetscapes, supported by land development regulations; public water or wastewater, or both; and multimodal transportation systems. … These areas should generally meet the following criteria:"* **24 V.S.A. § 4348a(a)(12)(B)**

This is not a novel argument foreclosed by the numbered criteria; it is the threshold the numbered criteria are meant to test compliance with, not a substitute for it. On this record, that threshold fails on four independent grounds, each sufficient on its own:

- **No mixed use.** The site, beyond the existing clubhouse, contains no commercial, civic, or cultural structures at all — historic or otherwise. There is nothing on site for residential development to be "mixed" with, and nothing in the record shows this is being designed in rather than assumed away.
- **No historic or nonhistoric commercial or civic sites.** An undeveloped former golf course does not answer the statute's own description before the numbered criteria are even reached.
- **Not walkable.** Addressed fully below.
- **Not complete-streets connected.** Addressed fully at Count II and at § 4348a(d), discussed below.

The City and CVRPC may answer that the introductory paragraph also covers "future growth areas," so Country Club Road need not already contain the mix it describes. That answer does not cure the failure. A future growth area is still one the statute describes as including "a mix of historic and nonhistoric commercial, residential, and civic or cultural sites … supported by land development regulations." For a parcel that today has none of those uses, the only way a record can show the mix will exist is a plan that assigns them. The one planning phase that would have done that — the Actionable Plan's Phase Two — was given up in May 2025 (below). A designation resting on a future mix that no

document allocates, after the City gave up the only process for allocating it, is not a designation for a future growth area; it is a designation for a parcel of undeveloped land. Section II.H addresses the Board's Guidelines on the same point.

Neither the daycare nor the disc golf course cures the mixed-use failure — if anything, both confirm it. Turtle Island Children's Center occupies part of the clubhouse under an emergency lease approved in July 2025, with children in occupancy by September 2025, ahead of environmental testing the site's own consultants identified as required around that building and its play yards. Objector understands that the emergency placement displaced the winter overnight homeless shelter. A use placed on site through an emergency lease, ahead of the environmental review the site's own record says was required first, is not evidence of planned civic-use integration; it is evidence of the same developer-first, plan-later sequencing pattern discussed below, now involving a specific building and specific children rather than an abstraction. The informal disc golf course on the former fairways is recreational use of vacant land, run by volunteers, with no structure, no site design, and no anchor function — not a commercial, civic, or cultural site within the meaning of the statute's introductory paragraph.

The mix-of-uses requirement cannot be satisfied by a housing developer alone. The same introductory paragraph requires "a mix of historic and nonhistoric commercial, residential, and civic or cultural sites," not residential use alone. Nothing in the record shows this parcel is being designed to meet that requirement. The City's own solicitations are for housing: the Request for Proposals is titled "For Development of Housing on the Country Club Road Site" (Ex. 13), and at the Council's October 14, 2026 meeting the City Manager described the letter of intent's Phase 1 as 108 units of housing, 45 rental and 63 ownership (Ex. 55). No document in this record allocates a commercial or civic use on the site. A developer selected through a housing RFP has no mandate, and no reason, to design in the commercial or civic anchor uses this parcel's 2.3-mile routed distance from downtown would require for it to function as an actual mixed-use village rather than a car-dependent residential extension of one. That design work cannot

responsibly be separated from two other unresolved determinations already before the Board's attention: first, the brownfield remediation method — whether contaminated soils are capped in place or removed determines what ground is available for fixed civic and commercial uses, not housing alone, and a master plan produced before that choice is made cannot reliably deliver the mix the statute requires; second, the site's prime and statewide-significant agricultural soils and its current agricultural use — food is presently grown and consumed on site, no Method 3 site-specific risk assessment has determined whether or where that use may safely continue, and nothing in the record shows how a preserved agricultural component is meant to coexist with housing, roads, and multimodal access. A housing developer's RFP does not ask any of these questions; only an integrated master plan, developed concurrently with the remediation decision, can.

The City's own Request for Proposals confirms that what exists for this parcel is a solicitation, not a plan. (Ex. 13; Ex. 14.) The RFP, issued December 19, 2025, is titled a request "For Development of Housing on the Country Club Road Site." It states that the buildable areas shown in the City's concept plan are "conceptual and non-binding at this stage" (p. 3, n.2); it reserves the City's right to "[m]odify or withdraw this RFP at any time" and to "[r]eject any or all proposals" (p. 13); and it provides that "[n]o contractual obligations shall arise from this RFP." It does not describe a plan the City has adopted. It asks the developer to write one: the selected developer is to "[p]repare and refine a master development plan for the buildable areas" and to "[i]dentify the proposed unit count, mix … and phasing, including any non-residential components" (p. 7). Non-residential uses are thus optional and left to the developer, and the master plan the statute's introductory paragraph presupposes is assigned to a private developer, after the designation is sought rather than before. The one finalist summary in the City's packet that mentions retail — a Subcommittee note that Chinburg proposed a "village structure/design with retail" (packet p. 33) — records an RFQ response, not a plan, and the RFP did not require it.

Objectors offer the RFP and the City's responses as exhibits for what kind of documents they are, not because they are bad ones. A request for proposals states what a municipality hopes a developer will build and what the municipality will offer to induce one. It is written to attract bids, reserves the right to change or withdraw, and binds no one. The Board's members are professional planners and will recognize the difference between such a document and a plan adopted through the Chapter 117 process, which is warned, heard, adopted by the legislative body, and can be measured against the criteria of § 4348a(a)(12)(B). A finding that this parcel meets those criteria cannot rest on the former. If the Board credited the RFP's description of a "walkable, connected neighborhood" (p. 6) as evidence that one will exist, it would be crediting the marketing of a proposal instead of verifying the parcel. Due diligence on a Planned Growth Area designation means checking the parcel against the statute, not reading the City's prospectus for it.

The City's proposed letter of intent and the developer's own proposal confirm the absence. The letter of intent in the Council's October 14, 2026 packet is unsigned and, by its own terms, binds no one except to negotiate in good faith (Ex. 35, p. 6). Objectors do not offer it as a commitment or as proof that any criterion is met. They offer it as the City's own statement of what it now proposes, and of what it does not. It describes a "housing development" (p. 6). It names no commercial, civic or cultural component. It leaves the boundaries of Phases 2 and 3 to be delineated later by the developer (pp. 6–7), and it makes the developer's market study, due six weeks after execution, the step that can revise the unit mix (pp. 6, 10). The City Manager told the Council on October 14, 2026 that the letter covers Phase 1 only, 108 units, that land for Phase 2 would be negotiated later if DEW performs, and that the land not conveyed stays in City control and may become a park or conservation land, none of which need be specified in any phase (Ex. 55). The June 1, 2026 Development Proposal that the letter incorporates says the same. Asked to "[c]reate commercial/mixed-use space," DEW answered: "The original RFP indicated no commercial space; while we are open to evaluating its

inclusion, it would only be feasible with committed tenant partner(s)" (Ex. 36, p. 26). Its only site plan, VHB's May 29, 2026 "Country Club Road – Conceptual Master Plan," shows 108 units in Phase 1 and 182 in future phases, 290 in total, all housing (Ex. 36, p. 29), and the proposal says the final quantity and mix will be "informed by market study results" (Ex. 36, p. 4). That is a developer's conceptual site plan, not a master plan adopted through Chapter 117. It adds another set of unit figures (108, 182 and 290) to those described under criterion (v) below. On traffic, DEW says it will review existing studies after selection and, with VHB, "determine whether an updated study is required," and that a second access and "the need for a Route 2 signal" remain to be evaluated (Ex. 36, p. 7). The point does not depend on the letter being signed. The record the City itself has put forward leaves the use mix, the site plan and the traffic study to the developer, after the designation is sought.

The RFP also shows the sequence the Board is being asked to ratify, and records the City's own doubt on walkability. In December 2025, when the operative regional map classified the parcel Rural, the City told developers the property was "not currently under Act 250 jurisdiction" and that it "will be pursuing Tier 1A designation" (RFP pp. 3–4) — a status that exists only for areas on an approved future land use map, and that the City was offering to developers before that map existed. Eight months later JO 5-208 held that an Act 250 permit is required. The same Council-approved RFP (Minutes, Dec. 17, 2025, item 2025-512) tells developers that "this site is not walkable downtown" (RFP p. 10, Schedule item 8). The footnote to that line says developers told the City so and that "the City has not vetted this information" (n.6) (Ex. 13; Ex. 20). Nothing in this record shows the City tested that statement against criterion (iii). The City's January 12, 2026 responses add that Green Mountain Transit "would not generate sufficient usage to add new routes at this time" (No. 16) — the introductory paragraph's "multimodal transportation systems," as applied to this parcel, in the City's own words. Since that statement, Green Mountain Transit has withdrawn from the local Montpelier routes and Tri-Valley Transit has taken them over, as Objector heard at the City Council's

September 23, 2026 meeting, which he attended; the transfer was also reported by VTDigger on July 14, 2026. Nothing in the record shows that the City or CVRPC has assessed transit service to this parcel with the new operator.

Smart growth principles, independently required by § 4348a(a)(12)'s own introductory clause. Section 4348a(a)(12) — the future land use element provision within which (a)(12)(B)'s Planned Growth Area criteria sit — independently requires that its descriptions of intended future land uses be "consistent with the smart growth principles in section 4303 of this chapter," per the amendment made by 2026 Acts and Resolves No. 152, § 13. (Prior to that amendment this requirement appeared instead in (a)(12)(B)'s own introductory paragraph, quoted above; the 2026 amendment relocated it to (a)(12)'s own introductory clause without narrowing its reach — if anything broadening it, since it now governs every future-land-use description rather than Planned Growth Areas specifically.) The definition itself sits at § 4303(43). That definition specifically identifies, as disqualifying, a settlement pattern that "at full build-out" is characterized by "development that limits transportation options, especially for pedestrians" (§ 4303(43)(I)(ii)) or "requires the extension of municipal infrastructure across undeveloped lands in a manner that would extend service to lands located outside compact village and urban centers" (§ 4303(43)(I)(iv)). A car-dependent cluster 2.3 routed miles from City Hall, reachable only by a single corridor extended across an undeveloped former golf course, is a documented illustration of both. The September 20 draft does not test any future land use description against the smart growth definition.

The operative text of the two provisions is:

> *"… descriptions of intended future land uses, consistent with the smart growth principles in section 4303 of this chapter …"* **24 V.S.A. § 4348a(a)(12), as amended by 2026 Acts and Resolves No. 152, § 13**
>
> *"'Smart growth principles' means growth that: … (I) reflects a settlement pattern that, at full build-out, is not characterized by: … (ii) development*

> *that limits transportation options, especially for pedestrians; … (iv) development that is not serviced by municipal infrastructure or that requires the extension of municipal infrastructure across undeveloped lands in a manner that would extend service to lands located outside compact village and urban centers …"* **24 V.S.A. § 4303(43)(I)**

The Board's preliminary review. The Board's September 8, 2026 preapplication response quotes the pre-amendment lead-in to § 4348a(a)(12)(B) — "[t]hese areas should generally meet the smart growth principles definition in chapter 139 of this title and the following criteria" (p. 21) — language Act 152 struck and relocated to § 4348a(a)(12); and the response does not apply smart growth principles as a threshold to any Planned Growth Area. The same page quotes criterion (iii) as it read before Act 152: "generally within walking distance from the municipality's or an adjacent municipality's downtown, village center, new town center, or growth center." Act 152 struck "new town center, or growth center." Criterion (iii) now requires walking distance from a "downtown or village center." The Board's preliminary finding that Montpelier's Planned Growth Area "appear[s] to meet the statutory standards" was therefore made against a broader anchor than the statute now allows. Whatever proximity Country Club Road has to the edge of Montpelier's legacy growth center, that is no longer a measure the statute permits.

Sabins Pasture abuts Country Club Road on the west and lies inside Montpelier's legacy growth center. Under the former wording, the parcel could claim to be within walking distance of a growth center at its own boundary. Act 152 removed that anchor. The measure now runs to the downtown itself, and for this parcel that is 2.3 routed miles.

The distance and grade are documented, not estimated. From Montpelier City Hall's front steps to the parcel's clubhouse the straight-line distance is 1.8 miles (Google Earth, September 29, 2026; Ex. 44), consistent with the City's own project page, which gives "~1.79 miles from the site to City Hall." Google Maps, retrieved October 5, 2026 (Ex. 58), returns a 2.3-mile route along the only access corridor for both walking and bicycling, estimates the walk at 49 to 52 minutes depending on direction, and shows 121

feet of climb and 7 feet of descent along it (three screenshots). Objectors report what the tool returns and do not vouch for its estimates. Walking distance is measured along the route a person walks, not as the crow flies. The City's own 2026 BUILD grant application confirms the existing corridor's grade "reach[es] 13.5%" and that its own proposed $7,277,470 reconstruction — "the essential transportation access required to unlock" this development — would reduce that maximum only to 12%, still more than double AASHTO's desirable 5% maximum grade for accessible, all-ages-and-abilities facilities. The City's own January 12, 2026 responses add that if CDBG-DR funds are not received, the project "could be scaled back (e.g., not lowering the grade on Country Club Road)" (Ex. 14, No. 15) — so even the 12% figure is contingent. The State's award of those funds is conditional, "up to $5,000,000," and its conditions deadline is now November 30, 2026 (Ex. 27, 28, 29). No amount of reconstruction of the existing corridor produces a route meeting that standard; a genuinely separate, appropriately graded connection would be required, and none is planned, budgeted, or committed.

Criterion (iii), as amended by 2026 Acts and Resolves No. 152, § 13, provides:

> *"The area is generally within walking distance from the municipality's or an adjacent municipality's downtown or village center."* **24 V.S.A. § 4348a(a)(12)(B)(iii), as amended by 2026 Acts and Resolves No. 152, § 13**

No measure of "walking distance" is applied, and the Board has already ruled this way once — in this same docket. Criterion (iii)'s requirement that an area be "generally within walking distance" of a downtown has no stated measure in CVRPC's methodology or in this record; different, inconsistent proxies (quarter-mile buffers, sidewalk presence, traffic-volume thresholds) have been applied to different parcels without reconciliation. This is not merely a comparison to a different region's docket: within RPC03-0001 itself, the Board's preapplication response found the Berlin Planned Growth Area "appears not to meet the statutory standards" because "[t]he PGA area across Route 62 along Airport Road does not have sidewalks," and required either

"[a]dditional information on complete streets planning" or consideration of "another FLU area category" (p. 22); CVRPC's own change summary reports that it reclassified the area as Transition/Infill "because it lacks sidewalks/walkability." The Board's preapplication response on the Chittenden plan refers to "the quarter to a half mile VAPDA methodology standard" for walkability (LURB Preapplication Response, Chittenden County Regional Planning Commission, Docket RPC04-0001, Dec. 22, 2025, p. 20), although the Board's Guidelines state that it "will not use a particular distance measure" (§ 1.007(A)(3)). Objectors cite this only to show that the criterion has no settled measure; no count rests on it. Nothing in the record shows a comparable walkability review was performed for Country Club Road — the corresponding change entry in CVRPC's own "Summary of Substantial Changes" states only that the designation "was expanded to include the entire parcel," with no sidewalk or complete-streets analysis mentioned. An anticipated response — that the City has pursued funding (a 2026 BUILD grant application seeking $5,312,550 toward a $7,277,470 reconstruction, which the Planning Director told the Council on August 12, 2026 the City did not receive (Ex. 38, Aug. 12 transcript excerpt), plus a Northern Border Regional Commission commitment) to reconstruct Country Club Road with sidewalks and a bicycle lane — does not distinguish this parcel from Berlin's. A grant application, awarded or not, is not an adopted § 4430 capital budget and program; it has not been adopted by the municipality's legislative body and was not subject to § 4443(a)'s public hearing requirement. And even if built exactly as proposed, the reconstruction reduces the corridor's maximum grade only to 12% — still more than double AASHTO's 5% desirable maximum for accessible facilities — and extends only to the clubhouse, not to any point nearer downtown than where the corridor began. A proposal to build a steeper-than-standard route to the same dead end is not a walkability showing; it is a more expensive version of the defect the Board has already flagged once in this docket. In its December 22, 2025 preapplication response on the Chittenden plan, the Board stated that it could not find the eastern edge of the Richmond Planned Growth Area on Cochran Road met the requirements, and asked for information on walkability or suggested mapping the area as Infill/Transition

(LURB Preapplication Response, Chittenden County Regional Planning Commission, Docket RPC04-0001, Dec. 22, 2025, p. 35). The Board's July 31, 2026 determination records that the deficiencies identified in the preapplication response were addressed (Docket RPC04-0001, Determination of Compliance, July 31, 2026). Objectors cite the preapplication response only as advisory. Nothing in this record distinguishes Country Club Road's showing from either the Berlin finding or the Cochran Road finding.

The RFP and the City's responses also refer to connecting "logically to the Route 2 multi-modal path" (RFP p. 6). Objector states what that path is. It runs from the bottom of Country Club Road along Old Country Club Road and the river and joins Barre Street; it does not run on Route 2 at all. It is about 2.3 miles to town. It is not usable by all ages and abilities in the sense 19 V.S.A. § 2401 uses, because it arrives at the bottom of Country Club Road, and a cyclist or wheelchair user must then climb a grade of up to 13.5 percent (12 percent after the City's proposed reduction) to reach the parcel. A path entering the property at a higher elevation would have to be designed, and Objectors have located no design for one.

Criterion (v)'s predicate is not merely empty — it is false, and the City knew it was false when it happened. Criterion (v), § 4348a(a)(12)(B)(v), provides:

> *"The municipal plan indicates that this area is intended for higher-density residential and mixed-use development."* **24 V.S.A. § 4348a(a)(12)(B)(v)**

The "municipal plan" is the Chapter 117 document adopted through the process §§ 4384–4385 require, not a concept map or consultant deliverable resembling one. Montpelier's City Plan 2025 does not stay silent on this parcel; its Housing chapter contains an active strategy of "continuing implementation of the Country Club Road Actionable Plan." That is the affirmative indication criterion (v) requires — and it is false on this record. The Actionable Plan's own Phase Two, the master-planning phase that would have addressed use mix, remediation sequencing, and agricultural preservation together, was given up in May 2025. The Planning Director's May 20, 2025 memorandum to the Council states

that “the council has already adjusted that process to forego the second round of master plan development to maintain maximum flexibility for developers,” leaves site, permitting and archaeological assessments to the future developer, and reopens single-family homes. On May 28, 2025 the Council unanimously approved the amended Actionable Plan and the Director’s recommendations (item 2025-205) (Ex. 16, 17). Before that, the City had already abandoned the Actionable Plan’s concrete 2023 concepts in favor of unenforceable density “bubble diagrams” that defer road layout, water/sewer alignment, brownfield delineation, and traffic planning. Within months — a Request for Qualifications to developers issued October 27, 2025, and the RFP on December 19, 2025 — the City launched a developer process that has run in parallel to, not through, the plan the City Plan says it is implementing. The City did not amend the City Plan to reflect this abandonment; the “continuing implementation” language remains in place while the City does something else entirely. This is not a documentation gap CVRPC could cure by producing something new — it is an existing representation in an adopted document that the City’s own subsequent conduct contradicts, on notice. On August 21, 2025, during CVRPC’s own review of the City Plan, Objector Whitaker told CVRPC’s Board of Commissioners, in a memorandum he read into the record, that the City Plan “does not incorporate that plan by reference” and that its master-planning phase had been “removed entirely,” citing the Planning Director’s May 20, 2025 memorandum (Ex. 9, 10). That memorandum, “Montpelier City Plan 2025 – Comprehensive Analysis and Grounds for Disapproval,” dated August 21, 2025, followed the City’s May 2025 memoranda and sets out these grounds in full (Ex. 10). CVRPC’s Board approved the City Plan at that meeting. Objector, who was present, states that the approval carried with exactly the 12 votes required. Objector appealed that approval under 24 V.S.A. § 4476; the appeal is pending before the Vermont Supreme Court (No. 26-AP-064), which heard argument on September 15, 2026. DHCD itself flagged the identical defect nearly a year earlier still: reviewing the City’s 2024 growth-center application for this same parcel, DHCD staff wrote that the City’s “‘actionable concept plan’ for a portion of the proposed growth center expansion… [i]t is not known if it has been approved by the Planning

Commission and/or Council to guide municipal plan amendments, regulatory amendments, or capital investments." The approval-status question DHCD raised in October 2024 was never answered before the Actionable Plan was cited as the criterion (v) predicate in this docket.

The instability of what the City actually intends for this parcel is not confined to the master-planning process; it runs through the unit counts themselves. The City's own 2022–2023 planning materials described "300 to 500 new housing units," "a high-density area location to support 5-story development," and "residential development at a density of about 14 units per acre." The City's January 12, 2026 responses to developers restated a goal of 300 total units, answering "Yes" when asked whether that goal is to be achieved "within the 35 buildable acres" (No. 21), while the RFP it was answering describes "[a]pproximately 20 acres of buildable area" (p. 3). The September 23, 2026 Supplemental Site Investigation work plan describes a different concept: approximately 108 units in Phase 1, up to 180 total, "consisting of multifamily buildings, duplexes, condominiums, and single-family homes" — the last category directly contradicting the City Plan 2025 summary's representation that the Actionable Plan "explicitly excludes single-family homes." The Council itself reopened single-family homes in May 2025 (Ex. 16, 17). Materially different unit-count and housing-type figures, and two different buildable-acre figures, each attached to the same parcel at different points since 2022, is not evidence of a stable plan the municipal plan can be said to "indicate" within the meaning of criterion (v); it is evidence that no single plan has existed long enough to be indicated.

This sequencing failure follows directly from the City's abandonment of the one public process this parcel's designation was supposed to run through. The City acquired this publicly owned parcel in 2022 without an adopted master plan. The Community Investment Board's 2024 conditional approval and revocation of the growth-center amendment for this parcel, described below in this Count, followed DHCD staff review that found the application's capital-budget-and-program showing — required

under 24 V.S.A. § 2793c(b)(5) for exactly this kind of amendment — did not exist (Ex. 23, 24). The City announced its intent to reapply once that showing was complete. It never did; the reapplication deadline lapsed without the required capital-budget package ever being produced, and in its place the City pivoted to the developer RFP process discussed above. That sequence — a public land-use decision routed through a developer selection process instead of through the Chapter 117 master-planning process the site's public ownership calls for, after the one comparable state-level review this site received found the underlying planning inadequate — is not an inference from silence. It is the documented reason criterion (v)'s predicate is false rather than merely missing, and it is why no adopted master plan reaching that showing currently exists: the concept document Montpelier's City Plan 2025 references is not incorporated through the Chapter 117 process required to satisfy criterion (v)'s predicate, and its own master-planning phase — the phase that would have addressed use mix, remediation sequencing, and agricultural preservation together — was given up, as described above.

Criterion (i): Montpelier's confirmed planning process is neither duly confirmed nor settled — and this reaches every Montpelier designation in this plan, not Country Club Road alone. Section 4348a(a)(12)(B)(i) provides:

> *"The municipality has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title and has adopted bylaws and regulations in accordance with sections 4414, 4418, and 4442 of this title."* **24 V.S.A. § 4348a(a)(12)(B)(i)**

That is a per-municipality gate, not a per-parcel one. Two independent problems defeat it for Montpelier on this record. First, the § 4350 confirmation process itself: the July 8, 2025 Municipal Plan Review Committee hearing that confirmed Montpelier's planning process and recommended approval of its City Plan to the full Board did so after staff told the five-member Committee, on the record, that its review "does not take into consideration all points that were presented to the committee in public testimony" — and both the confirmation vote and the recommendation to the Board passed unanimously,

with no further discussion, immediately afterward. Section 4350(b)'s "shall approve… if it finds" presupposes an actual finding, not a vote ratifying staff's framing without independent discussion. Second, and independently: CVRPC's approval of City Plan 2025 has never been reviewed on its merits. Objector and other signatories petitioned for formal review under 24 V.S.A. § 4476, and the petition went to the Secretary of Commerce and Community Development on August 27, 2025. By letter of September 8, 2025, the General Counsel of the Department of Housing and Community Development answered that § 4305 was repealed in 2009, that the council and regional review panel no longer exist, that the Agency has no authority to create them, and that responsibility for the gap lies with the Legislature. Objector then petitioned the Superior Court (No. 25-CV-3918). The court dismissed the petition under Rule 12(b)(6) by decision signed January 16, 2026 and filed January 20, 2026, holding § 4476 impliedly repealed; the decision records that CVRPC and the Agency each argued implied repeal. The appeal (No. 26-AP-064) was argued September 15, 2026 and is pending. If the Court reverses, the approval faces formal review. Act 152, Sec. 16, effective July 1, 2026, repeals § 4476 by name and supplies no substitute. For Montpelier the Board's finding on criterion (i) may be the only examination that approval receives. The City's own resolution certifies, in the words of the statute, that the City "has a duly adopted and approved plan and a planning process that is confirmed in accordance with 24 V.S.A. § 4350" (Ex. 42). CVRPC treats this gate as dispositive elsewhere in the same plan: its change summary reports that because "[t]he Calais Town Plan has not yet received regional approval," Calais is "ineligible for the Village Area FLUA," and the land around its village centers was remapped. The comparison shows that the gate is real; Objectors do not contend that it proves Montpelier fails it.

Criterion (v), beyond Country Club Road: the same predicate that is false for this parcel is simply absent for others. Montpelier's confirmed City Plan record only ever analyzed a growth-center-boundary justification for this parcel (133.55 acres) plus one abutting parcel. The September 20 draft nonetheless assigns Montpelier a 2,150.73-acre

Planned Growth Area (Appendix C) — roughly sixteen times the acreage the confirmed municipal plan ever addressed, and 59% of all Planned Growth Area acreage in the region — with no shown derivation connecting the remainder to anything in Montpelier's own plan. For Country Club Road, criterion (v)'s predicate is false, for the reasons above. For whatever portion of the remaining acreage the confirmed municipal plan never designated for anything, the predicate is not false but simply absent: nothing in the confirmed plan indicates that ground is intended for higher-density residential or mixed-use development at all. No statutory or Board-guidance provision excuses this by allowing a regional designation to outrun municipal-plan support merely because updating every municipal plan on the same timeline is impractical; §§ 4348(j) and 4348(n) already provide the amendment path for adding such acreage in a later cycle once municipal-plan support for it actually exists. A regional plan cannot use the impracticality of synchronizing every municipal plan as a reason to designate ahead of the showing criterion (v) requires — it is a reason to designate less this cycle, using the amendment mechanisms the Legislature already built for exactly this timing problem.

Criteria (v) and (vi): the City's own plans reserve most of this parcel from development. The City's solicitation describes "[a]pproximately 20 acres of buildable area" and reserves the balance for recreation and conservation; its later answer to developers uses 35 acres (Ex. 13; Ex. 14, No. 21). The solicitation states that 83 of the parcel's 133 acres are wooded. The City's May 2025 concept map labels most of the parcel "Passive Recreation / Natural Area" (Ex. 18). On either acreage figure, about 100 to 113 of the parcel's 133.55 acres are land the City does not propose to build on. The September revision nonetheless placed the entire parcel in the Planned Growth Area, at the City's request, on the stated ground only that it "is one parcel" (Count IV). For that land, criterion (v) is not merely unsupported: the municipality's own documents say the opposite of what the criterion requires. Nor can it be "needed to meet" housing targets under criterion (vi), because no housing is proposed there. Yet it is counted in the acreage that sets Montpelier's target (Count VII), and it would carry the same eligibility for Act

250 exemption as the land that is to be built on. A boundary drawn to the property line, with three-quarters or more of the parcel reserved from development by its owner, is a designation by ownership, not by the statutory criteria.

The abutting Blueberry parcel is outside every document this designation rests on. The City's own parcel map, printed October 11, 2026 (CAI Technologies; Ex. 56), shows Map/Lot 025-00E003, "Lot 3," of 7.56 acres, owned by Blueberry Assoc. LLC, as a lot separate from the City's parcel. A 4.50-acre lot owned by Vertical Bridge AM II LLC (040-007000) cuts into its southern edge. The land records show that Lot 3 was conveyed to Blueberry Associates, LLC by warranty deed recorded February 4, 2019 (Book 691, Pages 150–153, City of Montpelier Land Records; Ex. 57). As Objector reads it, the deed carries two 25-foot utility easements for Lot 3 across the Elks lodge's remaining land, which the City now owns (Book 713, Page 126): one for a sewer line to connect to the municipal system, and one for electric and telephone service. The deed also states that the lot "may not be able to meet state standards for a potable water supply or wastewater system and therefore this lot may not be able to be improved." Objectors report what the map and the deed show and do not vouch for either. Objector has located no document in this record that addresses the use, the utility connections or the traffic of that lot in any plan, capacity analysis or traffic study for Country Club Road. The point is one of omission. Lot 3 abuts Country Club Road, as Objector understands the deed's description, so whatever it eventually carries will use the same road and the same Route 2 intersection that any traffic study must cover, and its sewer connection runs across the City's land. A master plan or capacity analysis for Country Club Road cannot be complete without the use, the traffic and the utility connections of the lot that abuts it. Nothing in this record says what that use will be.

Section 4348a(d)'s disconnection bar applies with equal force. The same section separately provides that designation benefits "shall not include development that is disconnected from a downtown or village center and that lacks an existing or planned pedestrian connection to the center via a complete street." Whatever this parcel's ultimate

eligibility, no existing or planned pedestrian connection meeting complete-streets standards presently exists or is funded.

The Vermont Community Investment Board has already tested this exact question and found it wanting. This is not merely an interpretive argument. On September 23, 2024, the Community Investment Board conditionally approved, by a vote of 12 to 1, amending Montpelier's state Growth Center boundary — a designation resting on smart-growth criteria at 24 V.S.A. § 2791(13) closely analogous to § 4303(43) and the introductory paragraph at issue here — to include this exact parcel (Ex. 23, 24). On October 28, 2024, the same Board voted 11 to 0, with one member recused, to revoke that conditional approval (Ex. 24, October 28, 2024 minutes). The minutes record that Christian Meyer, now CVRPC's Executive Director and then the Board's designee of the Vermont Association of Planning and Development Agencies, "recused himself from the proceeding due to conflicts of interest." The revocation followed a motion for reconsideration filed by Objector Whitaker, identifying a conflict between state statute and the Board's internal policy and shortcomings in the application. No corrected application was ever resubmitted; the State's Growth Center application window closed permanently in October 2025, foreclosing that path for good. The parcel's current classification, on the 2024 Future Land Use Map (Regional Plan p. 273, readopted July 9, 2024), is Rural. (Ex. 1, final page.) Given that classification, and given that a state review body applying a closely comparable statutory test has already conditionally credited, then rejected by an 11 to 0 vote, an upgraded designation for this exact ground, Objectors ask directly: on what basis does this plan propose to designate the parcel a Planned Growth Area, absent any § 4348(d)(1) or (h)(1) description of that change (Threshold Objection), and absent any showing addressing the defect the Community Investment Board already identified?

Synthesis: the master plan is not one missing document among several — it is the single prerequisite each of the other missing showings depends on, and its absence is not an oversight. Chapter 117's warned public hearing process (24 V.S.A. §§ 4384–

4385) exists to let the public — including, most directly, the public that owns this parcel — decide what a site becomes before that decision is made, not after. A master plan produced through that process is what allocates a site to the "mix of historic and nonhistoric commercial, residential, and civic or cultural sites" § 4348a(a)(12)(B)'s introductory paragraph requires; without that allocation, the mixed-use showing this Count already finds missing is not merely undocumented, it is impossible to make, because no adopted document allocates uses within the buildable areas beyond housing. The May 2025 Concept Plans identify approximately 20 acres of "Buildable Areas" and reserve the balance for recreation and conservation (RFP pp. 3, 5), but the RFP itself calls those plans "conceptual and non-binding" and assigns the master plan for the buildable areas to the selected developer (p. 7). The concept map itself leaves street locations to "future developers plans" and shows the link to downtown as a "potential future road to Sabins Pasture and downtown" across "adjoining property, location TBD" (Ex. 18). Objector understands that the owner of Sabins Pasture, the parcel to the west, is willing to have an emergency multimodal path across it but not a through road. If that understanding is right, the downtown link the concept map draws as a road depends on a landowner who has declined a road. The City did not omit this process by accident. It gave up the Actionable Plan's Phase Two — the master-planning phase — in May 2025 (Ex. 16, 17); the developer Request for Qualifications followed on October 27, 2025, and the RFP on December 19, 2025. No Chapter 117 master-planning process has taken place. A developer's response to a housing RFP is not a hearing; no public process warned or decided what Country Club Road should become, how much of it should remain agricultural, or where a genuine civic or commercial anchor should sit. That decision was made by which developer answered a solicitation, not by the statutory process designed to let the public — the owner of this land — make it.

The uses on and proposed for this site show why the allocation cannot be left to a developer's response to a housing solicitation. The informal disc golf course and the daycare placement are not planned uses; no plan assigned either to the site. The only use

the City has taken to the design stage is housing: the Request for Proposals, the City's responses to developers and the October 14, 2026 letter of intent are all for housing (Ex. 13, 14, 35, 55). The record therefore allocates no commercial or civic use at all, and what a developer selected through a housing solicitation would add is unknown. The traffic consequence follows. No traffic study can be completed until the plan decides which uses stay, and the City's own Request for Proposals says that an updated assessment must consider the daycare's operations (RFP p. 9). Two neighboring parcels bound that decision: the Blueberry lot, discussed above, whose use and traffic no document addresses, and Sabins Pasture, whose owner Objector understands to have declined a through road. The site is also in active use inside a state hold: the Department of Environmental Conservation asked the City in writing on June 15, 2026 to hold further intrusive work until an approved soil management plan was in place, a hold first lifted in writing on September 11, 2026 by its approval of an interim plan, while Disc Golf Vermont wrote to the City on August 14, 2026, "We will be out Sunday … for another tee pad workday," and the course was closed to other public use for a tournament on September 5–6, 2026 (Chronicle of Deficiencies).

Everything else missing from this record follows from that same absence. A traffic study capable of projecting peak-hour trips at the Route 2/Country Club Road intersection — over which the Vermont Agency of Transportation holds independent, concurrent jurisdiction as a Class 1 town highway under 19 V.S.A. §§ 1101–1112, with its own engineering review running alongside the § 1111 permit process — requires trip-generation inputs tied to a defined land use and density; no such definition exists without the master plan the City gave up, and no traffic study can be more than provisional in its absence. The City's own RFP concedes that the question is open: the 2022 assessment "pre-dated the daycare use," and "[a]n updated traffic assessment would need to consider the continuation of the daycare's operations and the impact on capacity of the existing intersection and single site access" (RFP p. 9). The City's January 12, 2026 responses put numbers to it: the 2023 work supported 144 units before a signal at Route 2 would be

warranted; the daycare reduces that figure by an amount the City said it was still calculating; and the City's goal is 300 total units (Nos. 20–21). On the City's own figures, the goal is roughly double the pre-signal threshold. The signal — which the City describes as off-site and "not required right away" — is unfunded: "the City and development partner will need to secure the funding," most likely through CHIP (No. 3). CVRPC's own staff said as much at its Board's August 21, 2025 meeting, stating that the City would be limited by the capacity of the intersection at Country Club Road, a question that "should arise out of the master planning process" (Ex. 9). Objector has located no traffic assessment produced since the 2022 assessment the RFP describes (Ex. 13, p. 9). The study's underlying modal assumption is equally unresolved: a conventional vehicle trip-generation study presumes cars are the dominant mode, while the introductory paragraph's own multimodal and complete streets requirements presume otherwise, and nothing in the record establishes which governs — or whether the parcel's 2.3-mile routed distance and 13.5% maximum road grade, already documented above, permit meaningful non-vehicular mode share at any density this designation contemplates. The § 4348a(a)(7) capacity study Count I finds missing, and the § 4430 capital budget Counts I, II, and V all find missing, are subject to the identical constraint: none can price or prioritize infrastructure sized for a program that has never been defined. Nor can a genuine site-suitability inventory exist without it: which of this parcel's wooded, hilly, and flat areas can support development, which soils will support septic versus require sewer extension, which areas could serve renewable generation or a resilient microgrid, and what recreational or emergency-staging capacity the land itself has — all of this is the ordinary output of the Chapter 117 process the City skipped, and none of it exists in this record because a developer responding to an RFP for one portion of the site has no occasion to inventory the whole of it.

This is accordingly not a documentation gap CVRPC could cure by producing missing paperwork after the fact. It is proof that Planned Growth Area status was sought before the statutory prerequisite for seeking it — a master plan, adopted through the public

hearing process Chapter 117 requires — was ever produced, on land the public itself owns. The mixed-use showing, the traffic study, the capacity study, and the capital budget are not four independent defects that happen to coincide at this parcel. They are four consequences of one substitution: a developer's private proposal in place of the public process the statute requires before any of them can exist.

Section 6034(b)(1)(B) states the Tier 1A boundary requirement:

> *"The boundaries are consistent with downtown or village centers and planned growth areas as defined 24 V.S.A. § 4348a(a)(12) in an approved regional plan future land use map with any minor amendments."* **10 V.S.A. § 6034(b)(1)(B)**

Absent that process and the showings it would have produced, the parcel cannot be classified a Planned Growth Area, and a designation that fails at the threshold cannot support Tier 1B status under 10 V.S.A. § 6033 or Tier 1A status under 10 V.S.A. § 6034 — both of which require the area first be validly identified as a Planned Growth Area, downtown center, village center, or village area on an approved future land use map. There is no mechanism within §§ 4348, 4348a, 6033, or 6034 by which the Board can credit this designation without these showings existing in the record first — not a suggested modification under § 4348(i)(4), not a phased or conditional approval, not a finding of substantial compliance. The statutory predicate for Tier status simply does not currently exist for this parcel, and no exercise of Board discretion supplies a predicate the statute requires the record itself to establish.

A first phase does not answer the mix-of-uses requirement. The designation is made for the area, not for a first phase of it. The mix of uses and the planned multimodal infrastructure that § 4348a(a)(12)(B) describes attach when the area is designated; a later project permit cannot supply them. The City's letter of intent covers Phase 1 only, 108 units of housing, with land for later phases to be negotiated if the developer performs (Ex. 55). A Phase 1 housing agreement is not a plan that assigns the area's uses, and it

supplies no traffic forecast for them. The City's Planning Director told the Council on August 13, 2025 that a Tier 1A area is exempt from Act 250 (Count IX), so if the designation is granted, the Board's review of it may be the only point at which everything the area is meant to become is examined together. Objectors therefore ask the Board to decide the question on the whole area and on this record, and not to approve a first phase pending later planning, for the reasons stated above.

Section 6081(z)(2) states the Tier 1B exemption:

> *"… no permit or permit amendment is required within a Tier 1B area approved by the Board under section 6033 of this chapter for 50 units or fewer of housing on a tract or tracts of land involving 10 acres or less …"*
> **10 V.S.A. § 6081(z)(2)**

What a decision rejecting this Count must say. To find that the Country Club Road parcel meets the introductory description of a Planned Growth Area, the decision must identify: (1) the mix of uses on or planned for the parcel beyond the existing clubhouse, by use and by the plan that assigns it; (2) how a parcel that is undeveloped, publicly owned and, on the City's own figures, buildable on about 20 to 35 of its 133 acres, is among the "high-density existing settlement and future growth areas with high concentrations of population, housing, and employment" the paragraph describes; (3) how the designation advances the smart growth principles of 24 V.S.A. § 4303(43); (4) for criterion (iii), the downtown or village center from which the Board measured, the measure of "walking distance" it applied, and the distance and route it found "generally within" that measure, given 1.8 miles in a straight line and 2.3 miles on the walking route (Ex. 44; Ex. 58); (5) the complete-streets connection to the downtown that § 4348a(d) requires, and the § 4430 line item that funds it; (6) for criterion (v), the municipal plan text that shows the City intends this area for the designation, given that the confirmed plan record analyzed about 133.55 acres only as a growth-center boundary; (7) why a first phase of 108 units of housing (Ex. 55) answers a requirement that attaches to the

area and not to a phase; and (8) whether the Board reads "generally" in the closing sentence to modify the introductory description, and if so, on what text.

Relief requested. That the Board find the Country Club Road parcel does not meet the threshold description, the mixed-use requirement, or the smart growth principles § 4348a(a)(12)(B)'s introductory paragraph and § 4348a(d) independently require; that, absent the master plan, connectivity, and capital-budget showings identified above, the parcel does not meet the definition of a Planned Growth Area under § 4348a(a)(12)(B); and that it is accordingly ineligible for Tier 1B status under 10 V.S.A. § 6033 on this record. Tier 1B relieves Act 250 review only for developments of 50 units or fewer on 10 acres or less (§ 6081(z)(2)); Tier 1A relieves it entirely, for any development of any size (§ 6081(z)(1)). Because Tier 1A's eligibility requirements under § 6034(b)(1) subsume and exceed Tier 1B's, the same record failures that defeat the lesser, capped relief defeat the greater, uncapped relief as well — in addition to the showings Counts I–IV separately require. Absent a plan demonstrating a mix of uses, designating this parcel would sanction a remote, disconnected, car-dependent residential extension of the City, which is the settlement pattern the smart growth principles and the Planned Growth Area criteria exist to prevent.

COUNT VI — Failure to Include the § 4348a(a)(9) Housing Element's Required Recommended Actions to Satisfy Established Need

The statutory element. 24 V.S.A. § 4348a(a)(9) requires the plan's housing element to identify regional housing need and to include "a set of recommended actions to satisfy the established needs" — a mandatory element of every regional plan, structurally identical to the § 4348a(a)(7) "shall include" requirement Count I tests.

> *"A housing element that identifies the regional and community-level need for housing that will result in an adequate supply of building code and energy code compliant homes where most households spend not more than 30 percent of their income on housing and not more than 15 percent on*

> *transportation. … The regional planning commission's assessment shall estimate the total needed housing investments in terms of price, quality, unit size or type, and zoning district as applicable and shall disaggregate regional housing targets or ranges by municipality. The housing element shall include a set of recommended actions to satisfy the established needs."* **24 V.S.A. § 4348a(a)(9)**

The defect — the plan contains no emergency housing or shelter provision. The September 20 draft identifies the need and then recommends nothing for it. It reports 317 households experiencing homelessness in the planning area, from a one-night count, the 2024 Point in Time count conducted by the Vermont Coalition to End Homelessness (p. 300). It says the problem "is not easily tracked" and that many do not seek assistance (p. 299), and it counts households, not people. Its answer is arithmetic: "there is a need to create an additional 317 housing units to support this population." In the same passage it acknowledges that "[n]ew construction is often not enough" (p. 300). The element then closes with five goals, seven policies and fifteen strategies (pp. 310–312). None mentions homelessness, emergency housing, shelter, non-congregate options, or residents who will remain unhoused within the planning horizon. Housing Goal 1 refers to special needs housing; that is a goal, not a recommended action. The actions go no further than production targets, regulatory encouragement and technical assistance. Production targets cannot discharge § 4348a(a)(9)'s "recommended actions to satisfy the established needs" for a population the plan itself says new construction will not reach. The element also still rests on the unreconciled statewide housing-target figure Objector challenged in his September 17, 2026 memorandum to CVRPC (Ex. 11). The adopted plan does not differ from the September 20 draft on these points.

Objectors raised this specific gap during the preapplication comment period; the September 20 draft does not address it. Part 31 of Objector Whitaker's filing (August 4, 2026) (Board docket Ex. 015) asked CVRPC to add recommended actions addressing three things the plan does not address: that congregate shelter models do not serve

everyone; that the State's hotel and motel voucher program is rationed and inadequate as a default shelter strategy at current funding and eligibility levels; and non-congregate, lower-barrier shelter options paired with hygiene infrastructure, planned as distributed, actively managed sites. The September 20 draft describes the hardships of those "who choose not to access transitional housing or social services" (p. 300) and recommends nothing in response. Objector raised the point again on September 17, 2026, asking CVRPC whether non-congregate, managed shelter had been evaluated as a housing type under § 4348a(a)(9) (Ex. 11, item 10). The plan's own statement on where such housing should go is at p. 300: "housing designed to alleviate homelessness should likely be situated where supportive services are already available, rather than evenly distributed across the region." Objector works daily with the front-line providers who help people gather the paperwork to qualify for housing and replace lost belongings such as a sleeping bag, and states from that experience that supportive services are portable, that grouping many unhoused people together is part of the design problem, and that services should be designed to meet people where they are. One public building bears on this. The City owns the Transit Center, which Tri-Valley Transit (formerly Green Mountain Transit) uses under a lease at $1 a year; Objector attended the City Council's September 23, 2026 meeting on that lease and understands that changes to it are to be negotiated in December. In his experience the building is needed for accessible restrooms and, in heat and cold, cooling and warming shelter. None of this appears in the plan. Staff's answer to the September 17 memorandum called non-congregate shelter "an innovative idea and something to be taken under consideration in future drafts of the plan" (Ex. 59, p. 31).

Two other required contents are asserted but not shown. Section 4348a(a)(9) requires the regional commission's assessment to "estimate the total needed housing investments in terms of price, quality, unit size or type, and zoning district as applicable." The September 20 draft states that "CVRPC has disaggregated targets by municipality and zoning district, as well as by unit type, size, and affordability" (p. 303). It contains municipal targets (Table 50) and percentage charts by unit type, size and income. It

contains no table by zoning district and no estimate of total needed housing investment. The adopted plan does not differ from the September 20 draft on these points.

This is a § 4348(i)(3) consistency defect, not a discretionary policy preference. Unlike the environmental-justice narrative-gap concerns preserved in the accompanying Chronicle of Deficiencies, which raise matters outside this Objection's statutory scope, § 4348a(a)(9)'s "recommended actions" language is mandatory element text — the same "shall include" structure Count I tests compliance with. A housing element that identifies need but supplies recommended actions addressing only part of that need has not satisfied the element the statute requires, any more than an implementation program addressing only part of § 4348a(a)(7)'s required elements would satisfy Count I.

The Board's preliminary review. The Board's September 8, 2026 preapplication response found that the draft plan "appears to conform" with § 4348a(a)(9) (p. 15). That preliminary finding is advisory only, does not reflect the Board's position on comments received (p. 1), and does not address the absence of recommended actions for the residual need; the same response recommended that "[i]nfrastructure planning necessary to accommodate density should be further detailed in the housing chapter" (p. 15). CVRPC's answer to that recommendation was the passage quoted at Count I, stating that the capacity data does not exist.

What a decision rejecting this Count must say. To find § 4348a(a)(9) met, the decision must identify: (1) the recommended actions in the housing element that address the 317 households the plan reports as homeless (p. 300), other than building units; (2) the table by zoning district and the estimate of total needed housing investment that § 4348a(a)(9) requires and that p. 303 says exist; (3) the plan's response to the specific gaps raised in Part 31 (Board docket Ex. 015); and (4) the basis for "appears to conform" (p. 15), which did not address the residual need.

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(9) and require CVRPC to include, within the housing element, recommended actions

specifically addressing residents who will remain unhoused within the plan's planning horizon — distinct from, and not satisfied by, general housing-production targets.

COUNT VII — Failure to Support the § 4348a(a)(12)(B)(vi) Housing-Target Criterion with Parcel-Level Findings

The statutory element. As amended by 2026 Acts and Resolves No. 152, § 13, § 4348a(a)(12)(B)(vi) requires that a Planned Growth Area "provide[s] opportunity for development, infill development, and redevelopment that is needed to meet the regional and municipal housing targets that meet the present and future needs of a diversity of social and income groups in the community." The pre-amendment version tied the diversity-of-income-groups language to development generally; the amendment retargets it specifically onto the housing targets a designation is meant to serve.

> *"The area provides opportunity for development, infill development, and redevelopment that is needed to meet the regional and municipal housing targets that meet the present and future needs of a diversity of social and income groups in the community."* **24 V.S.A. § 4348a(a)(12)(B)(vi), as amended by 2026 Acts and Resolves No. 152, § 13**

The defect — acreage without parcel-level findings. Nothing in the adopted plan ties any specific Planned Growth Area's acreage to a parcel-level finding that its development is actually needed to meet the region's housing targets. CVRPC's target is to add roughly 2,540 new homes region-wide by 2030. To reach that number, the plan runs a top-down calculation, not a parcel-by-parcel one: it looks at what share of the region's total land area falls into the combined Downtown Center/Planned Growth Area category — 0.88% — and assumes that sliver of land will produce 40% of all new housing, 1,016 units, simply because of its share of the map (Table 51, p. 306). Nowhere does the plan connect that number back down to any actual parcel. Country Club Road illustrates the gap: it is one of the largest Planned Growth Area parcels in the region, yet nothing in the record says how many of those 1,016 units it is supposed to provide, or whether its land, water,

sewer, and roads can support that many. This is the same documentation gap Count I identifies for the capacity study and Count III identifies for water and wastewater service, applied here to the housing-target criterion itself.

The method is circular. Under the plan's method, 40% of the regional target is assigned to municipalities in proportion to their share of Downtown Center and Planned Growth Area acreage, 20% by Village Center and Village Area acreage, and 40% by population (p. 304; Appendix B, p. 1). Montpelier holds 2,150.73 of the region's 3,628.59 Planned Growth Area acres and, with its Downtown Center, about 53% of the acreage in the first group (Appendix C). Its 2030 target is 662.9 of 2,540 units, 26% of the region (Table 50, p. 304), of which roughly 539 units, about four-fifths, come from acreage alone. Acreage therefore produces the target. The target cannot then be the reason the acreage is "needed." Every acre added to a Planned Growth Area, including the expansion of the Country Club Road designation to "the entire parcel," raises the municipality's target by the same formula. Region-wide, the formula assigns 1,016 units to about 4,493 acres of Downtown Center and Planned Growth Area, roughly one unit for every four acres by 2030. Nothing in the plan explains why that acreage is needed to meet that number.

The method treats every acre alike. An acre where a building could tie into existing mains tomorrow counts the same as an acre that needs tens of millions of dollars in new road, water and sewer work first. CVRPC's own change summary says infrastructure capacity and infill were excluded "as factors in determining municipal housing targets." Without the capacity study § 4348a(a)(7) requires, CVRPC cannot know where housing can be built soonest or at the least public cost. It therefore cannot say which acreage is "needed" to meet the targets, which is the question criterion (vi) asks. Objector asked CVRPC on September 17, 2026 for the calculation connecting the 40/20/40 allocation to the acreage drawn for any Planned Growth Area, and why capacity was not the starting point for allocating housing (Ex. 11, items 3 and 6). Staff answered the request for the calculation by pointing to "meeting minutes of CVRPC committees and Board of Commissioners when this was discussed" (Ex. 59, p. 29), and answered the request to say

why capacity was not the starting point by stating that it "is not in line with the statutory definitions of the FLUAs" (Ex. 59, p. 30).

Country Club Road is the example. The stated project total of $11,091,098 covers road, water and sewer work to the clubhouse (Ex. 26; Ex. 21). It does not cover the streets, mains and stormwater works inside the site. For those there is no adopted plan, no capital program and no committed funding. The City's own answer to developers is that improvements within the site "will depend on the private development (likely using CHIP)" (Ex. 14, No. 3). The development they would serve has no master plan beyond a concept diagram the City itself calls non-binding. The formula nonetheless counts the parcel's 133 acres exactly like served infill lots, although the City proposes to build on about 20 of them (Count V). The acreage also moved while the hearings were under way: CVRPC's Montpelier municipal packet, with a memo dated July 9, 2026, showed 1,961.78 acres of Planned Growth Area for Montpelier (Ex. 64, packet p. 15); the September 20 draft shows 2,150.73 (Appendix C).

The plan's own caveats. Appendix B states that CVRPC "did not subtract Tier 1 ineligible areas from within higher-density FLUA," that "some municipalities will see a larger high-density FLU than is practical on the ground," that the calculation "does not include infill analysis," and that "a Future Land Use classification is not necessarily a measure of capacity" (p. 1). The housing chapter adds that "there is nothing in these targets to prevent the majority of new housing from being in low-density suburban or exurban districts," and that "these numbers describe both targeted growth and predicted growth" (p. 303). For how the area determinations were made, the chapter refers the reader to "Appendix C: Future Land Use Area Methodology" (p. 305). Appendix C is an acreage table. The plan contains no such methodology appendix.

The Board's preliminary review. The Board's September 8, 2026 preapplication response quotes § 4348a(a)(12)(B)(vi) in its pre-amendment form ("The area provides for housing that meets the needs of a diversity of social and income groups in the community") (pp. 21–22), although Act 152 took effect July 1, 2026. Its preliminary

finding that five proposed Planned Growth Areas, including Montpelier's, "appear to meet the statutory standards" (p. 22) therefore did not test the housing-target criterion as amended.

What a decision rejecting this Count must say. To find criterion (vi) met for any Planned Growth Area, the decision must identify: (1) the finding, for that area, that its development "is needed to meet" the regional and municipal housing targets, in the text as amended by Act 152; (2) how acreage can show that acreage is needed, when the plan assigns 40% of the target by acreage and then treats that target as the reason for the acreage; (3) how the plan's own statement that a future land use classification "is not necessarily a measure of capacity" (Appendix B, p. 1) is consistent with that finding; and (4) whether the Board applied the amended text, since its September 8 response quoted the pre-amendment version (pp. 21–22).

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(12)(B)(vi) for any Planned Growth Area designation not supported by a parcel-level finding connecting that designation's acreage to the housing targets it is meant to satisfy.

COUNT VIII — Failure to Satisfy the § 4348a(a)(11) Flood Resilience Element

The statutory element. Section 4348a(a)(11) requires a flood resilience element with two distinct components: an identification and designation component, and a policy component.

> *"(A) A flood resilience element that: (i) identifies flood hazard and fluvial erosion hazard areas, based on river corridor maps provided by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1428(a) or maps recommended by the Secretary, and designates those areas to be protected, including floodplains, river corridors, land adjacent to streams, wetlands, and upland forests, to reduce the risk of flood damage to infrastructure and improved property; and (ii) recommends policies and strategies to protect*

the areas identified and designated under this subdivision (A) and to mitigate risks to public safety, critical infrastructure, historic structures, and public investments." **24 V.S.A. § 4348a(a)(11)(A)**

"A flood resilience element may reference an existing regional hazard mitigation plan approved under 44 C.F.R. § 201.6." **24 V.S.A. § 4348a(a)(11)(B)**

The defect — no dedicated element exists, and the statute's own fallback is equally empty. The draft plan's table of contents lists nine numbered chapters: Introduction, Natural Resources and Working Lands, Future Land Use, Energy, Transportation, Utilities Facilities and Services, Housing, Economic, and Implementation. Flood resilience is not among them. It appears only as a short narrative section within Chapter 1's introduction, which states that "flood resilience is incorporated into the Natural Systems and Working Lands Element, the Future Land Use Element, the Utilities, Facilities and Services Element and the Economic Element" (p. 35). That is an assertion of diffusion, not a demonstration of it. Nowhere does the plan identify where within those four chapters subdivision (A)(i)'s identification and designation of flood hazard and fluvial erosion hazard areas, using the Secretary's § 1428(a) river corridor maps specifically, actually occurs, or where subdivision (A)(ii)'s required policies mitigating risk to public safety, critical infrastructure, historic structures, and public investments are collected and addressed as such. Scattered content responsive to flooding generally — river corridor maps, erosion-hazard discussion, general goals language — is not the same as the element the statute requires: one that does these two specific things, identifiably.

Subdivision (a)(11)(B) offers CVRPC a second path to the same showing: a flood resilience element "may reference an existing regional hazard mitigation plan approved under 44 C.F.R. § 201.6." That path is equally empty on this record. A full-text search of the draft plan's own Natural Resources, Utilities, and Emergency Services content shows CVRPC's role described consistently as assisting each of the region's twenty-three municipalities in developing their own separate local hazard mitigation plans — Strategy

6a: “Continue to assist municipalities in developing local hazard mitigation plans” (p. 61); the Utilities chapter references only “Local Hazard Mitigation and Local Emergency Management Planning.” No regional hazard mitigation plan of CVRPC’s own, approved under 44 C.F.R. § 201.6, is referenced or cited anywhere in this document. Both routes subdivision (A) makes available — a dedicated flood resilience element, or reference to an approved regional hazard mitigation plan standing in for one — are unused, because neither exists.

The Board’s September 8, 2026 preapplication response found that the draft plan “appears not to meet” § 4348a(a)(11) and stated one required revision: “Include river corridor mapping and ensure the flood hazard area map reflects the most recent FEMA flood insurance rate mapping” (pp. 16–17). The Board is not bound to treat CVRPC’s response to that revision as satisfying the statute, and must evaluate the adopted plan on this record. The September 20, 2026 draft adds river corridor and flood hazard maps (Maps 6 and 9) and states that flood resilience is “incorporated into” four elements (p. 35). It contains no element that designates the mapped areas as areas to be protected, and its strategies are addressed to municipalities (“encourage,” “assist”); Policy 5 (Natural Resources and Working Lands, Goal 1, p. 60) exempts “established economic and institutional centers” from avoidance and requires only “strict floodplain management standards.” Nothing in it ties any strategy to risk to public safety, critical infrastructure, historic structures, or public investments within a Planned Growth Area located in or adjacent to a mapped hazard area. § 4348a(a)(11)(A). The plan also acknowledges that “FEMA is currently updating Flood Hazard Maps” (p. 238), so the currency of Map 9 cannot be assumed. Map 9 states no date and no data source on its face. Its legend shows hazard areas; it designates nothing as protected.

The September 20 re-mapping moved developed flood-hazard land into growth categories. CVRPC’s FLU change summary reports that it “originally used Rural Conservation to denote all flood hazard or river corridor areas across the region,” and that, after the Board’s comment that developed areas do not fit that category, it

reclassified those areas "as Transition/Infill, Enterprise, or Rural General as appropriate" in thirteen municipalities. Objectors do not dispute that the Board asked for the change. But the Rural Conservation mapping was how the plan marked flood hazard and river corridor land as land to be protected. The statutory purpose of a Transition or Infill area is "to transform these areas into higher-density, mixed-use settlements" (§ 4348a(a)(12)(D)). Nothing in the September 20 draft identifies where the § 4348a(a)(11)(A)(i) designation now appears for the re-mapped areas, or which (A)(ii) policies apply to them. Appendix B confirms that higher-density areas still contain "parcels in a higher-density FLUA in a municipality without flood hazard or river corridor regulations, or parcels awaiting a FEMA buyout" (p. 1).

The plan maps flood-hazard land for higher density and leaves the conditions blank. The re-mapping rests on a premise Objectors do not dispute: Montpelier and other river towns are built in the floodplain. Memorial Drive, lower State Street and the state office buildings along it, the high school, and Green Mountain Drive were under several feet of water in July 2023, as Objector Whitaker, a Montpelier resident, observed and as was widely reported. But the statute does not stop at that acknowledgment. It requires policies "to mitigate risks to public safety, critical infrastructure, historic structures, and public investments" in those areas. The plan's one policy on point exempts "established economic and institutional centers" from avoidance and requires only "strict floodplain management standards," and it states no standard. It does not say which re-mapped areas are to stay unbuilt, which are to be protected by structural measures such as a berm around a treatment plant, and which may be redeveloped only with flood-resilient design, such as living space raised above ground-level parking. A plan that maps flood-hazard land for higher density owes that differentiation. Without it, the re-mapping is a decision to build in the flood hazard area with the conditions left blank.

The defect goes further than a structural omission — where the Element's substance does appear, it operates in one direction only. Subdivision (A)(ii)'s mandate to "mitigate risks to public safety" is not limited to avoiding damage to property; it

reasonably extends to whether the public can actually be protected and served during a flood event, not only whether structures are protected from one. Objectors do not contend the statute expressly commands affirmative emergency-response-site planning in so many words — its text is centered on identifying and protecting hazard areas, which is damage-avoidance language more than response-capacity language. But nothing in whatever flood-related content is scattered through the plan's other chapters asks the inverse question a public-safety mitigation mandate reasonably contemplates: which land is suited to actively serve the region when the next flood happens, not merely avoided because one might occur. Objector Whitaker raised this same gap in writing during the preapplication comment period, without response: "The Flood Resilience Element's public-safety and critical-infrastructure mitigation language does not appear to reach communications infrastructure" (Part 28, August 5, 2026 comments), and "the Plan's resilience framework should affirmatively identify sites capable of serving during disasters, not just classify which parcels to avoid building in" (Part 29, same filing). Section 4302(c)(14)(C)'s flood emergency preparedness goal — a goals-consistency provision independent of § 4348a(a)(11) itself — reinforces the same point and was raised in the same filing.

The gap is not abstract. During the July 2023 flood, the Montpelier Police Department's own contemporaneous press release, as reprinted in Fire Apparatus & Emergency Equipment on July 12, 2023, confirms "heavy flooding in the department's basement, city hall and the fire department," with dispatch, police, and fire operations relocated to the water treatment plant in Berlin. The fire station itself took on water beyond its basement — roughly three feet reached the first-floor truck bay, forcing the department's apparatus to be moved and parked on higher ground elsewhere in the city; the trucks were not lost, but the station could not function as a base of operations. Montpelier's own most recent Local Hazard Mitigation Plan update (October 22, 2025) shows the City's response since has been to harden those same downtown facilities in place — "completed plans for a more resilient City Hall, Fire Station, and Police Station," submitted to FEMA

for funding (Ex. 60) — rather than to evaluate whether any critical function should relocate to ground that doesn't flood at all.

Objector Whitaker has proposed Country Club Road as one parcel worth that evaluation, given its upland location, public ownership, and scale. Objectors do not contend the parcel is a self-evident answer — it carries its own unresolved constraints, including its brownfield status and ongoing environmental questions discussed in the accompanying Chronicle of Deficiencies, and any resilience-siting evaluation would need to weigh those alongside the parcel's advantages. The point is narrower: no such evaluation, of Country Club Road or any comparable site, has been conducted anywhere in this record, and § 4348a(a)(11) as currently applied gives the region no occasion to conduct one.

Nor has any other level of government done this work. Objector Whitaker wrote to the Commissioner of the Department of Public Safety on December 26, 2025, proposing Country Club Road's evaluation for a resilience function. A public records request seeking any DPS or Division of Emergency Management and Homeland Security action taken in response — or any independent DPS/DEMHS assessment of disaster staging areas, buffer or "cushion zone" capacity, or utility continuity-of-operations planning serving Montpelier — returned, on September 9, 2026: "The Department certifies that no records responsive to your request exist. Please be advised that DPS does not prepare plans for specific municipalities and those records should be requested from the municipality in question."

What a decision rejecting this Count must say. To find § 4348a(a)(11) met, the decision must identify: (1) the element, by page, that identifies flood hazard and fluvial erosion hazard areas and "designates those areas to be protected"; (2) the policies and strategies, by page, that protect those areas and mitigate risk to public safety, critical infrastructure, historic structures and public investments; (3) if the Board relies on (a)(11)(B), the regional hazard mitigation plan approved under 44 C.F.R. § 201.6 that the plan references, by name and approval date, given that the plan describes only local plans; and (4) how re-mapping flood-hazard land from Rural Conservation to Transition or Infill,

Enterprise or Rural General is consistent with designating it to be protected, and what protective condition applies to each area.

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(11) for failing to include a flood resilience element identifiable as such, meeting both subdivision (A)(i)'s identification and designation requirement and subdivision (A)(ii)'s policy requirement; require CVRPC to state, for each re-mapped flood-hazard area, which treatment applies — to remain unbuilt, to be protected by structural measures, or to be redeveloped only under a stated flood-resilient design standard; and require CVRPC, in curing that omission, to address not only land to avoid building on but land within the region suited to actively serve public safety, shelter, and emergency-operations functions during a flood event — including an evaluation of Country Club Road as one candidate for that purpose — and to design that capacity without artificially limiting it to flood scenarios alone, since the same critical-infrastructure and public-safety investments serve the same interests during the other severe-weather events this region has experienced, including the 1938 hurricane and the 1998 ice storm.

Objectors recognize the Board's authority under this Objection is bounded by § 4348(i)(3) and cannot extend beyond what § 4348a itself requires. Objectors nonetheless ask the Board to take administrative notice, for its own institutional awareness and for DHCD and VAPDA's consideration in future methodology revisions, of a gap this record demonstrates concretely — not for lack of municipal hazard-mitigation capacity, but despite it. Vermont law already imposes all-hazards emergency management planning duties at the municipal level (20 V.S.A. § 6(c)) and maintains an all-hazards State Hazard Mitigation Plan at the state level, with Regional Emergency Management Committees operating in between — none of it presently coordinated with regional plan development under 24 V.S.A. chapter 117, notwithstanding the natural fit between the two. Montpelier's own current Local Hazard Mitigation Plan is a genuine, actively maintained all-hazards document, most recently updated October 22, 2025 — the City has real capacity to do this kind of planning. That same capacity has simply never been directed at

Country Club Road or any comparable site. No level of government has done this work, and nothing in the current statutory architecture assigns responsibility for doing it. Objectors raise this not as a basis for relief in this Objection, but as a gap the Board, DHCD, and the Legislature may wish to address going forward.

COUNT IX — Failure to Verify Each Planned Growth Area Designation Against the § 4348a(a)(12)(B) Criteria

The statutory element. Section 4348a(a)(12)(B) describes what a Planned Growth Area is — in its introductory paragraph, "a mix of historic and nonhistoric commercial, residential, and civic or cultural sites with active streetscapes, supported by land development regulations; public water or wastewater, or both; and multimodal transportation systems" — and then lists seven numbered criteria, (i) through (vii). The operative sentence is:

> *"These areas should generally meet the following criteria:"* **24 V.S.A. § 4348a(a)(12)(B)**

The seven criteria are quoted where each count applies them: (i), (iii) and (v) at Count V; (ii) at Count III; (vi) at Count VII; (vii) at Count II; and (iv) below.

What "should generally meet" does and does not permit. Objectors do not overstate that language. "Should generally" is not "shall," and Objectors do not contend that a single unmet criterion automatically defeats a designation. But the phrase does not excuse the Board from determining, for each designation, which criteria are met and which are not. "Generally" describes a conclusion a reviewer reaches after checking each criterion; it cannot be reached without the check. A finding that an area generally meets seven criteria, made without knowing whether it meets any of them, is an assumption, not a finding. Where the record shows a criterion unmet, the designation needs a stated reason why the area nonetheless qualifies. On this record there is none. The Board's October 21, 2026 letter declined to require parcel-by-parcel submissions from regional commissions as guidance (Ex. 63, p. 3). The duty at issue here is different. The Board cannot find that

an area generally meets the criteria without determining, for that area, whether it meets them. That duty comes from § 4348(h)(4), not from any guidance.

"Generally" cannot carry a designation that fails the description or the criteria. Four features of the text answer the reading that "should generally meet" lets the Board approve an area without finding that it meets the criteria. **First**, the word attaches only to the criteria. The sentences before it say what Planned Growth Areas "include": "a mix of historic and nonhistoric commercial, residential, and civic or cultural sites with active streetscapes, supported by land development regulations; public water or wastewater, or both; and multimodal transportation systems." That is the description of the category (Count V). "Generally" loosens how closely an area must track the seven criteria. It does not remove the description that makes an area a Planned Growth Area. **Second**, the Legislature wrote "generally" into one criterion by itself: criterion (iii), "generally within walking distance." If the lead-in's "generally" already softened every criterion, the word in (iii) would do no work, and statutes are read so that no word is surplusage. The text shows the better reading. The Legislature softened walking distance expressly and wrote the others as facts: the area "is served," "excludes," the municipal plan "indicates." Where it wanted flexibility about infrastructure it said so: criterion (vii) accepts "planned or existing" transportation infrastructure, and Transition or Infill areas are those "served by, or planned for," water or wastewater (§ 4348a(a)(12)(D)). Criterion (ii) has neither phrase. **Third**, whatever "generally meet" permits, it is a conclusion about the whole: that the area meets the criteria in the main. An area that fails most of them does not. **Fourth**, the mapping itself must be consistent with the section: areas eligible as neighborhoods "shall be identified on the regional plan future land use map as planned growth areas and village areas in a manner consistent with this section and chapter 139." § 4348a(c). That is a mandatory standard, and the section includes both the description and the criteria.

Application to Country Club Road. The Country Club Road parcel fails on any reading. On this record the parcel is not "served" beyond the clubhouse (criterion (ii); Count III); it is 2.3 routed miles from the downtown, not "generally within walking

distance" (criterion (iii); Count V); the City's own plans reserve most of it from development and its municipal plan record analyzed a growth-center boundary, not higher-density intent for this ground (criterion (v); Count V); and the record shows no capital-program investment that would supply a complete-streets connection to the downtown (criterion (vii); Count II). Criterion (vi) is unsupported (Count VII). That is four criteria unmet and a fifth unshown. The failure is of the criteria themselves, not a shortfall at the margin of one, and no reading of "generally" reaches it.

The Board's own practice. The Board has applied this approach before. For the special use areas it found it "unable to determine whether the following proposed special use category areas appear to meet the statutory standards" and required "[a]dditional supporting information" (Preapplication Response, p. 29 of 33). A Planned Growth Area designation with no area-by-area finding presents the same problem, with a larger consequence: the designation is the gateway to Tier 1 exemptions from Act 250 review.

The standard Objectors apply. Objectors accept that a Planned Growth Area need only "generally meet" the criteria. They do not ask the Board to adopt guidance stricter than the statute, which the Board has declined to do (Ex. 63). They ask the Board to state, for each designation, which criteria it found met and on what record, so that "generally" has a stated measure.

What a decision rejecting this Count must say. Section 4348(i)(4) requires the Board's decision to "expressly evaluate any objections and state the reasons for their decisions in writing." To reject this Count, the decision must therefore answer each of the following. It cannot answer by saying the criteria are "generally" met. (1) Which reading of "should generally meet" the Board adopts, and how that reading gives the word "generally" in criterion (iii) any work to do. (2) For each Planned Growth Area addition identified in this Count, whether the Board finds each criterion met and, for any criterion it finds unmet, the reason the area nonetheless qualifies, with the record citation. (3) For Country Club Road: what public water or wastewater infrastructure serves the parcel beyond the clubhouse (ii); the distance, and the standard by which that distance is "generally within

walking distance" of the downtown (iii); where the municipal plan indicates higher-density intent for this ground (v); and which investment in the City's capital improvement program under § 4430 provides a complete-streets connection to the downtown (vii). If the Board finds those criteria unmet, it must say how an area that fails four of the seven meets the criteria in the main. (4) The statutory text on which the Board relies to treat a municipality's request or map, as distinct from the municipal plan's stated intent under criterion (v), or the VAPDA methodology guidance, as a substitute for findings on criteria (ii), (iii), (iv), (vi) and (vii). (5) Whether the Board contends that the description of a Planned Growth Area, including "public water or wastewater," is itself subject to "generally," and if so, the words that say so. (6) How a determination that an area "generally meets" the criteria, made without findings on them, satisfies § 4348a(c), which requires Planned Growth Areas to be identified "in a manner consistent with this section." A decision that does not answer these has not evaluated the objection.

Verification must be direct, and the Board cannot delegate it. Verification against a mapping process that tracks the VAPDA methodology's own steps confirms that the methodology was followed, not that the statute is satisfied. As Section II.A explains, guidance cannot narrow a statutory element, and as Section II.B explains, CVRPC's self-certification is not the Board's determination. DHCD's own Community Planning & Policy Manager told the regional planning commissions the same thing in May 2025: "you must apply the statute (first) and any guidance established by the LURB." (Ex. 39.) The Board's determination under § 4348(h)(4)(C) is its own duty.

CVRPC tested for consistency with the methodology, not with the statute. At its September 8, 2026 meeting, CVRPC's Executive Director explained the full-parcel designation of Country Club Road this way: "This is one parcel, and so it does in this case make a lot of sense to keep that consistent. That certainly is consistent with the methodology, as we've been instructed to implement it" (Ex. 7). The record does not show who gave that instruction. Section 4348a(e) directs the association of regional commissions to develop a methodology; it directs no commission to follow one. The

methodology calls itself guidance and invites deviations (Section II.A). CVRPC's Board of Commissioners never voted to adopt it (Section II.B). And CVRPC has stated, in response to a records request, that no methodology or guidance beyond the association's exists for applying the seven criteria to specific parcels, and that no record identifies who evaluated any parcel against the criteria, or when: "No such records exist." Asked for records showing which criteria were evaluated for each parcel, CVRPC answered that "GIS files are being sent independently through separate link"; as of the date of this Objection Objector has received no such link or files (Ex. 5). Consistency with the methodology was the test staff applied. The statute's criteria were not.

The methodology's scope. The methodology is issued by an association of the regional commissions under § 4348a(e), which provides:

> *"The Vermont Association of Planning and Development Agencies shall develop, maintain, and update standard methodology and process for the mapping of areas eligible for Tier 1B status under 10 V.S.A. § 6033 and designation under chapter 139 of this title. The methodology shall be issued on or before December 31, 2024, in consultation with the Department of Housing and Community Development and Land Use Review Board."* **24 V.S.A. § 4348a(e)**

That provision reaches only areas eligible for Tier 1B status and designation under chapter 139; it is not a rule, and it governs no other future land use area, which the regional commission maps under § 4348a(a)(12) and the Board alone reviews. The methodology's introduction presents as statutory text a block quotation into which its drafters inserted acronyms and a closing sentence about updating the methodology; the closing sentence does not appear in the text of § 4348a(e) reproduced in the Board's July 31, 2026 appendix to its determination in RPC04-0001 (Docket RPC04-0001, Determination, July 31, 2026, appendix).

Why verification must occur at this stage. At its September 28, 2026 meeting, discussing another municipality's Tier 1A draft, the Board's Chair stated that the smart growth question is one "we've already assessed by approving it as planned growth area," and that "I don't think that we can renege on it now." Other members disagreed that approval is automatic, and one stated that she did not "think that the board has expressed a position just because [the Chair] articulated a position." (Ex. 33, at 17:07, 31:01, 33:54). The disagreement is the point: if the Board may treat a Planned Growth Area finding as settling smart growth at Tier 1A, then no later stage tests it, and the finding now before the Board is the only one that will.

What direct verification requires. For each Planned Growth Area addition or expansion, a parcel-specific finding on each numbered criterion: whether the municipality's plan is duly adopted and its process confirmed under § 4350 (i); whether public water or wastewater serves the area in fact (ii) (Count III); what "walking distance" from the downtown or village center means and whether the area meets it (iii); whether the area excludes identified flood hazard and river corridor areas, apart from preexisting development suitable for infill (iv); whether the municipal plan actually indicates higher-density, mixed-use intent for that ground (v); whether the area provides opportunity needed to meet housing targets (vi) (Count VII); and whether complete-streets infrastructure exists or is planned, with "planned" shown by investments included in the municipality's capital improvement program under § 4430, which CVRPC must identify (vii) (Count II and Section V, closing paragraph).

The plan's own account of its method does not track the criteria. The September 20 draft states that "[t]he primary factor used in determining the boundaries of Planned Growth Areas is municipal input on future planned development" (p. 71). Its "[o]ther factors" are an adopted plan, zoning and subdivision bylaws, walkability, the location of flood hazard areas, and conformance with complete streets principles (pp. 71–72). The list omits public water or wastewater (criterion (ii)), municipal-plan intent (criterion (v)) and housing targets (criterion (vi)). The Board's preapplication response recommended

adding “presence of water/sewer” to it (p. 23); the September 20 draft did not. The plan’s housing chapter refers the reader to “Appendix C: Future Land Use Area Methodology” (p. 305), but Appendix C is the acreage table “Future Land Use Area Acreage by Municipality”; no appendix sets out the methodology the chapter describes. The plan does not reproduce criteria (i) through (vii) anywhere, although CVRPC’s change summary says its definitions now “directly reflect” § 4348a.

Criterion (iv) illustrates the point. Criterion (iv) provides:

> *“The area excludes identified flood hazard and river corridor areas, except those areas containing preexisting development in areas suitable for infill development as defined in section 29-201 of the Vermont Flood Hazard Area and River Corridor Rule.”* **24 V.S.A. § 4348a(a)(12)(B)(iv)**

Unlike the Village Area criteria (§ 4348a(a)(12)(C)(iii)) and the Tier 1B requirements (10 V.S.A. § 6033(c)(4)), it contains no exception for municipalities that have adopted flood hazard and river corridor bylaws. The Board’s preapplication response nonetheless states that mapped flood hazard areas should be excluded from Planned Growth Areas “unless the municipality has adopted flood hazard and river corridor bylaws” (p. 27). The Board’s Guidelines, Version 1.5, are closer to the text: for municipalities with flood hazard and river corridor bylaws applicable to the entire municipality, such areas may be contained within all future land use areas, “although within Planned Growth Areas only areas suitable for infill development may be included” (§ 1.007(A)(4)). On this record no Planned Growth Area has a finding either way. CVRPC’s change summary reports that Barre City’s Public Safety Building parcel was remapped to Planned Growth Area because it is “largely outside” the Special Flood Hazard Area, which is to say partly inside it, with no infill-suitability finding. Appendix B states that CVRPC did not remove flood-hazard or buyout parcels from higher-density areas (p. 1).

The record shows no such verification. Within Montpelier, CVRPC’s change summary gives one reason for the whole list of additions: they were made “[i]n response to

requests by the City of Montpelier and in alignment with municipal planning efforts" (change summary, p. 3). Item by item, Mountainview Street has no further reason; Independence Drive and Northfield Street, that "sidewalks are present"; Westwood Drive, "similar neighborhood composition"; Crestview, alignment "with parcel boundaries and the municipal FLU Map"; Country Club Road, only "expanded to include the entire parcel." A municipality's request, its map, and its planning efforts are not criteria. Section 4348a(a)(12)(B)(i)–(vii) contains no conformity-to-municipal-map test. For Country Club Road the reason given in the Montpelier Planning Commission's August 6, 2026 letter to CVRPC was that "most of the parcel is already included," citing a step in the VAPDA methodology guidance (Board docket Ex. 023, item 6). That guidance has no counterpart in the statute, and where the methodology and the statute differ, the statute controls (Section II.A). The parcel was not in the legacy growth center, and the operative plan classifies it Rural (Count IV; Ex. 1). The plan assigns Montpelier a 2,150.73-acre Planned Growth Area (Appendix C) although the confirmed municipal plan record analyzed roughly 133.55 acres plus one abutting parcel (Count V, criterion (v)). CVRPC's own change summary records the Country Club Road expansion in one line — "expanded to include the entire parcel" — with no criterion analysis; the whole reason given, at CVRPC's September 8 meeting, was that it "is one parcel" (Count IV). Objector asked CVRPC for per-parcel documentation of each criterion on September 17, 2026 (Ex. 11, item 5). Staff answered that the request "is not in line with the statutory definitions of the FLUAs," and that CVRPC "relied heavily on local land use maps, community input, statutory language, and the statewide FLUA methodology" (Ex. 59, p. 29). Staff gave Weiss the same kind of answer: CVRPC "followed the statutory definitions of FLUAs" and "relied on the statewide VAPDA methodology" (Ex. 59, p. 22). Where a walkability review was done, it changed the outcome: the Board's preapplication response flagged the Berlin Route 62/Airport Road area for lack of sidewalks, and CVRPC reclassified it as Transition/Infill (Count V). The same review was never shown for the areas above.

The pattern is not confined to Montpelier. After the June 25 preapplication draft the Board reviewed, CVRPC added to Planned Growth Areas, among others: in Barre City, the 30-acre Prospect Heights site, moved from Rural General "[i]n reflection of municipal planning," and the Public Safety Building parcel; in Northfield, the Norwich University campus, moved from Special Use; and in Montpelier, in addition to the areas above, the areas along Independence Drive and Northfield Street "[w]here sidewalks are present." The Board's preliminary finding that the proposed Planned Growth Areas "appear to meet the statutory standards" (p. 22) was made on the earlier map and reaches none of these additions. For how its determinations were made, the plan refers the reader to an "Appendix C: Future Land Use Area Methodology" (p. 305) that the plan does not contain.

Sabins Pasture. The Planning Commission asked that the Special Flood Hazard Area on this parcel not be mapped Rural Conservation "despite being in the existing Growth Center" (Board docket Ex. 023, item 1). CVRPC's change summary "corrected" the map "to reflect that the entire parcel was within the legacy growth center" (change summary, p. 4). Neither states a basis in § 4348a(a)(12)(B)(iv), which excludes identified flood hazard areas from Planned Growth Areas except "areas containing preexisting development in areas suitable for infill development." Subsection (c) requires the mapping to start from growth centers existing on December 31, 2025, and to identify planned growth areas "in a manner consistent with this section." It does not amend (iv), and (iv) has no exception for legacy growth centers. Act 152 (eff. July 1, 2026) left (iv) unchanged. Where the Legislature gave designated growth centers an Act 250 exemption, it excluded mapped river corridors and floodplains from it except infill-suitable preexisting development. 10 V.S.A. § 6081(dd)(1). The record shows no existing development on Sabins Pasture. Undeveloped land is not preexisting development, and the record contains no infill-suitability finding.

Country Club Road, the half-mile buffer, and the methodology. The Planning Commission's letter does not say what "area" most of Country Club Road is "already

included" in (Board docket Ex. 023, item 6). The parcel was not in the legacy growth center, and the operative plan classifies it Rural (Ex. 1). Only two things could be meant. The first is CVRPC's own draft, which is the change under challenge. The second is the half-mile Act 250 interim exemption buffer around a legacy growth center, which the Planning Commission invokes elsewhere in the same letter (item 5). That buffer is not a Planned Growth Area. It is a temporary jurisdictional exemption for priority housing projects, measured by distance from a designated center's boundary, with a 51-percent-of-parcel test that exists for that exemption alone. It ends January 1, 2027, and a person had to request a jurisdictional opinion by June 30, 2026 to use it, before CVRPC adopted this plan. 10 V.S.A. § 6001(3)(D)(viii)(III); 2023 Acts and Resolves No. 47, Sec. 16a. It is a temporary exemption, not a land use designation. Section 4348a(a)(12)(B) does not mention the buffer. Distance from a boundary is not service, walkability, a plan designation, or a flood exclusion. The VAPDA methodology is guidance, not law. It maps the buffer only as a starting layer and then directs that the mapped area be tested "using the following criteria" (Mapping Process, steps 3–4, p. 9). The step the City calls a "rule" says only: "Review boundary against parcel lines and snap to parcel lines where reasonable." (Step 4(d).) It contains no "most of the parcel" test and no entire-parcel instruction. Step 4(e), directly after it, excludes flood hazard and river corridor areas. The statute applies its criteria to "the area," not the parcel: "[t]his area is served by public water or wastewater infrastructure" (ii); "[t]he area excludes identified flood hazard and river corridor areas" (iv). Parcel-line guidance cannot supply service, exclude a flood area, or supply the municipal plan designation criterion (v) requires. The same applies to the Crestview parcel, which CVRPC added "to align with parcel boundaries and the municipal FLU Map."

Parcels A through E, and the eastern portion of Country Club Road. On October 15, 2026, Thomas Weiss told the Commission that areas lettered A through E inside Montpelier's Planned Growth Area, shown on his Figure 1, are not served: Parcels A, C and D are "served by neither public water nor public wastewater," most of Parcel B is not

served by either, and Parcel E is served by "neither public water nor sewer" (Ex. 59, pp. 9–10, 18). He said the same of the eastern portion of 203 Country Club Road (Ex. 59, p. 10). Staff's written answer does not dispute any of it. It says CVRPC "followed the statutory definitions" and "relied on the statewide VAPDA methodology" (Ex. 59, p. 22). It names no parcel, no service area, and no finding that any of these areas is served. A Planned Growth Area must be "served by public water or wastewater infrastructure." § 4348a(a)(12)(B)(ii). Even a transition or infill area must be "served by, or planned for" it. § 4348a(a)(12)(D). The packet shows CVRPC was told which parcels were unserved and adopted the map without answering. This is the same gap Objectors raised on September 17 (Ex. 11, item 5), and it is a second, independent commenter raising it. Weiss also reported that Parcels A, B, D and E lack the documents required for "planned Complete Streets" status (Ex. 59, p. 18). Staff's answer does not address it. Criterion (vii) requires service by planned or existing transportation infrastructure that conforms with complete streets principles, and counts planned infrastructure only if it is among "those investments included in the municipality's capital improvement program pursuant to section 4430." § 4348a(a)(12)(B)(vii); see Count II. For Country Club Road, the State's July 1, 2026 record is that "[t]he City will be removing the pump station element from the scope of work" (Ex. 28). Without it, public sewer and water extend no further than the existing clubhouse, and the record contains no showing that the connection has capacity for anything beyond it. The City's solicitation assigns the parcel's internal utilities to the developer, and its answers to developers say the City funds infrastructure "to the site" while work "within the site will depend on the private development" (Ex. 13; Ex. 14, No. 3; Count IV). No development agreement exists, and no capital budget and program under 24 V.S.A. § 4430 includes the infrastructure the designation would need (Count I). No municipal plan in the record designates the parcel a Planned Growth Area under criteria (ii) and (v), and the one municipal record the City has relied on analyzed only a growth-center boundary (Count V). The parcel therefore fails the service criterion and the plan-designation criterion, and nothing shows planned, funded service that could support Transition/Infill status under § 4348a(a)(12)(D). The same record shows no

complete streets infrastructure, existing or in a § 4430 program, connecting the parcel to downtown (Count II).

The municipal input the plan relies on is not consistent across audiences. The plan names municipal input as the "primary factor" in drawing Planned Growth Areas (p. 71). For Country Club Road, the City's statements about the infrastructure the site depends on differ by audience. To the Northern Border Regional Commission, in a grant agreement signed in March 2026, the project includes "a new pump station" (Ex. 26). To the State, as recorded July 1, 2026, "[t]he City will be removing the pump station element from the scope of work" (Ex. 28). The project total in the State's records did not change (Ex. 43). To developers, in January 2026, the City said its $11 million contribution would come from two grants, of $3 million and $8 million (Ex. 14, No. 7); the State's award is "up to $5,000,000" (Ex. 27). The State's budget report for the award lists a $5,225,000 VCDP amount, a $2,871,502 "Municipal Contribution" of cash marked "Committed" and labelled "Montpelier Water & Sewer Funds," and the Northern Border award of $2,994,597 (Ex. 43). The award's conditions require evidence of "an additional $225,000" (condition 2(b)) and "voter approval for the Municipal Contribution" (condition 2(l)) (Ex. 27). Objector has located no record that the Council or the voters have committed $2,871,502 in water and sewer funds to this project. The Planning Director's own statements differ as well. On June 30, 2026 he wrote that the grants would "bring the total cost of the project to $8M" and that the City "will not need to commit other resources" (Ex. 29); against the $11,091,098 project total, that implies roughly $3.09 million of cost the City would no longer carry, which is arithmetic from the two figures and not a statement in the email. On August 12, 2026, Objector attended the City Council meeting and heard the Planning Director tell the Council that the project had always been described as an $11 million project that included a $3 million pump station, that the pump station was in it as the match if the City received the BUILD grant, that the City did not get the BUILD grant, and that the City still has to build the pump station, which will not be part of the grant (Ex. 38, Aug. 12 transcript excerpt, auto-generated;

captions are not verbatim). And CVRPC, the grant's local development district, states that it holds no record of the station's removal, of any scope amendment, or of where replacement funding would come from (Ex. 6). A designation that rests primarily on municipal input needs that input verified. On this record it was not.

The Country Club Road designation was requested for its regulatory effect. At the City Council's August 13, 2025 meeting, the City's Planning Director, Michael Miller, stated that the City was "working on the assumption that Country Club Road would be a planned growth area," that "Tier 1A is fully exempt," and that the parcel "should very much be expected to be in that tier 1A status"; the same discussion established that the City's financing tool, CHIP, has "no location based criteria" (Council video, 41:50, 45:10–46:26). CVRPC's draft plan states that "municipal input on future planned development" is the "primary factor" in drawing Planned Growth Area boundaries (p. 71). The City Council's September 9, 2026 minutes record that "[t]he plan is to start working on 1A in the future" (Ex. 41). The proposed letter of intent now puts the same objective in writing: the City is to submit its Tier 1A application within 30 days of the Board's approval of a regional plan and future land use maps (Ex. 35, p. 10). The letter is nonbinding, but it shows what the designation is sought to do.

Country Club Road illustrates the defect; it is not the defect. Counts IV and V apply this standard to that parcel and are incorporated here. The same absence of criterion-by-criterion support runs through the plan's designations, which is why the relief below is region-wide.

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(12)(B) as to every Planned Growth Area addition or expansion for which the record contains no parcel-specific finding on each numbered criterion and, for any criterion unmet, a stated reason the area nonetheless qualifies; require CVRPC to supply that showing for each such designation; and decline to credit any designation for which it is not made. In the alternative, and at a minimum, that the Board find that the Country Club Road parcel

does not generally meet the criteria of § 4348a(a)(12)(B), because the record shows criteria (ii), (iii), (v) and (vii) unmet.

COUNT X — Failure to Set Forth Future Land Uses in Relation to the Provision of Necessary Community Facilities and Services, and to Correlate the Plan's Elements (§ 4348a(a)(12) and § 4348a(b))

The statutory element. The future land use element has its own requirement, stated before any of the land use categories and independent of the Planned Growth Area criteria.

> *"A future land use element, based upon the elements in this section, that sets forth the present and prospective location, amount, intensity, and character of such land uses in relation to the provision of necessary community facilities and services…"* **24 V.S.A. § 4348a(a)(12)**
>
> *"The various elements and statements shall be correlated with the land use element and with each other."* **24 V.S.A. § 4348a(b)**

What these provisions require. The future land use element must be "based upon the elements in this section," which include the transportation element at (a)(4) and the utility and facility element at (a)(5). It must state the amount and intensity of future land uses "in relation to the provision of necessary community facilities and services." And the elements must be correlated with the land use element and with each other. The statute itself therefore connects where growth is mapped, and how much, to the facilities and services that growth requires. A methodology instruction that capacity "need not be considered" cannot be squared with that text, whatever "served by" means in criterion (ii) (Count III). Act 152 amended § 4348a(a)(12) in 2026 and left this language in place.

The defect. The September 20 draft does not make the connection, and in several places says so.

First, it disclaims amount and intensity. The future land use areas "focus on the overall pattern and form of development across the rural to urban spectrum rather than on specific densities or uses, which are more properly defined at the local level" (p. 69).

Second, its utilities element does not direct facilities to the areas the land use element maps for the most growth. Wastewater Policy 6 says new or expanded treatment facilities should be planned "where municipalities have immediate need or where additional growth is appropriate, including Downtown Centers, Village Centers, Hamlets, some Resource-based Recreation areas like ski resorts, and Transition/Infill and Enterprise areas" (p. 263). Water Policy 6 has a similar list (p. 265). Neither names Planned Growth Areas or Village Areas.

Third, it states that it lacks the information the relationship depends on: capacity data is "surprisingly difficult to come by" (p. 296); unused plant flow should not be read as "available capacity" (p. 214); and "a Future Land Use classification is not necessarily a measure of capacity" (Appendix B, p. 1) (Counts I and III). Montpelier's own filing with the State identifies its collection system, not its treatment plant, as the constraint, and the plan says nothing about the collection system (Count III). A plan may direct growth to where capacity exists only if it knows where that is. This one says it does not.

Fourth, its transportation element lists no project serving any of the Planned Growth Area additions identified at Count IX, and no project at Country Club Road (Count XI). The plan's own policy is to "[e]ncourage development patterns that reflect the planned capacity of the transportation system," with Level of Service C "the preferred condition" (Transportation Goal 2, Policy 3, p. 191). No level-of-service or capacity finding appears for any Planned Growth Area.

Fifth, its housing element assigns 40% of the regional housing target by Downtown Center and Planned Growth Area acreage (Count VII), while the appendix explaining that method says the acreage is not a measure of capacity.

The elements are not correlated with the land use element or with each other. Each one, read alone, disclaims the connection the statute requires the plan to make.

The Board's preliminary review. The Board's September 8, 2026 preapplication response found that the draft "appears not to meet" § 4348a(a)(12) on other grounds — a standardless mandatory policy and unmapped areas (p. 17). It quoted the main clause but made no finding on whether the element sets forth land uses "in relation to the provision of necessary community facilities and services," and it did not address § 4348a(b). Its one related comment was the advisory recommendation that "[i]nfrastructure planning necessary to accommodate density should be further detailed in the housing chapter" (p. 15). CVRPC's response was the passage at p. 296 stating that the data does not exist.

What a decision rejecting this Count must say. To find § 4348a(a)(12) and (b) met, the decision must identify: (1) where the plan sets forth the "amount" and "intensity" of future land uses, given its statement that it does not address "specific densities" (p. 69); (2) for each Downtown Center, Village Center, Planned Growth Area and Village Area, the facilities and services the plan says that growth needs; (3) the page on which the transportation, utility and facility, and housing elements are each correlated with the land use element; and (4) how elements that each disclaim the connection are "correlated … with each other."

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(12) and § 4348a(b), and require CVRPC to state, for each Downtown Center, Village Center, Planned Growth Area and Village Area, the amount and intensity of development intended and the water, wastewater, transportation and other facilities and services that development requires; and to conform the utility and facility, transportation and housing elements to the future land use map so that each identifies the facilities and services the mapped growth depends on.

COUNT XI — Failure to Satisfy the § 4348a(a)(4) Transportation Element

The statutory element.

> *"A transportation element consisting of a statement of present and prospective transportation and circulation facilities, and a map showing existing and proposed highways, including limited access highways, and streets by type and character of improvement, and where pertinent, anticipated points of congestion, parking facilities, transit routes, terminals, bicycle paths and trails, scenic roads, airports, railroads and port facilities, and other similar facilities or uses, and recommendations to meet future needs for such facilities, with indications of priorities of need, costs, and method of financing."* **24 V.S.A. § 4348a(a)(4)**

The Board's preliminary review. The Board's September 8, 2026 preapplication response found that the draft "appears not to conform with this requirement" and stated a required revision: "The prioritization of projects, including bridge assessment, is required as additional information necessary to determine compliance with Element 4" (p. 13). The Agency of Transportation's August 6, 2026 letter had said that "specific projects, project locations, and anticipated costs are not identified" (Board docket Ex. 021; Count II). Objector raised the absence of priority, cost and financing to CVRPC on September 17, 2026 (Ex. 11, item 9). Staff answered that priority, cost and financing for utility and facility investments is "[n]ot a statutory requirement" and "may be something to consider working toward for a future draft" (Ex. 59, p. 30). Section 4348a(a)(5) requires "indications of priority of need." Section 4348a(a)(4) requires priorities, costs and financing for transportation.

CVRPC's staff did not dispute the gap and deferred it. Before the vote, a commenter told the Commission that new Tables 25 and 26, on the VTrans capital program, are incomplete: projects in that program carry estimated dates, costs and multiple sources of financing, and § 4348a(a)(4) requires that information in the plan (Ex. 59, p. 21, Comment 6). Staff did not say the tables were complete or that the element was met. Its answer was: "Further elaboration on this topic will be considered during future amendments." (Id.) Section 4348a(a)(4) says a transportation element "shall" include

costs and method of financing. A future amendment is not a cure for an element missing from the plan before the Board (Section II.F).

CVRPC's Executive Director's adoption memo to its Board lists what changed from the current plan: updating data and maps, disaggregating housing targets, an environmental justice analysis, and integrating the statewide future land use areas (Ex. 59, pp. 47–48). The prioritization of projects, which the Board's September 8 response said "is required" (p. 13, above), is not on the list. The memo adds that goals, policies and strategies "remain unchanged from the current plan" except where state programs or statute required a change (Ex. 59, p. 48).

The defect. The September 20 draft responds with Table 25 ("Priority Projects – VTrans Capital Program") and Table 26 ("Priority Projects – Not in the VTrans Capital Program") (p. 187). Together they name twenty-five projects. The statute asks for three things for each recommendation: priority of need, cost, and method of financing. The tables supply none of them. The projects appear as unranked lists. Calling every listed project a "priority project" does not indicate priority among them. No project carries a cost. Table 27 (pp. 188–189) lists funding programs and their match rates by program type; it does not say how any listed project is to be financed.

The tables also omit the transportation infrastructure the plan's own growth areas depend on. No project at Country Club Road appears in either table — not the road reconstruction the City describes as "the essential transportation access required to unlock" the site, and not the Route 2 intersection signal the City's own figures show would be warranted (Count V). The only Montpelier entry is rehabilitation of the State Street bridge over the North Branch. No listed project is tied to any of the Planned Growth Area additions identified at Count IX.

If the tables are the region's priorities, Country Club Road is not among them. Yet the City's own engineering sheet is titled "Alternative 4a – Center Country Club Road in R.O.W. & Raise US-2" (Ex. 21), and the City has called the road work "the essential

transportation access required to enable" the site (Ex. 46, p. 1). It sought $5,312,550 in federal BUILD funds toward that $7,277,470 work (Ex. 46); the Planning Director told the Council on August 12, 2026 that the City did not get the BUILD grant (Ex. 38, Aug. 12 transcript excerpt). The State's award conditions require a signed agreement with the Secretary of Transportation on the proposal "to elevate the railroad bed where Country Club Road meets Route 2" (Ex. 27); the meeting to begin that discussion was moved from July 23 to August 20, 2026 (Ex. 29). The plan nonetheless maps the entire parcel for its highest-density category. It therefore designates growth that depends on a transportation project its own transportation element does not list, rank or cost. If the tables are not the full statement of priorities, the element fails § 4348a(a)(4) on its face. If they are, the designation rests on infrastructure the region has not made a priority. Either way the land use and transportation elements are not correlated (Count X), and the "planned" infrastructure the complete-streets criterion requires appears in neither a municipal capital program nor the regional plan. The developer's proposal treats the signal, a second access and transit service as open: it says "the need for a Route 2 signal" remains to be evaluated and refers to a "potential second access point" and "anticipated public transit access" (Ex. 36, pp. 7, 12, 26).

Why this is not a matter of degree. Section 4348a(a)(4) uses the same construction as (a)(7) and (a)(9): the plan "shall include" an element that contains specified things. For the reasons in Section II.F, a list of projects without priorities, costs or financing is not that element delivered in part. It is a different thing.

What a decision rejecting this Count must say. To find § 4348a(a)(4) met, the decision must identify: (1) for each of the twenty-five projects in Tables 25 and 26, the priority of need, cost and method of financing, by page; (2) how the prioritization of projects that the Board's September 8 response said "is required" (p. 13) was supplied; (3) the text of § 4348a(a)(4) that permits a required element to be deferred to "future amendments" (Ex. 59, p. 21); and (4) the listed project that serves each Planned Growth Area on which the plan relies, including Country Club Road.

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(4) and require CVRPC to state, for each transportation recommendation, its priority of need, its cost and its method of financing, and to include the transportation facilities on which each Planned Growth Area designation relies.

COUNT XII — Failure to Include the § 4348a(a)(5) Recommendations to Meet Future Needs, With Indications of Priority of Need

The statutory element.

> *"A utility and facility element, consisting of a map and statement of present and prospective local and regional community facilities and public utilities … and recommendations to meet future needs for those facilities, with indications of priority of need."* **24 V.S.A. § 4348a(a)(5)**

The defect. Count I treats this element as an input to the capacity study. This Count tests it on its own terms. The element requires recommendations to meet future needs and indications of priority of need. The September 20 draft's utilities chapter (pp. 196–278) describes present facilities. It does state general priorities for some topics: waste reduction is "a top priority of the Region" (p. 266); emergency management "should be a high priority in the Region" (p. 238); and "[p]riority consideration should be given to rehabilitating and upgrading existing recreation facilities" (p. 273). Those are statements of emphasis. None identifies a future need of a facility or utility and ranks it against others. For water supply and wastewater, the systems the Planned Growth Areas depend on, the chapter names no future need and ranks none. Its wastewater policy proposes to "[e]xplore opportunities" for a study "to identify priority investments" (p. 263), which defers identifying priorities. Its communications section calls E-911 and wireless-reliability concerns "valid" and recommends nothing (p. 232). A plan that says priority investments are still to be identified has not indicated priority of need.

The record. On October 15, 2026, Thomas Weiss told CVRPC that the element "fails to identify future needs of any of the systems or facilities and fails to make

recommendations," and that the housing chapter does not do so either (Ex. 59, p. 10). Staff answered that future needs and recommendations "are interwoven into the text and addressed into the goals, policies and strategies," without citing a page (Ex. 59, p. 21). Objector's September 17 memorandum asked for priority of need for water and wastewater investments (Ex. 11, item 9). Staff answered, "Though not a statutory requirement, this may be something to consider working toward for a future draft of the Regional Plan" (Ex. 59, p. 30). Goals stated in general terms are not recommendations, and a future draft is not this plan.

What "indications of priority of need" requires. Objectors read the statute modestly. "Indications of priority of need" does not demand a ranked capital plan; that is the separate showing § 4430 and § 4348a(a)(4) call for. It does require something from which a reader can tell which future needs the region treats as more urgent than others. Priority is comparative: a need ranked against nothing has no priority. For water and wastewater the plan gives nothing of the kind, and staff's answer that future needs are "interwoven" into the text points to no page (Ex. 59, p. 21).

The Board's preliminary response. The Board's September 8, 2026 preapplication response says of this element only: "The draft regional plan appears to meet this requirement" (p. 13). It gives no reasons, identifies no recommendation and no indication of priority, and does not mention that the plan defers priorities to a study still to be explored. On the same page it found that the plan "appears not to conform" with § 4348a(a)(4) for want of "[t]he prioritization of projects," and it later recommended updating the water supply and wastewater map, "created 18 years ago" (p. 14). A preliminary "appears to meet," made on the June 25 draft before the September 20 draft and the October 15 comments, is not a determination. The Board's determination under § 4348(h)(4) is made on the adopted plan and this record. Objectors have found no recommendation with an indication of priority for any water or wastewater need, and the Board's sentence does not say where one is.

Limit of the Count. Section 4348a(a)(5) requires priority of need. It does not say "costs" or "method of financing." Those words appear in (a)(4) (Count XI). The Count rests on priority of need and on the missing recommendations.

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(5) and require CVRPC to state, for each facility and utility system in the element, the future need and an indication of its priority.

COUNT XIII — Failure to Satisfy the § 4348a(a)(2) Requirement That the Natural Resources Map Indicate Agricultural Lands and Aquifer Protection Areas

The statutory element.

> *"A natural resources and working lands element, which shall consist of a map or maps and policies … that: (A) Indicates those areas of significant natural resources, including … agriculture using the agricultural lands identification process established in 6 V.S.A. § 8 … and areas identified by the State, regional planning commissions, or municipalities that require special consideration for aquifer protection …"* **24 V.S.A. § 4348a(a)(2)(A)**

The defect. The element must "indicate" areas. An area is a place. On October 15, 2026, Thomas Weiss told CVRPC that Maps 1 through 10 still do not show agriculture identified under 6 V.S.A. § 8 or aquifer protection areas (Ex. 59, pp. 9, 20). Staff did not dispute it. Staff said that Map 10 shows prime agricultural soil and the Future Land Use Map shows "appropriate size parcels for agriculture," that "[t]he other three requirements of 6 V.S.A. § 8(a) are represented in the narrative," and that aquifer protection "is addressed in the text and policies of the plan" (Ex. 59, p. 20).

Aquifer protection. The statute lists aquifer protection areas as their own item. Surface water, wetlands, vernal pools, river corridors and forest blocks are other listed items.

Mapping those does not indicate aquifer protection areas, and staff's answer that they matter "for groundwater recharge" concedes the plan maps none. Policy text does not indicate where an area is.

Agriculture. Section 8(a) sets five criteria for identifying agricultural lands: soils, parcel size and adjacent use, importance to the region, availability of agricultural services and labor, and importance to the locality's character. CVRPC maps two. Soil is one criterion, not the identified lands. The plan shows no application of the five criteria to produce the lands it indicates.

Wildlife habitat. The plan defines rare and irreplaceable natural areas as significant natural communities, rare, threatened and endangered species, and deer wintering areas, shown on Map 4 (p. 38). Mr. Weiss told CVRPC that deer wintering areas are a "skimpy substitute for significant wildlife habitat" (Ex. 59, p. 9). Staff answered that expansion of wildlife habitat mapping "will be considered in a future amendment" (Ex. 59, p. 20). Mapping that the plan's own staff defers to a future amendment is not in this plan.

Related. The Board's September 8 preapplication response said it could not determine whether the plan meets (a)(2) because the maps date from 2007, 2008 and 2018. The new maps state no date or source (Count I).

What a decision rejecting this Count must say. To find § 4348a(a)(2) met, the decision must identify: (1) the map and page that indicate areas requiring special consideration for aquifer protection; (2) the map and page that indicate agricultural lands identified under 6 V.S.A. § 8, and which of the five § 8(a) criteria produced them; (3) the text of § 4348a(a)(2)(A) that allows a narrative to stand in for indicating an area on the map; and (4) the basis for treating wildlife habitat mapping deferred to "a future amendment" (Ex. 59, p. 20) as included in this plan.

Relief requested. That the Board find the plan inconsistent with § 4348a(a)(2) and require CVRPC to map the areas requiring special consideration for aquifer protection

and the agricultural lands identified under § 8, or state which criteria it applied and where.

V. PRAYER FOR RELIEF

Objectors ask the Board to:

- Issue a negative determination under 24 V.S.A. § 4348(h)(4), finding the adopted plan inconsistent with § 4348a(a)(2), (a)(4), (a)(5), (a)(7), (a)(9), and (a)(11); with the main clause of § 4348a(a)(12) and with § 4348a(b) (Count X); and, for the reasons set out in Count IX, with § 4348a(a)(12)(B) as to each Planned Growth Area designation lacking a criterion-by-criterion record — including criteria (ii), (iv), (vi) and (vii), the introductory paragraph of § 4348a(a)(12)(B), and § 4348a(d); holding that (a)(4), (a)(7), (a)(9) and (a)(11) are mandatory statutory elements under ordinary principles of construction, as set out at Section II.F above — not subject to a substantial-compliance or directory reading, and not curable by a suggested modification under § 4348(i)(4) attached to an otherwise-affirmative determination; and stating, as part of its reasons, that no Planned Growth Area or village-area designation in the adopted plan may be relied upon to confer Tier 1B status under 10 V.S.A. § 6033 or Tier 1A status under 10 V.S.A. § 6034 unless and until the showings Counts I–III require appear in the record supporting that specific designation;
- Find that a regional plan "shall include" each element of 24 V.S.A. § 4348a(a), that the future land use map must delineate planned growth areas that meet the criteria in § 4348a(a)(12)(B)(i)–(vii), and that the record contains no parcel-specific finding on any of those criteria for any Planned Growth Area addition; and, because the Board may "approve or disapprove portions of future land use maps," 10 V.S.A. § 6033(a), disapprove every portion of the Planned Growth Area not shown, on a record specific to that portion, to generally meet the criteria of § 4348a(a)(12)(B), and state which elements of § 4348a(a) the plan fails to meet;

- As suggested modifications under § 4348(i)(4), direct that before any request for a new determination CVRPC: (a) show, for every Planned Growth Area in the plan — not Country Club Road alone — which criteria of § 4348a(a)(12)(B) are met and which are not, with the reasons for any departure, including, for any designation relied upon to satisfy criterion (vi), a parcel-level finding connecting its acreage to the housing targets it is meant to satisfy; (b) produce the § 4348a(a)(7) capacity study and investment strategy; (c) file the report § 4348(h)(1) requires and the description of changes to the future land use map that § 4348(d)(1) and (h)(1) require, measured against the operative plan and including the change of the Country Club Road parcel out of Rural (Threshold Objection); (d) produce the § 4430(b) capital-program support for every designation relying on "planned" infrastructure; (e) state priorities of need, costs and method of financing for each transportation recommendation, as § 4348a(a)(4) requires, and the future need and indication of priority for each facility and utility system, as § 4348a(a)(5) requires; (f) state, for each higher-density future land use area, the amount and intensity of development intended and the facilities and services it requires, and correlate the plan's elements accordingly, as § 4348a(a)(12) and § 4348a(b) require; (g) state, for each re-mapped flood-hazard area, which treatment applies and what flood-resilient design standard governs; (h) map the agricultural lands identified under 6 V.S.A. § 8 and the areas requiring special consideration for aquifer protection, as § 4348a(a)(2)(A) requires, or state which criteria were applied and where; and (i) include each of these items in the scope of the new determination under the Board's Application Guidelines, § 1.400 et seq.;
- Require CVRPC to revise the flood resilience element required by § 4348a(a)(11) to identify land within the region suited to actively serve public safety, shelter, and emergency-operations functions during a flood event, not only land to avoid building on — including an evaluation of Country Club Road for that purpose;

- Specifically as to the Country Club Road parcel: find that, absent (a) an adopted master plan demonstrating the parcel meets the threshold description, mixed-use requirement, and smart growth principles § 4348a(a)(12)(B)'s introductory paragraph independently imposes; (b) a documented multimodal connectivity showing meeting complete streets principles under 19 V.S.A. chapter 24, extending to the downtown and not merely to the parcel boundary; (c) an adopted § 4430(b) capital budget and program identifying the cost, financing, and priority of the infrastructure that connectivity requires; and (d) a showing that Act 250 Criterion 9(B) review of primary agricultural soils will occur before any Tier 1A eligibility is exercised — the parcel does not meet the definition of a Planned Growth Area under § 4348a(a)(12)(B), and is therefore ineligible for Tier 1B status under 10 V.S.A. § 6033 on this record and, because Tier 1A's requirements under § 6034(b)(1) subsume and exceed Tier 1B's, ineligible for Tier 1A status under 10 V.S.A. § 6034 as well;
- Decline to approve a first phase of development on the Country Club Road parcel pending later planning: the designation attaches to the whole area, and a Phase 1 housing letter of intent is not a plan that assigns the area's uses or forecasts its traffic;
- Require CVRPC to include, within the housing element, an emergency housing and shelter provision: recommended actions specifically addressing residents who will remain unhoused within the plan's planning horizon — distinct from, and not satisfied by, general housing-production targets;
- State written findings and reasons on each objection, including the Threshold Objection and each count, as § 4348(i)(4) requires, whatever its determination;
- Grant such other relief as the Board deems appropriate.

Objectors emphasize that Country Club Road illustrates a defect in how designations are made under this plan generally (Count IX). Declining to designate Country Club Road

while leaving similarly unsupported additions elsewhere in the plan uncorrected would not remedy the defect Counts I through XIII identify; it would merely relocate it.

On this record the Board is not asked to strain to reach this result. The parcel has no walkable connection to the downtown, no capital program for one, no plan assigning a mix of uses and no complete-streets showing. A finding that it nonetheless meets the Planned Growth Area description would require the Board to treat as present what the record shows to be absent.

Objectors do not ask the Board to foreclose Country Club Road from Planned Growth Area status permanently. Sections 4348(j) and 4348(n) already provide the path: if the showings Counts I–V require are made, the designation remains available. What the record cannot support is designating first and discovering later whether those showings can be met. A genuine multimodal connection sited above the floodplain, paired with a § 4430-compliant capital budget and program actually funding it, and a master plan developed concurrently with the parcel's brownfield remediation — designing genuine mixed use into the site rather than housing alone — would meet that standard. What exists today does not.

Objectors recognize that requiring these showings will cost time. That cost is worth naming plainly rather than minimizing: the alternative — designating now, on a record that cannot support it, and hoping the missing capacity study, the missing capital budget, and the missing master plan materialize afterward — has already been tried once in this same process, at the state level, with this same parcel's growth-center status, and it did not survive contact with actual scrutiny. A delay that forces CVRPC and the City to build an honest capacity study, an honest capital budget, an honest map, and an honest plan is not a cost imposed on this project. It is the discipline the statute already requires, arriving now instead of after housing has been built on ground the record never actually supported.

Criterion (vii) provides that "[p]lanned transportation infrastructure includes those investments included in the municipality's capital improvement program pursuant to section 4430." The Legislature did not leave "planned" to be defined by whatever a commission finds convenient; it named the instrument. A § 4430 program is a public, adopted statement of each project's cost, financing, priority and operating-cost effect, and it is what separates a planned investment from an aspiration. The Board need not decide whether a § 4430 program is the only way to show that infrastructure is "planned." The record here contains no § 4430 program with a Country Club Road complete-streets line, no cost, no financing and no priority, and nothing else, and the burden is CVRPC's (Guidelines § 1.008). To the extent Guidelines § 1.007(A)(1) is read to accept a plan or study in place of the capital program (vii) describes, the statute controls (Section II.A). That structure, a one-year budget paired with a five-year program, arranged by priority, stating cost and financing for each project, has existed substantially unchanged since 1967 (No. 334, Adj. Sess., § 1, eff. March 23, 1968), was refined in 1976 to establish the public-hearing adoption process now codified at § 4443(a), was amended in 1990 (No. 280, Adj. Sess., § 11b) to add the operating-cost-impact requirement, and was recodified as § 4430 in 2004. Acts 181 and 152 did not invent this tool. They connected it, for the first time, to a future land use designation.

VI. RESERVATION OF RIGHTS

Objectors further reserve the right to pursue, in a separate proceeding, a declaratory judgment action addressing whether the Board's institutional practice — considered generally, across regions, and not limited to this docket — properly applies 24 V.S.A. § 4348a's requirements independent of the VAPDA methodology or the Board's own Application Guidelines, to the extent that practice conflicts with the statute. Objectors take no position here on the availability or merits of that separate action. Nothing in this objection, and nothing in the reservation of that possibility, should be read as an appeal, direct or indirect, of the Board's approval of this or any other regional plan.

Objectors also preserve, and do not ask the Board to decide, the contention that 24 V.S.A. § 4348(m)'s bar on appeal, as applied to a determination that removes Act 250 review from land in which Objectors have a particular interest, denies the remedy guaranteed by Chapter I, Article 4 of the Vermont Constitution and due process of law. The same reservation extends to the repeal of formal review under 24 V.S.A. § 4476 by 2026 Act 152, Sec. 16 (Section II.B).

Objector Whitaker's position in No. 26-AP-064, that § 4476 remained in force when he petitioned under it, is likewise preserved. Nothing in Section II.B or Count V, criterion (i), states or concedes otherwise.

The matters raised in the accompanying Chronicle of Deficiencies are preserved for the record notwithstanding their exclusion from this objection's § 4348(i)(3) scope.

VII. INDEX TO EXHIBIT VOLUME

Exhibits are filed as a separate volume and are cited in the text as "Ex." with the numbers below. This Objection quotes the passages it relies on; the volume is there so that each quotation can be checked. Transcripts are auto-generated and appear as excerpts exactly as generated, with their transcription errors left in place. Complete copies of any excerpted document are available on request. This single volume also serves the Chronicle of Deficiencies; Exhibits 51 through 53 are filed for the Chronicle of Deficiencies only. Citations to "Board docket Ex." are to exhibits already filed in Docket RPC03-0001, which are not repeated in the volume.

Ex. 1 — CVRPC memorandum, "Summary of Proposed Regional Future Land Use Map Changes," August 6, 2026, with the 2024 Future Land Use Map (Regional Plan p. 273, readopted July 9, 2024)

Ex. 2 — CVRPC Regional Plan Review Checklist (draft)

Ex. 3 — CVRPC Executive Director email, August 19, 2026 ("We do not intend to submit another document at this time")

Ex. 4 — CVRPC Executive Director email, August 19, 2026 (participation at either hearing)

Ex. 5 — CVRPC records response, September 9, 2026 (Planned Growth Area criteria methodology)

Ex. 6 — CVRPC records response, September 9, 2026 (local development district records, pump station)

Ex. 7 — Transcript excerpts, CVRPC hearing and Regional Plan Committee meeting, September 8, 2026

Ex. 8 — Transcript excerpts, CVRPC hearing and Montpelier Planning Commission meeting, September 14, 2026

Ex. 9 — Transcript excerpts, CVRPC Board of Commissioners meeting, August 21, 2025

Ex. 10 — Objector's memorandum to CVRPC, August 21, 2025

Ex. 11 — Objector's memorandum to CVRPC's Executive Director and Commissioners, September 17, 2026 (bcc line redacted)

Ex. 12 — [Reserved]

Ex. 13 — City of Montpelier Request for Proposals, Country Club Road, December 19, 2025 (Council packet pp. 27–46; the RFP is pp. 34–46)

Ex. 14 — City's Responses to Developer Questions, updated January 13, 2026

Ex. 15 — City's Responses to Developer Questions, January 27, 2026

Ex. 16 — Planning Director memorandum to City Council, May 20, 2025

Ex. 17 — City Council minutes, May 28, 2025 (item 2025-205)

Ex. 18 — City concept map, "Country Club Road Site Master Plan — Concept Plans," May 2025

Ex. 19 — City Council minutes, August 13, 2025 (item 2025-320)

Ex. 20 — City Council minutes, December 17, 2025 (item 2025-512)

Ex. 21 — VHB layout sheet, “Alternative 4a – Center Country Club Road in R.O.W. & Raise US-2,” plotted September 18, 2025

Ex. 22 — City of Montpelier annual combined sewer overflow report, January 30, 2026

Ex. 23 — DHCD staff memorandum to the Community Investment Board, October 21, 2024

Ex. 24 — Community Investment Board minutes, September 23, 2024, and October 15 and October 28, 2024

Ex. 25 — DHCD email on the draft methodology, November 22, 2024, with reply of November 23, 2024

Ex. 26 — Northern Border Regional Commission grant agreement (signed March 2026)

Ex. 27 — Agency of Commerce and Community Development award letter and conditions, May 11, 2026

Ex. 28 — Award conditions status page, printed July 13, 2026

Ex. 29 — State correspondence produced July 16, 2026, including the July 1, 2026 email extending the conditions deadline

Ex. 30 — Jurisdictional Opinion JO 5-208, August 27, 2026

Ex. 31 — Response to Reconsideration Request, JO 5-208, September 25, 2026

Ex. 32 — [Reserved] Agency comments are cited by Board docket number and not reattached: Ex. 021 (Agency of Transportation, August 6, 2026) and Ex. 028 (Agency of Natural Resources, August 7, 2026)

Ex. 33 — Transcript excerpts, Land Use Review Board meeting, September 28, 2026

Ex. 34 — [Reserved]

Ex. 35 — Proposed Letter of Intent, City of Montpelier and DEW Properties, City Council agenda packet of October 14, 2026, pp. 4–11 (agenda item cover sheet and letter)

Ex. 36 — DEW Properties, Development Proposal, June 1, 2026 (selected pages: PDF pp. 1, 4, 5, 7, 12, 26 and 29 of 55)

Ex. 37 — White + Burke memorandum, July 15, 2026 (3 pages)

Ex. 38 — Transcript excerpt (auto-generated), Montpelier City Council meeting, August 12, 2026 (the Planning Director's statements on the pump station and the BUILD grant)

Ex. 39 — Hemmerick (DHCD) email to Abbate (NVDA), May 5, 2025, "Expansion of village centers under Act 181"

Ex. 40 — Two Rivers-Ottauquechee Regional Commission, Regional Future Land Use Mapping Methodology, version of July 16, 2025 (opening sections)

Ex. 41 — City Council minutes, September 9, 2026 (item 2026-350)

Ex. 42 — Resolution authorizing CVRPC to include eligible Tier 1B areas in the City of Montpelier, signed (item 2026-350)

Ex. 43 — Vermont Community Development Program, Project Budget and Other Resources, application 07110-DR-IG-2025-Montpelier-264 (City of Montpelier)

Ex. 44 — Google Earth measurement, Montpelier City Hall to the Country Club Road clubhouse, September 29, 2026 (screenshot)

Ex. 45 — Future Land Use Methodology and Process: Final DRAFT of December 2, 2024 and Version 1.0 (December 20, 2024) (sidewalk threshold, 65% figure, capacity sentence, "(within 1000'?)"); Northwest Regional Planning Commission records production, production pp. 1, 8, 9, 21, 29

Ex. 46 — City of Montpelier, FY2026 BUILD grant application, Country Club Road Improvements, Project Description (complete document, as obtained from the City)

Ex. 47 — City Council minutes, July 22, 2026 (item 2026-298)

Ex. 48 — CVRPC Executive Committee meeting packet, June 1, 2026: memo, pp. 31–32 (NBRC Grant GT-25FAC-00012); City of Montpelier Local Development District services contract, from the City's records production Foia 2026-241, pp. 27–29

Ex. 49 — City of Montpelier, Country Club Road Actionable Plan (White + Burke, June 28, 2023), excerpt: Table 1

Ex. 50 — CVRPC Regional Plan Committee, draft minutes, September 1, 2026 (as published)

Ex. 51 — CVRPC notice of the September 14, 2026 special Regional Plan Committee meeting and public hearing (email) — Chronicle of Deficiencies only

Ex. 52 — CVRPC Bylaws (approved December 10, 2019) — Chronicle of Deficiencies only

Ex. 53 — CVRPC Regional Plan Committee Rules of Procedure (December 10, 2019) — Chronicle of Deficiencies only

Ex. 54 — Vermont Association of Planning and Development Agencies, draft amendments to Titles 24 through 32, February 18, 2026 (comment CD22, p. 9), from the S.325 committee file (Catherine Dimitruk, “VAPDA Titles 24-32 Explained,” March 10, 2026)

Ex. 55 — Transcript excerpt (auto-generated), Montpelier City Council meeting, October 14, 2026 (agenda item 5, letter of intent with DEW Properties: the vote, the consultant’s statements on the letter and the CHIP financing, and the City Manager’s statement on phasing)

Ex. 56 — City of Montpelier parcel map (CAI Technologies), Country Club Road, Map/Lot 025-00E003 (“Lot 3,” Blueberry Assoc. LLC), printed October 11, 2026

Ex. 57 — Vermont Warranty Deed (Second Corrective), Peter J. Maurice and Denise O. Maurice to Blueberry Associates, LLC, recorded February 4, 2019, Book 691, Pages 150–153, City of Montpelier Land Records (Lot 3, Map/Lot 025-00E003)

Ex. 58 — Google Maps walking-route screenshots (three), Country Club Road to Montpelier City Hall, October 5, 2026

Ex. 59 — CVRPC Board of Commissioners packet, October 20, 2026 (excerpts: packet pp. 1, 8–10, 18–23, 27–32, 47–49 and 97, cited by the packet's own page numbers; staff's written answers to comments and the Executive Director's adoption memo)

Ex. 60 — (a) City of Montpelier, Community Rating System Activity 510 progress report, with Table 21 update to the 2021 Local Hazard Mitigation Plan, October 22, 2025 ("Increase Resiliency of Critical Facilities" entry); (b) Montpelier Police Department press release, July 12, 2023, as reprinted in Fire Apparatus & Emergency Equipment

Ex. 61 — City of Montpelier, Country Club Road Development Scoping Project, VHB Client Authorizations of October 18, 2024 (original, $218,674) and December 9, 2024 (reduced, $106,800), with the City Council agenda item of December 18, 2024 (excerpts; Council packet pp. 38, 39, 43, 44 and 46 of 428)

Ex. 62 — Objector's Request for Board Guidance to the Land Use Review Board, September 17, 2026

Ex. 63 — Land Use Review Board Chair Janet M. Hurley, letter to Objector, October 21, 2026, responding to the September 17, 2026 request

Ex. 64 — CVRPC, Montpelier Future Land Use Map and Tier 1 Update packet to the City (memo dated July 9, 2026) (excerpts: cover, memo pp. 1 and 3, packet pp. 11 and 15)

Ex. 65 — City of Montpelier, City Council minutes, October 14, 2026 (item 2026-386, Country Club Road project status and adoption of the letter of intent)

Ex. 66 — Objector's written comments to the CVRPC Board of Commissioners on the draft 2026 Central Vermont Regional Plan, October 20, 2026 (final hearing)

Respectfully submitted,

Stephen Whitaker

Montpelier, Vermont

[ASAP4CV signature block]