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To Whom It May Concern:

I submit the following comments and objections to the draft TRORC regional plan. Specific comments on specific sections follow the more general comments below. I respectfully request you read the general comments to better understand the concerns behind the more specific comments that follow.

GENERAL COMMENTS:

A. Regional Regulations Adopted By Unelected Staff Are Unnecessary When Such Rules Could Be Made By Elected Officials Who Are Democratically Accountable

First, I would like to make the overarching point that I disagree with the approach of this plan. It seizes enormous regulatory power with countless “shalls” and “musts” that are too often tied to imprecise or overbroad definitions – the makings of nightmarish Act 250 proceedings where lawyers make money and everyone else loses time, money, energy, and, ultimately, faith in the workings of our government. In addition, these rules will no doubt preclude certain economic opportunities, including housing, that might otherwise develop in our struggling rural communities. This would not happen if our regional planning commission had instead chosen to remain in the more conventional advisory role like others across the state.

Regulatory decisions about uses of land in our community can and should be decided by the elected local officials. I understand and agree that the state has certain environmental interests that trump local considerations and Act 250 already exists to protect those interests. Anyone with a shred of intellectual honesty would concede that our “regions” are artificial contrivances that have no unique interest in the governance of our communities beyond those already represented by state and local governments—who are, importantly, democratically accountable. The RPC role should be advisory only, helping smaller democratically elected entities plan for the future with trustworthy information and advice.

Decisions about rules with the force of law should come from those who can be voted out of office. These regional rules are written in far less accessible and far less accountable forums by paid staff, and are never ratified by the voters or the elected officials. Each municipality has a de minimis presence on the oversight board of the regional planning commissions and it is very difficult for a single town, let alone a group of concerned citizens, to influence these bodies’ decisions. The organization’s structure allows unelected staff to dominate the decision-making process. We cannot vote out the staff, or even those appointed to oversee that staff.

It should be noted that other regions have taken a far more advisory role and their communities will not be overrun with inappropriate development. There are ample safeguards in place, including Act 250, local zoning, and even town ordinances in no zoning towns. By adding a series of additional regional regulations, we are overcomplicating the development of things we need, such as housing and commercial services.

But there is another equally important reason that the “shalls” and “musts” could be discarded with no real adverse impacts on our communities. Regional planning commissions already have ample opportunity to influence Act 250 permitting decisions. Indeed, they are required to help District Commissions determine whether the Act 250 criteria have been met. 24 V.S.A. §4345a(13). RPCs can make arguments based on “should” rather than “shall” to the District Commission based on the specifics of the site, the neighborhood, and the project details. If the arguments are persuasive in the particulars of each case, they will prevail.

The RPC staff apparently do not wish to try to convince the District Commissions based on the facts and details of each particular project. They would prefer arbitrary rules to justify why their views should be adopted.

But their positions in these Act 250 proceedings do not suddenly gain greater validity because they were able to sneak a rule through an undemocratic process with most Vermonters never knowing these rules were created—rules that citizens must discover in a 200+ page document. Those rules are just the staff’s position being recharacterized into rules that would not likely carry the day in a project-specific permitting proceeding.

Is it really necessary that a seasonal creemee stand with a half dozen high school employees install electric car chargers when most customers do not stay long enough to charge a car? I don’t think so. Yet, that position will carry the day in an Act 250 proceeding now due to a rule enacted very far from the public’s view. And perhaps we will never get that creemee stand because the family decides that expense is just too much—what a loss for our community that we will never know about. These rules will deter family scaled businesses in amounts that cannot be counted and considered by RPC staff who will continue to insist that the rules are reasonable.

This should be stopped. Let the RPCs do their usual job in front of these District Commissions based on the specifics of the individual case and the rules adopted by our elected local officials. That is more than enough.

If RPC staff think those municipal rules are inadequate, use the power of persuasion to convince elected officials to adopt more stringent rules—as these officials are answerable to the voters.

In one new rule, the RPC goes so far as to claim it can specify exactly which evidence an applicant must submit in order obtain its Act 250 permit. That is not a land use policy. It is an attempt to assume control over regulatory proceedings without any basis in law.

As that provision exemplifies, the draft regional plan is a gross overreach and is clearly an outlier across the state of Vermont. Rather than exercise restraint and humility as an unelected body with

few direct interactions with voters, the RPC exploited the powers it perceives itself to have been granted to stifle much potential development, particularly in our rural communities.

B. The Maps Appear Arbitrary And It Is Doubtful They Have Been Carefully Scrutinized by Elected Officials or Members of the Public

Second, with respect to the maps, I would request that the representative of each town that has reviewed these maps in detail be identified prior to the formal meetings being held in the final week of July. If no town representative has carefully reviewed the maps, that information should be provided to the public. I have briefly examined the online map and saw that my road is part Rural General and part Rural Agriculture and Forestry – and the division seems completely arbitrary. I also was a bit surprised that the plan seeks to ban principal retail in so many locations regardless of product, and regardless of scale. So I took a peek to see where White's Dairy is located (a Hartland retail store quite appreciated by many rural residents). It is in Rural Agriculture and Forestry which also does not permit new principal retail. Again, this is a rule that unfairly sweeps in all retail, regardless of products, scale, etc. But more importantly, the map itself doesn't even conform to reality as it currently exists. White's Dairy has not caused the sky to fall – quite the opposite. These maps require careful review by town representatives (not RPC staff) who know the towns intimately. If that has not been done, the public needs to know. The notion that any and all new retail in the neighborhood of White's Dairy should be banned is just foolishness.

Moreover, the restrictions in Rural Conservation are so severe that individual notice should be mailed to land owners to ensure that they are aware of this designation prior to passage of the plan. Telling someone where they can and cannot build their single family residence is not something one would expect to find as binding law in a regional plan, and citizens should be notified of these types of restrictions.

C. The Substantial Regional Impact Definition Threatens Municipal Control Over Huge Swaths of These Communities Without Any Showing That There Is Any Genuine Regional Impact.

Third, many of these rules are far stricter than anything that appears in our municipal plans or zoning across the Two Rivers region. There is no need for the RPC to decide density limits, for example, for each municipality. These decisions should be made by each town – where any binding rule would be subject to democratic accountability. It appears these rules were included in the regional plan precisely to avoid democratic accountability. Because Two Rivers' definition of "substantial regional impact" is so overbroad, these regional rules will trump more lenient municipal rules in well over half the region. The "substantial regional impact" definition is a seizure of territory both expressly (in that it claims control over all development in any Rural Conservation Area, 35% of the region, and any business in a two mile swath running along one mile wide on either side of any town boundary), and by more subtle means through the use of numerous imprecise and overbroad criteria that could be interpreted to cover the tiniest of projects with insubstantial, if any, regional impact.

D. The Process Foreclosed Public Involvement At Critical Stages Before Drafts Were Decided Upon

Finally, I should note that these land use policies were finalized at a meeting where public involvement was refused – despite hands up on a zoom call. When the Chair asked at the next executive committee meeting to re-open the discussion for landowner comment, RPC staff urged that the issues be left as is, arguing that the public could get involved later on in the process. RPC staff went on to make a series of false and disparaging comments about the point of view of one member of the public that was excluded from the prior meeting. This staff member's decision at the executive committee meeting to reject future public participation on land use issues was clearly linked to the viewpoint of the speaker who was excluded. Viewpoint discrimination is a violation of the First Amendment. In addition, this was also in violation of Open Meeting Law, and Act 181 itself, which requires meaningful participation, and access throughout the process – not just when convenient. Indeed, under Act 181 local citizen participation was supposed to be affirmatively solicited-- not excluded at any point in the process. The staff member who denied public access to the land use meeting did mention his interest in eating pizza with others after the meeting at Positive Pie in Woodstock—not exactly something requiring a pressing time limitation to deny public engagement.

SPECIFIC COMMENTS:

Provisions that involve questionable statutory authority:

- 1) Policy 8 (Transportation 4-8): This policy purports to require that for projects of “substantial regional impact,” no permit be granted unless certain evidence – transportation impact studies – is submitted to the District Commission during the Act 250 process. I see no statutory grant of authority for the RPC to place any requirements on the permitting process or to compel applicants to generate studies in support of any application. I do not dispute that traffic and other transportation impacts are a legitimate concern in land use planning but land use policy describes the concerns and considerations on the issue – not the evidence needed to address those concerns. District Commission determine whether enough evidence has been provided to satisfy the criteria. There is no statutory role for the RPC except to “Appear before District Environmental Commissions to aid them in making a determination as to the conformance of developments and subdivisions with the criteria of 10 V.S.A. § 6086.” 24 V.S.A. §4345a(17).

While you may recommend transportation impact studies in order to demonstrate compliance, you have no authority to compel an applicant to conduct such studies or present any type of specific evidence -- whether that be a transportation impact study or a note from the applicant's mother. That is not a land use policy, that is an administrative proceeding policy.

Similarly, I do not see how you can impose any requirements outside your region for projects of substantial regional impact. I see no statutory authority for you to do so. Indeed,

your ability to define substantial regional impact is expressly limited to be used “with respect to its [meaning the RPC’s own] region.” 24 V.S.A. §4345a(17). Policy 8 cannot possibly apply to projects outside your region as it purports to do as currently drafted.

Provisions that lack humility (and common sense):

- 2) Your policies that at least one electric car charging station should be installed (at least eventually) on every single Act 250 project is an overreach. Transportation 4-8, Policy 9 (projects must have taken steps or will take steps to install chargers); Energy 10-15, Policy 2 (even developments with less than 5 employees/units must install one car charging station).

This position is not based on any land use consideration at all. You have applied it *carte blanche* across the entire region regardless of any region or site-specific considerations. That, in essence, is a law, not a land use policy. The policy has nothing to do with any use of the land. And it is a law written by an unelected body. It makes a decision that elected officials have never made, and likely would not.

Accordingly, I would urge you to eliminate or substantially modify the requirement.

First, it deters new businesses that might not be able to afford car charging stations at the outset of the business, but might later be able to do so if they succeed. We don’t need it to be any harder to start a business in our rural communities, which often involve small family businesses. Why cut new businesses off at the knees?

Car charging stations were way out of budget for my business when I was opening, but I have been looking at the issue, trying to find a way around expensive trenching over the past year or so. Between the electrical upgrade or addition of new electrical service, the trenching, and the machines themselves, I’d be looking at around \$20,000 dollars (unless I can find a way around the trenching). That’s a huge cost to impose on a new husband and wife operation, just starting out. Being forced to spend thousands to install one off-site is unfair – the type of unfunded mandate that shifts the cost of a public good entirely onto a few private individuals.

Second, the rule does not take into account the project’s surroundings. If there are already high-speed chargers within 15 minutes of the project site, why should that business be forced to install them? I am close to Harpoon Brewery which has high-speed charging available.

As perhaps the most obvious example of an overbroad application, I just don’t see why a seasonal cremee stand should be forced to put in car chargers. It’s a modest business with great opportunities for communities to gather, jobs for young people, etc. Why make it so hard? And most people don’t stick around at the business long enough to charge an electric car anyway. This one size fits all approach is absurd.

Third, I think we should recognize that electric cars are still predominantly the choice of higher income individuals, even though that is changing. Forcing a more modest housing development to put these in will drive up the cost of desperately needed housing. I could see requiring conduit for future installations, but I see no reason to require it for every

single project under Act 250 from a practical standpoint, even leaving aside the point that this is effectively a law, not a land use policy.

We need the housing more than we need the car charging station – if we had to pick one or the other. Your rule doesn't acknowledge that some people either won't build the housing, or some buyers will then be priced out of it. That's no way to solve a housing crisis.

- 3) The limit of 20 events on AOFBs in agriculture and forestry regions (Rural Agriculture and Forestry, Policy 8, Land Use 3-15.) is unnecessary and overbroad.

This is a strange requirement in that it is completely arbitrary and it is applied to only one rural area. It makes no sense to specifically limit it to an agricultural area when the AOFB law was passed to help agriculture stay in business. Why limit the statute's effect where the farms are supposedly located? Why impose a one-size fits all rule when the proposed project site might be a mile from any neighbor's house?

Notably, no municipality could even pass a bylaw like this, which specifically targets farms running events, as opposed to all similar businesses. It would violate state law. I find it hard to believe that the Legislature ever contemplated that an unelected regional planning commission would seek to impose limits on AOFBs when such limits were expressly banned when proposed by municipalities. There is no respect here for the decision of our legislature to support such AOFBs despite the nuisance concerns. This is one more chapter in this planning commission's long history of hostility to these types of businesses by certain staff and appointed members. This rule is an outlier across the state and is unnecessary – a product of personal prejudices, not reasoned policy requested by members of the public.

Indeed, the Legislature this past session chose to exempt many of these businesses from Act 250 altogether – demonstrating a strong state policy in favor of farm viability through diversification in this area. The only concerns the Legislature imposed were with respect to sound and hours of operation. They did not seek to impose arbitrary limits on the number of events. Yet our unelected planning commission knows better? Please show some humility and restraint and do not second guess our legislature until you have actually won an election.

Again, this rule can simply be eliminated and the RPC can argue event limitations on a case-by-case basis. I've heard RPC staff claim that this provision will rarely ever be invoked—in which it case, it is totally unnecessary.

- 4) Policy 2 of Rural General Areas (Land Use 3-12) and Rural Agriculture and Forestry Policy 2 (Land Use 3-15) appear on their face to imply only one structure may contain housing except on paved roads. It is unclear whether you intended to preclude a second structure for housing. It sure sounds that way. That would be a violation of state law in that we have a right to build an ADU "appurtenant" to an existing structure – meaning it could be independent from the primary structure. 24 V.S.A. §4412(E). If that was not your intention, the policy should be clear that it is not intended to prevent a second structure ADU from being built on the lot. Otherwise, the average person might read the rule to preclude an ADU in a separate structure on their property. Clarity is important, as is respecting state law. Again, I would argue that these density restrictions are likely to impede housing

construction and that such decisions should be made by elected, accountable officials in each municipality. I would remove them here and let the democratic process work these issues out.

Provisions with overbroad or imprecise definitions:

- 5) Policy 1 in Rural General Areas (Land Use 3-12) says that any development should be at residential scale that is less dense than adjacent core settlements. This sounds good at quick glance but many rural general areas are not adjacent to any core settlements (mine included). How would we know the comparison?

Second, I presume you mean “housing development.” If it is a business with two storage sheds and one structure for operations, how do you compare that to the density of core settlements? Is each structure considered a house? That seems illogical. It should say “housing development.”

Third, I think you need clarity around whether it is the required density by the plan, or whether it is the actual density in real life. It would seem unfair to do the required density if the existing density level exceeds the plan’s requirements. But if it is the actual density, are you using the entire core settlement area? What if there is significant variation throughout the core settlement area? Are you picking the closest area? Is this policy really necessary? Respectfully, it could be removed and nothing would change—if someone proposes something objectionable, simply argue as much in the Act 250 proceeding.

- 6) Policy 3 in Rural General Areas (Land Use 3-12) seeks to limit housing to five-unit buildings maximum, even though it allows more than one such building. This arbitrary limitation accomplishes nothing but might interfere with housing construction. It is much cheaper to build a six-unit structure than two three-unit structures. What difference does it make to have one structure versus two structures? The site itself might favor just one structure with more units than finding two sites for a structure. Why are we trying to limit housing options in a housing crisis based on a rule that does not take into account the physical landscape of the proposed project? If a proposed project is inappropriate for the site or neighborhood, the RPC can argue as much to the District Commission. An arbitrary rule written by an unelected body should not decide these matters.
- 7) Policy 10 in Rural General Areas (Land Use 3-13) includes lots of vague language (residential scale and form, not primary or dominant use, or unduly affect rural character) that really adds nothing to the ten criteria. It does not appear to be mandatory language, but it could be omitted to avoid unnecessary fighting around this terminology.
- 8) Policy 11 in Rural General Areas (Land Use 3-13) is way too overbroad. Rural commercial activity is valuable to the community as a source of jobs and as a convenience for those living there so they do not have to take long trips to acquire goods. In Hartland, Northern Nurseries appears to be in Rural General and is a perfect example. To impose a principal retail ban, regardless of products, regardless of scale, and regardless of how the proposed project fits into the neighborhood is absurdly overbroad. Not all retail is a Target or Wal-

Mart. Pragmatic retail for rural living, small scale retail, local product retail, or retail just done tastefully can enhance our rural communities.

- 9) Policy 12 in Rural General Areas (Land Use 3-13) again seems overbroad in that it precludes any project that would require paving of a road, and yet the plan contemplates 75% of the future housing will be in such areas. Certainly, some of that housing might require some paving. Do we want to ban any and all housing that might require paving – regardless of all other factors and considerations? Again, the RPC can address each project before the District Commission on a case by case basis instead of a blanket rule. The rule forecloses any flexibility on housing construction in the midst of a housing crisis.
- 10) Policy 3 in Rural Agriculture and Forestry (Land Use 3-15) says that subdivisions “shall” take reasonable steps to do many vaguely described activities. What is considered reasonable is not elaborated on in any way, and some of these matters such as “necessary wildlife habitat” are undefined terms that make application of the rule uncertain. While I agree it is good to encourage projects to address these issues, the word “shall” should be replaced with “should.” Otherwise, a neighbor could sue claiming just about any land is necessary wildlife habitat and hold a project up for years at great expense. If there are site specific concerns, they can be dealt with based on conditions on the ground by the RPC pointing them out in an Act 250 permitting proceeding. We do not need a blanket rule with no context.
- 11) Like Policy 11 in Rural General, Policy 5 in Rural Agriculture and Forestry (Land Use 3-15) prohibits new principal retail, self-storage, warehousing and office buildings in rural areas. These businesses can exist in these areas and provide valuable economic opportunity and services to rural areas. There is no reason to ban them outright regardless of scale or particular impacts. Note White’s Dairy appears to be in this area in this region in Hartland. Again, the sky has not fallen. It is an asset, not a problem, in our community. Why such wide-sweeping rules with zero flexibility??? Some retail and offices are conveniences, not eyesores. We are foreclosing far too much with these rules, rather than address the specifics of each project. Its mindless restrictions like these which will hollow out our communities.

Rural Conservation Concerns:

- 12) Rural Conservation Policy 1 (Land Use 3-19) favors industrial development in these sensitive areas where the money will leave the community and the impact is large in the most sensitive areas. This should be kept in mind when looking at absurdly overbroad prohibitions on many types of businesses like retail or warehouses in rural areas in locations with no serious environmental impact, and where the local citizens will use and benefit from the services (and the money stays in the community). It is difficult to take the strict rules over far less disruptive commercial development seriously in this context— unless we just want to make sure our retirement community state has good cell reception and nothing else.

Rural Conservation Policy 6 (Land Use 3-20) is a significant restriction on land use in that it affects where a person can build a single-family residence on their property. Persons

who bought land in these regions and have yet to develop those lands may not even realize that their land falls in this category. Individual notice should be mailed to property owners in Rural Conservation to ensure that they are aware of these and other restrictions which go well beyond past restrictions, and are beyond what landowners might reasonably expect. For example, Policy 9 (Land Use 3-20) prohibits subdivisions from being more than 10 principal structures (an undefined term). No other area has such a limitation. Policy 8 (Land Use 3-20) appears to require that a subdivision is limited to only 20% of the lot as developable and contains vague restrictions like not making roads or power lines that would further future development into interior areas—this could arguably apply to an extension that only goes to the forest's edge but does not enter it. Policy 12 (Land Use 3-20) limits impervious surface to a single acre regardless of lot size or the nature of the development. And the plan purports to ban any use other than agriculture, forestry, residential, outdoor recreation, and conservation. That draconian limitation also is unique to this area. Owners of these lands deserve individual notice. I find it hard to believe any member of this RPC Board would not want mailed notice if these restrictions were about to be placed on their land.

The reasonableness of these restrictions obviously depends on the lines on the maps drawn. I did not see much of this land in Hartland but it is reportedly 35% of the Two Rivers region.

I strongly object to Two Rivers claiming that any project in this area has substantial regional impact as overbroad – merely by existing in one third of the land in the total region. By claiming “substantial regional impact” for any and all projects in this region, these draconian policies will trump less restrictive and conflicting policies chosen by the towns themselves.

There should be project specific attributes to merit a “substantial regional impact” definition. Two Rivers should not be able to claim an entire region, particularly such a large one, where their regulations will trump conflicting municipal regulations.

Again, regional impact implies that something about the project affects more than just a single municipality. Simply being in a rural conservation area does not mean it is of regional impact.

Minor Edit:

- 13) Rural General Areas Policy 5 should be an “undue” adverse impact, not just any adverse impact.

Concerns about the Substantial Regional Impact Definition:

- 14) Despite being the last subject addressed here, I am most concerned about this definition, particularly in the long term. I fully expect the RPC to add onerous requirements specific to these projects (like the transportation impact study) as the years go by. As those requirements become more onerous, applicants will seek to avoid being deemed a project

of substantial regional impact for cost reasons, and that will lead to expensive fights with abutters or bureaucrats seeking to stifle the project by imposing large costs even if the objections are lacking in merit.

For that reason, I am very concerned about the following highlighted aspects of the “substantial regional impact” definition contained in Chapter 12 of your plan (Implementation 12-2), all of which I would contend are too vague and/or overbroad, and susceptible to dramatically increasing the costs of determining whether a project has regional impact or not:

“f. will necessitate capital grid improvements such as extension, upgrading, or enlargement of electrical transmission lines; or”

The above provision could trigger regional project rules for adding new service at a site, or increasing wire size to an existing service to accommodate greater service—both of which are routinely done in the renovation of a single family residence. Surely that is not of regional impact. Yet it could be argued by a neighbor in an appeal and cost time and money to resolve this.

i. is located in areas of special flood hazard, necessary wildlife habitats or significant natural communities, Class 1 wetlands, areas identified with threatened or endangered species, source protection areas; or the Rural Conservation Area; or”

The above provision is hopelessly vague and can be used by an abutter to claim substantial regional impact exists based on poorly defined terms. Is one instance of a threatened or endangered plant or animal in the vicinity enough, or does the presence of a single animal in the vicinity render the area a necessary wildlife habitat? Or does the presence of certain vegetation consistent with the preferences of a single animal constitute necessary wildlife habitat even in the absence of any proof that an animal lives there? The answers to these questions might all be no, but it would be an expensive court process before anyone loses. These vague standards are a nightmare.

“m. will entail principal retail outside of core settlements; or”

The above provision is unjustifiably overbroad in that any and all principal retail does not have substantial regional impact. It could be of small scale or fit entirely within the rural character by selling wares rural people use, etc. White’s Dairy or Northern Nurseries would be an example in Hartland – no regional impact is being unaddressed right now.

n. will entail any commercial development with structures of more than 2,000 square feet of floor space in the Rural Conservation Area, or 4,000 square feet of floor space in the Rural Agriculture and Forestry Area; or

The above provision is unduly restrictive. These structure sizes are arbitrary and do not consider the nature of the individual project. Simply because a structure is 4000 square

feet does not mean it is impacting the entire region. This provision also appears to question whether subsection i was meant to include anything in Rural Conservation, because, if it were, this provision regarding 2,000 square feet would be entirely redundant. This should be clarified in the next draft.

o. will construct public, private, or nonprofit facilities or utilities meant to serve multiple towns within one mile of a municipal boundary; or

This is a geographic jurisdictional claim dressed up as a project attribute claim for jurisdiction. I cannot think of any local business that can claim it serves members of only a single town. This provision essentially makes a two-mile swath – one mile on either side of all municipal boundaries – in the region subject to RCP rules even when in conflict with municipal rules.

My project was deemed a minor and did not require a hearing. Yet under this rule, I'd be considered to have substantial regional impact because I'm within one mile of Windsor. That is absurd.

p. affects the existing or potential capacity to provide essential or required public services by one or more municipalities adjacent to the municipality where the proposed development is located due to direct and indirect impacts; or

The above provision is overbroad and should at least include “unduly” or “substantial” or something akin to those terms before “affects” to ensure that modest and foreseeable reasonable impacts are not sufficient to trigger the substantial regional impact definition.

Respectfully submitted,

Todd Heyman