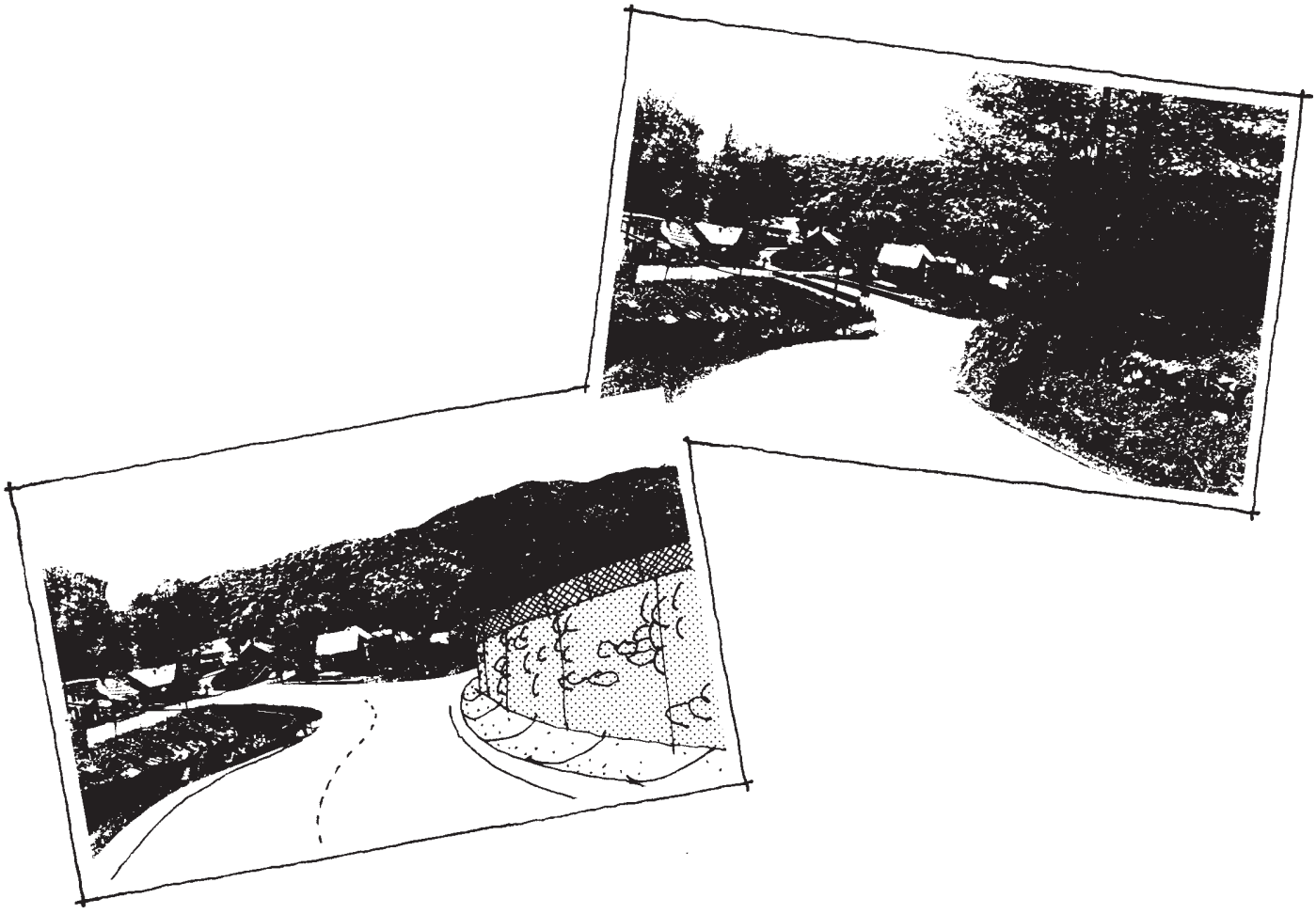
A State Highway Project in Your Town?

Your Role and Rights
A Primer for Citizens and Public Officials

by Jim Wick



A Preservation Trust of Vermont Publication

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Author's Note

This booklet came to be written because of a bridge replacement project that was proposed for my town, Tunbridge. Many citizens and public officials felt that the project was unnecessarily large and out of scale for its village setting. After a year of sometimes difficult negotiations with Vermont Agency of Transportation we were able to agree on some modifications to the design, improving the project to a degree.

During the process we operated with little information on the law, the issues, and the process, and with little help. Some basic knowledge would have been very helpful to us. This booklet is intended to provide this information to citizens and public officials in other Vermont towns.

From that experience I developed a definite point of view about highway issues which is reflected in this booklet. However, my point of view aside, I have attempted to provide accurate, credible documentation for assertions in this booklet.

This is particularly true for statements about applicable laws. Much of the legal information comes from publications called Selected Studies in Highway Law, and Legal Research Digest, both of which are published by the Transportation Research Board, a research arm of the National Academy of Sciences. The purpose of these studies is "to furnish thoroughly researched reference material on highway and transportation law...", according to an introduction to the publications. The studies are prepared by attorneys specializing in highway law and are overseen by a board made up of attorneys, state attorneys-general, state transportation officials, Federal Highway Administration officials, counsels to state departments of transportation, and others from the transportation industry; in other words **not** an environmental/preservation group. These studies can be found in the Vermont State Library in Montpelier, open to the public.

Paul Gillies, of Tarrant, Marks, & Gillies and former Deputy Secretary of State for Vermont, has provided invaluable help by reviewing this handbook for accurate legal content. Advice on highway engineering matters has been provided by Walter Kulash, P.E., Senior Transportation Engineer, Glatting, Jackson, Kercher, Anglin, Lopez, Rinehart; Orlando, FL. Mr. Kulash is a licensed professional engineer and an experienced highway planning engineer interested in "livable" highways.

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Introduction

More Highways for Vermont

A lot of money will be spent in Vermont on highway projects over the next several years. The Vermont Agency of Transportation (VAOT) has a 5 year Capital Plan listing about 200 projects and plans to spend approximately $150 million a year on them. These projects will be of all kinds, and will occur all over the state, perhaps in your town.

Conventional Highway Planning

The traditional philosophy of modern highway planning has always been to move more cars greater distances at higher speeds. To do this, techniques of modern highway engineering have evolved, with elaborate methods and exacting standards. New highways built to these standards are wider, straighter, and flatter than the ones they replace. The Vermont country road and village street, much revered here and across America, are looked on as substandard and deficient, things that should be changed. Until recently this has been the predominant philosophy at VAOT at all levels.

The Side Effects

Frequently ignored are the side effects of such changes. Few creations of man have such widespread effects upon their surroundings as do highways. Whatever their transportation or economic benefits, modern road projects often seem not to "fit in" very well; there is a tendency to overdo things. The wider, straighter, flatter highways often alter the character of the landscape and the nature of communities. There is more asphalt and cars move faster. Scenic and natural features are often compromised. Trees and stone walls are removed. Land use patterns are changed. Town life is altered. Taken as a whole, these side effects change the appearance and character of our state and could make it a less desirable place to live, work, and visit.

A Good System

In reality we have a good system of roads in Vermont, even though most do not meet modern standards. Well-known trouble spots excepted, most Vermont highways are still pleasant, fun to drive, uncongested, reasonably convenient given the terrain, and seem to serve their purpose quite well. For people really in a hurry the Interstates and main arterials are available. If there were ten million people living in Vermont our basic system would not be adequate, but we are still a small state and will remain that way for some time to come. There is no need to change the basic nature of our highway system for the foreseeable future. Nor can we afford to.

Feasible Alternatives

We have been educated to believe that our only choices are to do nothing and tolerate whatever transportation problems arise or to build big scale highway projects.

These are <u>not</u> our only options. Fortunately it is possible to have a safe, efficient, and useful highway system for Vermont without undue adverse side effects. There are many examples here and across the country of "livable" highways which meet legitimate transportation needs, are adequately safe, support economic activity, qualify for federal funding, and still fit in well with their communities. It is a matter of balancing legitimate interests, defining projects properly, and working thoughtfully within those standards as may apply. These things are possible if a town is willing to be active in its self-interest.

Changes at VAOT

During the past several years there has been genuine and constructive change at VAOT. There is new leadership at the agency. A major revision to the state's Long Range Transportation Plan, adopted in 1995, shows new and welcome thinking. There are new Vermont standards for highway design. The official policy at VAOT is now to favor maintenance of the existing system over construction of new highways. Overall the outlook is

much more encouraging.

Yet, at the actual project level, much remains the same. Too many projects are still carried out in the old way at high cost, using conventional design practices, and contrary to local wishes. The new thinking has not fully reached all levels within VAOT.

The Purpose of this Handbook

This handbook has been written to assist towns to achieve the goals **they want** from state highway projects, **whatever** those goals may be. This handbook outlines:

- The **Process** of bringing a highway project to your town, (Chapter I.)
- Highway Design **Principles and Issues,** like traffic flow, speed, safety, etc., (Chapter II.)
- **Laws, Rules, and Policies** which affect highway projects, (Chapter III.)
- **Strategies** which a town might use to achieve its goals. (Chapter IV.)

This handbook does have an admitted bias in favor of low impact highway projects. It is intended as an advocacy document, not a planning document. It is written with the hope that VAOT policy will continue the present trends toward more modest and cost-effective projects, emphasis on repair and maintenance instead of expansion, greater interest in maintaining the character and beauty of the state, and increased consultation with towns about projects. This booklet is intended to encourage these trends.

This handbook **does not** question the need for a good highway system or seek to reduce money spent on highway construction. It **does not** seek to change the basic responsibilities of VAOT or reduce its budget. It **does not** seek to curtail personal vehicle travel.

No matter the point of view of this handbook, the information presented here can be used by a town to advance **whatever** interests it may have in a highway project.

Overview of this Booklet

- A town may influence the design of a State highway project if it is active and forceful in pursuing its objectives. The stated policy of VAOT is now to work cooperatively with towns on projects.
- Whatever the merits of Vermont's past highway planning policies, they have not been cost effective. Too few projects have been done, at too great a cost, with too little practical benefit. Any common sense highway policy should take into account how to get the most for our money.
- The process of building a highway project is lengthy, with many steps and approvals. A town has **one chance** under Vermont law to turn down a project within its boundaries.
- Published standards normally govern highway design, but they are not absolute requirements. The standards are subject to much interpretation, and in all cases are subject to exception where reasonable and prudent. Deviations from standards often occur in actual practice.
- Safety is an important factor in highway design, but not the **only** factor. The State is legally obligated to design highways which are reasonably safe for the prudent driver. The State is not required to **ensure** the safety of drivers. Fears of liability are often exaggerated. Many older highways do not meet modern standards and are safe anyway.
- America needs a good "infrastructure," but the economic benefits of piecemeal improvements are hard to find.
- Highway improvements may or may not bring about traffic/safety improvements or other benefits for the motorists. Quite a bit of money is spent on highway projects which do not result in a better or safer driving experience. Higher speeds are not usually a very good solution to traffic problems.
- Highway projects **do** have numerous and far-reaching side effects, some good and some bad. Very often these effects are not even identified, much less heeded, when highways are designed.
- Several federal and state laws affect highway projects by limiting or regulating their impact on scenic, natural, or historic resources. Many of these laws are not enforced, however, unless towns or citizens insist.
- A town wishing to influence a highway project should begin its work early, before too much engineering has been done.
- A town should make a clear, simple case and involve a variety of persons and groups as allies. Help is available from many sources, usually at no cost.

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Chapter I. The Highway Construction Process

This chapter describes the process by which highway projects, large and small, are planned, designed, and built here in Vermont. It explains when and how a town may interact with this process.

The Importance of Community Involvement

Whatever the various laws may say and whatever the written procedure, a town will only be able to influence the course of a highway project within its boundaries if it is clear and assertive about its wishes. It does not matter who makes this effort - the Selectboard, the Planning Commission, a Conservation Commission, local associations, or private citizens, but somebody has to.

In the absence of such an effort, the project design tends to be determined by engineering criteria alone. The Agency's mission has historically been to safely move more cars at higher speeds. Despite recent changes in thinking at VAOT, bringing other considerations to bear in a given situation still requires firm input from the town over a long period of time.

The Typical Process

The Agency actually goes through several steps in building a typical project. The following description is a summary of those steps.[1]

- **Project Selection**

  Until recently, projects were selected by VAOT staff, mostly on the basis of engineering criteria, with little local input. Under the old system the "5-Year Capital Plan" grew to a list of over 800 projects, realistically a 20-year supply. New projects were added to the list faster than they were completed. With so many projects "moving forward" very little was actually getting done.

The leadership at VAOT realized that the situation could not continue. The current policy at VAOT is to develop a 5-Year Capital Plan that can really be accomplished in five years. In practice this means that hundreds of projects in the old Plan will be abandoned or postponed. Very few new projects will be added to the list. "Project selection" now often means "weeding out."

VAOT has delegated part of this planning to Transportation Advisory Committees, (TAC's) organized under the Regional Planning Commissions.[2] (If they wish, towns send delegates to these committees; some do, some don't.) It does appear that towns, acting through their TAC's are able have some influence on the selection and prioritization of projects.[3] The TAC's reviewed many projects in the old Plan and provided guidance on those which should be retained, modified, or scrapped, taking into account the wishes of affected communities. The recommendations are being taken into account to an extent in developing the current version of the Plan.

A town can also sometimes influence the list by direct action - negotiation with VAOT or through the local legislative delegation.

- **Scoping**

  "Scoping" is a new step in the process. It is a good faith attempt by VAOT to assess early-on and take into account all the considerations which may bear on a highway project and then to define (scope) the project in such a way as to best satisfy competing interests. Scoping occurs at the beginning of a project, before too many lines have been put on paper.

  In VAOT's own words, scoping

  . . .investigate[s] a broad range of concerns . . .includ[ing] environmental, eco-

1. VAOT uses a numbering system and nomenclature to describe the steps; this summary does not attempt to follow this system exactly.

2. The author is a member of his TAC.

3. Besides working on this project list, the TAC's have been a surprisingly effective voice for new thinking about transportation issues. Some of the Regional Transportation Plans have been quite clear and quite blunt in calling for changes in VAOT policies. TAC staff members have been effective and knowledgeable in testimony before the Legislature. And it is apparent that the Legislature takes the recommendation of the TAC's seriously as it considers annual approval of the 5-Year Capital Plan.

nomic, social aspects in addition to engineering considerations. . . [Initial studies] will eliminate delays, emphasize cooperation with and among agencies, provide swift and fair resolution of disputes, identify environmental issues deserving of study at an early stage, and better define the recommended solution. . . . The solution. . . must minimize cost, disruption to residents, and land use impacts. It must also incorporate the input from the local community and have public acceptance. The best solution is the one that balances all of the issues. . . .[4]

Scoping is carried out by VAOT planning staff. A number of public hearings/meetings usually occur including an early "local concerns" meeting,[5] and a subsequent presentation of project plans. The scoping team may include outside experts from other state departments or elsewhere. The team develops at least three alternative solutions for review by the Project Definition Team (PDT) which consists of senior VAOT staff **and** representatives of the town and Regional Commission.

The scoping process is new, and very few projects have moved all the way through from scoping to design to completion. Nevertheless there are some real success stories coming from the process.[6]

Although scoping is the official policy of VAOT, it by no means applies to most projects. The scoping staff can only handle 25 or so projects per year. Most of the 200 projects in the current 5-Year Capital Plan were never scoped and never will be; these are old projects that were defined mostly by engineering criteria. Paving projects are not scoped. Town highway/bridge projects have only limited scoping carried out within the VAOT Structures section. In short, most of the projects VAOT will complete in the next several years will not be scoped.

4 . Project Scoping Manual, Vermont Agency of Transportation, 1995, pp. 1-2.

5 . "The function of this meeting is not just to gather information and answer questions, but to foster a working relationship with the local community. . . . Generally the public is not specifically invited since the focus of the meeting is to obtain a concise statement from the town leaders. . . [however] in no case will the public be turned away." Project Scoping Manual, pp. 6-8.

6 . For instance, the Town of Sharon felt that the scoping process was helpful for their project on Route 132.

- **"Line and Grade"**

Active projects move into the first stage of engineering called "line and grade."[7] This means defining the basic layout of the road in plan and vertical alignment. A plan view is produced which shows the proposed location, existing roadside features, proposed length, width, curve radii, banking, and shoulders. A "sectional view" shows how the road rises and falls.

At this point there may be very little detail in the plans; they may only show pavement. They usually do not show retaining walls, curbs, plantings, fences, guard rails, or the appearance of a bridge. For a lay person they provide little information; however an experienced person can usually figure out the probable nature and implications of the project from these plans.

- **Land Taking - The "502" Process**

Very often the line and grade studies indicate the need to acquire additional rights of way. If so, the State must go through certain procedures referred to by the state law which applies," Section 502" of Title 19. (See Appendix 2). The 502 process is technically to confirm the project's "location," but since the needed land takings must be described, in practice it is about the size and nature of the project.

The Agency gives notice of a public hearing called a 502 hearing, held in the town affected by a project. Although these hearings are legally warned, they are seldom publicized and are sparsely attended. An engineer from VAOT will describe the project, present the "line and grade" plans, and answer questions. VAOT may make changes to the plans on account of public comments, but is not obliged to do so. Frequently VAOT attempts to quietly resolve any apparent conflicts with the Selectboard.

If it is not satisfied, a town may reject the project at a properly warned regular or special town meeting held within one year of the 502 hearing.[8] If this occurs, VAOT may proceed with the project only after successful petition to the Vermont Legislature. This is the **only** chance for a town to turn

7 . When projects are scoped, "line and grade" is usually part of that process.

8. 19 V.S.A. § 1511. (See also Chapter IV.)

down a project!

At this point the Agency also begins to circulate plans to various other state and federal agencies, such as Historic Preservation, Agency of Natural Resources, and Army Corps of Engineers, to obtain their sign-offs on the project. This process can take some time and often extends across several of the project steps.

- **The "Transportation Board"**

This Board is an independent body of nine members appointed by the Governor. Board members may attend the 502 hearing.

> *Following the hearing, unless otherwise directed by the board, the agency may proceed to lay out the highway and survey and acquire the land. . . .*[9]

Although this would seem to imply that the Board has the right to direct the Agency, in practice the Board considers that it only has the right to "recommend" the overall approach to the project.[10] In reality the Board seldom affects the overall solution.

- **Final Design, Permits, and Reviews**

The Agency proceeds to draw up detailed construction plans for bidding, which show all work to be included. These are technical plans and are not readily understandable by a lay person. They are supposed to conform to the "502" plans, but in practice quite a few changes may be made.

At this time the Agency must finalize any necessary permits and obtain any needed sign-offs from state or federal agencies. The Agency must get any state and federal permits which would be required of an individual, but **does not** need to obtain any local permits.

During this period, the Agency negotiates with landowners regarding compensation for rights of way. In the rare cases where agreement is not obtained, the Agency may seek court intervention.

- **Final Approval and Construction**

The Agency now seeks final approval of the project from the Transportation Board and files a "necessity petition" with the court.[11] These are usually formalities.

The Agency also obtains funding authority from the Legislature, usually as part of the annual appropriation for capital projects. (Even though the majority of projects are supported with federal funds, budget approval flows through the Legislature.)

Once the above approvals have been obtained, the project is bid and constructed. **No** further approvals or reviews are required at the local level.

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Chapter II. Highway Planning - Principles and Issues

Highway design can be a confusing matter, with many issues being involved. This chapter describes some of them. Later chapters describe existing laws and how towns can work with laws and procedures to achieve their objectives.

Cost and Cost Effectiveness

Whatever else, Vermont's highway planning policies should be cost effective. Until recently they have not been. Project selection policies have been shortsighted and individual projects have been too expensive for the transportation benefits obtained.

- Selection of projects has been mainly by very narrow engineering criteria resulting in scattershot expenditures on unrelated projects. A curve has been straightened here, a bridge replaced there, a short length of road widened somewhere else, all to a very high standard. We have gotten expensive little

9 . 19 V.S.A. § 502

10 . According to the Board's Executive Secretary in a conversation with the author, 2/18/98.

11. 19 V.S.A. § 501 et seq. Necessity petitions are usually successful. By law "necessity" is supposed to take into account scenic values and environmental impacts. See Appendix 2.

bursts of modern technique but minimal overall transportation benefit. A map of recent projects reveals no overall plan for improved travel, no allocation of funds toward an overall purpose.

- Reliance on conventional design practices has resulted in **very** expensive projects. A great deal of money has been spent to achieve very little. $400,000 will be spent to replace a one-lane bridge on a minor town road,[12,13] $4.6 million to rebuild 2 miles of secondary road, and so on.[14]

$4.6 million for 2 miles of this

in the middle of 35 miles of mostly this.

Bringing all Vermont roads up to ideal standards is not achievable with the money realistically available. This reality has been acknowledged by the Agency itself in its current Long Range Plan[15] and in the new Vermont State Standards.[16] Recent thinking at the Agency has been in the direction of developing more cost effective policies, both in project selection and design. Unfortunately the inertia in the backlog of projects, many quite expensive, is a big hurdle to overcome.

"Sufficiency Ratings"

Any discussion of a highway project is likely to focus on the "sufficiency" of the existing road. Each state highway and each bridge has a "sufficiency rating," which is like a grade, and is compiled by VAOT. The maximum rating is 100, and as highways or bridges decline from this grade they are seen as needing reconstruction. Until recently, sufficiency ratings were the primary means of selecting projects; most of the backlog of projects in the 5-Year Capital Plan got there because of low sufficiency ratings.

A sample of a sufficiency rating for a highway is attached as Appendix 7. The criteria for determining sufficiency are strictly engineering criteria: drainage, pavement width, grade, speed, accident history, structural condition, and so forth. Narrow roads are always downgraded, as are roads which do not allow high speeds, whether or not they are actually giving adequate service. Sometimes a bridge will get a low rating just because it is narrow and slow, even though it is structurally sound and perfectly adequate for its actual use.[17]

It is important to note that many factors which are actually important to towns are not reflected at all in the sufficiency ratings. For instance, a highway gets **no points** for being fun to drive, for being scenic, for being a "good neighbor" to adjoining properties, for fostering desirable land use patterns, for respecting natural features or historic resources, or for just "fitting in." Even a road that functions quite well can have a poor rating. An example would be Route 110 from South Royalton to East Barre, which is well liked by local people as a

12. As was proposed for Stockbridge some years ago. See the Boston Globe of 1/2/98, p. B1.
13. Some towns have discovered that they can build bridges on town roads for about 10% of the cost of VAOT proposals. (Sue Spaulding, Town Manager, Town of Chester, in testimony before the Senate Transportation Committee.)
14. Route 302 in Groton/Rygate. Source: 1998 Capital Plan.
15. Vermont's Long Range Transportation Plan, Montpelier, Vermont Agency of Transportation, 1995, p. 85.
16. Vermont State Standards, Montpelier, Agency of Transportation, 1997, p. 83.
17. Although hundreds of bridges in Vermont have a poor sufficiency rating, only a few are actually structurally unsound.

pleasant, functional, uncongested rural highway. Nonetheless its Sufficiency Rating ranges from "bad" to "poor" for most of its length.[18]

Sufficiency Rating: 26.5 "Bad"- the worst possible rating

Design Standards

Modern highways are usually designed according to a lengthy handbook put out by the American Association of State Highway Transportation Officials, (AASHTO), known as the "Green Book," or the "AASHTO Standards."[19] The handbook contains detailed recommendations for width, slope, curves, banking, shoulders, sight distance, and so forth. The recommendations have the goal of improving traffic flow, speed, and safety. The standards contain practically **no** consideration of the side effects of highway projects, such as the appearance of the highway corridor or impact on land use within a community. These standards were developed in the midwest long after Vermont's highway system was in place and do not reflect Vermont's landscape. Hardly any of Vermont's older roads meet these standards.

The standards are reasonable but conservative. Transitions into curves are gentle. Slopes are designed so that big trucks won't have to slow down very much. And so forth.

The AASHTO standards are no longer legally binding for most projects. Nonetheless, they have formed the bedrock of modern highway planning theory and are the basis of a highway designer's professional training. The AASHTO standards are so deeply rooted in the thinking that it is hard to move beyond them.

Vermont Standards

VAOT has recently developed and issued a set of state standards.[20] These are legally binding on projects carried out by VAOT, including most of the projects now in the pipeline.[21] The document is short and fairly easy to understand; it is essential reading for anyone interested in a specific highway project.

Overall these standards reduce construction requirements compared to AASHTO to suit the Vermont landscape, character, and existing road system. The most significant technical provisions include:

- Reduction in allowable design speeds. Additional reduction in design speed for curves.
- Reduction in lane and shoulder width, especially on "major collectors" (usually two lane rural roads.)
- Reduced "clear zone" requirements.

In addition to specific technical requirements, the standards contain significant policy provisions, including the following:

> *The Standards have been designed to be flexible and to allow and encourage creative methods to minimize impacts. . . . All Transportation projects in Vermont must be designed to minimize negative impacts. . . .(p.1)*
>
> *. . .the design of new transportation facilities in Vermont must balance multiple factors: . . safety. . . transportation policies. . . mobility. . . historic. . . natural resources. . . environmental factors. . . social context of communities. . . economic development. (p. 2)*
>
> *Roads and bridges should be designed to specifically fit into the situational context of the area...city, town, village, suburban and rural areas. (p.4)*
>
> *. . . some projects may require. . . easing [of] geometric values. . . to avoid or reduce impact to the natural and built environment. Should such situations become unavoidable*

18. Sufficiency Ratings of Vermont State Highways, Vermont Agency of Transportation, 1991, (most recent data) p. 44.

19. The official title is A Policy on Geometric Design of Highways and Streets, Washington, DC, American Association of State Highway and Transportation Officials, 1994.

20. Vermont State Standards, Agency of Transportation, Montpelier, 1997.

21. But are voluntary for projects carried out by towns, even when using general state aid. See p. 8 of the Standards.

then an exception . . . may be appropriate. . . in accordance with the "VAOT Design Exceptions Policy. (p. 8-9)

In the opinion of this author the new Vermont State Standards are an important and positive step forward in the direction of livable highways. Used creatively they can result in reasonable, moderate impact projects, especially on lower volume roads.

But they are new and there is little experience with them. Some designers oppose them outright. Inertia may prevent their use on many projects now in the pipeline. Towns will still need to be assertive to benefit from these new standards and may still find specific provisions quite troublesome.

What the Standards Don't Cover

Designers often assert that the standards cover most aspects of a design, but there are major decisions that are **not determined** by any standards. Very often these decisions have more effect on the nature of the project than what the standards do cover. The standards **do not** define the transportation problem to be solved or the basic way of solving it; they provide dimensional guidelines once those decisions have been reached. Quoting in part from a recent Federal Highway Administration publication:[22]

The Green Book is not a design manual. It provides guidance on the geometric dimensions of the roadway.... There are many aspects of design that are not directly addressed in the Green Book. A number of these items are as follows:

- *Problem definition*
- *Project definition*
- *Definition of the termini [extents] of the project*
- *Development of a project concept. . .*
- *Design within the appropriate context*
- *Determination of the appropriate functional requirements, capacity, level of service*
- *Structural design*
- *Landscape development. . . .*
- *Roadside developments. . . .*

A similar list could be made for the new Vermont State Standards.

Legal Status of the Standards

The legal status of the various standards is as follows:

- The AASHTO standards **have never** been adopted in Vermont by law or administrative procedure. Their continued use is a matter of custom, habit, and because of their historical importance.
- Conformance to the AASHTO standards is **no longer** required for receipt of federal funds except for major "National Highway System" routes - Routes 2, 4, 7, 9, 103, and the Interstates.[23]
- The new Vermont standards are legally binding for all work carried out by VAOT, but they are subject to the many qualifications described below.

Conformance to the Standards

The AASHTO and Vermont standards are a practical guide for the highway designer, not a straitjacket. There are many situations where deviation from the standards is permissible and appropriate, as described below.

- **All standards** including the new Vermont standards are subject to **exception** for good cause. There are formal written exception policies at both the state and federal level.[24] The Vermont standards specifically allow exceptions in order to reduce impacts on the natural and built environment. Federal law specifically includes cost as a factor.

  In actual practice designs for all kinds of highway projects **frequently** fail to meet standards in some respect or other. Normally this is because some technical standard is difficult or too expensive to satisfy in a particular case. It was found that 75-90% of all federally funded projects in the northeast at one time were granted design exceptions.[25] Because of Vermont's difficult local conditions, some degree of lingering "deficiency" may remain with most projects, and thus the degree of adherence to

22. Flexibility in Highway Design, Federal Highway Administration, 1997, p. 28.

23. 23 C.F.R. § 625.3 a (2).

24. 23 C.F.R. § 625.3 a (2) f. Also Federal Aid Policy Guide, FHWA, 1995, p. 14. Also Vermont State Standards, pp. 8-9.

25. Designing Safer Roads-Special Report 214, Transportation Research Board, Washington, 1987, p. 26.

the standards is a matter of design judgment.

Engineers tend to be flexible in pursuing exceptions to a standard for a technical reason; they are much less flexible in doing so because of a community, scenic, or historic interest. But legally there is no difference between the two situations. The new Vermont standards specifically note that the exception process may be used to protect "important resources or values."[26] Recent Vermont legislation specifically makes it clear that "purposeful" deviations from the standards are acceptable.[27]

- Moreover, the AASHTO standards themselves do not claim to be absolute requirements. The AASHTO standards are a **policy**, not a specification like a building code.[28] The term "standards" is generally used, but "guidelines" would be a better term. The "Foreword" to the current (1994) edition states that "Sufficient flexibility is permitted to encourage independent designs tailored to particular situations."[29] Likewise, the Vermont standards stress the need for flexibility and offer specific tools to mitigate adverse effects.[30]
- The AASHTO standards are intended to apply primarily to **new** highways, not repairs to existing ones. The "Green Book" itself states, "This publication is not intended as a policy for resurfacing, restoration, or rehabilitation (R.R.R.) Projects."[31] For R.R.R. projects, (most projects in Vermont) AASHTO specifically recommends using TRB 214 as the appropriate standard.[32] (See Appendix 4 for a discussion of TRB 214.)
- The standards often give a range of values; they do not imply that the larger value is preferable to the smaller. This is a project-by-project judgment.
- Neither the standards nor the law require upgrading of existing highways to meet current standards. Failure of an existing highway to meet current standards **is not** the problem to be solved. Courts have found that the mere fact that a highway fails to meet current standards is not a requirement that it be altered, rebuilt, or modified to conform, unless there is a known "dangerous condition."[33] The "Green Book" states, "The fact that new design values are presented herein does not imply that existing streets and highways are unsafe, nor does it mandate the initiation of improvement projects."[34]
- Very often a project can be redefined to fall into a lower category in the standards. For instance, if the design speed is reduced, the road can be scaled down and still meet the standards. A recent Vermont law gives VAOT the specific authority to reduce design speeds without requiring a formal exception.[35]
- There are also opportunities (or legal requirements) to waive the standards in particular circumstances, such as where historic or other resources are impacted, as described further in Chapter III.

The subject of adherence to standards is thorny and contentious. To summarize: the standards are a practical guide for highway construction, especially new construction, and they are somewhat flexible. They do not define the problem to be solved nor the overall approach to the solution. AASHTO standards are not legally binding for most projects, but Vermont State Standards are. In any event, both are subject to interpretation, and exceptions are available on account of local conditions, costs, environmental matters, and other reasonable concerns in the public interest. They **cannot** be ignored outright or waived out of carelessness, inattention, or lack of concern for the consequences.

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26. Vermont State Standards, p. 9.
27. 12 V.S.A. § 5601 (e) 8. (See also Chapter III.)
28. Netherton, Dr. Ross D., "Legal Aspects of Historic Preservation in Highway and Transportation Programs," Legal Research Digest, Washington, DC, Transportation Research Board, Number 20, May 1991, p. 34.
29. AASHTO "Green Book," p. xliii.
30. Vermont State Standards, p. 1 and elsewhere.
31. AASHTO "Green Book," p. xliii.
32. AASHTO "Green Book," p. xliii. See Appendix 4 for discussion of TRB 214.
33. Vance, John C., "Legal Implications of a Highway Department's Failure to Comply with Design, Safety, or Maintenance Guidelines," Legal Research Digest, Washington, DC, Transportation Research Board, Number 26, December, 1992, p. 9. See also Thomas, Larry W., "Legal Implications of Highway Department's Failure to Comply with Design, Safety, or Maintenance Guidelines," Selected Studies in Highway Law, Vol. 4, Ross D. Netherton, Editor, Washington, DC, Transportation Research Board, 1991, p. 1966-N24, N29.
34. AASHTO "Green Book," p. xliii.
35. 19 V.S.A. § 10c (b). "S. 305" has many other useful provisions; see Chapter III.

Highway Safety

Safety is a legitimate issue in all highway design and is a matter of sincere professional concern to design engineers. Safety concerns are usually raised to justify the rigorous application of the standards. However:

- The State does not have a legal duty to **ensure** the safety of motorists, as long as it designs highways which are **reasonably** safe for **prudent** drivers.[36]
- In reality the relationship between the standards and safety is complex. Meeting standards does not guarantee safe highways; deviating from them does not guarantee accidents. The Interstates are designed according to the standards and indeed are amazingly safe considering the traffic and speeds; but even the Interstates in Vermont contain numerous "H.A.L.'s" (High Accident Locations.)[37] Conversely, there are many highways in Vermont which greatly deviate from current standards, yet have a good safety record year after year. Examples would be Routes 110 and 66.[38]
- Consistency in road conditions contributes greatly to safety.[39] A stretch of road that is uniformly too narrow, too curvy, too steep may in fact be safer than the same stretch with several short "improved" sections. This is because motorists get an idea of what to expect with consistent albeit substandard conditions. Simply following the standards does not automatically mean that the state has satisfied its duty to the public; failure to properly take into account the particular circumstances of a situation can amount to negligent design.[40]
- "System safety," meaning the most overall safety for the most roads, is best achieved by making numerous, consistent, small-scale, low-cost improvements throughout the system rather than by concentrating on a few "textbook" projects.[41] Accomplishing projects in an ideal manner costs so much money, especially in the difficult Vermont terrain, that needed funds are drained from other worthwhile improvements.

AASHTO at Work - A Dangerous Intersection

- There is some evidence that bringing short portions of old road systems like Vermont's up to modern standards really does not contribute to safety. For instance, there are 7 "High Accident" (H.A.L.) intersections within 20 miles of the author's hometown.[42] All but one of these has been modernized to or close to AASHTO standards. The picture above shows the intersection of Routes 14 and 5. It has the full AASHTO treatment - paved shoulders, left turn lanes, right turn lanes, islands, signals, big signs, etc. It has a very poor accident history. It is easy to imagine why this might be so. The complicated design is very confusing in comparison to the two-lane roads which feed it. The wide pavement sends the message "speed up"; the right message is to slow down.
- AASHTO standards are mostly designed to produce safety for the **motorist**, not anyone else. For instance, a high speed road with wide paved shoulders is much less safe for a pedestrian to cross. It may not be at all safe to improve a road through a settled area with pedestrian activity. Safety for others receives relatively little attention in the standards.

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36. Sometimes the guidelines are just applied without any effort to see if a safe project will result. See the public record of the "502" hearing for the Tunbridge bridge replacement project, January 27, 1992, p. 37-41. See also. Kenneth G. Nellis, "The Public Duty Defense to Tort Liability," Legal Research Digest, Transportation Research Board, Number 17, December, 1990, p. 22. See also Thomas, "Liability of State...," p. 1787.
37. High Accident Locations, Vermont Agency of Transportation, 1992, p. 10.
38. High Accident Locations, 1995, pp. 8, 11.
39. "Design Consistency and Driver Error," Mark D. Wooldridge, P.E., paper given at Transportation Research Board Annual Meeting, 1993, p. 1 and elsewhere.
40. Thomas, "Legal Implications....". p. 1966-N23.
41. The source of this finding is TRB 214; see Appendix 4.
42. High Accident Locations, 1995, pp. 37-53.

- Highway geometry (layout) is only one cause of accidents and not the most important. Drunken driving is a much more likely cause, as are speeding, driver experience, law enforcement, vehicle condition, traffic, weather, and animals in the road.[43] Yet we seem willing to spend a lot of money to correct geometry and very little on other measures which could improve safety just as much.[44]
- Safety is an important consideration, but is not the **only** factor which is legally relevant, as is often claimed. As individuals and as a society we frequently choose some benefit ahead of safety. As a society we increased the national speed limit to 65 mph, even though we predicted that roads would be less safe. Federal regulations recognize the need to weigh various factors, such as cost, in deciding whether to adhere strictly to standards.[45] Cases here in Vermont clearly point to a balancing of interests in determining the appropriate design for a road.[46]

In summary, safety is a legitimate consideration in all highway planning. But achieving safety is a complex matter requiring careful thought in each case. It is not achieved by blindly following the standards on every project; it is not necessarily compromised if standards are relaxed for good cause.

It is also the sovereign right of the state to set a balance between safety needs and other legitimate public concerns, through properly considered laws, policies, and regulations. Vermont has done just that through the new Vermont State Standards and recent legislation.

Liability

Concerns about liability are often raised at the state and local level. State officials often claim that they are putting the welfare of the state, or even their personal welfare, at risk if a highway design does not meet AASHTO standards. Lawsuits against state transportation departments are increasing. Town officials may have the same concerns. However, real liability exposure for either State or town officials is not very great.

The State's basic legal duty is <u>not necessarily</u> to follow the standards; it is to be reasonable and prudent in designing and building highways.[47] Proper application of standards needs to be viewed against this fundamental principle.

- Very few lawsuits are brought on account of negligent highway **design**. Most lawsuits against transportation officials have to do with inadequate maintenance, signals which are not functioning, unsafe construction sites, and so forth.[48]
- Courts have found that failure to meet standards, even when they legally do apply, is not by itself sufficient to establish negligence on the part of the highway designers, other information being necessary to determine whether negligence occurred.[49] There may be justifiable reasons for relaxing the standards, such as failure of the standards to adequately apply to a particular situation, failure of the standards to bring about the desired result, apparent conflict with other laws and regulations, conflicting public interests, unreasonable cost in applying the standards, or other legitimate reasons. The state is likely to be quite safe when formal exceptions procedures have been followed and documented.
- A plaintiff must prove negligence, not just deviation from a standard. It is difficult to prove negligence in highway design. "Most juries are suspicious of these cases. It's like salmon swimming upstream. Not that many make it."[50] This should be even more the case where designers have kept a careful record of the reasons for design decisions and any exceptions.
- Recent legislation specifically protects the State from claims on account of selection of one standard

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43. 1988-93 accident data for Addison, Orange, Rutland, and Windsor counties, provided by VAOT.

44 . The new DWI strike force has been a “tough sell” in the Legislature. But it costs as much to eliminate <u>one</u> accident by replacing bridges on minor roads as it costs to hire one trooper for an entire year. (Derived from data in <u>TRB 214</u>.)

45. 23 C.F.R. Section 625.3 (f) 2.

46. See the decision of the Environmental Board regarding a bridge project in Barre, Land Use Permit Application # 5W1167-EB, 1994. See also 12 V.S.A. § 5601 (e) 8.

47. Thomas, Larry W., "Liability of State Highway Departments for Design, Construction, and Maintenance Defects," <u>Selected Studies in Highway Law, Vol</u>. 4, Ross D. Netherton, Editor, Washington, DC, Transportation Research Board, 1991, p. 1787. See Appendix 5.

48. Walter Kulash, P.E., at the Vermont Design Institute. See also Marcotte, Paul, "When Roads Kill," <u>ABA Journal</u>, May 1, 1988, p. 84. Also <u>TRB 214</u>, p. 180.

49. Vance, p. 9.

50. Attorney Richard Kuhlman, quoted in Morcotte, p. 83.

over another or "purposeful" deviation from standards.[51]

- Except when there is gross negligence or willful misconduct, town and state officials are not personally liable for actions taken as part of their duties.[52] Also, the design and construction of roads is a so-called "governmental" function, which is still well protected in Vermont by sovereign immunity.[53] Any liability a town might have is limited to its insurance coverage.[54] The liability of the state is likewise limited by statute. [55] Nor does advocacy of a course of action upon VAOT make the town responsible for the results.

For these reasons, towns should not be hesitant to offer reasoned objections to proposed design solutions where there are legitimate concerns.

Perhaps the best defense against negligence claims against the state or any other party is for the highway designers and the community to consider reasonable design alternatives and then **carefully document in each case** reasons for any decision to deviate from standards, so that the prudence and thoughtfulness of design decisions are established.[56] The importance of a solid "paper trail" cannot be over-emphasized for all highway designs, especially if exceptions are to be sought.

Repair vs. Upgrades

In the past many projects billed as "repairs" were actually upgrades, were very expensive, and did not result in a detectable improvement in the way the highway system as a whole actually functioned. If highway funds were unlimited, an argument could be made that all projects should necessarily be "the best." But since funds are limited, priorities must inevitably be set.[57] The need for discrimination is reflected in the new Vermont State Standards in its "Level of Improvement" policy.

> *Level of Improvement (LOI) is a recognition that with limited resources it is not possible to upgrade every road and bridge in Vermont to its ideal engineering condition.*[58]

The LOI specifies upgrades (reconstruction) for the most heavily traveled roads, major repairs (rehabilitation) for lower use roads, and repairs and minor enhancements (preservation) for minor roads.

Convenience and Traffic Flow

The objective of conventional highway design is to allow greater traffic flow and higher speeds. The object is to achieve acceptable "Levels of Service," (LOS) meaning freedom from congestion. Level of Service "A" means free flowing traffic and is the ideal; Level of Service "F" means stop-and-go traffic and is to be avoided of course.

The need to provide for future traffic is often cited by VAOT as a reason for doing a project or doing it in a certain way. This is often a dubious argument. With vexing exceptions, most of Vermont's highways are still **very** lightly loaded and improvements to increase capacity on the average rural road will not be needed in the foreseeable future. A two lane highway can carry up to 2,800 cars per **HOUR** under ideal conditions.[59] Few rural roads in the state have anywhere near that volume of traffic; the typical rural road might carry 1,000-3,000 cars per **DAY,** a fraction of its capacity.[60] Vermont's roads typically carry much less traffic than similar roads similarly classified in other states.[61]

The Vermont State Standards establish "C" as being the target LOS for design.[62] (Lower LOS "D" or even "E" may be acceptable on a case-by-case basis.) LOS

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51 . 12 V.S.A. § 5601 (e) 8. See discussion in Chapter III.

52. 24 V.S.A. § 901, 12 V.S.A. § 5602, and 3 V.S.A. § 1101.

53. Town of South Burlington v. American Fidelity Co., (1965). 125 Vt. 348, 215 A.2d 508.

54. 29 V.S.A. §§ 1403, 1404.

55. 12 V.S.A. § 5601 (e) 8, 29 V.S.A. § 1404

56. Netherton, p. 35. See also Larry W. Thomas, "Liability of State Highway Departments for Design, Construction, and Maintenance Defects," Selected Studies in Highway Law, Vol. 4, Ross D. Netherton, Editor, Washington, DC, Transportation Research Board, 1991, p. 1821.

57. Thomas, "Liability of State....,p. S-48. Also Kulash, p. 4.

58. Vermont State Standards, pp. 83-87.

59. Highway Capacity Manual, Washington, DC, Transportation Research Board, 1985, p 8-4.

60. A few two lane roads in Vermont do carry high volumes.- For instance, Route 302 in Montpelier carries 14,600 cars/day according to VAOT data. (1996 AADT Route Log, VAOT, 1997.)

61. Route 14 in Williamstown is a two-lane road classified as a "major collector"; it carries 870 cars per day. Route 6A in Sandwich, Massachusetts, is a two lane road classified as a "major collector" and carries 12,300 cars per day.

62. Vermont State Standards, pp. 14, 31, 49.

"C" is easy to achieve on the typical Vermont road without much improvement; 11 foot lanes with 2 foot shoulders will give LOS "C" for a road carrying 2,000 - 3,000 cars per day.[63] There is no need to upgrade most of Vermont's rural roads due to capacity problems, and most projects cannot be justified on this account.

Highway Capacity vs. Speed

Traffic engineers know just how many cars a certain size of highway can handle without becoming congested. Traffic, the thinking goes, is a little bit like water in a pipe - - to get more water though the pipe you have to make it flow faster. Likewise, to get more cars through a section of highway we generally think of making them go faster. When congestion occurs, the first response is usually to increase design speeds, meaning widening, straightening, and flattening.

The trouble is, traffic is not just like water. If you do indeed double the speed of water, double the amount will flow. But this is not true with traffic; you do not double the flow. In fact, usually the flow decreases. The reason is that higher speeds require **more space between the cars**.

The maximum flow occurs at 40-50 mph; the 60 mph traffic stream carries **less** traffic.[64] In other words, quite a lot of effort can be expended to "improve" a highway without actually increasing its capacity very much. The only truly effective way to increase capacity is to add lanes, restrict access, and/or provide alternate routes. Towns should not lightly accept higher speeds as a response to congestion.

Design Speed

A highway can be designed to allow motorists to feel comfortable at almost any speed, high or low. The design speed is usually set so that most drivers will not feel delayed. Evaluations of highway adequacy have traditionally emphasized speed over all other considerations.[65]

The design speed has more effect on the layout of a highway than any other factor. If a design speed is low the pavement can be narrower, the curves sharper, the shoulders narrower, the sight distances shorter, the clear zone less, and so forth without any compromise in safety. The differences can be dramatic. For instance, the minimum curve radius for 30 mph is 273 feet, but for 60 mph is 1,348 feet, a quarter mile. If a highway seems to have objectionable features, the best way to eliminate them is to seek a reduction in the design speed. A new Vermont law, S. 305, specifically allows the selection of a reduced design speed without a formal exception.[66] The new Vermont State Standards allow considerable leeway in the selection of design speeds.[67]

Higher speeds are often sought to promote traffic "efficiency" and reduce wasted time, but the speed a vehicle travels has surprisingly **little effect on trip time**. Overall trip time is much more a factor of waiting for traffic signals, congestion from turning and entering traffic, stopping for a donut, and so forth, rather than simple vehicle speed. Waiting for a complicated series of signals can take several minutes. In contrast, the extra time spent by a vehicle slowing down to pass through a small village is only about 20 seconds.[68] Furthermore, any time savings are given to us in tiny, useless little bits; we can't "save up" a few seconds every day for any useful purpose. Nobody is going to set their alarm 20 seconds later because there is new bridge.

A 50 mph design speed might be a good choice for typical rural roads, but settled areas and other special conditions warrant lower design speeds.

Economic Impact

It is often and correctly asserted that America needs an adequate transportation infrastructure to assure economic health. This general premise is then used to justify **any** highway improvement project. In reality, the economic effect of any particular highway project is difficult to assess.

For instance, in the Agency's 1992 Policy Plan,[69] the

63. Reilly, William R., P.E., Traffic Engineering Handbook, Pline, James L., Editor, Institute of Transportation Engineers, Englewood Cliffs, NJ, Prentice Hall, 1992, p. 137. Assumptions: rolling terrain, 50/50 directional split, 80% no passing zones, no truck adjustment = 536 vph.

64 . Reilly, p. 136.

65. "Transportation Service Standards - As if People Matter," Reid Ewing, paper given at Transportation Research Board Annual Meeting, 1993, p. 2.

66 . 19 V.S.A. § 10c (b).

67. Vermont State Standards, pp. 14, 31, 49, 67.

68. Walter Kulash, P.E., letter to the author, 12/8/93, p. 5.

69. Vermont on the Move, Agency of Transportation Policy Plan 1992, p. 11.

economic success of the Burlington area is attributed first of all to its access to the Interstate, in comparison to Bennington and Rutland especially. However, the growth in Burlington may also be due to its beautiful natural setting, its university and medical center, its proximity to Canada and to Vermont's largest employer (IBM.) Furthermore, good roads do not by themselves ensure economic prosperity; witness St. Johnsbury and the Northeast Kingdom which are served by a dandy Interstate yet remain economically depressed.

Small local projects are even harder to link to economic development. It is hard to imagine that, for instance, straightening a particular curve, might bring more businesses to a community. Economic considerations can be important where there is a specific bottleneck, like a "low headroom" bridge which forces a detour.

Highway Decisions and Land Use

Even though highway improvements by themselves may not stimulate overall economic development, they do profoundly affect land use and development patterns. Yet these effects are almost never considered during the highway planning process.

An upgraded highway tends to draw traffic. When motorists have a choice of routes, they tend to use the most improved. Once a highway experiences a major upgrade it will attract more traffic. At some point, highway-oriented businesses begin to locate along the improved route. Once several businesses do, the temptation for all businesses to do the same is overwhelming. Often businesses in the village or town center collapse. For instance, downtown White River Junction is struggling, while development occurs vigorously near the exits to the Interstates.

These strip commercial developments tend to generate even further additional traffic. Whereas in a traditional town or village, customers will park once and do several errands, with strip commercial each errand requires the customer to get back in the car and back on the highway. Thus there is even more traffic, and even more highway improvements are needed. Hence upgrading a highway may actually result in **worse** Levels of Service. A good example is Route 12A in West Lebanon, NH, which is congested despite numerous upgrades.

The purpose of this booklet is not to argue about what is desirable land use. Rather, the intent is to alert towns to changes in land use patterns that **will** result from major highway projects. Once the highway system is in place attempts to influence land use through zoning, planning, Act 250 or any other public process are likely to prove futile. Highway planners tend to assert that they are only trying to satisfy traffic needs that are going to arise anyway; in reality they often make decisions which generate the needs.[70]

Few public decisions have as much effect upon land use as do decisions on highway projects. Towns have the right to consider and question the effects of such projects upon them.

Other Side Effects of Highway Projects

Besides increasing speed and traffic, improvements and upgrades of highways tend to produce other side effects. Improvements tend to:

- Result in increased areas of pavement and gravel,
- Remove buildings if they are close to the road,
- Remove trees and other plantings from roadsides,
- Remove roadside objects such as stone walls, fences, mailboxes, and the like, often to be replaced by steel guardrails,
- Impair the scenic value of the road, especially as increased pavement seems to overwhelm the traditional small-scale architecture of Vermont, or as highway-oriented businesses proliferate,
- Impair natural features such as hedgerows, animal habitats, streams, rock formations,
- Make it more difficult for pedestrians to cross or walk along,
- Make the road less interesting to drive, by taking away the "ups and downs" of the traditional Vermont highway,
- Make the road less attractive for bicyclists,
- Make adjoining properties less suitable for housing or recreation,
- Disturb peaceful village life, and
- Make Vermont look just like anywhere else.

Needless to say, conventional highway planning does

70. "...more highways do not bring mobility -- new highways tend to generate new congestion." Senate Committee on Banking, Housing, and Urban Affairs, Federal Transit Act of 1991, S.Rep. No. 79, 102 Cong., 1st Sess. 4-5 (June 11, 1991). Also "In growing areas, the upgrading of existing highways to relieve congestion by adding capacity may lead to additional traffic..." Vermont Long Range Transportation Plan, p. 20.

not take these side effects into account. At no point in the AASHTO standards is a means offered for even identifying or evaluating these "externalities." However, towns have a legitimate interest in looking at these side effects and determining whether they are tolerable or even acceptable. Indeed, the appearance and character of Vermont may well depend upon a willingness of towns, one by one, to resist highway projects which threaten what is valuable to them in the name of increased traffic flow and higher speeds.

The Driving Experience

Although conventional highway planning is supposedly carried on for the benefit of the motorist, very little attention is devoted to whether the motorist is having an acceptable driving experience or not.[71] Success in highway planning is measured solely by whether the motorist can safely reach his/her destination without much delay. No matter that a large and increasing number of Americans spend many hours a week in one of the most hostile and unpleasant environments possible - in tense competition with their fellow citizens for asphalt along an unattractive highway.[72] Vast amounts of money have been spent to make things **worse** for the motorists, albeit sometimes getting them there faster.

For most citizens of Vermont the driving experience is still quite pleasant. Town roads and most rural highways are still scenic and enjoyable. However, this is changing as the larger cities experience congestion resulting from sprawl and strip commercial development. Even rural highways are arguably less pleasant to drive as a result of highway improvements. For instance, Route 125 in Ripton, (one of only **two** official "scenic highways" in the state) is now "improved" by guardrails almost solidly for a two mile stretch, which greatly detract from the beauty of the road and views of the Middlebury River.[73]

The driving experience is especially important for Vermont's tourist industry, which accounts for 8% of Vermont's economy.[74] Many tourists come to Vermont simply to drive around in an attractive and comfortable rural setting. Their experience of Vermont is mostly gained from the car. They do not come to see asphalt.

71. Walter Kulash, at the Vermont Design Institute.

72. From a talk by Andreas Duany, Boston, 1989.

73. The standard shiny metal rail first installed has recently been replaced by a less obtrusive type.

74. According to the Vermont Travel Division.

The traditional Vermont country road, which goes up and down, round about, hugs close to hedgerows, farms, fields, and villages is itself a unique and valuable travel experience which goes beyond just getting there quickly.

Towns have a legitimate right to look at the driving experience which will result from a highway project. Is getting there a little faster worth it for the visitor or resident?

3

Chapter III. Applicable Laws, Rules, and Policies

This chapter briefly describes the federal and state laws, rules, and policies which govern highway construction. A later chapter will describe how a town can best use these laws to obtain what it wants from a highway improvement project.

Laws and Policies About Design and Construction

Federal Highway Administration (FHWA) Regulations:

Federal law sets forth a basic requirement that federally assisted projects conform to standards and then specifically lists guidelines, policies, standards, and so

forth which are to be followed.[75] Among these is the AASHTO "Green Book."

However, AASHTO standards apply **only** to roads on the "National Highway System," meaning the Interstates and major Vermont routes like Rt. 2, 4, 7, 9, etc. The law goes on to say:

> *Federal-aid projects not on the NHS are to be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.*[76]

Yet even NHS roads may be designed to other standards that take into account "environmental, scenic, aesthetic, historic, community, and preservation impacts..," the reference to AASHTO notwithstanding.[77]

Exceptions are specifically permitted for **all** projects "where conditions warrant that exceptions be made... after due consideration is given to all project conditions..."[78] Such considerations can include cost, and consistency with adjacent road segments. The FHWA has a formal written exceptions policy.[79]

In actual practice VAOT has not aggressively sought these exceptions in response to town concerns. However exceptions have been given when a town made a determined effort to pursue them. An excellent example is right here in Vermont, where the Village of Woodstock secured a waiver of the standards to allow the rebuilding of the Elm Street bridge more or less along its original lines, instead of the AASHTO design originally proposed.

> *...the Elm Street Bridge was the first case in which FHWA funds were used on a project that did not meet AASHTO standards and the waiver was granted because of historical considerations....This occurred because preservation proponents were able to make a strong argument for the functional importance of a smaller bridge that would sufficiently slow highway traffic into town and the narrow village streets. Studies of the safety record of the 19-foot-wide bridge showed that it was unusually safe - no fatalities in over 100 years and few accidents. Strong, well-organized local support, as well as comments from the Advisory Council, convinced state and federal highway officials that this was a case where standards could be waived without endangering the motoring public....*[80]

The above case concerns a bridge, but the exception principle applies to all types of projects.

Vermont Highway Laws and Policies:

Public Policy - Vermont's Long-Range Transportation Plan[81]

Released in 1995, this thoughtful and forward-looking document was prepared by the Planning Division at the Agency, signed by the (then) Secretary, and endorsed by the Governor. As such it represents the official planning policy of the Agency.

Several provisions should be of aid to those who support more appropriate and cost-effective projects:

- Recognition of the value of the Vermont landscape/townscape and the necessity of designing projects in harmony. (pp. 3, 51)
- The need to "strike an appropriate balance between ...mobility ...safety, ...economic growth and development ...natural resources, ...scenic qualities, ...historical and cultural resources, ...(needs of) bicyclists and pedestrians, ...Vermont's quality of life." (p. 53)
- An interest in more modest design solutions. (p. 100)
- A pledge to work cooperatively with towns and citizens in making transportation decisions. (p. vii, 112)
- Emphasis on maintenance of the existing system instead of building new capacity. (pp.3, 100)
- The need to make "strategic investments," meaning to spend money where it "will do the most good." (p. 85)

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75 . 23 C.F.R. § 625.4.

76. 23 C.F.R. § 625.3 (a) 2.

77. 23 C.F.R. § 625.3. (a) 1 (ii) FHWA must approve use of other standards. AASHTO still applies to Interstates/freeways.

78. 23 C.F.R. § 625.3 (f).

79. Federal Aid Policy Guide, FHWA, July 21, 1995.

80. Jackson, Donald, C., "Saving Historic Bridges," Information Sheet No. 36, Washington, National Trust for Historic Preservation, 1984, p. 8

81. Vermont Agency of Transportation, Vermont's Long Range Transportation Plan, Montpelier, 1995.

In practice the various provisions of this plan do not yet seem to influence designs very much. The plan is not very specific, so that when it comes to particular projects the designers tend to fall back on the concrete, namely AASHTO.

Nevertheless, as a statement of policy and intent in VAOT's own words, the Plan can and should be used to influence the discussion about specific projects. The Plan may not have much influence in parts of the Agency, but other decision-makers may take it more seriously.

Vermont Law and the AASHTO Standards

Probably most important is what **isn't** a law. The AASHTO "Green Book" has never been adopted as a required standard by law or administrative procedure in Vermont. These standards have been enforced by custom and formerly, but no longer, by being a requirement for all federal highway funds.

As described in Chapter II, Vermont now has adopted its own state standards.

Vermont "S. 305" [82]

This new law, passed in 1996, has profound implications for the highway and bridge construction process in Vermont. This law was passed primarily to assist towns in dealing with the agency. S 305 specifically:

- Allows the Agency to pursue exceptions to AASHTO standards for projects on the NHS system.
- Allows a design speed to be selected lower than the legal speed for all projects **without a formal exception**. This is an extremely important provision and should enable the scale of many projects to be reduced.
- Directs the Agency to favor "footprint"[83] bridge replacements over new alignments.
- Favors rehabilitation of bridges over new construction as the policy of the state, and for rehabilitation of town bridges reduces town share to 5% instead of the normal 10%.

Regarding the choice between repairs and complete reconstruction:

- Directs the Agency to consider local and regional plans **as interpreted by the adopting entity**, i.e., the towns.
- Directs the Agency to consider "the impact on the historic, scenic and aesthetic values of the municipality, **as interpreted by the municipality**."
- Provides that actual accident history be considered in evaluating safety issues.

Regarding bridge projects on town roads:

- Requires a "footprint" solution if "feasible."
- Requires a "hearing as early as feasible in the project scoping process to identify pertinent issues."
- Requires the Agency provide the town with alternative conceptual designs, with cost estimates.
- Prevents the Agency from presenting the town with a bill for design services if the town rejects the conceptual plans.

Regarding bike lanes:

- Reaffirms the existing law [19 V.S.A. § 2310 (a)] requiring paved shoulders for bikes. The width is not specified.[84]

There is nothing in S 305 to suggest that projects already "in the pipeline" are exempt.

Claims Against the State for Faulty Highway Design

A 1995 change to Vermont law specifically exempts the state from claims "arising from the selection of or purposeful deviation from a particular set of standards for the planning and design of highways." (10 V.S.A. § 5601 (e) 8.) This law is intended to allow designers to make reasonable decisions regarding the choice and use of standards without exposing the state to liability.

A "purposeful deviation" would be a departure from standards in order to bring about some other legitimate public benefit. A thoughtful and well-documented balancing of environmental, historic, community, and natural interests against the provisions of the standards

82. The various provisions have been incorporated into 19 V.S.A.§ 10 (c), 19 V.S.A. § 309 a(b), 19 V.S.A. § 2310 (a). Many of the provisions of this law have also been incorporated into the new Vermont State Standards.

83. "Footprint" means taking up the same space as the existing bridge.

84. Under § 2303 four feet is identified as the minimum width when funded through the "bicycle fund." The new State standards call for less in some cases. Many recent repaving projects actually have included shoulders of less than four feet.

would definitely be "purposeful." The law is not intended to cover careless, thoughtless, arbitrary, or ill-considered deviations from standards.

Laws About Scenic, Historic, and Environmental Issues

Federal Section "4(f):"

A most important law is so-called "4 (f)."[85] This is a very strong law protecting historic and other resources. It states:

> *The [Federal Highway] Administration may not approve the use of land from a significant publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historical site unless a determination is made that:*
>
> 1. *There is no feasible and prudent alternative to the use of the land from the property, and*
> 2. *The action includes all possible planning to minimize harm resulting from such use.*

Under "4(f)" a thorough effort **must** be made to reduce harm to the affected resources. Quoting from an AASHTO publication:

> *It is essential that impacts to properties covered under Section 4(f) of the Act be evaluated early in the project planning and design process. All reasonable project alternatives and/or design options to avoid the property must be assessed and documented. When avoidance alternatives are not practical, options that would lessen the amount of land required must be identified and implemented whenever possible.*[86]

Case law has affirmed that any search for alternatives be thorough, and the documentation of the decision making process extensive.[87]

This law applies to all projects, even NHS projects.[88]

However powerful the language of this law, enforcement can be problematic. Serious consideration of alternatives early in the design process rarely occurs. Enforcement is by the Federal Highway Administration, which in actual practice accepts and approves a "formula" response from VAOT. Typically, "no-build" and "repair" alternatives are compared to the single design that VAOT really wishes to do, and found unacceptable. It is easy to find projects where **no** lower impact solutions were envisioned, drawn, or evaluated, let alone selected, contrary to the plain intent of the law. The "4(f)" requirements have become merely paperwork after the fact, not an influence on project design.

Actual enforcement of the true intent of the law might entail litigation. However, the practical value of the law may be in helping to build support for a town's position. Citizens, public officials, and legislators may be strongly influenced if they know that federal law requires a serious look at alternatives.

Federal Law - "Section 106" of the National Historic Preservation Act :

This law requires that federal agencies (and state or local agencies using federal money) "take into account" effects of their projects on historic resources. Such resources include districts, buildings, archeological sites, and so forth. These do not actually have to be on the National Register to be protected; a large number of Vermont's villages and older buildings would qualify.[89]

Section 106 does not specify **how** the effects need to be "taken into account," nor does it guarantee that preservation interests will prevail; essentially it establishes a review procedure.[90] However, numerous legal cases point toward a far-reaching duty to explore and document project alternatives including the "no build" alternative.

All federally supported projects, not just highways, are required to undergo a review to see what impacts the project will have on historic resources. This review is carried out by the sponsoring agency (VAOT) and is presented to the State Historic Preservation Officer

85. 23 C.F.R. § 771.135 (a) (1).

86. A Guide for Transportation Landscape and Environmental Design, Washington, DC, American Association of State Transportation Officials, June 1991, p. 46.

87. Netherton, Dr. Ross D., "Legal Aspects of Historic Preservation in Highway and Transportation Programs," Legal Research Digest, Washington, DC, Transportation Research Board, Number 20, May 1991, pp. 13-33.

88. 23 USC § 109 (q).

89. The Vermont Division for Historic Preservation maintains a listing of over 30,000 properties which already have been identified as having historic value.

90. 16 U.S.C. 470 (f). See also, Nertherton Legal Research Digest, p. 13-19 for discussion of what "taking into account" means in the way of documentation, alternatives, and mitigation.

(SHPO) for concurrence.[91] The finding can be "no effect," or "no adverse effect," or "adverse effect." Findings of "adverse effect" are atypical, but definitely do occur.[92]

Findings of "no adverse effect" or "adverse effect" are made known to the National Advisory Council on Historic Preservation in Washington. (This Council is an independent board established by Congress and has a professional staff.) The Council has the opportunity to comment on all projects where there will be an effect. In a case of "adverse effect" the Council attempts to reach a written understanding with the sponsoring agency and the SHPO on ways to reduce, mitigate, or avoid the effects. Occasionally the parties agree that the adverse effects cannot be mitigated and must be accepted in the public interest, but usually some agreement to scale back or otherwise modify the project is reached.

If the parties fail to agree, the Agency must request final comments from the Council, which are made known to the **head** of the Agency, the Secretary of Transportation. The Agency may then proceed with the project, but with considerable exposure to legal challenge if it inadequately takes into account the Council's final comments. In any case the project may not proceed until the "106" process is complete.[93]

Interested parties, including local governments, may participate in project reviews carried on by the Council. Outside parties may also ask the Council for a reconsideration of any finding, including any initial finding of "no effect" or "no adverse effect" made by VAOT and the SHPO. Such requests can come from a town, its planning commission, other town body, a private association, **or any private citizen**.

While Section 106 does not mandate any particular result (i.e. protection of a historic resource) it is nonetheless a very important law. It establishes a review and documentation process which the Agency cannot lightly ignore and which is supposed to result in a project which avoids effects to a historic resource insofar as possible. It should be noted that the SHPO and the Council are likely to be more courageous where it is apparent that local people are strongly interested in the outcome and willing to offer support.

Federal Law - The National Environmental Policy Act (NEPA):[94]

This law "is best known for its requirement of an environmental impact statement (EIS) on proposed major federal actions that will significantly affect the quality of an environment, including important historic, cultural, and natural aspects of our national heritage. . . Even outside the context of preparing an EIS, NEPA requires that every federal agency's policies, regulations, and public laws be interpreted in accordance with NEPA's substantive goals, including historic preservation."[95]

A project has to be quite large or have significant impacts or need a federal license to require an EIS. The typical Vermont project has not required one.[96] However, probably more projects would need an EIS if citizens were active in bringing possible impacts to the attention of the EPA. For Vermont, NEPA's requirements are administered through the Boston EPA office.

Vermont Act 250

When highway projects reach a certain size they are subject to Act 250, but that threshold is quite high. In the language of Act 250 "development" means among other things "the construction of improvements on a tract of land involving more than 10 acres to be used for municipal, county, or state purposes."[97] A typical road project would need to be two or three miles long before it reaches that threshold. Bridge replacements and similar "spot" improvements seldom reach it, even though they may cost several million dollars. Major road reconstruction projects often do. Bike paths often do. Guardrail projects may or may not.

In any case, if an Act 250 permit is required, the Agency is supposed to demonstrate appropriate response to its ten criteria, just like anybody else. Criterion Number 8 prohibits an "undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic

91. In Vermont the SHPO is in the Vermont Division for Historic Preservation.

92. For instance recently in the case of a proposed bridge across the White River in South Royalton. This has resulted in the reconsideration of the design for the project.

93 . Any failure to give the Council opportunity to comment is known as "foreclosure" and also leaves the Agency vulnerable to litigation by interested parties.

94. 42 U.S.C. § 4321 et. seq.

95. Jackson, p. 5.

96. According to Bill Brownell, FHWA Vermont Office, in a conversation with the author, Jan. 7. 1994.

97. 10 V.S.A., Chapter 151, § 6001. (Act 250).

sites, or rare and irreplaceable natural areas.[98] Number 1 requires that a project not result in water or air pollution. Number 10 requires conformance to a local or regional plan, and so on. As in the case of any Act 250 proceeding, a town or adjacent landowners have ample chances to voice their concerns and will be able to obtain the full attention of the District Environmental Commission.

Act 250 is mostly effective as a deterrent. The Agency has failed to get some of its "blockbuster" projects through Act 250 and has had to reduce the scope to a more acceptable level to avoid jurisdiction.[99]

Vermont Act 200

Act 200 requires that "state agencies ... that take actions affecting land use ...[are to take actions] ... compatible with regional and approved municipal plans."[100] This means that once a town's municipal development plan has been approved by its regional commission, VAOT is not supposed to take actions contrary to it. This is one of the "selling points" for Act 200 on the issue of "local control," but may not be legally enforceable.

Transportation projects are also supposed to be consistent with the planning goals of Act 200.[101] These goals include, among other things, the maintenance of historic settlement patterns, discouragement of strip development along highways, preservation of natural, scenic, and historic features, provision of a transportation system which respects the natural environment, and balancing of highways with air, rail, and other means of transportation.

Miscellaneous Environmental Laws and Regulations

VAOT is required to conform to many other laws and regulations, from the State's erosion control measures to Army Corps of Engineers regulations. Sometimes an actual permit is required, and sometimes the authority with jurisdiction merely has to "sign off" on the project. Typical permits include stormwater, stream alteration, temporary pollution, endangered species, and wetlands.

Getting all these permits and sign-offs requires effort and time over the life of the project. Most of the permits and reviews necessitate filing of documents by VAOT and allow for public comments. The public can intervene in many of the proceedings. Some permits involve hearings; decisions are subject to appeal. However, a town may be unaware of these processes unless it makes specific inquiries; many of the required notices get buried in the mountain of mail which comes to all town clerks.

The Agency of Natural Resources processes many of these permits and develops a file on each project. ANR can be a source of information on permits needed for a particular project.

Laws About Land Takings

Vermont Title 19, Sections 501 and 502

These sections cover the procedure for land takings where necessary for a project. Section 501 describes what constitutes "necessity" for a taking. (See Appendix 2.) The courts have generally found that public safety is the "critical factor" in determining necessity, but due consideration is supposed to be given to: alternatives to the project, effects on agricultural and homestead rights, effects on scenic, recreational, and environmental values, and effects on the grand list. In actual practice, the criteria for proving necessity are not very high.

Section 502 describes the process of holding a hearing on the taking, the so-called "502 hearing."

Vermont Title 19, Section 1511

This very important law describes **how a town may reject a project and send it to the Legislature within one year of the 502 hearing.** (Quoted fully in Appendix 3.) This is the only chance a town has under Vermont law to reject a project. However, this law only applies if a land taking is involved - any land within the town. A fuller discussion of how to use this law follows in Chapter IV.

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98. 10 V.S.A., § 6086 (a).

99. An example would be the "Spaulding" bridge project in Royalton which shrank to a more modest "on present alignment" solution after problems with Act 250 and considerable local opposition.

100. V.S.A. Title 3, Chapter 67, § 4020. (Part of Act 200).

101. Required by 19 V.S.A. § 10 (b).

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Chapter IV. Strategies for Towns

This chapter describes the various steps and strategies that towns can adopt to influence projects within their town limits. These strategies utilize the processes, principles, and laws described in the earlier chapters.

It is the admitted bias of this booklet that these strategies would and should generally be used to limit the size and scope of projects. However, these strategies can be used to bring about **whatever** a town may wish for its particular highway project - - bigger, if that is what is desired.

General Strategies

Build Local Support, and Be Prepared to Do Some Work

Despite new attitudes at VAOT and despite recent legislation, when it comes down to a particular project at a particular place, you may still encounter traditional thinking. VAOT officials sometimes still insist that mobility and safety are the only relevant issues, that community concerns are not important, that AASHTO standards still apply, and so forth.

Recent state and federal legislation, the new Vermont State Standards, and recent policy changes provide tools to overcome this approach, but a town that wishes to influence a highway project must develop solid, active local support for its point of view, whatever that point of view is. The importance of this cannot be overstated. Whatever the merits of a case, changes from "business as usual" will likely occur only if a town is assertive. Where local interest is strong, help has been available from many sources.

As with many causes, a few individuals in a community who really care about an issue can bring along the Selectboard and quite a large number of the citizens if their point of view is a reasonable one.

In some cases, this active support is also needed to assist various officials and public bodies who might want to be of assistance, but need a little help. It is difficult to influence a large and powerful agency like VAOT. Officials within VAOT, (like the historic preservation or planning staff) and outside the Agency, (like your local legislators) will appreciate public support.

Begin the Discussion Early

The sooner a town asserts its wishes for a project the more likely they will be reflected in the final design. It is especially important to get your point of view on the table **before a project has gone through initial engineering studies**. Once lines are drawn on a sheet of paper with a ruler, it is very hard to get them changed, and of course initial studies will be based mostly on engineering criteria unless **you** influence the thinking in another direction. The scoping process will automatically afford an opportunity for a town to express its concerns; for the many projects that are not scoped the town must find other means.

See if there are any projects in the 5-Year Capital Plan for your town. Or, get in touch with the transportation planner at your Regional Commission. (S)he should be aware of any projects in the works and will be happy to discuss them with you.

Make a Clear, Simple Case

The issues for a particular project are usually not that complicated. Is the project too large for its setting? Will it lead to speeding or unwanted traffic? Will it be harmful to the scenery or historic buildings or natural features? Will land use change in an undesirable way? Will it be harmful to the character of the town?

The main two or three arguments need to be clear and convincing. With a clear, simple case a town will be able to explain the issues to townspeople, to its legislative delegation, to other public officials, to the media, or even to the full Legislature, should it come to that. Pictures and diagrams can be very helpful. A town does not need intricate arguments, just good ones.

Get Expert Help (Free)

Some expert advice may be helpful in supporting your arguments. Hopefully, some of the examples and cases in this booklet will be of use; its author will be glad to answer some questions.[102] Several other organizations which may be of help are listed below. Expen-

102. Jim Wick, (802) 889-9472.

sive legal help is not generally necessary.[103]

- Vermont Division for Historic Preservation 828-3211.
- Preservation Trust of Vermont 658-6647.
- Agency of Natural Resources 241-3620.
- Vermont Natural Resources Council 223-2328.
- Vermont League of Cities and Towns 229-9111.
- National Trust for Historic Preservation (202 - 686-8505)
- Local bike touring companies
- Conservation Law Foundation 223-5992.

Specific Strategies

Keep Aware of Project Status

Once you know of a project planned for your town, stay aware of its status. This way you can be prepared for scoping, for the 502 hearing, for Act 250 hearings, etc. Your influence can be much stronger if you avoid trying to put something together at the "last minute."

Participate Actively in the Scoping Process

A town can probably influence a project more at the "scoping" stage than at any other time. The best way is for the Selectboard to be actively interested. Another way is for interested citizens to make their concerns very apparent to the Selectboard and/or Planning Commission and to attend the various scoping meetings.

Projects now in the pipeline will not normally be scoped, but a town may attempt to have a project sent back through scoping. The best way to do this is through your regional TAC.

Influence Your Local Regional Transportation Advisory Committee

Overall the Regional Transportation Advisory Committees (TACs) have been an effective voice for town concerns. The best way to influence the TAC is to send a capable delegate regularly. A delegate with a clear point of view reflecting his/her town's concerns can definitely influence the TAC. In any case a town should inform the TAC of the projects it would like to see occur in the community and should include a capsule description of the project **as you would like to see it done.** This is important; if you want to see a bridge replaced, but with something modest, tell your TAC.

If a conflict does arise over a particular project, involving the TAC and its staff transportation planner can often be helpful. TACs/staff have arranged public meetings with VAOT planners, offered testimony, provided accident data, etc. in support of a town's interests. TAC planners often know exactly who at VAOT is likely to be the most sympathetic to town concerns.

Attend the "502" Hearing

Usually 502 hearings are attended by hardly anybody. This is because the Agency does not really publicize them, because notice is fairly short and sometimes "out of the blue," because the plans are hard to understand, and because the issues may not be very well defined this early in a project.

However, unless a project is scoped, the 502 hearing is the **only** time VAOT officially presents the project to the town. The Agency has shown that it can be influenced by the 502 hearings to some extent if a large and vocal group is present. So try to understand the designs, frame the issues, make a lot of calls, and get your neighbors to show up. Sometimes VAOT is willing to meet with a committee from the town to further discuss project design.[104]

The 502 hearing is a good place to enter any petitions or expert testimony on the public record.[105]

Obtain Support from Your Legislative Delegation

Strong support from your legislative delegation will be important in furthering your interests. The Agency is **very** interested in maintaining good relations with the Legislature, from which it receives all funding.

Individual senators and representatives are sometimes willing to make calls or meet with Agency offi-

103. The Town of Tunbridge spent **no** money on legal fees in its opposition to its bridge replacement project.

104. This did in fact occur in the case of the project in Tunbridge. The negotiations resulted in some revision to the design.

105. Again, in Tunbridge such a petition helped solidify support from the town's legislative delegation.

cials, or to attend the various hearings, or to moderate meetings between town and Agency officials. It is a very good idea to have your legislator present whenever VAOT makes a major public presentation, such as at the 502 hearing. Sometimes the physical presence of a legislator is the only thing that will move discussions forward in a positive manner.[106] Concerns of legislators have definitely influenced VAOT decisions.[107]

Influence the Transportation Board

Normally, the Transportation Board has little influence on Agency actions.

However, members of the Board can be sympathetic to town concerns. On some few occasions the Board has shown independence and recommended against the Agency, sometimes writing fairly strong opinions.[108] This happens when and only when citizens have gone to the Board and strongly made their case. It is possible to request a site visit from a Board member prior to the 502 hearing and begin to frame the local issues and concerns. The number for the Board is 828-2669.

Put Something in Your Town Plan

According to recent revisions of 19 V.S.A. § 10 (c) the Agency is supposed to take local and regional plans into account, as interpreted **by the adopting entity**, i.e., the towns. The exact effect of this law is not yet known, but a clear statement of the town's policy on its road system (including state roads) can't hurt. For instance, if you have definite ideas about what should happen to the state highway in your town, say so.

Get Your ANR File - Go Talk with Them

The Agency of Natural Resources may have a file on your project, available as public information. It will show any plans that VAOT has filed, any correspondence between ANR and VAOT or other agencies, and any permits issued. You may find that VAOT has not provided complete information about your project or that information has not been fully understood at ANR.[109]

You will be able to discuss your project with ANR staff. They have plenty of projects to review and may not be able to give your project the full attention it deserves unless you clarify your issues and concerns with them. If you wish to go on the record or intervene in any formal proceeding, they can tell you how to do it.

If an Act 250 permit is required, actively participate in the process by making your wishes and concerns known on the record. A town automatically has party status in Act 250 proceedings through its Selectboard and Planning Commission. An inquiry to your District Environmental Coordinator will clarify whether VAOT is getting, or should be getting, an Act 250 permit for your project.

Try to Have the Project Area Identified as a Historic Resource

Since federal law is supposed to **require** that historic resources be protected to the maximum feasible extent, it will be very helpful to obtain a ruling that some part of the project is a historic resource, if that is indeed the case. Where historic resources are affected, the project is supposed to be scaled back or altered if possible until impacts on the resource are minimized. A historic designation can be used to protect the overall historic character of a community, not just individual sticks and stones. VAOT must respond to a historic designation.

The threshold for being a "historic resource" is not especially high. No "National Register" designation is required; no special district has to exist. In Vermont, many buildings over 50 years old would probably qualify as being historic resources, as would be the original built-up sections of most towns and villages. A "historic resource" can be a district, a site, a single building, or a structure, such as a bridge. Even roads themselves are beginning to be recognized as historic elements.

The State Division for Historic Preservation participates in the required review of projects under "Section 106." You should call the Division to discuss your project, request a site visit and a meeting with concerned townspeople, and discuss possible findings about the area. Your local historical society or local historian can be helpful in making a case.

Any preservation professional inside VAOT or at the

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106. Sen. Webster and Rep. Richardson accompanied Tunbridge representatives to meetings with VAOT and were quite helpful.

107. As was the case with a controversial project in Underhill.

108. See cases in Cavendish and Tunbridge.

109. In Tunbridge the plans provided by VAOT failed to show the most objectionable feature of the project, a 250 foot long 12 foot high concrete retaining wall right in the village historic district.

Division who might rule against VAOT engineering plans will be very appreciative of continuing local public support for her (his) position. This is not a comfortable spot to be in.

Question the Need for the Improvement

As described in an earlier chapter, most projects in the 5-Year Capital Plan got there because a highway element flunked its "sufficiency" rating. This rating, which comes strictly out of engineering criteria, may have very little to do with how a highway is actually serving its users. A highway can flunk its rating and still be relatively free of accidents, uncongested, fun to drive, scenic, and so forth - in other words, basically adequate.

In a period of limited public resources, there is not enough money to do all projects. Request that VAOT justify the need to do **your** project by pointing out bona-fide transportation problems: actual congestion, an unusual number of accidents, or whatever. Very often this case cannot be made.

Do not accept a low sufficiency rating or failure to meet current standards as adequate reasons for a project. A low sufficiency rating makes the "need" for a project self evident to highway planners, but other decision makers do not necessarily think the same way. A more common sense evaluation of "need" may sway your fellow townspeople, your TAC, or your legislators.

Gather Data

In evaluating the need for a project you may wish to collect the following data:

- Traffic Counts - (from VAOT or your TAC)
- Accident Records - (from VAOT or your TAC)
- Sufficiency Ratings - (from VAOT or your TAC)
- Growth or Economic Projections (from your TAC)
- Needs of Local Shippers
- Scenic, Natural, or Historic Features
- Tourism in the Local Economy
- Bike Tourism - (from local tour operators)

Insist on Documentation

Insist that VAOT provide actual documentation for its assertions about the project. For instance, if safety is supposed to be an issue at a particular spot, ask for the accident data and analysis of contributing factors to see if road geometry has indeed been the problem. If congestion is predicted, ask for the calculations. As a public agency VAOT is obliged to make such information available. Very often it will turn out that the factual basis for a project is quite weak.

Does the Project Really Improve Safety?

Look at the overall picture. An AASHTO project may be safe within its limits, but decrease overall safety in the area. For instance, a "spot" improvement may lead to speeding in a nearby congested area. VAOT does not always document safety effects from projects outside the actual project limits.[110] However, if a town believes a project will have an overall adverse effect on safety, this can be a powerful argument for change to the design.

Likewise, other undesirable side effects of the project should be documented.

Look at the Level of Improvement Policy

If your "spot improvement" seems too ambitious, review the Level of Improvement Policy in the Vermont State Standards to see if the policy is being followed.[111]

Come Up With Alternative Suggestions

Simple opposition to a project may not impress anyone. Can you think of alternative plans which can solve bona-fide transportation problems which do exist? A description of such alternatives may sway decision makers, such as your selectboard or your legislators, to your cause. For instance, simply paving a road can very often improve its sufficiency rating.

Do the Project Yourself

State law and VAOT policy now allow towns to develop and manage projects themselves using state money.[112] There are numerous constraints, but this may be an attractive option for towns with sufficient know-how. A faster, cheaper, more appropriate project is likely to result.

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110. See the official transcript from the 502 hearing concerning the Tunbridge bridge replacement project. No analysis had been done on the effect of the project on a dangerous intersection immediately to the south.

111. Vermont State Standards, p. 83.

112. 19 V.S.A. § 10 (e).

Vote the Project Down

This is the "ace of spades" as far as the towns are concerned. Vermont law gives towns effective veto power over projects where a land taking is involved, and very few towns even know this. 19 V.S.A. § 1511 allows a town to vote down the project at a regular or special town meeting held **within one year of the 502 hearing.**[113] If the Agency then wishes to proceed it must appeal to the Legislature. The threat of a veto is often enough to get VAOT to negotiate much more seriously about a project.

This is because in the few cases where projects have gone to the Legislature on appeal, the towns have almost always prevailed. With Vermont's tradition of local independence, the Legislature is very reluctant to go against the well-founded and reasonable objections of a town. For instance, the Town of Bethel recently succeeded in having the Legislature direct VAOT to modify a project substantially, in accordance with the town's wishes. It is of course important to keep your own legislative delegation informed and involved with the project from the outset so that they can generate support for your position if the need arises.

The trouble is, the 502 process and the chance to use paragraph 1511 occurs in the very early stages of a project before citizens know much about it. Public interest in a project often does not develop until final plans are done, and the one year deadline has long since expired. It cannot be revived. Paragraph 1511 gives the towns **one chance.**[114]

This is all the more reason for towns to be aware of the project and become involved as early a possible, certainly by the time of the 502 hearing.

Appeal to the National Advisory Council on Historic Preservation

Section 106 of the National Historic Preservation Act allows for requests to the National Advisory Council for reconsideration of any findings made about a project. This can result in an extensive fact-finding procedure, which will be onerous to the VAOT. VAOT may wish to avoid this process by modifying its design.

This request for reconsideration may be brought by a town, a planning commission, a private group, or any private citizen. Information on how to go about this is available from the Vermont Division for Historic Preservation, 828-3211.

The Council has far too many projects to review to adequately consider them all. But the Council is willing to send the sponsoring agency "back to square one" in cases of egregious failure to heed Section 106.[115]

Mediate

Request that VAOT enter into formal mediation concerning your project using a professional mediator. This shows a good faith interest in arriving at a just solution short of going to the courts.

If All Else Fails - Litigate

Cases challenging the suitability of highway designs are fairly rare, and it is not a recommendation of this booklet that parties resort to litigation as a means of solving problems.

However, it should also be pointed out that the legal basis for highway projects is often fairly weak, especially where **any** impacts on scenic or historic resources are involved. Very seldom is documentation of impacts, consideration of alternatives, and means of mitigation pursued with the vigor that the laws intend. In other words, it should be fairly easy to support a case. The object would be simply to get the highway planners to follow the law.

It is therefore suggested that if a town (or other interested party) has a solid, reasonable case and feels strongly about the issues, a talk with an attorney or public interest group familiar with land use law might be contemplated.

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113. See Appendix 3, for the full text of this law. It is brief.

114 . There is one other chance in the case of town highway bridge projects. Since the town has to pay 10% of the cost it can kill a project simply by not agreeing to pay. This decision must be reached fairly early in the project.

115. Statement by John M. Fowler, Deputy Executive Director and General Counsel of the Advisory Council, at a meeting in Montpelier, October 27, 1995.

A success story. Route 12 in Barnard. $2.4 million for 15 miles of practical low-impact improvements.

Closing Summary

This is a time of change and reconsideration within the Vermont Agency of Transportation. Initiatives such as "scoping," the regional Transportation Advisory Committees, the new Long Range Plan, the new state standards, show a sincere willingness to make changes to past policies and practices. However, the conventional "happy cars" philosophy still often prevails in the Agency.

This is an important time for the state to consider how its character and traditional way of life can be preserved even as inevitable growth and change occur. We look at other parts of the country, shake our heads, lament the mess they have gotten into, and proceed to make the same mistakes. One of the principal mistakes is to decide that the "needs" of the car are so important that we need not take into account, or even identify, competing needs of our communities, people, and the environment. Poor decisions about the car have contributed in other states to sprawling cities, congested suburbs, weak communities, and an unattractive environment. Does this have to be the future for Vermont?

Most design professionals have to deal with a wide range of considerations in the normal course of their work. When we ask architects or landscapers to design things for us, we expect a lot from them. We expect beauty, function, economy, and we expect the designers to listen to us to find out what we truly want. Of course we expect their work to conform to the law and various codes, but we wouldn't think of letting the codes dominate the design process the way standards normally dominate highway design. If there is an apparent conflict between the codes and what we hope to achieve, we expect the designer to do his **absolute best** to find a way to harmonize the conflict. We do not expect our architect to point to a book and tell us there is only one way to do it. Highway design doesn't have to be any different.

These are solvable problems. Apparent conflicts between transportation needs and community concerns can usually be resolved. For the first time the new standards, laws, and policies give designers the necessary tools. The chances are that a committed designer working with a thoughtful community can plan a project that all parties will enthusiastically support. If we really gave the process a chance we would probably like the results.

What is required is the intention. We hope that the Agency and communities will grasp this opportunity and really stretch to find the best solutions. The result will be of great benefit to our state, our communities, and our way of life.

Epilogue - Where Do We Go From Here?

Even though a modest approach is appropriate for today, increased pressures of population and traffic will sooner or later call for substantial transportation investments. The long-term solutions are not at all clear.

Once decisions about the transportation system are made, many other decisions will be foreclosed. Land use patterns, population patterns, the character of villages, towns, even regions are going to be determined mostly by our decisions on transportation investments. Planning, zoning, access control, etc. are weak forces compared to transportation decisions, as the recent history of Chittendon County makes very clear.

What will be the policies for the future? How much money, overall, should we spend on transportation investments? What are the proper roles for passenger rail, freight rail, air, public transportation? Are we going to tolerate congestion or try to build our way out of it? Will we try to improve all our roads about the same amount, or concentrate on a strategic few corridors? Which decisions will be made at the local/regional level? Which at the state level?

These will be hard decisions to make because transportation investments advantage some people and disadvantage others. In some ways the old system was a lot easier; the Green Book seemed to have all the answers.

Nevertheless, we need to look very hard at the big picture for the future. This is the challenge of the next few years and it **is not an engineering problem**. Alternatives need to be developed for a number of different overall transportation approaches, and the results predicted, costed out, understood, debated, and implemented. Alternatives need to include different overall strategies for highway improvement, as well as different plans for rail, air, and public transportation.

Very different pictures will emerge. The transportation plan we choose, more than any other decision we might make, will determine the future of our state.

Appendices

Appendix 1

Vermont Law -Act 200

The Agency is required by 19 V.S.A. § 10 (b) to do its work consistent with the Act 200 goals, two of which are quoted here in part. The Council of Regional Commissions is the body which would enforce its provisions as appropriate.

24 V.S.A. 4302, (Act 200) quoted in part:

(4 To provide for safe, convenient, economic and energy efficient transportation systems that respect the integrity of the natural environment, including public transit options and paths for pedestrians and bicyclers....

(5) To identify, protect and preserve important natural and historic features of the Vermont landscape including:

(A) significant natural and fragile areas;

(B) outstanding water resources, including lakes, rivers, aquifers, shorelands, and wetlands;

(C) significant scenic roads, waterways, and views;

(D) important historic structures, sites, or districts, archaeological sites and archaeologically sensitive areas.

Appendix 2

Vermont Law - Land Takings

19 V.S.A. § 501, quoted entire:

§ 501. Definitions

The following words and phrases as used in this chapter shall have the following meanings:

(1) "Necessity" shall mean a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner. Necessity shall not be measured merely by expense or convenience to the condemning party. Due consideration shall be given to the adequacy of other property and locations and the quantity, kind and extent of cultivated and agricultural lands which may be taken or rendered unfit for use by the proposed taking. In this matter the court shall view the problem from both a long range agricultural land use viewpoint as well as from the immediate taking of agricultural lands which may be involved. Consideration also shall be given to the effect upon home and homestead rights and the convenience of the owner of the land; to the effect of the highway upon the scenic and recreational values of the highway; to the need to accommodate present and future utility installations within the highway corridor: to the need to mitigate the environmental impacts of highway construction; and to the effect upon town grand list and revenues.

Appendix 3

Vermont Law- Town's Right to Turn Down a Project

19 V.S.A. § 1511, quoted entire:

> *§ 1511. Town approval of projects on the state highway system*
>
> *(a) If a planned highway project is located completely within one town or is located in more than one town and in the event the voters of one of the towns at an annual or special meeting which has been warned, vote against that project within one year after the corridor and/or corridor/design hearing, the project shall be suspended by the transportation agency and the facts related to the project with appropriate recommendations shall be reported to the board for its review. The board shall make its report with recommendations to the legislature which shall order either completion or discontinuance of the project.*
>
> *(b) The provisions of subsection (a) do not apply to any project which:*
>
> *(1) has been the subject of a corridor or corridor/design hearing prior to May 1, 1982; or*
>
> *(2) was specifically designated for preliminary design, right-of-way acquisition and/or construction for the legislature prior to May 1, 1982.*

Appendix 4

Designing Safer Roads - Special Report 214[1]

"TRB 214" is a research document compiled by the Transportation Research Board, a research arm of the National Academy of Sciences. It is **referenced in AASHTO** as the appropriate guideline for R.R.R projects.[2]

TRB 214 attempted to determine the relationship between improvements to **existing two-lane rural roads** and resulting benefits. The study considered only increased safety and mobility as benefits; **no consideration** was given to environmental, social, community, or aesthetic factors.

Even so, the study found that:

> *Improving existing highways to match new construction design standards is generally unwarranted. By permitting more highway miles to be improved earlier, less stringent RRR standards can better enhance systemwide safety. (p. 187)*

Some of the most important specific findings include:

- Modest improvements are usually the most effective and/or cost effective. Further improvements save lives and time too, but at higher costs for the benefit received. (pp. 87, 140 and elsewhere) For instance, the first foot of bridge widening has three times the safety benefit as the tenth foot, but is usually much less expensive to accomplish.
- The cost/benefit analysis justified a numerical geometry standard for **only one** kind of improvement - lane/shoulder width. (p. 194) The benefit of other improvements, such as rebuilding curves, widening bridges, changing slopes, removing roadside obstacles, etc. depends on the facts and circumstances in each case. In other words, "one size fits all" responses are not appropriate to R.R.R. projects. (p. 170-171)
- The level of improvement should be related to traffic volume. Improvements to low-volume roads cost just as

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1 . Designing Safer Roads, Special Report 214, Transportation Research Board, National Research Council, Washington, 1987.

2. AASHTO "Green Book," p. xliii.

much as the same improvements on busy roads. But the benefit is less. (p. 170)

- Widening bridges really does enhance safety, but only if the approaches **are not** widened. Widening causes drivers to speed up; if the approaches are also widened the safety benefits are lost. (p. 87) Bridge widening is only cost-effective for short spans on higher volume roads. (p. 172)
- Shoulder widths on roads having more than 2,000 cars per day should be 6 feet. However, a cost-effective option is to pave only the first three feet. (p. 202)

TRB 214 is a thorough, well researched, stupendously tedious document of 250-plus pages. It is hard going but it makes very clear that even if the **only** goals are to improve mobility and safety, numerous, modest improvements, tailored to specific circumstances, are the best approach.

Appendix 5

Legal Opinions and Writings

All the following are from Selected Studies in Highway Law or Legal Research Digest, both published by the Transportation Research Board, National Research Council, a part of the National Academy of Sciences, Washington, DC.

Regarding the State's overall legal obligation to the public:

> *In sum, the State is required only to exercise reasonable care to make and keep the roads in a reasonably safe condition for the reasonably prudent traveler. Although the State has no duty to make the roads absolutely safe, a motorist using a public highway has the right to presume that the road is safe for the usual and ordinary traffic, and he is not required to anticipate extraordinary danger, impediments, or obstructions to which his attention has not been directed.* [3]

Regarding the relationship of the design standards to liability:

> *Generally the purpose for which guidelines are admitted [in court] is to show what the applicable standard of care is on a given issue. Although the guidelines are no doubt important and carry considerable weight, they "do not conclusively determine the applicable standard of care, but are merely one kind of evidence to help a jury determine the issue of reasonable care."*
>
> *The guidelines may assist the jury in deciding what the standard of care is and whether there has been a negligent deviation from it.* [4]

Regarding the legal obligation to upgrade highways:

> *In sum, it appears that the fact that newer, more stringent, design or safety standards may be issued after a*

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3. Thomas, Larry W., "Liability of State Highway Departments for Design, Construction, and Maintenance Defects," Selected Studies in Highway Law, Netherton, Ross D., Editor, 1991, p. 1787.

4. Thomas, Larry W., "Legal Implications of a Highway Department's Failure to Comply with Design, Safety, or Maintenance Guidelines," Selected Studies, p. 1966-N12.

highway is planned and constructed does not mean that the highway department must undertake to improve or upgrade the highway.[5]

Regarding historic resources, in this case speaking about a bridge:

The existence of requirements based on laws promoting historic preservation does not change the transportation agency's obligation to build and operate highways that are safe to use. Nor can it relieve the agency of liability for negligence in performing that mission. It can, however, affect a definition of the agency's duty of care to highway users by sharpening the focus on the character of the property involved, and so helping identify the range of measures that are available to rehabilitate the structure or to mitigate the effects of rehabilitation....

The best defensive position for a transportation agency is likely to be a full documentation of the decision-making process used in determining the appropriate duty of care and selecting the appropriate measures to meet that duty.[6]

Regarding guardrails:

The duty of the State to erect and maintain guardrails, barriers, or similar protective devices is premised on and grows seminally out of the fundamental and underlying rules that: (1) The State is not an insurer of the safety of its highways; (2) the State's duty in respect to highway safety is fully met and satisfied by maintaining its highways in a condition reasonably safe for use by travelers exercising ordinary care.

It follows from these established rules that the State is not under a duty to erect guardrails or barriers along stretches or portions of the roadway system that are reasonably safe for use by prudent motorists absent the installation of such protective devices. The duty of the State to erect guardrails or barriers is hence a limited one, and exists only in connection with hazardous conditions, or , in the words of many or most courts, conditions of 'unusual danger.'[7]

Appendix 6

The Scoping Process

The following from the VAOT 1995 Project Scoping Manual, p. 1:

Introduction

A. General

1. *The scoping of a project is a process that identifies a transportation problem, defines the purpose and need justifying the undertaking, identifies natural and manmade resources in the area, develops safe, efficient and environmentally prudent solutions to the problem and makes recommendations to solve the transportation problem. If the solution to correct transportation deficiencies avoids harm or minimizes harm to the environment, the permit process will be greatly simplified.*
2. *A significant portion of Vermont is home to sensitive resources. At the same time deficient transportation facilities are in use. These facilities must be maintained, upgraded or replaced to solve identified*

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5. Thomas, "Legal Implications ...", p. 1966-N29.
6. Netherton, Ross D., "Legal Aspects of Historic Preservation in Highway and Transportation Programs, Legal Research Digest," No. 20, May 1991, p. 35.
7. Vance, John C., "Duty of the State to Erect and Maintain Guardrails, Barriers, and Similar Protective Devices, Selected Studies," p. 1966-N157.

problems and the impacts to the environment kept to a minimum. All Vermont Agency of Transportation (VAOT) projects are expected to be technically sound, well designed, cost effective, compatible with their surroundings and acceptable to local and regional officials, and citizens. To meet this goal, the VAOT is committed to the scoping process so that a consistent approach to problem solving is in place.

3. *The VAOT has expanded its role to investigate a broad range of concerns during the scoping process. This includes studying environmental, economic and social aspects in addition to the engineering considerations surrounding a transportation project. The VAOT has created the Project Scoping Section, within the VAOT Planning Division, which can draw from specialists to create a multi-disciplined team to accommodate these issues. To facilitate this process, the VAOT has made a commitment to early involvement with affected citizens and local and regional officials, and to explore environmental issues early in the scoping process. This requires interaction with many agencies, such as [numerous agencies listed.] Regional and local planning commissions and the local government must also be included. In this way the VAOT can develop a transportation project that not only meets technical requirements, but also fits with environmental, social and economic context of the problem area...*

5. *The Project Manager must be aware of all the objectives including the goals concerning environmental issues. The solution developed through this process must minimize cost, disruption to residents, and land use impacts. It must also incorporate the input from the local community, and have public acceptance. The best solution is the one that balances all of the issues.*

Appendix 7

Sufficiency Ratings

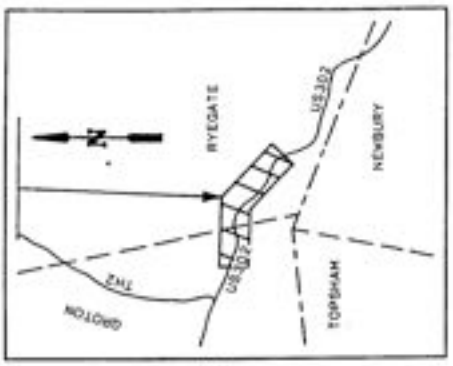
The following is an exact transcription of a sufficiency rating sheet for a highway, from the 1991 (most recent) VAOT Sufficiency Ratings. Note that no points relate to environmental or community concerns. No points depend on whether the facility is actually serving its function adequately. Points are earned for width and speed, whether appropriate or not.

IDENTIFICATION OF POINT VALUES			
I. STRUCTURAL CONDITION			50 POINTS
A. Foundation		30 points	
Slides: deduct 1 to 3 points			
Bridge Capacity: deduct 0 to 5 points			
B. Drainage		8 points	
1. Culverts	4 points		
2. Ditches	4 points		
C. Pavement or Surface		12 points	
II. SAFETY			25 POINTS
A. Surface Width		6 points	
(Deduct for Narrow Structures)			
B. Roadbed Width		7 points	
C. Planning Survey Stopping Sight Distance		8 points	
D. Consistency of Alignment and Grade		4 points	
E. Accident Deduction: deduct 0 to 5 points			
III. SERVICE			25 POINTS
A. Average Highway Speed		12 points	
Speed Correction: deduct 0 to 6 points			
B. Planning Survey Passing Sight Distance		6 points	
C. Ease of Driving		7 points	
1. Surface Width	4 points		
2. Rideability	3 points		
D. Correction of Total Service Rating			
1. Correction for excessive grade: deduct 0 to 6 points			
2. Correction for restricted vertical clearance: deduct 0 to 8 points			
			100 POINTS

Appendix 8

Five Year Capital Plan

The following page is reproduced from Fiscal Year 1998 - Capital Program and Project Development Plan, VAOT, p. 52. This example is for the replacement of 2 miles of US 302 in Groton/Rygate. The page shows the location, description of the project, approximate total cost, and expected expenditure in each of several years.



One-Year Capital Program and Four-Year Project Development Plan

Category: NEW CAPACITY ROADWAY

Project Name: GROTON-RYEGATE

Project No.: STP F 026-1(30) Route Name or No.: US 302

Program: TRANSPORTATION - ENGINEERING AND CONSTRUCTION

Roadway Sufficiency Rating: 49.80 Milemarker: 7.300-1.300
Bridge Sufficiency Rating: N/A Bridge No.: N/A

Description: RECONSTRUCTION OF US302 BEGINNING AT THE EASTERN GROTON VILLAGE LINE EXTENDING EASTERLY 2 MILES ENDING 0.2 MILE WEST OF THE SOUTH RYEGATE VILLAGE LINE.

Comments:

PHASE	TOTAL COST	EXPENDED THRU FY 1996	CURRENT YEAR FY 1997	BUDGET YEAR FY 1998	PROJECTED CASH REQUIREMENTS (FOR PLANNING PURPOSES ONLY) FY 1999	FY 2000	FY 2001	FY 2002	ESTIMATED COST TO COMPLETE
PE	$ 366,000	$ 318,838	$ 46,162	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
ROW	374,000	359,271	14,729	0	0	0	0	0	0
CONST	3,891,880	0	850,154	2,541,726	500,000	0	0	0	0
TOTAL	$ 4,630,880	$ 678,109	$ 911,045	$ 2,541,726	$ 500,000	$ 0	$ 0	$ 0	$ 0
STATE	$ 963,126	$ 169,527	$ 185,253	$ 508,345	$ 100,000	$ 0	$ 0	$ 0	$ 0
FEDERAL	3,667,754	508,582	725,792	2,033,381	400,000	0	0	0	0
LOCAL	0	0	0	0	0	0	0	0	0

5/28/97

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About the Preservation Trust.....

Vermont has a rich collection of historic properties, and the combination of historic communities and the countryside make the state a very special place.

Included are individual buildings like the Old Round Church in Richmond, Flynn Theatre in Burlington, and the buildings at Shelburne Farms. There are also historic districts which include small village centers, neighborhoods, downtown areas, and industrial sites. Examples include the Village of North Bennington, Park Street in Brandon, downtown Montpelier, and the marble works of West Rutland. Each of these historic resources adds to our economic and community health.

With generous support from a great many individuals, businesses, and foundations, the Preservation Trust has provided technical assistance and direct financial support to hundreds of community preservation initiatives. The Preservation Trust has also been at the forefront of the battle against sprawl in Vermont and in promoting downtown vitality. The Trust has provided major financial support and technical assistance to local citizens groups battling sprawl. At the same time, the Trust has worked closely with Wal-Mart to develop smaller scale stores located in downtown districts. Many of the Trust's other activities and projects are designed to stimulate a broader understanding of the importance and value of our historic architectural resources. The Preservation Trust is a statewide partner of the National Trust for Historic Preservation.

Here are some examples of what the Preservation Trust accomplished last year:

- The Trust provided over $600,000 in grants and technical assistance to 55 preservation projects. Examples include the Williston Federated Church, Kimball Public Library in Randolph, and the Ethan Allen Firehouse in Burlington.
- In partnership with the Vermont Land Trust, the Preservation Trust established a barn restoration program that has already supported the rehabilitation of eight historic barns.
- With our urging and assistance Wal-Mart opened a new store in downtown Rutland, proving that new retail development can take place without sprawling into the countryside.
- For the second year, the Preservation Trust and the Vermont Country Store sponsored an award and grant program that recognizes the contributions of local storekeepers and small community stores.

Our Contributors Make Our Programs and Projects Possible

Each year the Preservation Trust must raise the funds necessary to carry out our many programs. Some contributors prefer to fund specific programs such as technical assistance grants or our newsletter Historic Vermont. Others provide support for the Trust's general fund budget.

Each contribution, no matter how large or small, makes a real difference. If you would like to help, please contact Paul Bruhn, Executive Director, Preservation Trust of Vermont, 104 Church Street, Burlington, Vermont 05401. Telephone 802-658-6647. Email: bruhnpa@vbimail.champlain.edu