

MEMORANDUM OF UNDERSTANDING
between
the Vermont Natural Resources Board
and
the Vermont Agency of Transportation
for Implementing Act 145 of 2014 (Relating to Transportation Impact Fees)

The purpose of this Memorandum of Understanding (MOU) is to define the roles and responsibilities of the Vermont Natural Resources Board (NRB), the District Environmental Commissions (District Commissions), and the Vermont Agency of Transportation (VTrans) in establishing and administering Transportation Impact Fees within and outside Transportation Improvement Districts pursuant to Act 145 of 2014 – An Act Relating to Transportation Impact Fees.

By defining roles and responsibilities this MOU encourages cooperation and coordination between the NRB, District Commissions, and VTrans as Act 145 of 2014 is implemented.

I. Transportation Impact Fees within Transportation Improvement Districts

A. Establishing Transportation Impact Fees and Transportation Improvement Districts

1. VTrans Functions

- a. VTrans shall identify the capital transportation project or projects in the VTrans Capital Transportation Program that support(s) VTrans' establishment of a Transportation Improvement District. (10 V.S.A. § 6105(a).)
- b. VTrans shall fund and prepare the Transportation Infrastructure Plan necessary to determine the geographic boundaries of the Transportation Improvement District, the performance standards within the Transportation Improvement District, and the Transportation Impact Fee Formula. (10 V.S.A. § 6105(b)(2).)
 - i. VTrans may prepare the Transportation Infrastructure Plan itself or assign preparation of the Transportation Infrastructure Plan to a Regional Planning Commission (RPC) for VTrans' adoption or modification.
 - ii. Once VTrans has decided to prepare the Transportation Infrastructure Plan itself or to assign preparation of the Transportation Infrastructure Plan to an RPC, VTrans shall assemble a steering committee to assist with Transportation Infrastructure Plan preparation. The steering committee may include representatives from VTrans, the NRB, RPCs, municipalities, landowners, and developers in the area of the transportation project or projects supporting the proposed Transportation Improvement District.

- c. Based on the Transportation Infrastructure Plan, VTrans shall propose performance standards for the Transportation Improvement District, the geographic boundaries of the Transportation Improvement District, and the Transportation Impact Fee Formula for the Transportation Improvement District.
- d. VTrans shall express the Transportation Impact Fee Formula that VTrans proposes for a Transportation Improvement District as a generally applicable fee formula or as a per-vehicle fee. (10 V.S.A. § 6106(a).)
- e. VTrans shall conduct a public hearing on the proposed Transportation Impact Fee Formula and Transportation Improvement District following the notice requirements set forth in Act 145. (10 V.S.A. § 6105(b)(3).)
- f. The Secretary of Transportation or the Secretary's designee may approve, approve with revisions, or deny VTrans' Transportation Impact Fee Formula and Transportation Improvement District proposal.
- g. VTrans may assess a Transportation Impact Fee for a particular permit for access to a state highway under 19 V.S.A. § 1111 when the project requiring an access permit does not also require an Act 250 permit. VTrans may also advocate for the assessment of a Transportation Impact Fee for a particular land use or access permit before a District Commission, the Transportation Board, or any court. (10 V.S.A. § 6106(b).)
 - i. VTrans shall promptly notify the NRB of any proceeding before the Transportation Board or any judicial proceeding in which a Transportation Impact Fee is at issue and VTrans is a party, unless the NRB has already received notice.
 - ii. In any proceeding before the Transportation Board or in any judicial proceeding, VTrans shall make reasonable efforts to cooperate with the NRB and provide expertise to reach a common position on the case-specific assessment of a Transportation Impact Fee.

2. NRB and District Commission Functions

- a. At VTrans' request, the NRB shall provide VTrans with public information on existing and pending land use permits within a proposed Transportation Improvement District planning area (including but not limited to mitigation requirements, trip allocations, and any other relevant and available permit condition data that may inform VTrans' establishment of performance standards, the Transportation Impact Fee Formula, and the Transportation Improvement District boundary).

- b. The NRB may serve on transportation infrastructure study steering committees that VTrans assembles to assist with Transportation Infrastructure Plan preparation.
- c. The NRB may participate in public hearings on proposed Transportation Impact Fee Formulas and Transportation Improvement Districts.
- d. The District Commissions may assess a Transportation Impact Fee for a particular land use project before the Commission. (10 V.S.A. § 6106(b).)
- e. The NRB may advocate for the assessment of a Transportation Impact Fee on a case-specific basis in any court. (10 V.S.A. § 6106(b).)
 - i. The NRB shall promptly notify VTrans of any judicial proceeding in which a Transportation Impact Fee is at issue and the NRB is a party, unless VTrans has already received notice.
 - ii. In any judicial proceeding, the NRB shall make reasonable efforts to cooperate with VTrans to reach a common position on the case-specific assessment of a Transportation Impact Fee.

B. Administering Transportation Impact Fees and Transportation Improvement Districts

1. VTrans Functions

- a. VTrans shall determine the Transportation Impact Fee for any project within a Transportation Improvement District that requires a state highway access permit pursuant to 19 V.S.A. § 1111 but that does not require a state land use permit pursuant to 10 V.S.A. § 6081. VTrans may impose mitigation measures instead of or in addition to a Transportation Impact Fee as VTrans deems appropriate. (10 V.S.A. § 6105(d), 19 V.S.A. § 1111(a).)
- b. VTrans, as a party subject to all the rules pertaining to proceedings before the District Commissions, shall recommend for the consideration of the District Commissions the Transportation Impact Fee for any project within the Transportation Improvement District that requires a state land use permit pursuant to 10 V.S.A. § 6081. (10 V.S.A. §§ 6104(a), 6105(d); 6106(b).) VTrans may recommend mitigation measures instead of or in addition to a Transportation Impact Fee as VTrans deems appropriate.
- c. For land use projects within a Transportation Improvement District that do not require a state land use permit but that do require a state highway access permit, VTrans shall collect any Transportation Impact Fee through the state highway access permit application process. (19 V.S.A. § 1111(a).)

- d. VTrans shall administer the Transportation Improvement District Fund within the State Transportation Fund. (10 V.S.A. § 6107.)
- e. VTrans shall deposit Transportation Impact Fees that it receives into the Transportation Improvement District Fund and track Transportation Impact Fees collected and expended for each Transportation Improvement District. (10 V.S.A. §§ 6107(a), 6108(a).)
- f. VTrans shall provide the State Treasurer an annual accounting of each Transportation Improvement District and the associated Transportation Impact Fees. (10 V.S.A. § 6107(c).)
- g. After receipt of a timely application, VTrans shall refund Transportation Impact Fees from the Transportation Improvement District Fund to the appropriate applicant if the Transportation Impact Fees have not been spent on the capital transportation projects for which the Transportation Impact Fees were paid within 15 years from the date of payment. (10 V.S.A. § 6109.)

2. NRB and District Commission Functions

- a. For land use projects within a Transportation Improvement District that require a land use permit pursuant to 10 V.S.A. § 6081, the District Commissions shall, as appropriate, require payment of any Transportation Impact Fee as a permit condition. Permittees shall pay all such fees directly to VTrans. (10 V.S.A. §§ 6104(b), 6108(a).)
- b. Pursuant to existing processes under 10 V.S.A. § 6084(b)(3), the District Commission shall provide notice to VTrans of minor and major cases.
- c. The NRB shall require permit applicants to indicate in their applications whether the proposed project is located within a Transportation Improvement District.
- d. A District Commission may require a permit applicant, or a permit applicant may choose, to pay the entire cost of a capital transportation project in lieu of paying a Transportation Impact Fee. (10 V.S.A. §§ 6104(a), 6106(d).)
 - i. At the request of the applicant in a particular state land use permitting case, a District Commission may provide for reimbursement to the applicant by developments or subdivisions subsequently receiving state land use permits or amended permits that benefit from a capital transportation project that the applicant previously paid for in its entirety.

- ii. Pursuant to existing processes, the District Commission shall include VTrans on the service lists for proceedings involving Transportation Impact Fees, and VTrans shall provide the District Commission with recommendations for determining the subsequent development's or subdivision's proportionate share of reimbursement.
- e. The District Commissions shall consider the extent, if any, to which the payment of a Transportation Impact Fee would satisfy 10 V.S.A. § 6086(a)(5) or 9(K) and may require other mitigation in addition to or instead of any Transportation Impact Fee. (10 V.S.A. §6104(c).)

II. Transportation Impact Fees without Transportation Improvement Districts

A. Establishing Transportation Impact Fees without Transportation Improvement Districts

1. NRB and District Commission Functions

- a. The District Commissions may assess Transportation Impact Fees outside Transportation Improvement Districts on a case-by-case basis in both major and minor proceedings. (10 V.S.A. §§ 6104(a), 6106(a).)
 - i. A District Commission may require payment of a Transportation Impact Fee to fund, in whole or in part, capital improvements that are necessary to mitigate the transportation impacts of a proposed development or subdivision or that benefit the proposed development or subdivision.
 - ii. A District Commission may assess a Transportation Impact Fee outside a Transportation Improvement District for capital transportation projects in the VTrans Capital Transportation Program.
 - iii. A District Commission may assess a Transportation Impact Fee outside a Transportation Improvement District for capital transportation projects that provide a physical improvement to a municipal highway, right-of-way, or transportation facility and that are identified in a municipal capital budget or program pursuant to 24 V.S.A § 4430.
- b. Pursuant to existing processes under 10 V.S.A. § 6084(b)(3), the District Commission shall provide notice to VTrans of minor and major cases.
- c. District Commissions shall consider the recommendations of VTrans while reaching their own decisions on the need for and the amount of a Transportation Impact Fee outside a Transportation Improvement District.

- d. District Commissions may accept, modify, or reject a VTrans-recommended Transportation Impact Fee Formula or Transportation Impact Fee for a specific development outside a Transportation Improvement District.
- e. District Commissions may make payment of a Transportation Impact Fee outside a Transportation Improvement District a condition of a land use permit.
- f. VTrans may appeal a District Commission's decision regarding a Transportation Impact Fee outside a Transportation Improvement District as a condition of a land use permit. (10 V.S.A. § 6110(c).)

2. VTrans Functions

- a. VTrans shall review traffic impact studies and other information included in land use permit applications, and as a party in District Commission proceedings, recommend to the Commissions whether or not to require a Transportation Impact Fee and, if applicable, the amount of a Transportation Impact Fee to mitigate the transportation impacts of the development or subdivision at issue.
- b. VTrans may recommend mitigation measures in addition to or instead of a Transportation Impact Fee.
- c. VTrans shall specify whether any mitigation that it recommends would be addressed by:
 - i. A project included in VTrans' Capital Transportation Program,
 - ii. A project included in a municipal capital budget or program,
 - iii. A project funded by another permittee for which a District Commission previously established a Transportation Impact Fee,
 - iv. A project funded by the applicant, or
 - v. Other means.
- d. Under subparagraphs c.i and c.ii, above, VTrans shall recommend a Transportation Impact Fee Formula, considering all factors set forth in 10 V.S.A. § 6106 and the Transportation Impact Fee for the development or subdivision at issue.

- e. Under subparagraph c.iii, above, VTrans shall recommend the Transportation Impact Fee for the development or subdivision at issue by applying the previously established Transportation Impact Fee Formula.

B. Administering Transportation Impact Fees without Transportation Improvement Districts

1. NRB and District Commission Functions

A District Commission may require a permit applicant, or a permit applicant may choose, to pay the entire cost of a capital transportation project in lieu of paying a Transportation Impact Fee. (10 V.S.A. §§ 6104(a), 6106(d).)

- a. At the request of the applicant in a particular land use permitting case, a District Commission may provide for reimbursement of the applicant by developments or subdivisions subsequently receiving land use permits or amended permits that benefit from a capital transportation project that the applicant previously paid for in its entirety.
- b. The District Commission shall notify VTrans of the applicant's request, and VTrans shall provide the Commission with recommendations for determining the subsequent development's or subdivision's proportionate share of reimbursement. (10 V.S.A. §§ 6104(a), 6106(d).)

2. VTrans Functions

- a. If a District Commission establishes a Transportation Impact Fee based on one or more capital transportation projects in the VTrans Capital Transportation Program on the state highway system, VTrans shall:
 - i. Collect the fee, place it in the Transportation Improvement District Fund, and separately track fees collected and expended related to the capital projects. (10 V.S.A. § 6107.)
 - ii. Work to complete the development process (engineering, permitting, right-of-way acquisition, etc.) and construct the capital transportation projects on which the fee is based. (10 V.S.A. § 6109.)
 - iii. After receipt of a timely application, refund Transportation Impact Fees from the Transportation Improvement District Fund to the appropriate applicant if the Transportation Impact Fees have not been spent on the capital transportation projects for which the Transportation Impact Fees were paid within 15 years from the date of payment. (10 V.S.A. § 6109.)

- b. VTrans may make recommendations to District Commissions for Transportation Impact Fees relating to transportation projects that are not included in a VTrans Capital Transportation Program, including municipal projects and projects constructed by a private developer. (10 V.S.A. §§ 6104(a), 6106(d), 6108, 6109.)

III. Rulemaking

The NRB and VTrans shall work together to develop a single rulemaking package to implement Act 145 of 2014 and to move the proposed rules through the rulemaking process prescribed by the Vermont Administrative Procedures Act, 3 V.S.A. §§ 800 – 849. (10 V.S.A. § 6111.)

IV. No Limitation of Authority

This MOU is not intended to limit the authority of VTrans, the NRB, or the District Commissions; nor is it intended to limit how VTrans, the NRB, and the District Commissions may cooperate in implementing Act 145 of 2014. This MOU is subject to other applicable procedural and substantive requirements governing VTrans, the NRB, and the District Commissions.

V. Termination and Waiver

Either the NRB or VTrans may terminate this MOU after thirty days' written notice. The NRB and VTrans may jointly modify this MOU or waive any of its provisions at any time.

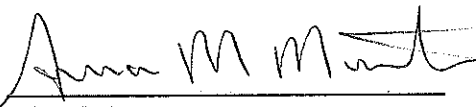
Dated at Montpelier, Vermont this 18th day of November, 2014.

Vermont Natural Resources Board


By: 
Ron Shems, Chair

Dated at Montpelier, Vermont this 3rd day of December, 2014.

Vermont Agency of Transportation

By: 
Brian R. Searles, Secretary

Approved as to form:

 11/18/14
Daniel D. Dutcher (Date)
Assistant Attorney General

