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June 2, 2010

Honorable Thomas S. Durkin
Environmental Court Judge
Environmental Court
2418 Airport Rd., Suite 1
Barre, VT 05641-8701

Re: *In re: Rivers Dev. Act 250 Appeal*, Docket No. 68-3-07 Vtec

Dear Judge Durkin:

The Vermont Agency of Transportation (VTrans) would like to express its very real concern about the potential impact of the Court's *In re: Rivers Dev. Act 250 Appeal* decision on the Scenic Byways Program.

The federal Byway Program was established in 1991 to "identify, designate, and promote scenic byways and to protect and enhance the archeological, cultural, historic, natural, recreational, and scenic qualities of the areas through which these byways pass." VTrans operates two related highway designation programs: the Vermont Byway Program and the Scenic Road law established by 19 V.S.A. Chapter 25. The Vermont Byway Program is more flexible than the Scenic Road law and participation allows access to federal grants for: the State Byway Program; corridor management plans; safety improvements; byway facilities; access to recreation; resource protection; interpretive information; and marketing programs. A copy of the list of grants received under the program is enclosed with this letter.

The details of the Vermont Byway Program are set out in *The Vermont Byways Program Manual*, a copy of which is included. The *Manual* can also be found at: http://www.vermont-byways.us/sites/byways/files/pdf/organizers_info/BywayProgramManual.pdf. The *Manual* notes that the Program is aimed at recognition of the resource and encouragement of economic activity, not regulation:

Paralleling the continuing concern for Vermont's scenic landscapes, the last three decades also illustrate another aspect of Vermont's culture that has great relevance to the new Program -- resource planning and regulation. Since 1970, Vermont has had in place one of the most sophisticated land use control mechanisms in the nation - Act 250. In 1988, Act 200 was passed to

encourage communities to plan for growth and to establish a coordination mechanism for state agency, regional, and town plans. As in most states, Vermont also has programs to manage wetlands, sensitive ecosystems, groundwater, and other natural resources. Many communities have historic preservation districts. Most communities have zoning. When put together, Vermont has an extensive set of growth and resource management tools available to communities.

This commitment to protection of natural, cultural, and scenic resources has been accompanied by an increasing concern for economic development. The weakened economy of the early 1990's coincided with a statewide and national concern that closer scrutiny be given to land use and resource management regulations. These new concerns placed another challenge before the Program: be sensitive to and fully incorporate the needs and concerns of the property owners and businesses that are participating in a Program. In accordance with the National Scenic Byways Program, the Program deliberately seeks to encourage economic development in byway communities so that the Program can produce both aesthetic and economic benefits.

* * * *

The Program provides protection for owners of private property in that (1) existing land use regulations need not be modified, (2) the Program does not have powers of zoning or condemnation, (3) residents in or along a corridor are not required to participate, (4) the Program is intended to promote economic growth and development in a balanced manner, and (5) the Program and/or data collected as part of the Program are not intended to be used in an Act 250 hearing, nor would it preclude any land development otherwise permitted by existing zoning. (Emphasis added).

Manual Pages 6 and 9.

The federal Byways Program is founded upon similar principles:

This program is founded upon the strength of the leaders for individual Byways. It is a voluntary, grassroots program. It recognizes and supports outstanding roads. It provides resources to help manage the intrinsic qualities within the broader Byway corridor to be treasured and shared. Perhaps one of the underlying principles for the program has been articulated best by the Byway leader who said, "the program is about recognition, not regulation." (Emphasis added).

National Scenic Byways Home Page -<http://www.byways.org/learn/program.html>.

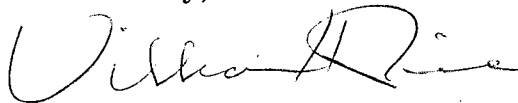
Designation and maintenance of Vermont Byway status requires local participation. First, a local steering committee has to be organized. Comments are obtained from affected selectboards and planning commissions and each selectboard

in a community along the proposed route must approve the application. *Manual* Page 10. Recertification must be obtained every five years. In the event that there is erosion of a given byway's quality, local governmental entities would have to demonstrate their commitment to improving the byway. Without that commitment, the byway's designation would be discontinued. *Manual* Page 15.

John LaBarge, the Manager for the Vermont Byway Program, reports that selectboards almost universally ask about the regulatory impact of the Byway designation on economic development. In accordance with the *Manual*, they are informed that the designation is intended as recognition of the resource and not to be used to regulate development. VTrans' believes that use of the byway designation in an Act 250 case will have a chilling effect on new byway applications and recertifications. Loss of designated byways will lead to loss of federal grants and potentially will harm tourism in those parts of the State.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "William H. Rice".

William H. Rice
Assistant Attorney General

cc: Enclosed Service List