

TOWN OF NORWICH

GIS Analysis of Rural development Patterns

**GIS Analysis Report
Project No.: 5028**

**Prepared for the
Town of Norwich
300 Main Street
Norwich, VT, 05055**

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AES Project No. 5028

AES  **Northeast**

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Contents

1) Premise of Study:.....	2
2) Datasets used for analysis:	3
3) Process of Analysis:.....	4
3.1 Parcel Layer Review and Categorization:.....	4
3.2 Review of Parcel Data Changes Over the Years:.....	5
3.2.1 State Tax Changes and National Economic Impacts:	5
3.2.2 Recent Merger Event within The Town of Norwich:	5
3.2.3 Town Response to Counter Slow Development:.....	5
3.3 Tax and Land Use Limitations: Hypothesis	6
4) Discussed Solutions:	7
4.1 Adjustment of Existing Zoning	7
4.2 Creation of New Zoning Classification	7
5) Review Summary:	9
6) FIGURES	10
7) APPENDICES	11

1) Premise of Study:

This report's purpose is to summarize the findings based off the review and analysis of the parcel information from the Town and see if the changes made to the regulations in 2002 have helped or hindered sustainable growth. After carefully reviewing the historic data from the town of Norwich Vermont, a pattern of development/actions has become apparent regarding how parcels are merged, split, or corrected over the study period.

Following a period of sustained growth, the Norwich Planning Commission amended the subdivision regulations in 2002, ending the two-acre minimum lot size that had been in effect for the previous decade. The amendment also introduced a density factor calculator which uses site conditions, proximity to Norwich village and road conditions to calculate the total number of parcels that could be subdivided from the original parcel. The goal was to protect rural character by concentrating development closer to the village and along major road corridors. This study measured the effectiveness of this regulatory approach. It will also be used to make any recommended changes to remediate any shortcomings found by the study.

2) Datasets used for analysis:

The following datasets were provided by the Town for use in the analysis of the settlement patterns for rural residential parcels within the Town boundary.

- 1993 Parcel Dataset
- 2003 Parcel Dataset
- 2013 Parcel Dataset
- 2017 Parcel Dataset
- 2021 Parcel Dataset
- Subdivision Datasets from 1992 – 2021
- Zoning Permit Datasets from 1993 – 2021

The following layers were brought in from the Vermont GIS Library:

- 2016 Land Cover
- 2021 FEMA Layers
- VT Datasets - Norwich Zoning
- VT Datasets - TRORC Future Land Use Plan
- VT Datasets - VCGI Open Data Emergency Road Lines
- VT Wetland Delineations

The following layers were produced over the course of the analysis process and can be used to further understand the development pattern:

- 3 Mile Buffer – Used to filter down some of the parcels that changed over the yearly datasets
- Center Point of the Town Hall Property - Used to create the 3-mile radius for filtering the parcels in the entire town
- Zoning layers - Used to filter the large parcel datasets to those classified under the Rural Residential Zone and are classed as residential 1 or residential 2 properties.
- Slope layers calculated from a series of Digital Elevation Model (DEM) files.
- Service layers calculated from the extents of the proposed districts and associated roadway lines extending from town center to 1.5 and 3 miles along existing roadways.
- Finished parcel layers that would be recommended to be entered into a new zoning district.
- Finished analysis layers from the different time periods to track the changes over time.

3) Process of Analysis:

3.1 Parcel Layer Review and Categorization:

The process of analyzing the parcels required careful review of the parcel layers and reviewing any changes from one dataset to the next representing the different time periods. Those changes were categorized as one of three different actions done to that parcel.

- Merge
 - If two adjacent parcels combined, either fully or partially to create a new parcel or to make one of the other parcels larger, this was classified as a *merger*.
 - Example of a partial split and merger: Parcel A and Parcel B share a side the desire was to partially split the parcels and merge the removed sections into a new parcel (Parcel C). Parcel A and B would split down the middle and the two center halves that shared a side would be combined to become Parcel C. Parcel C would be classified as a *merger* since it came from two or more parcels combining into one new one, and Parcels A and B would be listed as a *split* since they separated into two or more parcels.
- Split
 - If a single parcel is broken or split into two new parcels, then the two new parcels would be classified as a *split* parcel from the previous dataset's version.
 - Example: If parcel A was one parcel in the previous dataset, but it became two parcels in the next dataset, then parcel's B and C are split from parcel A. This would also include if part of parcel A was split off and merged with another parcel to become a larger one. Parcel A is still considered *split* since its parcel number did not change.
- Amend
 - In this scenario, no parcels are created or removed, and the boundaries are either edited, adjusted, or modified alongside their neighbors' parcel boundary, becoming an *amended* parcel. This could have been the result of a boundary dispute or a professional survey to update the boundary via newer methods. This action was called out in case further down the timeline there was a future split or merger resulting from this boundary update.
 - Example: Parcel A and B are joined by a common side that had multiple jagged edges and some small overlaps in the dataset. The next year's dataset was cleaned up to be a straight line between the two *amended* parcels.
 - Another common example is there was not a right-of-way (ROW) access cut into the parcel in an older dataset, but in the next dataset ROW has been clipped out of the *amended* parcel.

All three of these actions were used to color code and categorize the parcels, with some parcels merging and splitting multiple times over the study period of 30 years. It is important to see areas of high activity where the changes to parcels were significant, and if there was any noticeable trend within an area. Combined with seeing small changes that occurred multiple times, these analyses could point out the changing trends/advantages of having a parcel split or adjusted as it changed hands over the study period.

Additionally, with additional layers representing constraints imposed by the zoning ordinances, it can be seen if the rule changes caused landowners to split/merge parcels in response to the new regulations and whether the regulation changes had the intended effect on the distribution of parcels in the Towns rural areas.

Refer to **Figure 3.1: Parcel Changes for Rural Residential Parcels 1993 to 2003**

Refer to **Figure 3.2: Parcel Changes for Rural Residential Parcels 2003 to 2013**

Refer to **Figure 3.3: Parcel Changes for Rural Residential Parcels 2013 to 2017**

Refer to **Figure 3.4: Parcel Changes for Rural Residential Parcels 2017 to 2021**

Refer to **Figure 3.5: Parcel Changes for Rural Residential Parcels 2021 Reflecting 2017 Changes**

3.2 Review of Parcel Data Changes Over the Years:

Alongside the general changes to parcel boundaries over the years between the sets, there was a massive shift and merging of parcels from 2017 to 2021 and in 2003 to 2013. The merged parcels were ones that appeared to be parcels set up to be sold off as new residential properties and were merged into singular large parcels at some point between those two dates. This highly unusual activity was noted and after some research into the events during that time, there were some theories as to why the sudden changes in parcel management occurred.

3.2.1 State Tax Changes and National Economic Impacts:

One of the more noticeable events during the 2003 to 2013 time period was the economic downturn in the US, and within the state of Vermont there were significant changes in how land taxes and land values were calculated. The changes included tax laws on developable and undeveloped land and how that is calculated.

This tax change was intended to help landowners not be penalized for having large areas of undeveloped land, but landowners that own multiple smaller developable parcels were being taxed more compared to someone with comparable acreage but on a single parcel. It is speculated that this change in tax law is what caused many landowners, who would have developed once the economy recovered from the 2008 recession, to consolidate their parcels into single large parcels that would include their original parcel with their residential homes on them.

The details on the tax information can be read in detail in **Appendix A: Tax Summaries**

3.2.2 Recent Merger Event within The Town of Norwich:

There was also another merger event where a high number of parcel's boundaries were merged in the period from 2017 to 2021 based on the information provided with the parcel layers. For this more recent event, there isn't a very clear answer.

Many of the parcel's merging did appear to be large tracks of undeveloped land. The previous parcels were all listed as sub parcels or additional lots associated with a parcel with a residence built on it. Multiple parcels that did merge appeared to be classed as undeveloped land with a much smaller residential lot with a home or business on it. They were also further from the Town center and in a more rural area compared to parcels that merged during 2003 to 2013.

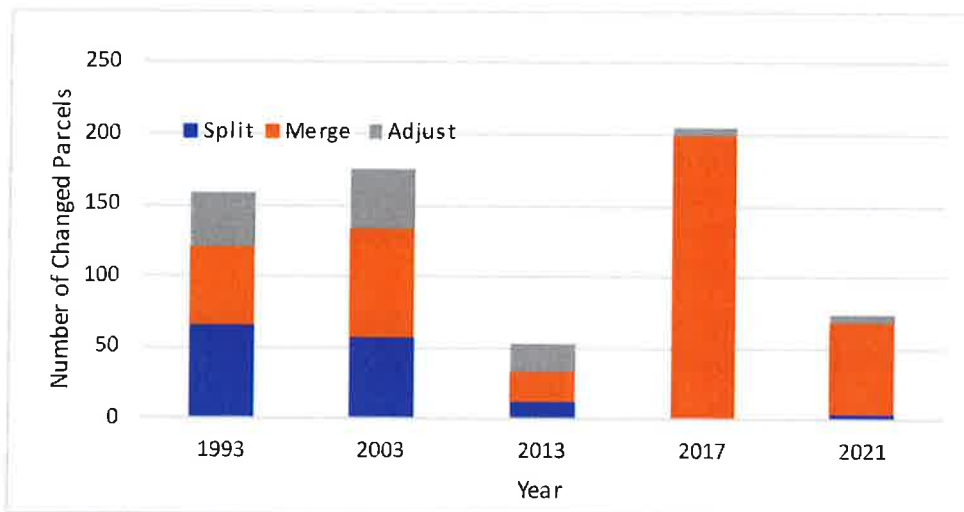
Other theories that were proposed to be affecting the growth and distribution of development in the rural areas of the Town of Norwich included access to roadways, minimum parcel size, access to scenic views from properties, ease/difficulty of developing a lot based on physical properties of the geography, such as slope, wetland, or flooding proximity, and having access to or being adjacent to protected forests. While some of these factors did determine the suitability to build, it did not seem to explain the strong reversal of land being split up for development and sale.

3.2.3 Town Response to Counter Slow Development:

The Town of Norwich attempted to adjust the rural residential zoning regulations in 2002 to help promote smart growth and to open lands to be developed by removing the 2-acre minimum lot size and created a series of calculations based on site conditions (proximity to wetland/flood zones, slope, terrain type, proximity to highways) to determine a parcel's allowable density for development.

Additionally, the changes to the rural residential zoning laws created a system where the planning board reviews each parcel's submission of proposed development vs a blanket set of development restrictions. This should have promoted more growth over the years in the areas that needed it most or could support the added development in a way that was tailored to the specific nature of each individual parcel and skewed toward areas that are easier to develop and closer to the town center.

The number of parcels that were split into sub-parcels was higher in datasets prior to 2004 and did not seem to be a result of the regulation changes that took effect in 2002 by the Town Planning Commission.



3.3 Tax and Land Use Limitations: Hypothesis

Continuing the hypothesis that the tax law changes are the contributing factors that are stunting the growth and development of the rural residential sector, additional visualization of the changes over time and the distribution of the parcels were reviewed.

With the continued analysis of the merger and split pattern to back up that reasoning, a series of maps showing the parcels overlaid with tax information including homestead, homestead reduction, and land value were created.

A strange occurrence is that many parcels that have changed significantly over the years do not have a homestead declaration and are not taking advantage of the tax credit and reduction that could have offset some of the costs of owning and maintaining larger parcels. This could be due to multiple reasons, including the parcel being a second home, a trust, an investment property, or the owner has no plans on developing and the parcel is used for resources or some other form of use that does not include residency other than a single dwelling.

So, despite the easement of the regulations by the board in 2002 to remove the 2-acre limit on parcels, the change made to existing zoning did not have any major effect on promoting development along the major/improved roadways near the village center. The economic environment during that time in the State of Vermont seemed to have caused more problems instead, making additional development too costly for developers and landowners at the time.

Refer to **Figure 3.6: Homestead and Tax Deductions for Rural Residential Parcels**

Refer to **Figure 3.7: Homestead and Homestead Full Land Value for Rural Residential Parcels**

Refer to **Figure 3.8: Homestead and Full Land Value for Rural Residential Parcels**

4) Discussed Solutions:

After presenting the initial findings to the planning board, two solutions to alleviate this development pattern were discussed.

- Adjustment of the existing zoning regulations
- Creating a new zoning classification

4.1 Adjustment of Existing Zoning

Under the current zoning restrictions, maximum densities are determined based on the individual parcel's location characteristics. This includes highway access, distance from town center, and proximity to protected spaces. While this system helps keep the number of zoning districts to a minimum, it limits development in parcels that would ordinarily be desirable to developers. With some of the existing zoning criteria causing the parcels density to be a restricting factor via minimum acreage per dwelling unit (currently set to 20 acres/dwelling unit). There are also restrictions on development due to the slope of the land, which would restrict building along steep slopes, despite those type of views and areas being desirable by developers for luxury residential housing.

Restrictions on developable areas due to proximity to wetlands, water, and protected lands can also be reduced but still have a minimum buffer to protect those vulnerable lands.

By making some sweeping adjustments to the minimum acreage, maximum slope and the associated acreage penalties, and mapping and creating the buffer zones for wetlands and protected areas, the regulations could allow for more development and utilization of available property.

4.2 Creation of New Zoning Classification

Another solution is to create a new zoning district that would adjust or remove the restrictive nature of existing development rules, allowing for easier development of large parcels. This new zoning district will be able to have less restrictions on the people closest to the town center who want to develop or had original plans to develop.

Granting landowners, the ability to then subdivide and develop their land while the Town could still regulate it some degree to prevent loss of character or over development of parcels. This setup allows the most flexibility without catering to specific landowners or the board becoming too involved with any one property or project.

The following figures show what this could look like, with the new district being made up of parcels that are a certain distance from the Town center and concentrated along class 3 paved or highway travel routes.

The new district would also remove the restrictions based on geographic properties such as slope, wetland proximity, and flood plain locations due to those factors being already addressed in other agency requirements to develop.

The following figures show parcels that would be encompassed in the proposed district depending on which option for distance from Town center is used. Parcels that were already included under the Village residential zoning or were part of the Town and/or state trail system were also removed since they would stay classified as rural residential.

The gaps caused by parcels being removed from the initial selection of parcels was due to them being already part of the Village Residential zoning class. Additionally, parcels belonging to the state of Vermont, the Town of Norwich, or federal lands were also removed since they would not be open to any development. The removed parcels can be added back into the parcel list if there was a need for the new zoning classification to not have any gaps or breaks in its boundary. Another major criterion in selection was the importance of being along a paved roadway or highway and within a certain distance from the center of the Town. Since the existing Rural Residential scoring criteria for

determining maximum density included both of those factors as an adjustment for access to the parcel and feasibility of additional development, it was important to base the new zoning class off these existing factors.

Refer to **Figure 4.1:** Proposed New Residential Class: Parcels to Incorporate 1.5 Miles from Center

Refer to **Figure 4.2:** Proposed New Residential Class: Parcels to Incorporate 3 Miles from Center

In terms of maximum density, the current density limit of 2 acres per dwelling would still be applicable and valid for the new zoning. The following set of figures shows what that development could look like by highlighting residential and vacant parcels for buildout and the maximum allowable additional dwellings that could be added based solely on acreage. This number would be reduced based on environmental limitations if the parcel were to begin the development application, such as slope, wetland, flooding, and surface waters.

Refer to **Figure 4.3:** Proposed New Residential Class: Existing Density Potential Buildout 3 Miles from Center

Refer to **Figure 4.4:** Proposed New Residential Class: Existing Density Potential Buildout 3 Miles from Center

5) Review Summary:

While reviewing the parcel sets from 1993, 2003, 2013, 2017, 2021, it became apparent that there was a major shift in private parcel management between the 2017 and the 2021 datasets. While the earlier datasets had more actions happening overall in terms of merger/split/amendments those were primarily due to merging and splitting amounts being counted. After 2003 there was much less activity. This was followed by the 2017 shift of many merges between already subdivided parcels being combined or recombined into larger tracks of undeveloped lands.

Parcels that were seemingly ready to begin developing were merged into singular large parcels under the original owners. Some parcels even had proposed roadways, easements, cleared lands, and small lots marked out in the prior datasets as if they were ready to be sold off to a developer for residential construction within the next construction season.

This phenomenon contrasted with the changes that the planning commission made to the existing zoning laws to allow larger parcels to be developed and removed the parcel minimum size limit to promote more development. Alongside the changes made in the State of Vermont land laws and tax codes, it became apparent that multiple landowners who were planning to develop their lands decided to merge their sub parcels into single large parcels and not pursue development.

With current problems of limited residential development in the State of Vermont, it has become a priority to promote growth within the rural residential district of the Town of Norwich, but in a way that does not cause the charm of Norwich to be lost, or to over develop areas that cannot support the added demand caused by additional residents.

This report provided two different solutions to alleviate the found issue of landowners not wanting to develop lands that were previously configured for higher density residential development. It is recommended that a new zoning classification be implemented that removes superfluous environmental constraints on the landowners who plan to develop and keep the same 2-acre maximum density with new developments. The environmental restraints are still enforced by the state but will not be duplicated in the new zoning classification.

Project Acknowledgments:

Funding through a Municipal Planning Grant administered by the Department of Housing and Community Development

6) FIGURES

Figure 3.1: *Parcel Changes for Rural Residential Parcels 1993 to 2003*

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Figure 3.6: *Homestead and Tax Deductions for Rural Residential Parcels*

Figure 3.7: *Homestead and Homestead Full Land Value for Rural Residential Parcels*

Figure 3.8: *Homestead and Full Land Value for Rural Residential Parcels*

Figure 4.1: *Proposed New Residential Class: Parcels to Incorporate 1.5 Miles from Center*

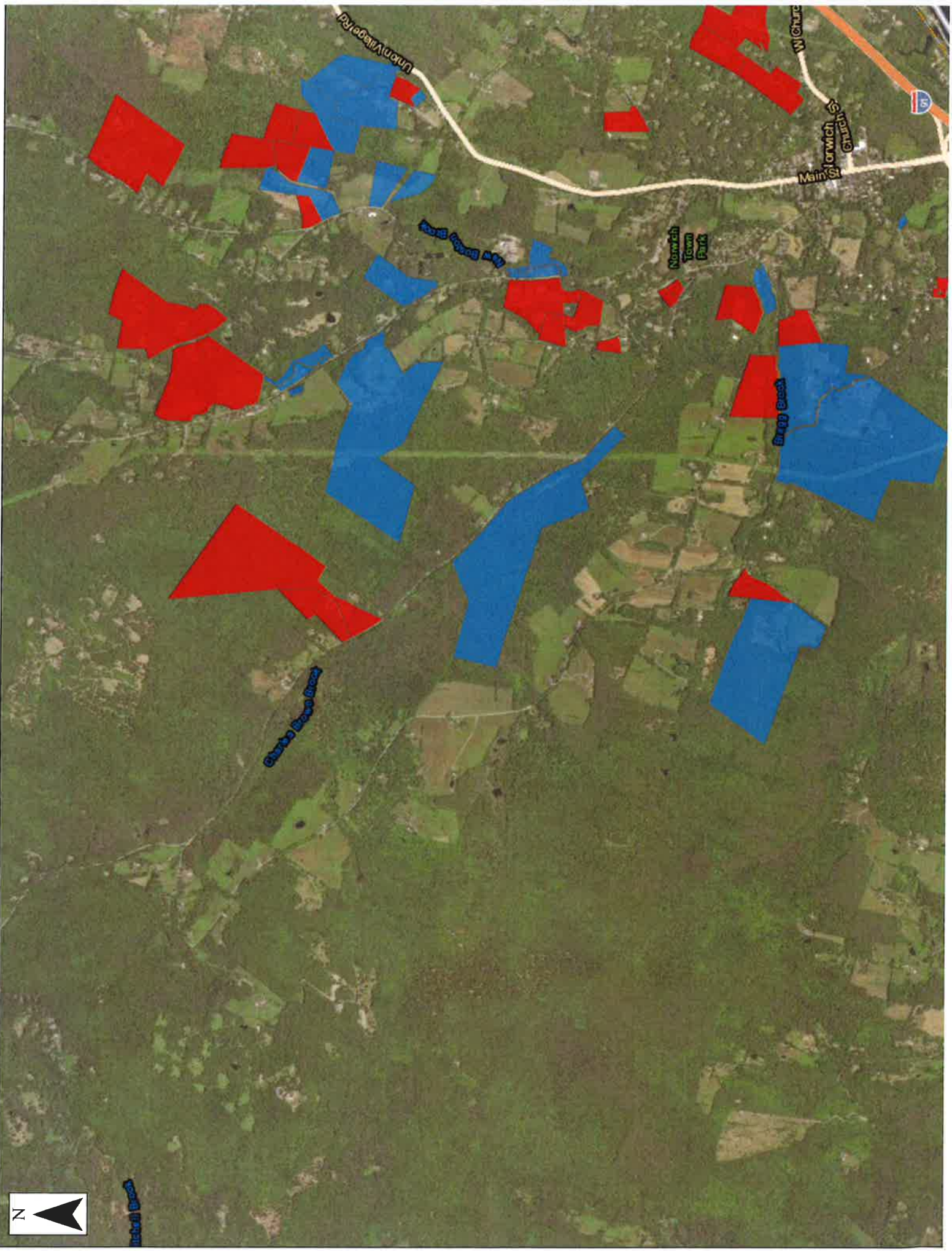
Figure 4.2: *Proposed New Residential Class: Parcels to Incorporate 3 Miles from Center*

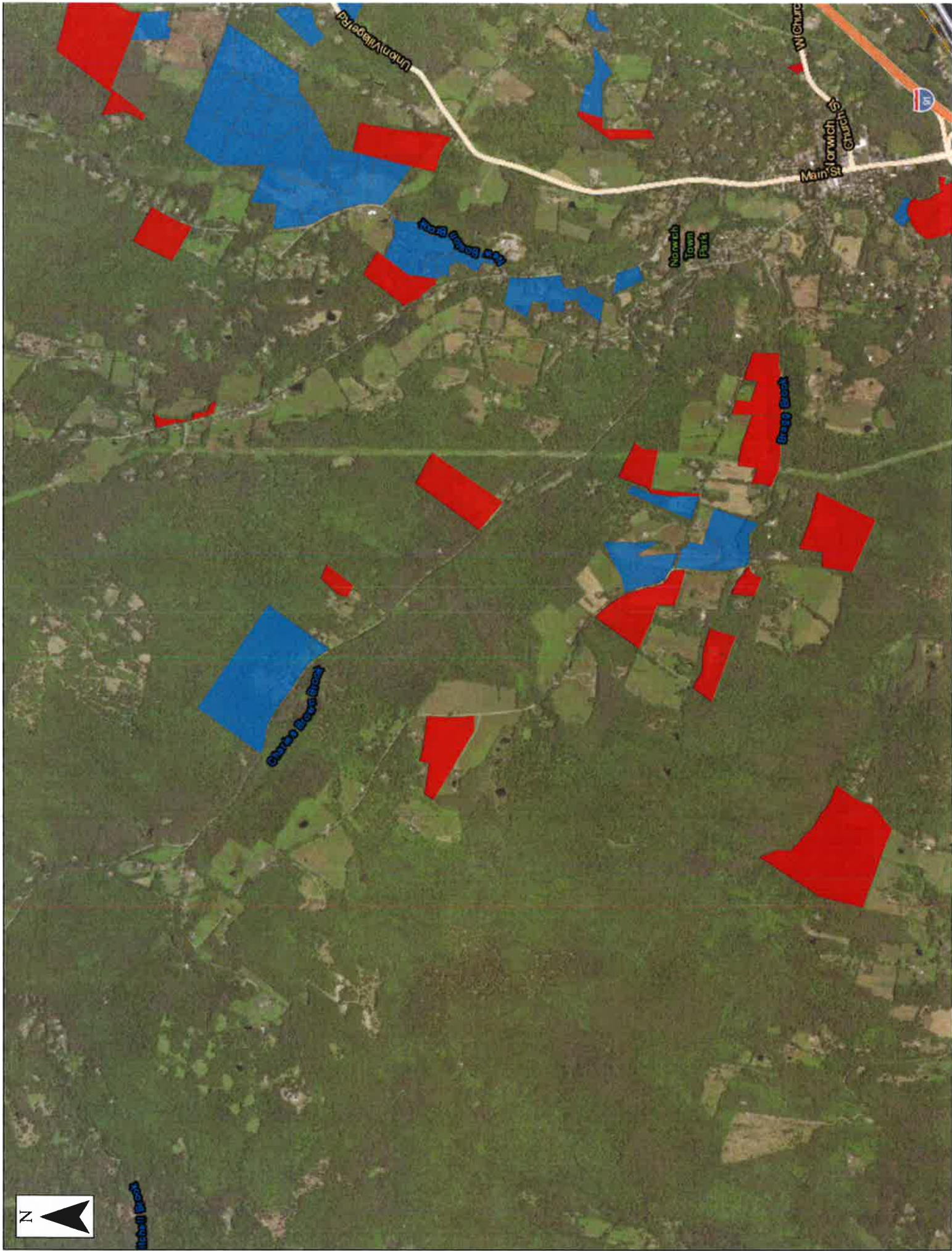
Figure 4.3: *Proposed New Residential Class: Existing Density Potential Buildout 3 Miles from Center*

Figure 4.4: *Proposed New Residential Class: Existing Density Potential Buildout 3 Miles from Center*

7) APPENDICES

Appendix A: Tax Summaries





Unholy Water Rd

W Church

Main St
Norwich Church

Norwich Town Park

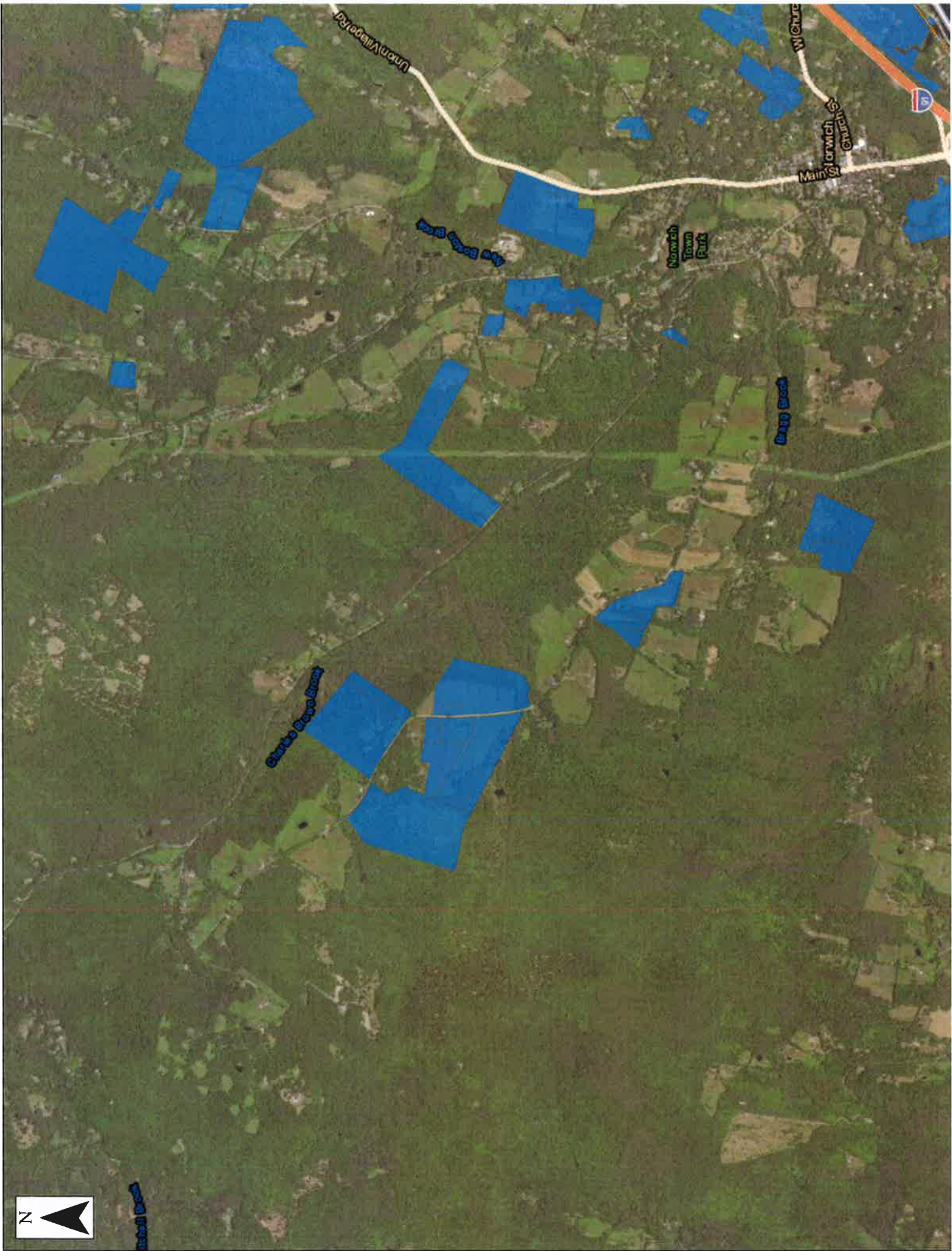
New Bedford Hwy

Bray Brook

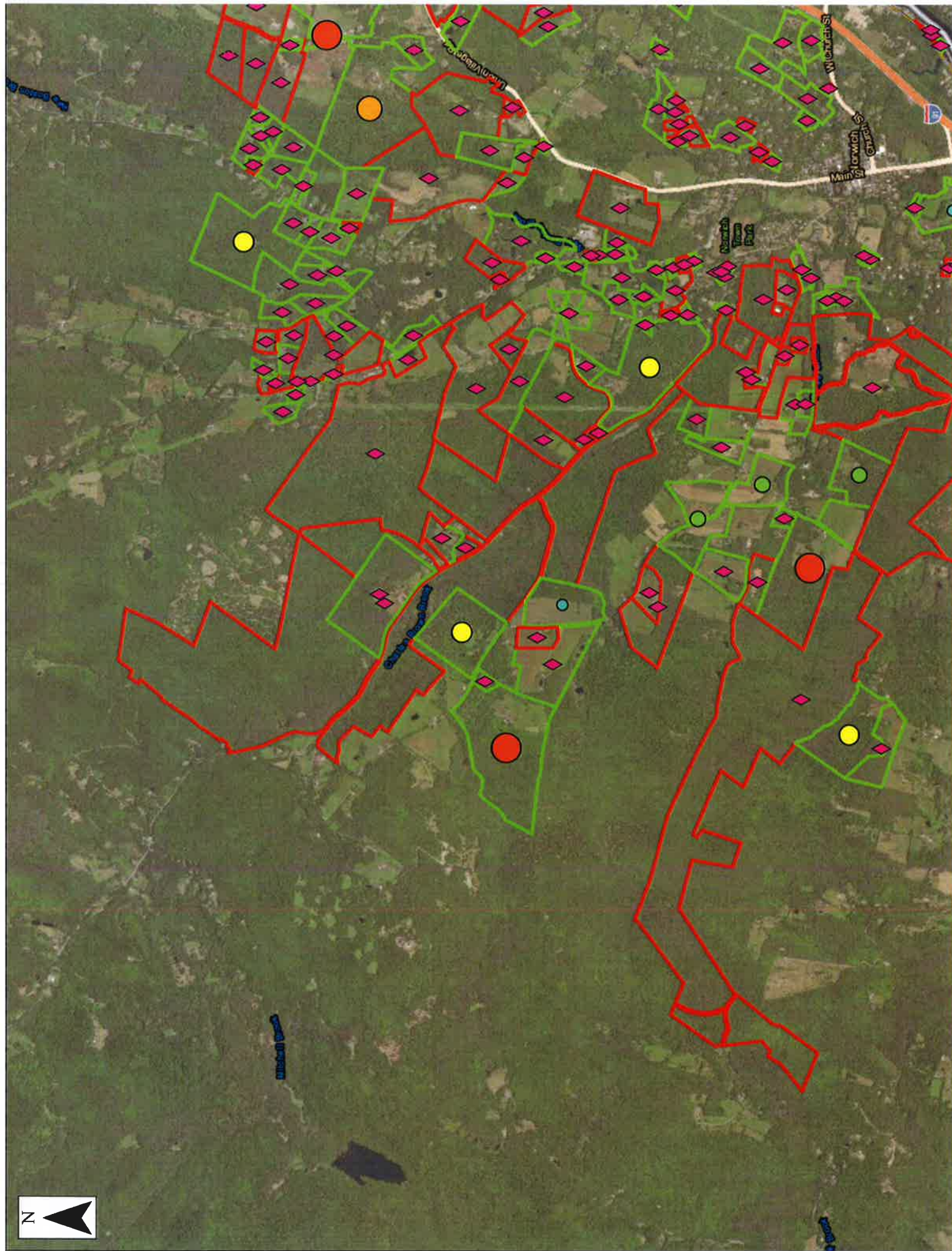
Charles Brown Brook

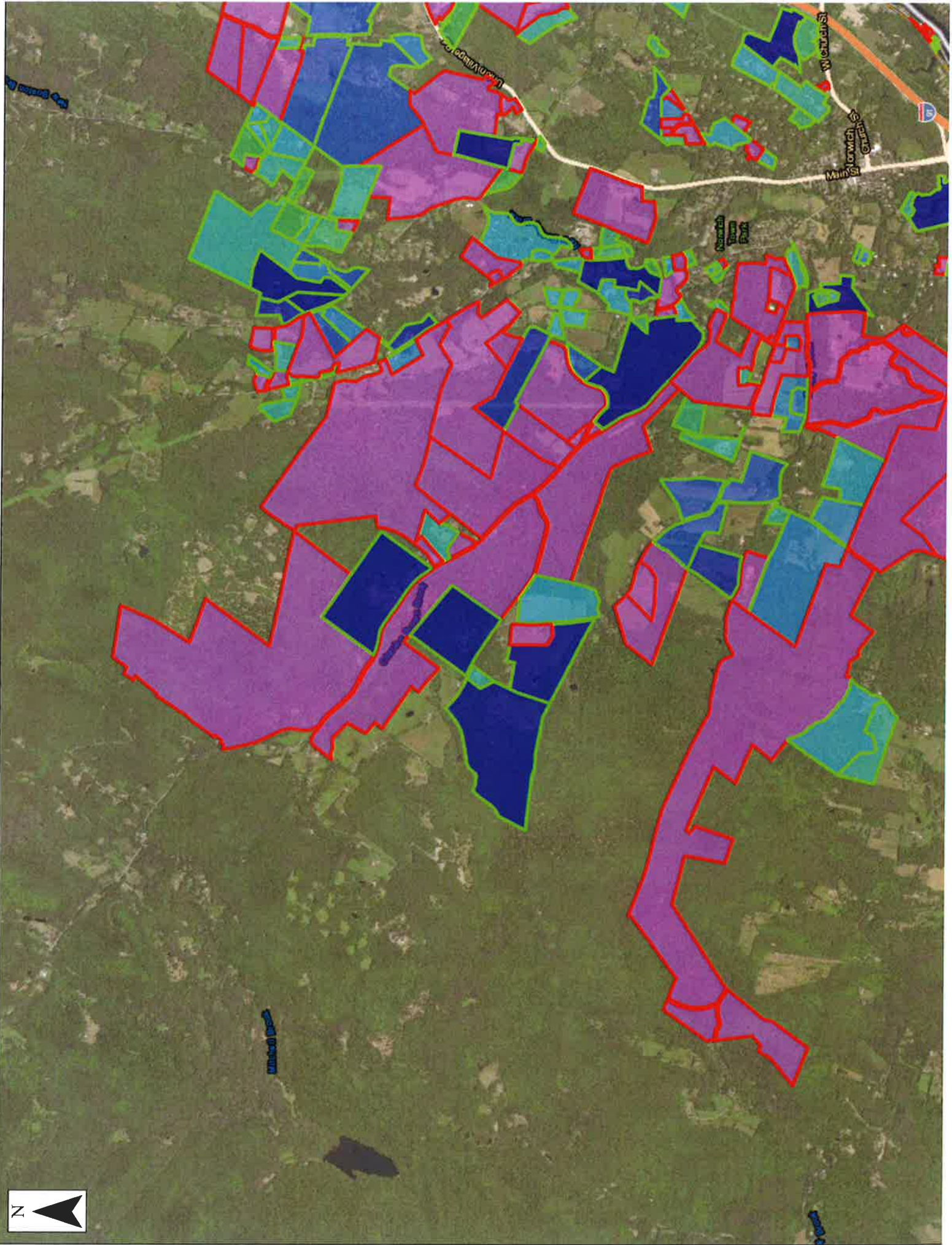


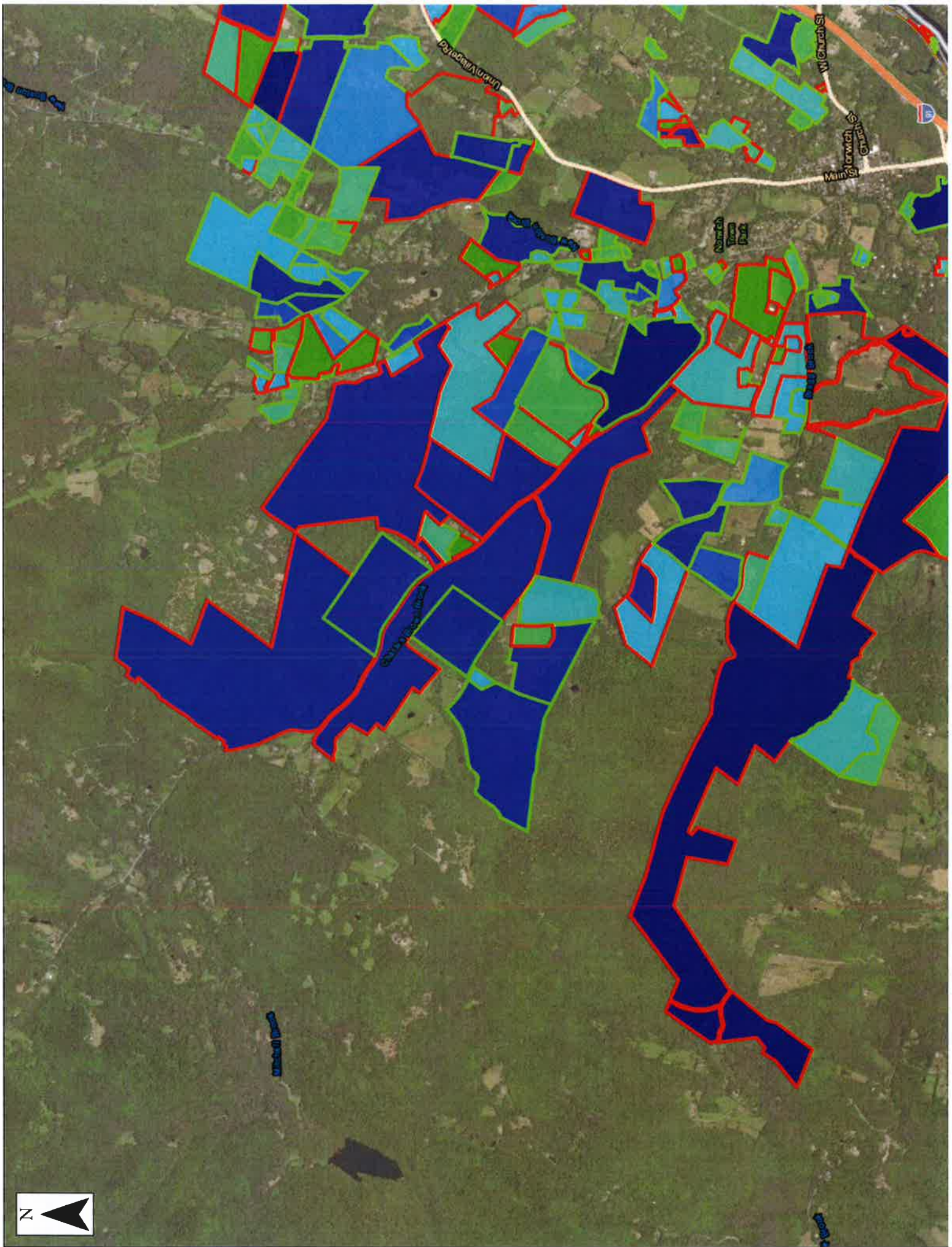
Little Brook

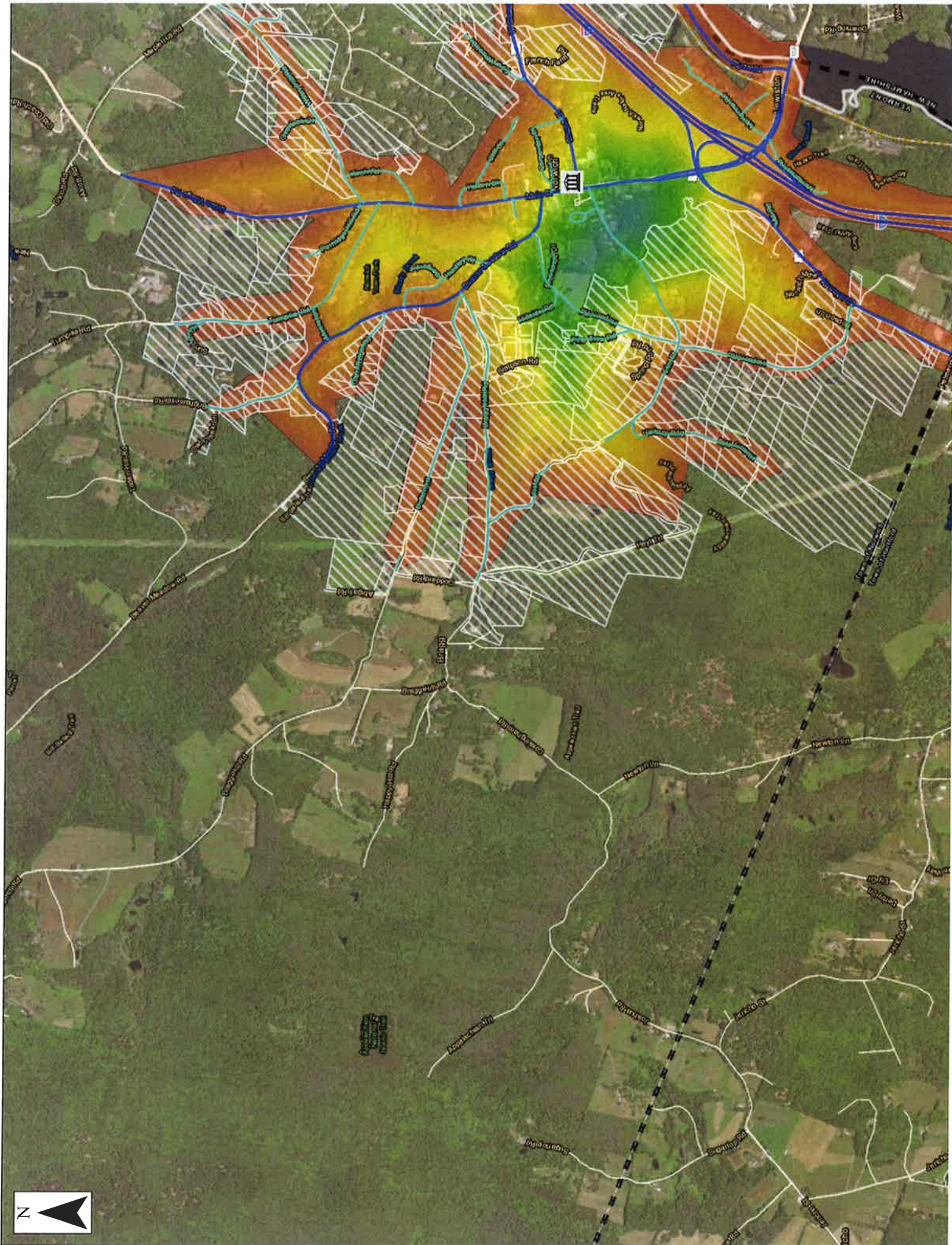


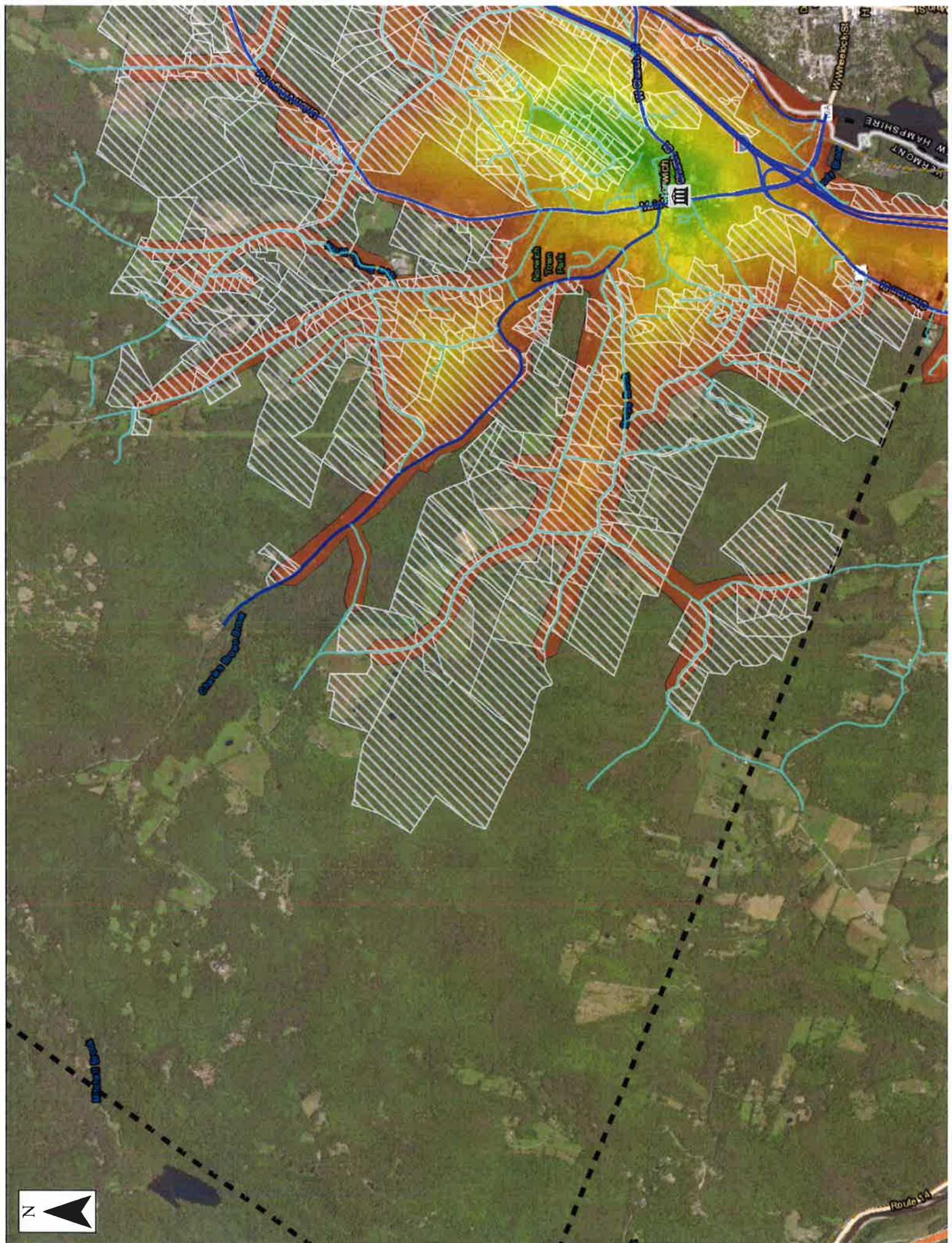


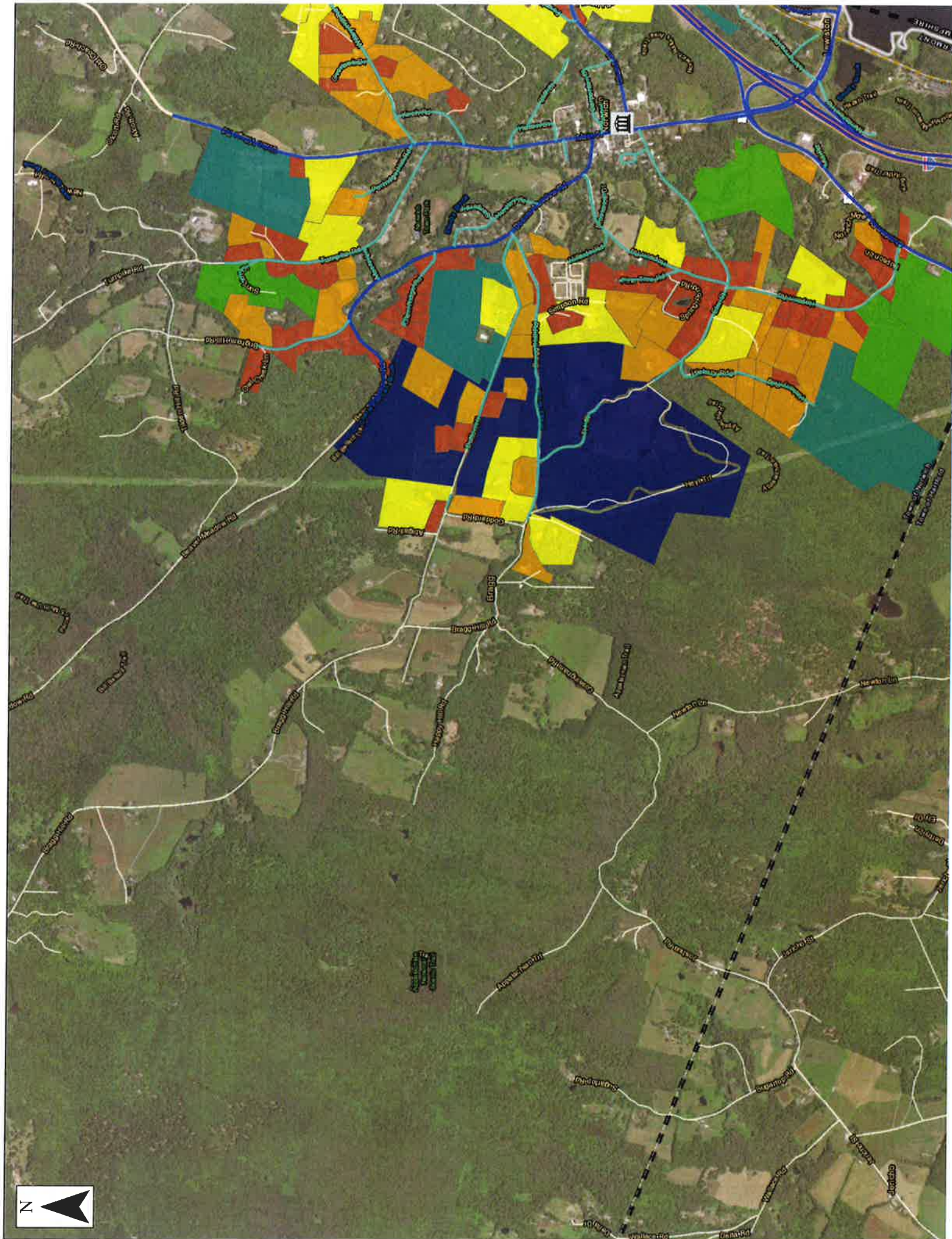


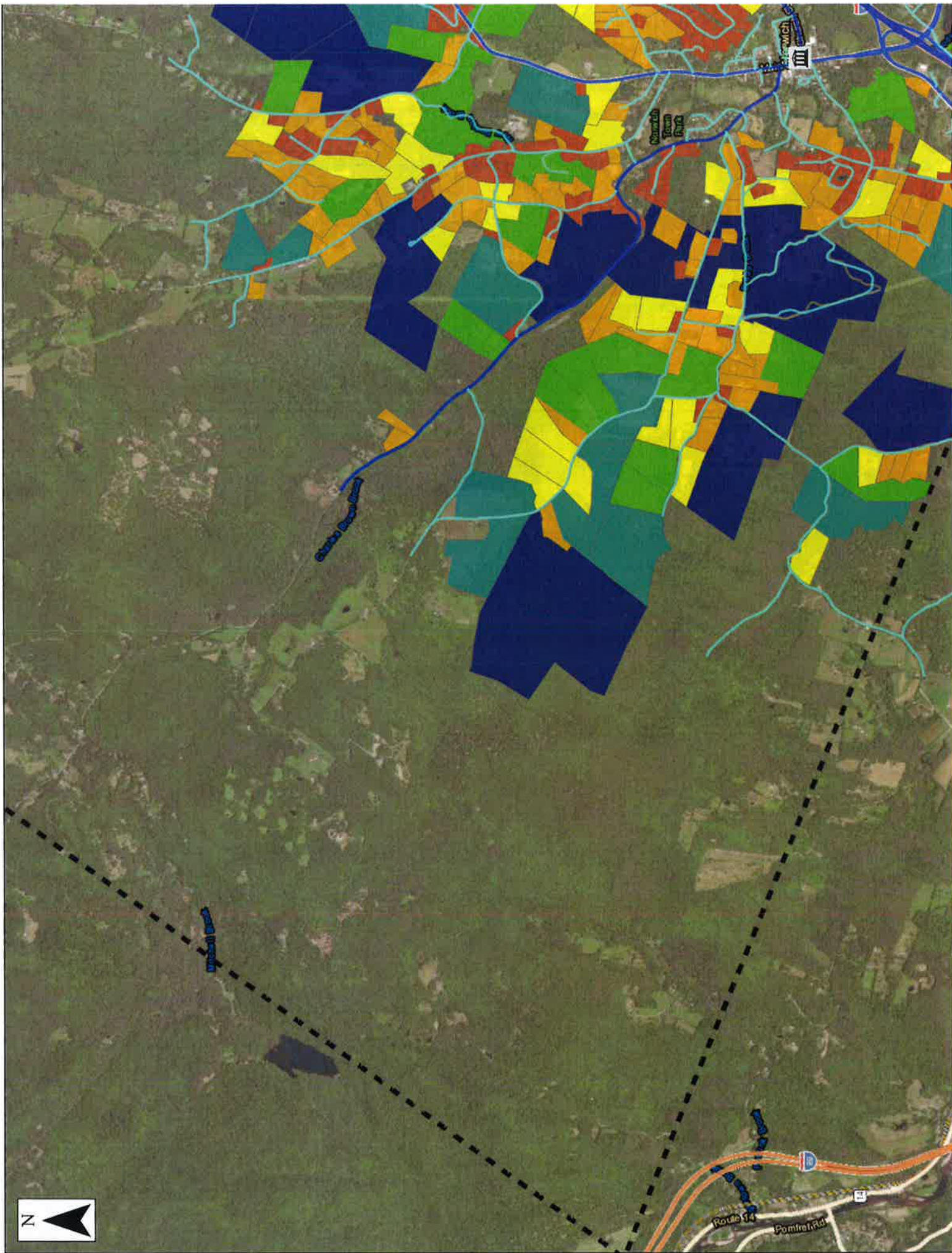












APPENDIX A

TAX SUMMARIES

Current Use and Your Property Tax Bill

Vermont's Current Use Program (also known as the Use Value Appraisal Program) allows the assessed value for a property to be reduced by a proportion of land and/or buildings enrolled in the program. The second page of this guide shows a sample Vermont municipal tax bill with a Current Use tax reduction. For a detailed explanation of the numbers and terms on a typical tax bill without Current Use, please see Understanding Your Property Tax Bill at tax.vermont.gov. To see if your property is eligible, please visit tax.vermont.gov/current-use.

How Land Use Values are calculated on enrolled property

A property's applicable **Use Value** is calculated by multiplying use value per acre for each type of land enrolled (forest or agriculture) by the number of acres enrolled. The result is then multiplied by the Common Level of Appraisal (CLA) for your town and rounded to the nearest \$100.

Example, using 2019 Use Values where the CLA is 1.0860

Acreage	Type	Use Value Per Acre	Acreage x Use Value	(Acreage x Use Value) x CLA
50	Forest	\$145	\$7,250	\$7,873.50
10	Forestland >1 mi. from Class 1, 2, or 3 road	\$109	\$1,090	\$1,183.74
27	Agriculture	\$362	\$9,774	\$10,614.56
	TOTAL			\$19,671.80
		Applicable Use Value (rounded)		\$19,700.00 C

How much property tax is lowered when there is enrolled property

Real Value (A) is the total value of the land and improvements before exemptions. Subtract the value of the land not enrolled in Current Use from the total land value to get the **Enrolled Land Value (B)**. Then subtract the applicable **Use Value (C)** from the Enrolled Land Value to get the **Land Use Reduction (D)** (See Note, below). The **Total Taxable Value (E)** is the Real Value, minus the Land Use Reduction. Tax calculations are based on the **Grand List Value (F)**, which is one percent of Total Taxable Value. In the examples below, the municipal tax rate is 0.4, and the education tax rate is 1.4386.

Land Use Reduction Calculation	
179,200	B
<u>-19,700</u>	C
159,500	D

Property tax is normally calculated by dividing the **Total Taxable Value** of a property by 100 (or multiplying by 0.01), then multiplying the result by both the municipal and education tax rates.

Without Current Use	
A 474,300	
÷ 100	
4,743.00	
Municipal	Education
x 0.4	x 1.4386
1,897.20	6,823.28
= 8,720.48 total tax	

With Current Use, the **Land Use Reduction** is subtracted from the **Total Taxable Value** first, allowing the property tax to be calculated on a lesser amount.

With Current Use	
A 474,300	
D -159,500	
E 314,800	
÷ 100	
F 3,148.00	
Municipal	Education
x 0.4	x 1.4386
1,259.20	4,528.71
= 5,787.91 total tax	

The tax reduction is the difference between the two totals to the left.

Tax Amount	
Without CU	8,720.48
With CU	5,787.91
Reduction	2,932.57

Note: Current Use is affected by how a town values the excluded and enrolled land. Towns send an Allocation Notice to taxpayers when these values change. Review the notice to see how the new values change the tax bill.



On a property tax bill, the Real (A) Value is reduced by the Land Use Reduction (D) amount shown in the Assessed Value box to get the Total Taxable Value (E). The Grand List Value (F) is one percent of the Total Taxable Value and is multiplied by the Municipal Tax rate (G) and the Educational Tax rate (H) to get the Taxes (I) due.

PAYABLE TO:

MAIL TO:

Town of Anytown

55 Main St
Anytown VT 05555

(555) 555 5555

TAX BILL

This is the only bill you will receive. Please forward to new owner if property is sold.

PARCEL ID	BILL DATE	TAX YEAR
LS5376.	06/21/2019	2019/20

Taxes unpaid after the due date are delinquent. The maximum interest allowable by law will be charged in addition to the collector's fee of 8%. Postmarks are NOT accepted as timely payment.

Location: 62 SUNSET AVENUE

Description: DWL & AC

OWNER PUBLIC, JOHN Q
PUBLIC, MARY A
62 SUNSET AVENUE
ANYTOWN VT 05555

HOUSESITE TAX INFORMATION

SPAN #003-252-23456 SCL CODE: 252
TOTAL PARCEL ACRES 89.00
HOUSESITE VALUE 295,100
HOUSESITE EDUCATION TAX 2,951.00
HOUSESITE MUNICIPAL TAX 1,180.40
HOUSESITE TOTAL TAX 4,131.40

FOR INCOME TAX PURPOSES

ASSESSED VALUE		HOMESTEAD		NONHOMESTEAD	
A REAL EXEMPTION	474,300	474,300			
LAND USE	- 159,500 D	- 159,500			
TOTAL TAXABLE VALUE	314,800 E	314,800			
GRAND LIST VALUE	3,148.00 F	3,148.00			
MUNICIPAL TAXES RATE NAME TAX RATE x GRAND LIST = TAXES MUNICIPAL G 0.40 x3,148.00= 1,259.20 I		EDUCATION TAXES RATE NAME TAX RATE x GRAND LIST = TAXES HOMESTEAD EDUC H 1.4386 x3,148.00= 4,528.71 I			
Amount the Grand List Value is reduced by, due to Current Use enrollment of the land and/or buildings		One percent of the taxable value to be applied to the tax rate			
TOTAL MUNICIPAL TAX 1,259.20 MUNICIPAL STATE PAYMENT 0.00 MUNICIPAL NET TAX DUE 1,259.20		Payments 1 08/15/2019 1,446.98 2 11/15/2019 1,446.98 3 02/15/2020 1,446.98 4 05/15/2020 1,446.97		TOTAL EDUCATION TAX 4,528.71 EDU STATE PAYMENT 0.00 EDUCATION NET TAX DUE 4,528.71	
		TAX SUMMARY Municipal + Education TOTAL TAX 5,787.91 I TOTAL ST PAYMENT 0.00 TOTAL NET TAX DUE 5,787.91			

Questions?

Contact the Division of Property Valuation and Review

Phone: (802) 828-5860 or tax.pvr@vermont.gov



HIGHLIGHTS OF 2003 TAX LEGISLATION

EDUCATION PROPERTY TAX

Beginning in fiscal year 2005 (July 1, 2004 – June 30, 2005), the statewide education and local share property taxes are replaced with a new statewide property tax imposed at the rate of **\$1.59** per hundred dollars of value on nonresidential property and **\$1.10** per hundred dollars of value on homesteads for per pupil spending of **\$6800**, the “base education payment”. H. 480, §§ 1 - 4. For fiscal year 2004, before the new provisions take effect, the statewide education property tax is \$1.10 per \$100 of value and the State support grant is \$5810. H. 480, §§ 76,77.

A **homestead** includes the entire parcel of land surrounding the dwelling regardless of whether a road intersects the land. If there are 2 or more homesteads on a single parcel, the value of the parcel allocated to each homestead shall be the total parcel value divided by the number of principal dwellings, unless a different ownership of record is established. H. 480, § 3.

The homestead rate **increases proportionately** for per-pupil spending in excess of \$6800. In towns that spend in excess of 125 percent (135 percent in fiscal year 2005 and 130 percent in fiscal year 2006) of the statewide average per equalized pupil spending, a portion of the spending is double-weighted. The base education payment grows by an inflation index in 2006 and after. H. 480, §§ 3, 4, 15.

The commissioner of taxes determines how much education tax is to be collected by each municipality based on these rates times the most recent equalized nonresidential and homestead values. Towns may retain **one-eighth of one percent** of the total tax collected if timely remitted to the State. H. 48, § 4.

The new law requires each resident individual to file an annual homestead declaration on or before April 15 and imposes a penalty in the amount of 3 percent of the education tax for the failure to file a timely declaration if the municipality’s nonresidential tax rate is higher than its homestead tax rate. If the nonresidential tax rate is the same or lower, the penalty is 8 percent of the education tax liability. The penalty is imposed and collected by the municipalities. Effective January 1, 2004. H. 480, § 6.

The exemption for ski lifts and snowmaking equipment from education property tax applies to grand lists for 2004 and after. The value shall be excluded from the calculation of the municipality's education tax liability for purposes of determining equalized education grand lists for January 2004. H. 464, § 289b.

PROPERTY TAX PAYMENTS

The property that is eligible for a property tax adjustment is now described as the **"housesite"** to distinguish it from the homestead which has no acreage limitation. A housesite is the principal residence and up to two acres. Applies to claims filed in 2004 and after. H. 480, § 7.

A claimant whose household income does not exceed \$75,000 is entitled to an additional adjustment amount of \$10.00 per acre, up to a maximum of five acres, for each additional acre of homestead property in excess of the two-acre housesite. Applies to claims filed in 2004 and after. H. 480, § 9.

A "household" now excludes a person who is not related to any member of the household and who is residing in the household under a **written homesharing agreement** pursuant to a nonprofit homesharing program. Similarly, "rent constituting property taxes" does not include payments made under such an agreement. Applies to claims filed in 2004 and after. H. 480, § 7.

The exclusion from "modified adjusted gross income" for income earned by a **dependent child** or received by a **dependent parent** is increased from \$4000 to \$6500. Applies to claims filed in 2004 and after. H. 480, § 8.

Effective for claims filed in 2004 and after, the **\$15,000 exclusion** from the housesite's equalized value is limited to claimants with household income of \$47,000 or less. Under former law the exclusion was available to claimants with household income less than \$75,000. Applies to claims filed in 2004 and after. H. 480, § 9.

An owner of a building containing **"qualified rental units"** is entitled to a reduction of education tax equal to ten percent of the ratio of qualified rental units to total rental units in the building. Qualified rental units are certain units subject to rent restriction under state or federal law. Applies to fiscal years 2005 and after. H. 480, § 4.

SALES AND USE TAX

The sale and use tax rate increases from 5 percent to **6 percent** on October 1, 2003. H. 480, § 30.

Telecommunications, which were formerly taxed at the rate of 4.36 percent, are subject to tax at the general rate of 6 percent beginning October 1, 2003. H. 480, § 31.

No sales or use tax is due on sales of personal computers to individuals for personal use from August 9 to August 11, 2003. S. 178, § 25.

Taxpayers are required to attest to the amount of **use tax** liability on their individual income tax returns. Alternatively, they may elect to report an amount that is .04% of their Vermont adjusted gross income. The Commissioner of Taxes will publish a table showing the alternative amount by income. Use tax liability arising from the purchase of each item with a purchase price in excess of \$1000.00 shall be added to the table amount. Applies to income tax returns for tax years 2003 and after. H. 480, § 35.

The **local option tax** (for towns that currently qualify) is extended from 2006 to 2008.

Upon Vermont's membership in **Streamlined Sales and Use Tax Agreement**, a multi-state project to simplify and modernize sales and use tax collection and administration, but no earlier than January 1, 2005, the sales and use tax and the local option tax will be amended in the following respects:

- (1) Conforming definitions and registration and filing provisions are adopted;
- (2) The **\$110 ceiling on the exemption for clothing** is removed;
- (3) The exemption for **beer** is repealed, making beer subject to the 6 percent sales tax;
- (4) The \$20 reduction per month per line of residential purchases of **telecommunication services** is repealed;
- (5) Clothing will become exempt from the local option sales tax and telecommunications will become subject to the local option sale tax.

H. 480, §§ 51 – 66.

INCOME TAX

Capital gains treatment of **dividends**, enacted as part of the Federal Jobs and Growth Tax Relief Reconciliation Act of 2003, will not pass through to the Vermont income tax return. The dividends are included as ordinary income in Vermont taxable income. Applies to tax years beginning on and after January 1, 2003. H. 480, § 82.

Under the new **Angel Venture Capital** provision, a qualified taxpayer may subtract from taxable income 60 percent of any capital gain if the gain is invested within two years in an eligible venture capital investment. The gain excluded under this provision is taxable in the year in which the eligible venture capital investment is disposed. Eligible venture capital investment means up to

\$200,000.00 of total investment by one person which is equity or at-risk debt investment, in one qualified business, for expenditure by the qualified business on plant, equipment, research, and development as working capital in Vermont. The treatment of capital gain income is available on a pro rata basis to partners, shareholders or members of an eligible partnership, S corporation or limited liability company. Applies to investments made after July 1, 2003. S. 178, § 24.

Two new credits are available to sustainable technology businesses with VEPC approval. The **Economic Advancement Sustainable Technology Research and Development Tax Credit** is equal to 30 percent of qualified sustainable research and development expenditures. The expenditures must be made within the State of Vermont for the purpose of design, development, or manufacture of computer software, machinery, or equipment used by an industry to generate electricity using biomass, geothermal, methane, solar or wind energy resources. The **Economic Advancement Sustainable Technology Export Credit** is equal to the difference between calculation of income tax liability using the statutory three factor formula (sales, payroll and property) and using a triple-weighted sales factor that disregards "throwback" of sales shipped to the United States Government or to states in which the company is not doing business. Both credits are available for taxable years beginning on and after January 1, 2003. S. 178, §§ 24b, 24c.

Other changes to **VEPC-approved credits** include an increase in the Workforce Development Credit from 10 to 20 percent of qualified expenditures and clarification of provisions related to carry-forward of credits, allowance of pass-through of credits to partners, shareholders and members and recapture and disallowance of credits. S. 178, §§ 18, 21, 21a.

A Vermont resident with federal adjusted gross income less than \$30,000 (or \$40,000 filing jointly) is eligible for a refundable credit against the individual income tax. The credit is equal to 50 percent of the federal **child and dependent care credit** allowed to the taxpayer for the taxable year for child or dependent care provided in Vermont in a registered home or licensed facility certified by the Agency of Human Services as meeting National Accreditation or National Credential Standards endorsed by the agency. This credit is in lieu of the child care and dependent care credit available under 32 V.S.A. § 5822(d)(24 percent of the federal child care and dependent credit). This was passed last year to apply to taxable years 2003 and after. 2001, No. 144 (Adj. Sess.), §§ 24, 42(8).

For tax year 2003 and after, the **military pay** exclusion from taxable income is increased from \$1500 to \$2000; eligibility for the exclusion is expanded from taxpayers with federal adjusted gross income less than \$47,000 to taxpayers with federal adjusted gross income of less than \$50,000; and pay received from the United States Reserve is expressly added to the exclusion which had previously referenced only National Guard pay. 2001, No. 144 (Adj. Sess.), secs. 1, 2, 42.

Effective for tax years 2003 and after, the threshold for imposing interest and penalty on **underpayment of estimated tax liability** is increased from \$250 to \$500. 2001, No. 140 (Adj. Sess.), § 10.

Interest on refunds resulting from amended or late filed returns begins to accrue on the 46th day after the date of filing the amended or late return. Formerly, interest accrued on amended returns from the 46th day after the date of filing the original return. H. 480, § 81.

Beginning with contributions made on and after January 1, 2004, a nonrefundable credit is allowed in the amount of five percent of the first \$2,000 per beneficiary contributed by a taxpayer to a **Vermont Higher Education Investment Plan Account**. The assets of the plan and income earned on those assets was already exempt from Vermont income tax. H. 141.

CURRENT USE

Farm buildings enrolled in current use are exempt from all property taxes starting in fiscal year 2004 (grand lists for April 1, 2003) and the value of the buildings will be excluded from the calculation of a municipality's education tax liability for fiscal year 2004. Municipalities that have already lodged their grand lists may file an addendum to the grand lists reducing the value of farm building to zero. H. 464, §§ 286, 28, 289a.

Effective with respect to April 1, 2004 grand lists, a dwelling situated on enrolled land and used in the preceding tax year exclusively to house one or more **farm employees**, as defined in 9 V.S.A. § 4469 and their families, as a nonmonetary benefit of the farm employment, is a "farm building" with a listed value of zero. H. 464, § 286a.

With respect to use changes and development occurring after July 1, 2003, the **land use change tax** will be paid to the Commissioner of Taxes for deposit into the general fund instead of to the municipality in which the land is located. (The State holds municipalities harmless from the loss of taxes that would otherwise result from the difference between use value and fair market value.) H. 480, § 86.

FUEL GROSS RECEIPTS TAX

The fuel gross receipts tax is extended to June 30, 2008. 2003, No. 9.

CIGARETTE TAX

A directory of cigarette brands will be maintained on the Attorney General's Website based on annual certifications made by cigarette manufacturers. Cigarette brands that are not in the directory may not be sold in

Vermont. This legislation is complementary to the Nonparticipating Tobacco Manufacturers Statutes, 33 V.S.A. §1912 et seq., that requires any tobacco manufacturer selling cigarettes in Vermont that is not participating in the Master Settlement Agreement to escrow funds available to satisfy claims against it. 2003, No. 14, eff. May 6, 2003.

HIGHLIGHTS OF TAX LEGISLATION PASSED IN 2004

Corporate Income Tax

Unitary combined reporting is adopted effective with tax years beginning January 1, 2006 and after. This is a corporate income tax system that apportions the taxable income of an entire multistate group of affiliated corporations that is engaged in a unitary business rather than the separate accounting income of only the corporations actually doing business in Vermont. The definition of "affiliated group" excludes corporations with 80% or more of property or payroll overseas and captive insurance companies. H. 784, secs. 2, 7.

Corporate tax rates are reduced for taxable years beginning on or after January 1, 2006 from 7% to 6% (\$0 to \$10,000 income bracket), from 8.10% to 7% (\$10,001 to \$25,000 income bracket), 9.20% to 8.75% (\$25,000 to \$250,000 income bracket) and 9.75% to 8.9% (income of \$250,001 and over). H. 784, sec. 3.

The rates are further reduced for taxable years beginning on or after January 1, 2007 for corporations with Vermont net income of \$25,001 and over, to 8.5%. H. 784, sec. 4.

Vermont's **apportionment formula**, which currently gives equal weight to sales, property and payroll, in determining the portion of a corporation's multistate income that is Vermont income is modified to double weight the sales factor. This change applies to taxable years beginning on or after January 1, 2006. H. 784, sec. 5.

The law that limited the corporate income tax of **holding companies** to minimum tax is repealed for taxable years beginning on or after January 1, 2006. A holding company is usually a member of an affiliated group and will be included in the combined return of the group. H. 784, 8.

The **financial services development credit** statute was clarified to provide that the credit is available only to businesses or the business owners for a pass-through entity, not to an employee who perform these services as part of the job, and is not available for investment services performed for the claimant's family members. Act 70, sec. 43.

Taxpayers that make an eligible cash contribution to an **affordable housing** project are entitled to a tax credit against their individual income, corporate or bank franchise tax. Formerly, the credit was available only to the owner of the project. The amount of the credit is specified on a "credit certificate" issued by the Vermont Housing Finance Agency. Act 74.

The formation of the **Vermont Seed Capital Fund** is authorized for the purpose of increasing the amount of investment capital provided to new Vermont firms or to existing Vermont firms for the purpose of expansion. The first \$2 million of capitalization shall be eligible for a credit. The credit may be taken against personal income, corporate income, bank franchise or insurance premiums tax and is the lesser of 20 percent of the taxpayer's contribution or 50 percent of the taxpayer's liability for that taxable year. The credit is available for the year of the investment and the four years following. However, the total credit is limited to 50% of the taxpayer's contribution. The credit applies to contributions made in taxable years 2004 and after. S. 42, sec. 6.

Personal Income Tax

Lottery prizes will no longer be exempt from Vermont income tax for taxable years beginning on or after January 1, 2005. Non residents are taxable on prizes if they purchased the ticket in Vermont. If a lottery winner sells the right to future lottery annuity payments, the lottery winner will be taxable on the proceeds of that sale. H. 784, secs. 13, 14.

See Affordable Housing tax credit above.

See Vermont Seed Capital Fund tax credit above.

Sales and Use Tax

There will be two sales tax holidays - August 7 through 9 and October 9 through 11, 2004 – during which no sales or use tax will be imposed or collected on sales of **personal computers** to individuals for personal use. As in 2003, the Commissioner will publish a list of personal computers and components thereof that qualify for the exemption. Act 121, sec. 51.

The date that the provisions of the **Streamlined Sales and Use Tax Agreement** may become effective is move back from no sooner than January 1, 2005 to no sooner than July 1, 2005. H.784, sec. 27.

Various technical amendments were made to the sale tax laws to conform with Streamlined Agreement provisions. These changes, like those enacted in the 2003 legislative session, will become effective no sooner than July 1, 2005. H. 784, secs. 15 –21.

The exemption for **agricultural items** codified at 32 V.S.A. § 9741(3) is expanded to include sheets of plastic for bunker covers. The requirement that silage bags and wrap be recyclable in order to qualify for sales and use tax exemption is eliminated. Effective on passage. Act 121, sec. 88.

Bulk sale provisions (requiring notification to the department) apply to transfer of business assets structured as a long-term lease as well as a sale. Effective March 1, 2004. Act 70, sec. 34.

Bank Franchise Tax

Banks pay a tax on their deposits in lieu of paying corporate income tax. Current law limits the bank tax to no more than the bank's federal taxable income, but not less than \$5000. This limitation is repealed and banks may not use it to limit their taxes for 2004 or after. H. 784, sec. 6.

Telephone Tax

Certain telephone companies (those with less than \$50 million in annual gross operating revenues within the state in the preceding taxable year) have the option to pay a gross receipts tax in lieu of the personal property tax and the income tax. H. 784 provides that no election to pay the gross receipts tax may be made by a taxpayer that did not make the election in the previous year. Effective upon passage. Sec. 10.

NEW Heating Oil Tax

Beginning July 1, 2004, a tax of one-half cent per gallon of heating oil or kerosene is imposed on every seller receiving more than \$10,000 annually for the retail sale of heating oil or kerosene not used to propel a motor vehicle. Monies from this tax will be deposited into the petroleum cleanup fund to fund cleanup and restoration of contaminated soil and groundwater caused by releases of petroleum from storage tanks and to pay third party claims for compensation. The tax terminates April 1, 2008. H. 412.

Education Property Tax

The **education property tax rates** are reduced for fiscal year 2005 (property taxes for the 2004-2005 school year) from \$1.10 to \$1.05 on homesteads and from \$1.59 to \$1.54 on nonresidential property (all property other than homestead). This is a one-year reduction. The homestead tax is adjusted for local spending decisions. A correlative change is made to "applicable percentage" (1.9 percent) for income sensitivity. Act 76, sec. 6.

The **homestead declaration** law is changed in several ways:

- (1) The **penalty** for not filing a required declaration by April 15 or filing an incorrect declaration is reduced from 3 or 8 percent to 1 percent in all cases.

- (2) Towns may keep any penalties collected. Towns have authority to **abate penalties** and interest due to late or incorrect homestead declarations in cases of hardship. Hardship is defined in the law.
- (3) Towns will issue new property tax bills reflecting a reduced tax only for late, revised or rescinded declarations filed *before* **December 1** of each year. Any reduction in tax due to a new, revised or rescinded declaration shall be paid to the taxpayer no later than May 15 of the fiscal year. Any additional tax due to the filing of a declaration or failure to file a declaration may be assessed without regard to the December 1 date. This additional tax and interest shall constitute a penalty which the towns may assess and collect in the same manner as a property tax under chapter 133.

Act 76, sec. 2 and H. 756, sec. 18a.

Income sensitivity adjustment payments will be based on the proper tax, even if the claimant originally forgot to declare a homestead declaration. Act 76, sec. 4.

The method for calculating amounts due from towns to the education fund is simplified. The **education tax rates** adjusted by common level of appraisal, and for the homestead rate by district education spending, are applied to the town's education grand list. A **preliminary calculation** of education fund payments will be done based on grand list information given to Property Valuation and Review by August 15 and a **final calculation** will be done after December 31. This calculation will reflect any change in taxes due to late or incorrect homestead declarations not reflected in the preliminary calculation. Refunds due from a town to a taxpayer on account of the taxpayer's new, revised or rescinded declaration shall be paid no later than May 15 of the fiscal year. Act 76, sec. 6 and Act 107, sec. 18a.

Prior law, dating to 1961, had allowed a town to vote to exempt up to \$15,000 of grand list value of **new residential construction**. This amount is updated to \$ 75,000. This exemption may be voted for up to three years, but does not affect the education grand list unless approved by Vermont Economic Progress Council. Act 76, sec. 31.

The education tax break for **qualified rent-restricted units** is retained, but as a grand list value reduction certified by Vermont Housing Finance Agency (instead of as a credit). Act 76, sec.7 and H. 772, sec. 33.

Property Tax Adjustment Payments

Under the **debt set-off** payments due from Tax Department are diverted to pay a taxpayer's or claimant's debt to another State agency. Effective March 1, 2004, property tax adjustment payments and rebates will be apportioned

between the debtor and non-debtor spouse based on homestead ownership (as opposed to income earned which is the rule for income tax refunds). Act 70, sec.45.

Solid Waste Tax

A moratorium on collection of solid waste franchise tax was enacted with respect to tax that could be assessed on the **earth material** portion of any waste resulting from mining, extraction, or mineral processing operations for any period of time before July 1, 2005. The Secretary of the Agency of Natural Resources shall report to the Legislature by May 1, 2005 on whether the tax applies to such materials, but even if the report is affirmative, no tax shall be assessed for earth materials from operations prior to July 1, 2005.

Current Use

Agricultural land must be in active use to be eligible for enrollment in the current use program. The definition of "active use" is amended to include otherwise eligible land that is enrolled in a **conservation enhancement program** for agricultural lands through a contract with the state or federal government. This allows, for example, the portion of land along a river that the owner agrees not to plow for conservation reasons to qualify for enrollment. H. 778, sec. 11.

Miscellaneous Tax Changes

The annual license fee on **amusement machines** is repealed and the sales tax law is clarified. The sales tax applies to charges for "access to any game or gaming or amusement machine, apparatus or device" but excludes from these categories any "video game, pinball, musical, vocal or visual entertainment machines which are operated by coin, token or bills." Effective upon passage. H. 784, sec.11, 12.

The franchise tax on **car and transportation companies** is repealed for taxable years beginning on or after January 1, 2006. H 784, sec. 9. These companies continue to be subject to corporate income tax.

Estate tax law is amended to clarify that the special treatment of farm businesses (whereby tax is reduced by the percentage which the value of the farm business bears to the value of the federal adjusted gross estate) is limited to a Vermont farm business. Act 70, sec. 51.

Prepared by Department of Taxes
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HIGHLIGHTS OF TAX LEGISLATION PASSED IN 2005

Corporate Income Tax

Under current law, a federal **net operating loss** election (to carry a loss back or forward) must be followed with respect to the Vermont return. However, Vermont refunds resulting from the application of a net operating loss carrybacks are limited to zero, thus limiting the benefit of a net operating loss based solely on how the federal net operating loss was utilized. The Department of Taxes will report to the Legislature by January 15, 2006 on the possible effects of amending the law to allow 50 percent of federal corporate net operating losses to be carried forward in Vermont, based on loss-year apportionment factors, for a period of up to ten years and of phasing the allowance percentage up from 50 percent to 100 percent. H. 521, Sec. 4.

Personal Income Tax

The retirement income credit is renamed the “**elderly and permanently totally disabled credit**” to reflect the new federal name for the credit. Eff. on passage. H. 521, Sec. 15.

Insurance Premiums Tax

The affordable housing tax credit, like other downtown credits, may now be applied against insurance premiums tax as well as against individual and corporate income tax. Eff. on passage. H. 521, Sec. 7.

Sales and Use Tax

Prior to an event that includes **occasional vendors**, e.g., a flea market or gun show, the promoter must provide a list of the participating vendors to the Department and verify that the participants are registered to collect sales and use tax. However, this requirement applies only if 25 or more vendors are authorized by the promoter to sell taxable items. Eff. on passage. H. 521, Sec. 1.

Effective for sales on and after July 1, 2005, the maximum tax on **tracked vehicles** is increased from \$900 to \$1100. The Commissioner will study the advisability of adjusting the cap for inflation every second year and report his recommendation to the Legislature by January 15, 2005. H. 521, Sec. 2.

The formula for allocating sales tax revenues to a town that is hosting **designated downtown development** is simplified. Instead of allocating based on actual sales and receipts, the allocation will be based on estimated costs as stated in the successful bid documents. A town will receive half of its allocation when the project is 50 percent complete and the balance upon completion. Eff. June 1, 2005. H. 210, Sec. 9; H. 51, Sec. 13 and 14.

Various **telecommunications-related provisions** in Vermont sales and use tax law were amended to conform to the Streamlined Sales and Use Tax Agreement, including changes to the definitions of “telecommunications” and “sales price”. Eff. July 1, 2005. H. 521, Sec. 21 – 25.

The Tax Commissioner may **post a sign** on a business informing the public that the business has failed to file a bond that was required by the department and may not conduct business at that location. Eff. on passage. H. 210, Sec. 11.

Education Property Tax

Homestead Declarations are due each year by April 15. However, the duty to file a declaration continues after that date in order to assure grand list accuracy. Under prior law, a person who filed late, but before December 1 would receive a new tax bill at the homestead rate. Beginning January 1, 2006, late filed declarations will result in a new bill only if they are filed before July 15. H. 504, Sec. 6.

A uniform method is enacted for **appraising residential rental property** that is subject to a housing covenant or other legal restriction by a governmental, quasi-governmental, or public purpose entity on rents that may be charged. For these properties, fair market value will be determined under an income approach that uses market rents, actual expenses, a vacancy rate that is 50 percent of the market vacancy rate and a capitalization rate that is typical for the area. Property Valuation and Review will determine and publish capitalization rates for geographic areas annually prior to April 1. This new method will apply to grand lists of April 1, 2006 and after. H. 521, Sec. 6.

The law is clarified that in determining **estimated fair market value**, the sale price of the property should be considered, but is not determinative. Eff. on passage and shall apply to grand lists of April 1, 2006 and after H. 504, Sec. 1.

There will be a **voluntary lister program** developed by the Division of Property Valuation and Review to support local listers in performing their jobs and to improve the quality and uniformity of appraisal methodology and grand list maintenance. The program will include instruction in lister duties, property inspection, data collection, valuation methods, mass appraisal techniques, and property tax administration and will lead to designation of competence at three levels. H. 504, Sec. 2, 3, 4, 4a.

A residence that was the **homestead of the decedent** at the date of death and from the date of death through the next April 1 is held by the estate of the decedent and not rented is taxed at the homestead rate. A declaration should be filed by the estate, but the estate is not entitled to a property tax adjustment. This new rule applies to declarations related to April 1, 2005 and after. H. 504, Sec. 16, 18.

Property Tax Adjustments (Prebates and Rebates)

Currently, a claimant with household income of \$75,000 or more may be eligible for an adjustment of education property tax on the first \$160,000 of equalized value of the housesite. Income sensitivity is expanded in two stages in H. 504. For claims filed for 2006 property taxes and after, the household income amount increases from \$75,000 to \$85,000 and the maximum housesite value that qualifies for income sensitivity at that income level increases from \$160,000 to \$200,000. For claims filed for 2007 property taxes, the household income amount increases from \$85,000 to \$90,000 and the housesite value remains at \$200,000. H. 504, Sec. 25, 26, 27. Claimants with income up to approximately \$110,000 will be eligible for a property tax adjustment under the new parameters (under current law, income sensitivity phases out at approximately \$88,000 of household income).

In most cases in which a homestead property is jointly owned, the percentage of property tax used to calculate a prebate or rebate is the same percentage as the claimant's ownership. However, in the case of a homestead that is a portion of a **duplex**, the property tax of the claimant is the tax on the portion of the structure occupied by the claimant (without reduction for the interest of other owners in the claimant's portion) provided that all owners live in a portion of the duplex structure. This new rule applies to claims filed for 2006 property taxes and after. H. 504, Sec. 15.

Current Use

The **definition of farmer** is expanded for purposes of determining eligibility to enroll farm buildings in the current use program. A person whose gross income from the **sale of processed farm products** and from the business of farming together equals at least half of the person's gross income is a farmer provided that a minimum of 75 percent of the farm crops processed in the farm facility are produced by the farmer on land enrolled by the farmer or on a housesite adjoining the enrolled land. The definition of farm buildings is also expanded to include up to \$100,000 of the value of a farm facility processing farm crops (75 percent or more of which are produced on the farm). H. 540, Secs. 1 and 2. Effective July 1, 2005.

The current use program provides that the **land use change tax** will be limited to 10 percent of the value of the changed land (instead of 20 percent) if the changed land has been enrolled for more than ten years. This section provides that the ten-year enrollment must be continuous. Eff. July 1, 2006. H. 210, Sec. 5.

Property Transfer Tax

The law that sunsets the property transfer tax exemption for the first \$100,000 of value for properties purchased with a Vermont Housing Finance Agency mortgage was repealed, making the exemption permanent. H. 521, Sec. 5.

Solid Waste Tax

Effective July 1, 2005, the following waste is exempt from tax: (1) waste delivered to and accepted by a composting facility for **composting**; (2) solid waste delivered to a facility with a **solid waste categorical certification**; (3) solid waste resulting from **mining, extraction, or mineral processing operations** delivered to a facility certified solely for the treatment, storage, recycling, or disposal of such waste. However, the exemption for mining waste sunsets June 30, 2008 and a study of the human health and environmental effects of Omya's mineral processing of calcium carbonate in Vermont is to be filed with the Legislature on or before January 15, 2008. Septage or sludge delivered to an incinerator is subject to tax. H. 532, Sec. 4, 5.

A **license fee** is imposed on facilities that treat, store, or dispose of waste generated solely from mining, extraction, or mineral processing at the rate \$0.41 per cubic yard of certified operational capacity above 15,000 cubic yards up to a maximum of \$35,000. The fee is prorated and paid on an annual basis over the term of the certification. The solid waste categorical certification statute is amended generally and categorical disposal facilities are expressly excluded from license fees charged by the Agency of Natural Resources. H.532, Sec. 1, 3.

HIGHLIGHTS OF TAX LEGISLATION PASSED IN 2006

Cigarette Tax

The tax on cigarettes increases to **\$1.79 per pack** beginning July 1, 2006. (This is a \$.60 per pack increase from the current \$1.19). The tax will increase by an additional \$.20 per pack on July 1, 2008. Act 191, Secs.36, 37.

“Little cigars” (cigars weighing 3 lbs. per 1000 or less) and **roll-your-own tobacco** will be taxed as cigarettes beginning July 1, 2006. Snuff will be taxed at \$1.49 per ounce beginning July 1, 2006 and at \$1.69 beginning July 1, 2008. These products are currently subject to a tobacco products tax of 41 percent of their wholesale price. Act 191, Secs. 36, 37.

A **floor stocks tax** will be imposed on cigarettes, little cigars, roll-your-own tobacco and snuff as of July 1, 2006 and July 1, 2008 to collect the additional tax on product on retail shelves on those dates. The floor stocks tax is the difference between the new tax and the tax paid by the wholesaler at the lower rate. Act 191, Sec. 39.

Vermont imposes the cigarette tax at the wholesale and distributor level. The tax is currently \$1.19 per pack (increases to \$1.79 per pack on July 1, 2006), and is paid by the wholesale dealers purchasing stamps and affixing the stamps to the packs. A new law imposes the cigarette tax on anyone who purchases cigarettes from a source that did not pay the Vermont cigarette stamp tax, such as purchases through the internet or mail order, or in another state. The **new cigarette use tax** applies to sales made on or after July 1, 2006. Under this law, however, two cartons of cigarettes may be purchased by an individual and brought into Vermont for that individual’s consumption without payment of the Vermont tax. Also, a taxpayer would receive a credit for any cigarette tax already paid to another jurisdiction. Act 207, Sec. 3.

Income Tax

A. Corporate

Effective January 1, 2007, the current Economic Advancement Tax Incentive program with its myriad of credits will be replaced with a single, **payroll-based incentive** for job creation and capital investment. Existing **property tax stabilization** and **allocation incentives** are retained. These three incentives are collectively subject to an overall \$10 million annual cap on authorizations. The Emergency Board may approve increases of the cap. The new program is authorized until January 2012. The Vermont Economic Progress Council (VEPC) will administer the new incentive program until the council dissolves in April 2009 at which time a new body, the Economic Incentives Review Board (EIRB), is established and will succeed to VEPC’s administrative responsibilities. Act 184, Secs. 3 – 13.

A new **net operating loss (NOL) rule** that is specific to Vermont has been adopted. “Vermont net operating loss” means any negative income after allocation and apportionment of Vermont net income under section 5833 of Title 32. Prior law piggybacked to the federal net operating losses, but allowed no refund for the portion that was carried back on the federal return (and therefore on the Vermont return). The new rule, when fully implemented in 2010, will allow corporate taxpayers to carry forward all Vermont losses for 10 years regardless of whether the federal loss is carried back. During the transition period, corporate taxpayers will be able to carry forward the Vermont NOL if the federal NOL is carried forward. Additionally, for 2007 losses, 10 percent of the Vermont NOL will be available for carryforward when the federal NOL is carried back. This percentage increases to 30 percent for 2008 losses and 40 percent for 2009 losses. Act 207, Secs.15-18.

Effective July 1, 2006, funding for the **affordable housing tax credit** is increased. For fiscal year 2007, the annual award cap goes from \$150,000 to \$300,000 and for fiscal year 2008 and after, the cap is \$400,000. The award amount is awarded for each of 5 years, so the maximum amount of new credits in any single year would be \$2 million. Act 207, Sec. 21.

Four existing tax credits – (1) rehabilitation of an historic building, (2) rehabilitation of an older or historic building, (3) platform lifts, elevators or sprinkler systems, and (4) code improvements to commercial building - have been consolidated into one **“Downtown and Village Center” tax credit program**. Inconsistent requirements are removed. Under the new program, credits continue to be available against the corporate and individual income tax, bank franchise tax and insurance premiums tax for historic rehabilitation, façade improvement and code improvements. In addition, a new bank credit certificate, which replaces the mortgage credit certificate, will allow a credit recipient to negotiate with a bank for cash, as well as for an adjustment of mortgage terms, in exchange for credit. The cap on the total amount of tax credits awarded, together with sales tax allocation under 32 V.S.A. § 9819, is increased from \$1 million to \$1.5 million. Act 183, Secs. 12 – 16.

The time for taxpayers to report **changes in federal taxable income** (due to a Federal audit or other reason) to the Vermont Tax Department has been expanded from 30 days to 60 days. Act 94, sec.4.

B. Personal

The **“angel incentive”**, which was a deferral of capital gain taxation, is now a tax credit. The credit is 3 percent of capital gain income invested in an eligible venture capital business. To be eligible, the investment must be at least \$50,000; otherwise, the definition of eligible venture capital investment remains the same. For taxpayers who deferred taxation of capital gain income in taxable years prior to 2006, the capital gain income must be included in the taxpayer’s taxable income no later than 5 years after the year in which the investment (that gave rise to the deferral) was made. Act 207, Secs. 9-11.

Beginning with contributions made in 2007, the credit for contributions to a **Vermont Higher Education Investment Plan account** is increased from 5 percent of the first \$2000 per beneficiary contributed each year to 10 percent of the first \$2500 contributed to the account. Act 207, Sec. 6.

See payroll incentive program, affordable housing tax credit and “Downtown and Village Center” tax credit program discussed above in corporate income tax.

C. Pass-Through Entities

Effective January 1, 2006, the rate at which pass-through entities pay tax (on behalf of owner) to Vermont is reduced. Partnerships, limited liability companies and subchapter S corporations are pass-through entities, meaning that they are not taxed at the entity or business level. Instead, their owners are taxed personally on their pro-rata share of the business income. To ensure that Vermont receives the income tax owed by nonresident owners of these entities, Vermont income tax law requires that the entity itself must pay tax to the State on behalf of the owner at the highest marginal rate. These sections lower that rate from the highest individual rate (9.5 percent) to the **second lowest rate (7.2 percent)**. Act 207. Secs. 1,2.

See payroll incentive program discussed above in corporate income tax.

Property Tax

A. Education Property Tax

Net tax bills: Beginning in 2007, property tax bills will be reduced by a taxpayer’s property tax adjustment (also referred to as “prebate” and “rebate”) and at the option of the taxpayer, by the taxpayer’s income tax refund or any designated portion of the refund. For all adjustment claims that are timely filed – by April 15, the State will send the town a payment on July 1 of the amount to be credited against the taxpayer’s property tax bill. If the taxpayer files a late claim for a property tax adjustment on or before September 1 (and also files a homestead declaration by that date), the State will send the adjustment amount to the town on or before September 15 and the taxpayer will receive a new bill from the town that subtracts the adjustment amount. The town will reduce the adjustment amount by \$15.00 to cover the cost of creating the new bill. A property tax will not be reduced to reflect a homestead declaration or property tax adjustment claim filed after September 1. The property tax adjustment and any designated income tax refund are subject to the same offsets (for delinquent State taxes and debts to other State agencies) as under current law. Act 185, Secs. 1-7. (See **Education Property Tax Adjustments** below)

Education tax rate: For fiscal year 2007 only (2006-2007 property tax bills), the education property tax rate on nonresidential property tax will be \$1.44 per \$100 of assessed value and the rate on homestead property shall be \$0.95 per \$100 of assessed value. Act 185, Sec. 18.

New **tax increment financing (TIF) district** provisions are available to all municipalities. TIF development must occur in compact, high-density industrial, commercial and residential areas; or within growth centers or designated downtown or village centers; or commercially distressed areas. New project criteria, which replace the cost-benefit model in determining eligibility, focus on public benefits such as affordable housing, brownfield remediation, potential job growth and transportation impacts. S. 165, Sec. 2h. A municipality that is a “designated growth center” is presumed to meet the location criteria. Act 184, Sec. 2.

Use of education funds for **TIFS is extended from 10 to 20 years**, with twenty-five percent of the increment dollars being retained by the education fund. Permitted uses of increment dollars are expanded to include “related costs” which are expenses directly related to the creation of the TIF district, transportation infrastructure and brownfields remediation. As with the payroll-based incentive program (see corporate income tax), EIRB will take over administrative functions of VEPC regarding TIFs in 2009. No more than 10 new TIFs may be created in the next 5 years, with no more than one new district in any municipality. Procedures for municipal hearings, planning and bonding have been established. Act 184, Sec. 2.

B. PILOT

For 2006 through 2010 grand lists, the State shall make PILOT payments for **Vermont State College property** regardless of whether the property is used for educational or commercial purposes. Under current law, all Vermont State College property is tax-exempt, but only educational buildings are eligible for PILOT. Beginning in 2011, Vermont State College property will only be exempt if used for educational and not commercial purposes. Act 207, Sec. 7, 8.

C. Other Property Tax Changes

Towns are now authorized to vote to exempt up to \$40,000 of the appraisal value of the **residence of a disabled veteran** or the disabled spouse, widow, widower or child of a veteran. Prior law authorized a voted exemption of \$20,000. Act 207, Sec. 25.

Beginning July 1, 2006, the **filing fee** for a property tax appeal to the Director of Property Valuation and Review will increase from \$30 to \$70. A taxpayer or selectboard aggrieved by a decision of the board civil authority may appeal to superior court or to the director of Property Valuation and Review for a de novo hearing. Appeals to the director are heard by a State Appraiser, an independent hearing officer who determines the property’s value after hearing. Act 202, Sec. 8.

Education Property Tax Adjustments

A. Overview

Beginning in 2007, the **prebate and rebate amounts will be combined** into one property tax adjustment payment that will be applied as a credit to the 2007-2008

property tax bill. The prebate will no longer be paid directly to the claimant and the rebate will no longer be a credit against the income tax. In addition, any taxpayer may opt to have all or a portion of his or her income tax refund applied to the homestead tax bill. Claims for both programs will be due April 15. Claims filed after April 15 but before September 2 will be allowed, but will be reduced \$15.00 to cover the town's cost of rebilling the property tax. No adjustment payment will be made for claims not filed by September 1. Act 185, Secs. 1-7.

Note that because 2006 rebates and 2007 prebates will be applied to reduce 2007-2008 property tax bills, individuals will not receive rebate or prebate checks in 2007.

With respect to claims filed in 2007 and 2008, no taxpayer shall receive total adjustments in excess of \$10,000 related to any one property tax year. An individual who received a homestead exemption or adjustment of property taxes assessed by another state for the taxable year will not receive a Vermont property tax adjustment. Act 185, Secs. 9.

B. Rebate Program Changes

A claimant must own the homestead on **April 1** to qualify for the rebate – this conforms the ownership date to the prebate program that has always required ownership as of April 1. Act 185, Sec. 2.

Effective for claims filed in 2007 and after, homeowner and renter rebates for claimants with **household income under \$10,000** are increased. These claimants will receive an adjustment in equal to the amount of property tax or rent constituting property tax in excess of 2 percent of household income. Currently the percentages are 3.5 for incomes up to \$4,999 and 4.0 percent for income between \$5,000 and \$9,999. Act 185, Sec. 12.

C. Prebate Program Changes

Prebates will be calculated using **prior year household income and tax assessment** (similar to the rebate program). Act 185, Sec. 1.

Since Act 68 became law, the **applicable base percentage** (the percentage of household income that claimants must pay before being entitled to a property tax adjustment) has been adjusted in proportion to education property tax rate changes. In the future, that base rate will drop no lower than 1.8 percent (adjusted by school district spending and the common level of appraisal). Act 185, Sec. 10.

D. Household Income Changes

Gifts received by members of the household in excess of a total of \$6500 in cash or cash equivalents (for example, certificates of deposit, stocks, bond, treasury obligation) must be included in household income for claims filed in 2007 and after. Act 185, Sec. 13.

The first \$6500 of income received by a person who qualifies as a dependent of the claimant under the Internal Revenue Code and who is the claimant's **disabled adult**

child may be excluded from household income for claims filed in 2007 and after. Act 185, Sec. 13.

For claims filed in 2005, 2006 and 2007, **difficulty of care payments** made by the State or an agency designated by the State to an individual for care of an eligible person with a developmental disability may be excluded from household income. Any tax assessment resulting from a claimant's exclusion of this income on a property tax adjustment claim filed in 2005 or 2006 will be abated. Similarly, if a claim was reduced as a result of a claimant's exclusion of such income, a supplemental payment will be made. Also, any person may file, on or before September 1, 2006, a late 2005 or 2006 property tax adjustment claim (relative to 2004 and 2005 household income) that excludes difficulty of care payments. (Note that flexible family funding payments were already excludable for those years.) Act 185, Sec. 14.

For claims filed in 2008 and after, only the first **\$6,500 of difficulty of care payments and flexible family funding payments** may be excluded from household income. Act 185, Secs. 13, 13a, 17(4).

Sales and Use Tax

Beginning September 1, 2006, **court judgments** for fines, penalties, surcharges and fees shall be subject to a setoff on the judgment debtor's income tax refund. Act 167, Secs. 4, 5.

The General Assembly approved a change to the **City of Burlington** Charter that will allow the city to impose a one percent **local option sales tax**. The tax will differ from local option taxes currently imposed in Manchester, Williston and Stratton in that Burlington will follow the State tax base and exempt clothing costing \$110 or less and will tax telecommunications. The tax will be effective on the next tax quarter following 30 days notice to the Tax Department, provided the notice is given in 2006. M-11.

Authorization to impose **local option taxes** existed under prior law only through 2008. That sunset has been removed. Consequently, the towns originally authorized by Act 60 to impose local option taxes, including Manchester, Williston and Stratton that have local option taxes in place, will continue to have that authority. Act 215, Sec. 293b, 293c.

Any in-state or out-of-state holder of a license to ship **vinous beverages** in Vermont must pay the sales tax due on such product directly to the tax department and must comply with the provisions of Chapter 233 and legally authorized local sales taxes. Act 140, Sec. 4.

Sellers that **register voluntarily** under the Streamlined Sales Tax Agreement will only have to file returns annually unless they accumulate more than \$1000 tax, in which case a return is due the following month. Act 207, Sec. 5.

HIGHLIGHTS OF TAX LEGISLATION PASSED IN 2007

Introduction

This document describes the significant changes made to Vermont tax laws by the General Assembly in the 2007 session. However, this is a reminder that Act 185, which was enacted in the 2006 session will impact property tax bills for the first time this summer. Act 185 combined prebates and rebates into one property tax adjustment amount¹. That amount will not be mailed to claimants but rather will appear as a credit on the property tax bill of the claimant's homestead, thereby reducing the amount owed to the municipality. Taxpayers who did not claim an adjustment amount are not affected by this law. 2006. Act No. 185.

Income Tax

Debt setoff: Clarified that courts, like all State agencies, are entitled to set off debts against both income tax refunds and property tax adjustments; and clarifies that court system "debts" include fines and penalties imposed by the State, but do not include damages awarded when one citizen sues another. Act 33, Secs. 3, 4.

The **Downtown Credit Allocation** was increased \$100,000 from \$1.5 million to \$1.6 million. These credits are awarded by the Vermont Downtown Development Board to qualified applicants for qualified code improvements, façade improvements and historic rehabilitation projects. H. 521.², Sec. 23.

Withholding tax: Effective July 1, 2008, the payment date for taxpayers who file their withholding returns electronically may be extended by the Tax Commissioner by six days. This allows Vermont and Federal withholding tax to be paid at the same time. Current law allows only a four-day extension for taxpayers *required* to file electronically. H. 521, Secs. 2, 3.

All bonds and notes issued by the newly created **Vermont Telecommunications Authority** and income from and interest on such bonds and notes are exempt from income tax (and all taxes except for transfer, inheritance and estate taxes). H. 248, Sec. 1 (30 V.S.A. § 8074).

Land Gains Tax

Land sold to an organization that qualifies under section 501(c)(3) of the Internal Revenue Code, meets the "public support" test of section 509(a)(2) of the Code, and has as one of its stated purposes to provide affordable housing is **exempt** from tax if the land is sold within 12 months by the organization to a buyer who is qualified under an affordable housing program for the buyer's principal residence. However, if the land is

¹ At the option of the claimant, this amount may also include all or a portion of the claimant's income tax refund.

² Bill numbers are referenced where Act numbers are not yet available.

not transferred within 12 months or not transferred to a qualified buyer for occupancy as the principal residence, the tax on both transfers (to and from the organization) shall be due from the organization. If the organization transfers the land within 12 months but there is no dwelling on the land and the buyer fails to complete and occupy a principal residence within two years, the tax on the first transfer shall be due from the organization and the tax on the second transfer shall be due from the buyer. H. 521, Sec. 25.

Local Option Taxes

The **City of South Burlington** charter was amended to give the City authority to impose a one percent local option tax on sales, meals & rooms and alcoholic beverages which are subject to taxation by the State of Vermont. The City Council must adopt an ordinance imposing the tax and then give 90 days notice to the Department of Taxes before collection of the taxes goes into effect. M-13. The City expects these actions to be taken in time for an October 1, 2007 effective date.

Property Tax

A. Education Property Tax

Education tax rates: For fiscal year 2008 only (2007-2008 property tax bills), the education tax rate on nonresidential property is \$1.36 per \$100 of assessed value and the rate on homestead property is \$.87 per \$100 of assessed value. H. 526, Sec. 4.

Divided question: Effective for FY10 through FY14, a school budget must be presented to the voters as a **divided question** if it contains spending in excess of the specified inflation amount *and* the district's education spending per equalized pupil in the prior fiscal year was in excess of the statewide average school district spending per equalized pupil in that fiscal year. The first question is whether the voters approve a total budget that includes the maximum inflation amount and the second question is whether the voters also approve additional education spending in a specified amount. Districts whose spending does not exceed the statewide average spending per pupil are not affected by this provision. H. 526, Secs. 5 and 6.

Section 3843 properties: 32 V.S.A. § 3841 authorizes municipalities to enter into PILOT agreements with owners of housing projects for low and moderate income occupants. These agreements were grandfathered by Act 60 for ten years, meaning that these properties were not included on the municipality's education grand list. Their grandfathered status – which was due to lapse in 2007 – has been extended one year. This provision does not affect other agreements and exemptions covered by the Act 60 transition language – these will be included on the municipalities' 2007 education grand lists. H. 521, Sec.11.

Tax increment financing for reappraisal towns: Tax increment financing exempts the excess value of property over the original taxable value (the "increment") within the tax increment financing district from the education tax and allows municipalities to retain

that portion of tax to finance improvements within the district. However, background growth – appreciation that would have occurred regardless of improvements within the district - is not part of the increment. This law provides that when a town reappraises at least twenty percent of the parcels in the municipality, the original taxable value of a property in the district is increased by the same proportion that other property within the district is increased. Prior to this amendment the increase was the same percentage as the increase experienced by the rest of the municipality. Act 66, Sec. 24.

To compensate municipalities for billing and collecting the education tax, municipalities may retain one-eighth of one percent of the total education tax collected (if remitted timely to the State). Effective for fiscal year 2009, the amount municipalities may retain increases to **0.225 of one percent of the total education tax collected**. However, the towns will not receive actual payment of the education tax adjustment amount in FY09 (as they will in FY08). Instead that amount will be **netted** in the calculation of education tax fund payments to school districts. In FY08, municipalities will receive education tax adjustment funds on or about July 1. The law was amended to require municipalities to transfer **all** education tax adjustment funds they receive to their school districts within 20 days of the first date upon which the taxes became due or 20 days after notification by the Education Commissioner, whichever is later. Under Act 185, some municipalities could have held a portion of the funds longer, depending upon the due dates. Act 65, Secs. 289, 290, 291, 299.

B. Property Tax Adjustments

Adult foster care: Last year, the law was amended to allow difficulty of care payments to be excluded in total from household income when calculating the claimant's property tax adjustment for 2007 and retroactively for 2005 and 2006; with respect to claims for 2008 and after, the first \$6,500 of such payments could be excluded. This year the law is further amended to replace the term difficulty-of-care payments with a new term, "adult foster care payments" and to allow a total exclusion of adult foster care payments for all future years. The Act also retroactively provides that interest will be paid to claimants who received refunds as a result of the retroactive law change (excluding the payments from household income) made last year. Act 37.

Homestead sales: Claimants who transfer their homestead after March 31, 2007 and before June 21, 2007, may receive their property tax adjustment directly from the Department of Taxes instead of having it credited against the property tax due to the town. To obtain the payment, a claimant must notify the Commissioner of Taxes in writing no later than 4:30 p.m. on June 20, 2007. The notice must include the following:

- 1) A request that the property tax adjustment amount be paid to the transferor;
- 2) a copy of the completed property transfer tax return that was filed with the town clerk including the transferor's social security number and the property's school parcel account number (SPAN); and

- 3) proof of payment of the property transfer tax, such as a copy of the check or receipt of the tax payment to the town or closing agent.

Act 39, Sec. 7 and H. 521, Sec. 24. The notice should be mailed to **Vermont Department of Taxes, P.O. Box 1645, Montpelier, VT 05601-1645** or faxed to **(802) 828-2720** and be marked "Homestead Closing". See NOTICE REGARDING HOMESTEAD REAL ESTATE CLOSINGS OCCURRING AFTER MARCH 31, 2007 AND BEFORE JUNE 21, 2007 on the Department's website.

Household income amendments: Prior law provided that a claimant who filed a timely claim had three years after the due date in which to amend their household income form (HI-144). This ability to amend has been extended to claimants who file late but by September 1 of the claim year. H. 521, sec. 4.

Maximum adjustment: With respect to claims filed in 2008 and after, no taxpayer shall receive a total adjustment amount in excess of \$8,000 related to any one property tax year. The maximum adjustment for claims filed in 2007 is \$10,000. H. 526, Secs. 2, 3.

C. Other Property Tax Changes

Subsidized housing: Definition of "appraisal value" with respect to subsidized rental housing is clarified to specify that for certain project types where rent is partially paid by the government and partially by the tenant, the value should be established using both components of rent referred to as "contract rents". H. 521, Sec. 10.

Rolling reappraisal study: Property Valuation and Review, in consultation with Vermont Assessors and Listers Association, Vermont League of Cities and Towns, International Association of Assessing Officials and two individual listers, one from an above average-sized town and one from a below average-sized town, will study the feasibility of adopting a statewide system of rolling reappraisals on a three- or five- year basis. H. 526, Sec. 27.

All property owned by the newly created **Vermont Telecommunications Authority** is exempt from tax. The Authority is authorized to own and lease equipment, facilities and other infrastructure, including fiber optic cables, towers, shelters, easements and rights of way. H. 248, Sec. 1 (30 V.S.A. §§ 8062, 8074).

Sales and Use Tax

The exemption for **parts, machinery and equipment ("parts") installed in an aircraft**, is broadened to include parts installed on private aircraft. Prior law exempted only parts installed on commercial aircraft (and commercial aircraft itself). After July 1, 2011, the exemption reverts to parts installed on commercial aircraft. H. 521, Secs. 7a and 7b.

Tobacco Tax

A taxpayer who fails to file a required **tobacco tax return** may be assessed at any time, which is the rule for other taxes. H. 521, Sec. 5.

Tobacco products wholesalers are now required to state on the invoice if the price includes the Vermont Tobacco Products Tax. This will clearly let retailers know if they have an obligation to remit the tax. H. 521, Sec. 6.

Vermont Economic Growth Incentive

Property tax allocations and stabilizations are subject to the same performance standards as a Vermont Economic Growth Incentive (VEGI) authorization. Thus, if a company falls short of performance requirements (creation and retention of payroll, capital investment and job targets) the property comes back onto the education grand list at full fair market value. H. 521, Secs. 12, 13, 21. Also, stabilizations and allocations are subject to the incentive ratio in the same manner as VEGI authorizations (this is the discount ratio whereby cost-benefit impacts are discounted 20% before an income authorization is issued) and cannot be authorized independently of an approval for a VEGI authorization. H. 521, Sec. 14.

Several **definitions** are corrected to make the program work as intended:

The term “**base payroll**” is removed from the definition of “**payroll threshold**” to resolve an error which would allow the calculation to produce negative numbers. The concept of base payroll is instead incorporated into the definition of “qualifying payroll”. H. 521, sec. 7.

“**Qualifying payroll**” is redefined to ensure that base payroll is maintained and background growth is taken into account in determining what investments are incremental. The new definition also clarifies that excess payroll may be counted toward future years’ targets and incentive payments provided the investments are maintained; and that VEGI recipients are not entitled to incentives on a full year’s salary for a new employee who is hired part-way through the year. H. 521, Secs. 7, 8.

HIGHLIGHTS OF TAX LEGISLATION PASSED IN 2008

Introduction

This document describes changes made to Vermont tax laws by the General Assembly in the 2008 session. Significantly, no major changes were made to the property tax adjustment program. For the second year, the adjustments will be a credit on the property tax bill that reduces education property taxes due to municipalities. Two important changes were made to income tax law. First, Vermont has decoupled from the federal accelerated bonus depreciation enacted by the Economic Stimulus Act of 2008 for individual income tax purposes.¹ Second, for tax years beginning in 2008 and after, the capital gains exclusion taken on the Vermont return may not exceed forty percent of federal taxable income. Other significant changes pertain to laws authorizing use of education tax increments to fund infrastructure costs. A number of exemptions from education property tax and income tax were added or expanded. There will be a two-day sales tax holiday in July for individuals purchasing tangible personal property; in the case of Energy Star appliances, the holiday will last one week.

Compliance

The commissioner may charge a **delinquent taxpayer** for the costs associated with serving a court complaint for the collection of delinquent taxes. This is generally the fee charged by a local sheriff. Act 190, Sec. 1 [32 V.S.A. § 3262].

Current Use

Each year, Property Valuation and Review (PVR) determines the eligibility of new and enrolled property for the Use Value Appraisal Program. Prior law prescribed various dates for this review to be completed and reported to towns. Now those notices will be combined into one, which PVR will send to towns by **March 15**. The other important deadline remains the same – towns must report back to PVR by **July 5** on whether the list is correct and on the fair market value of each parcel. PVR may notify an enrollee of discontinuance at any time that ineligibility is discovered. Act 190, Sec. 2 [32 V.S.A. § 3756].

Although the **transfer of ownership** alone will not affect the eligibility of the parcel, the law now provides that failure of an owner to provide information about the transfer, new maps or a new application within 30 days of a written request by PVR will result in removal from the program. Act 190, Sec. 3 and S. 311, Sec. 3 [32 V.S.A. § 3757 (e)].

Prior law allowed a decision by PVR regarding enrollment of use value of land to be appealed to the Director but did not specify the time in which such review could be sought. The law now

¹ Accelerated depreciation was already blocked from passing through to Vermont corporate income tax returns by prior legislation. See 2001(Adj. Sess.) Act No. 140.

specifically provides the aggrieved owner a **30-day appeal period**. Act 190, Sec. 4 [32 V.S.A. § 3758(a)].

A new owner of enrolled property is entitled to continue to have the eligible property taxed at use value provided the property remains eligible and the new owner **elects continued enrollment** on the property transfer tax return and, within 30 days of the transfer, applies to the Director of PVR and pays the required fees. The law directs the Commissioner of Taxes to redesign the transfer tax form to allow this election. S. 311, Secs. 2 and 4 [32 V.S.A. § 3756(e) and session law].

Applicants must pay a **\$30 fee** in addition to other fees. The fee will go into the existing special fund, which will now be available for making improvements to the management of the program as well as paying municipal clerk fees. S. 311, Secs. 2 [32 V.S.A. § 3756(e)].

The listers are not required to send a notice to the owner for a change to listed value made solely to reflect a **new use value** set by the Current Use Advisory Board and no grievance is allowed for this reason. S. 311, Sec. 8 [32 V.S.A. § 4111(e) and (g)].

A municipality may enroll land it owns that is located in another municipality in the use value appraisal program. However, if the use value appropriation for the year is insufficient to pay the full amount due to any municipality for enrolled property owned by another municipality, the municipality in which the property is located may assess the owner-municipality the difference. S. 311, Secs. 9 and 10 [32 V.S.A. §§ 3752(10) and 3760(a)].

Education Property Tax

For fiscal year 2009 only, homestead and nonresidential **education property tax rates** will be \$0.87 and \$1.36 respectively, and the “applicable percentage”² for property tax adjustments is 1.80 percent. Act 190, Sec. 5 [session law].

An alternative education property tax is imposed on buildings and fixtures used directly in the generation of **electrical energy from wind power**. The buildings and fixtures must be part of a facility certified by the Commissioner of Public Service as producing electric energy for resale, have an installed capacity of at least 5 megawatts and hold a valid certificate of public good issued under 30 V.S.A. § 248. The tax is imposed at a rate of \$0.003 per kilowatt hour produced. The tax is due twice a year to the Vermont Department of Taxes. Such buildings and fixtures will not be on the education grand list; however, municipal taxes are unaffected by this alternative tax. Act No. 92, Secs. 24, 25, 26 [32 V.S.A. §§ 5401(10)(J), 5402c, session law].

² The applicable percentage is the percentage of household income, when adjusted for district spending, that a claimant must pay for property taxes before a property tax adjustment is available.

Several **federally-subsidized affordable housing projects** that were subject to tax stabilization agreements were exempted from the statewide education tax by Act 60 for a ten-year period. This transitional exemption was subsequently extended for an additional year. During this period any foregone education tax revenue was made up by the State's other taxpayers. Now that the exemption is expiring, the underlying law is simplified to allow a town to vote directly to exempt, in whole or in part, affordable housing. If the town votes an exemption, any foregone revenue must be made up by the town's other taxpayers - just as before Act 60. The transition rule is that any agreement made prior to April 1, 2008, will continue in effect, but beginning in fiscal year 2010, the foregone education tax revenue must be made up by the town's other taxpayers. Act 190, Secs. 6-8 [32 V.S.A. §§ 3843, 3844].

The last payment of education taxes by municipalities to the education fund is on June 1.³ The Tax Commissioner calculates each municipality's education tax and the law now specifies that the calculation will be based on grand list information received by the Commissioner no later than the **March 15** prior to the June 1 net payment. Act 190, Sec. 11 [32 V.S.A. § 5402(c)].

The way towns are compensated for having to reissue a property tax bill due to a late-filed adjustment claim is changed. Instead of receiving a payment from the State of \$15 for each reissued bill, the town is permitted to **retain \$15** from education taxes collected. Act 190, Secs. 11, 15 [32 V.S.A. §§ 5402, 6066a].

Prior legislation increased the amount towns could retain for collection of the statewide education tax from one-eighth to 0.225 of one percent of the education taxes collected. This year, the Legislature has made a parallel change with respect to education taxes collected on new or corrected property tax bills. Act 190, Sec. 12 [32 V.S.A. § 5410(h)].

The law allows **recalculation of a town's education tax liability** if a property tax appeal results in a reduction of one percent or more. This relief is expanded to allow recalculation if the value is reduced as the result of declaratory judgment or other type of legal proceeding that changes the value of the property. The amendment also provides that in the case of a settlement between the town and a taxpayer, the town's education tax liability will only be recalculated if the Commissioner determines that the settlement amount represents fair market value. Act 190, Sec. 13 [32 V.S.A. § 5412].

The 2007 common level of appraisal for the **Town of Essex**, which underwent a reappraisal in 2007, will be retroactively increased to 100 percent. This cost to the education fund of approximately \$1,000,000, will be a credit against the town's fiscal year 2009 education tax liability. Act 190, Sec. 31 [session law].

³ Education taxes are paid on a fiscal year in two installments. The first payment is due December 1 and the second on June 1.

Effective for 2008 and 2009 grand lists only, **skating rinks**, owned and operated on a nonprofit basis, which provide facilities to local public schools for a sport officially recognized by the Vermont Principals' Association, are exempt from education property taxes. This is expected to exempt four or five skating rinks in the State. Act 190, Sec. 40 [session law].

Holton Home, a nonprofit elder residential care facility in Brattleboro, will be exempt from education tax on \$500,000 of value. An old law had exempted it from property tax on \$50,000 of value. The law does not increase the exemption from municipal tax. The increased exemption is effective for the facility's fiscal year 2009 tax liability. Act 190, Sec. 46 [session law].

For fiscal year 2009, two **health, recreation and fitness facility** properties are exempt from education property tax. One will be designated by the Springfield Hospital and the other by the North Country Hospital. Act 190, Sec. 101 [session law notwithstanding 32 V.S.A. § 3832(7)].

Provisions Affecting Tax Increment Financing Districts (TIF districts):

The **type of debt** a municipality may use to pay for improvements in a TIF district is expanded. Prior law authorized only bonded debt; effective upon passage, municipalities may also use Housing and Urban Development Section 108 financing instruments; interfund loans within a municipality; State of Vermont revolving loan funds; and United States Department of Agriculture loans. However, all types of TIF district financing must be approved by the legal voters of the municipality. VEPC must assure the "viability and reasonableness" of any proposed financing other than bonding and least-cost financing. Act 190, Secs. 54, 61 [24 V.S.A. §§ 1891⁴ ; 32 V.S.A. § 5404a(k)].

Improvements paid for with education tax revenue (increment) no longer have to be even partly within the district, they only have to "**serve**" **the district**. The increment used for the debt must be proportional⁵ to the use of the improvement for the district. Act 190, Secs. 55, 58 [24 V.S.A. §§ 1893, 1897].

It is clarified that education tax revenues may not be retained by a municipality in excess of twenty years; however, a municipality has five years after approval of a TIF district to incur debt that may be paid in part with education taxes. The **twenty-year retention period** begins with the initial date of the first debt incurred within the first five years. Act 190, Sec. 56 [24 V.S.A. § 1894]. It was also clarified that the municipal tax increment must be used in equal proportion to education tax increment. Act 190, Sec. 58 [24 V.S.A. § 1897].

⁴ Conforming changes - replacing "bonds" with "financing"- were made throughout Chapter 53 of Title 24. H.888, Secs. 54- 60.

⁵ The proportionality test also applies to "related costs".

If the tax increment collected is in **excess of the amount pledged** for financing in a particular tax year, the excess education portion and the excess municipal portion must be treated the same way. Three uses are permitted: prepayment of the financing instrument; placement in escrow, or distribution on a proportional basis to the education fund and municipal budgets. Act 190, Sec. 65 [24 V.S.A. §1900].

Municipalities with TIF districts are subject to **additional reporting requirements** and effective upon passage, the **State Auditor of Accounts** shall review and audit all active TIFs every three years. Act 190, Sec. 61, 62 [32 V.S.A. § 5404a(k); 24 V.S.A. § 1901;].

The provisions of Title 32 regarding **allocations** (retention of tax increment on new economic development) are repealed. There are no existing allocations and the provisions were unnecessary in light of other TIF provisions. Act 190, Sec. 63, 64 [32 V.S.A. § 5404a(e) and (g)].

Prior law allowed VEPC to approve ten new TIF districts within a five-year period beginning July 1, 2006. That was changed to allow approval of **six new districts in a five year period** beginning July 1, 2008. Act 190, Sec. 67 [session law].

Special provisions were enacted for three municipalities with TIF districts:

- **Milton** does not have to follow the proportionality rule for debt obligation incurred prior to April 1, 2009 with respect to improvements that serve two TIF districts known as Husky Campus and Catamount Industrial Park. Milton, however, is required to use the municipal tax increment in equal proportion to the education tax increment if these TIF districts are extended beyond the initial ten years, just as other towns are required to use equal proportions of educational and municipal increments. Act 190, Sec. 68 [session law]. Finally, Milton was given one more year before it has to comply with TIF district location criteria for any new TIF application. Act 190, Sec.69 [session law].
- **Winooski's** fiscal year 2008 education property tax liability will be retroactively calculated using a common level of appraisal factor of 1.0952. This recalculation will result in the City receiving approximately \$300,000 from the education fund as a credit against its fiscal year 2009 education tax liability. Act 190, Sec. 70 [session law]. The Joint Fiscal Office and the Tax Department have been charged with analyzing whether the law should be amended to adopt a recalculation method that includes all property within a TIF district for equalization purposes. Act 190, Sec. 65[session law]. Also, a technical correction was made to the Winooski TIF legislation. Prior law had required 5 percent of the education tax increment imposed on residential property within the district to be paid to the education fund. Since there was no definition of "residential" in this context, that qualifier was deleted and the percentage was lowered to 2. Act 190, Sec. 71 [amending Sec. 38 of No. 159 of the Acts of 1999 Adj. Sess.].

- **Burlington**, which had been using non-bond financing for its TIF, was given retroactive authority to use two forms of alternative financing, HUD section 108 financing instruments and certificates of participation. Act 190, Sec.75 [session law].

Income Tax

As stated above, Vermont has decoupled from the **bonus depreciation** provisions of the federal Economic Stimulus Act of 2008 and so accelerated bonus depreciation taken at the federal level will not pass through to the Vermont individual income tax. This means that businesses that utilize the federal depreciation will be required to keep separate depreciation schedules for federal and Vermont tax purposes. Federal bonus depreciation was already blocked with respect to C corporations. Act 190, Sec. 36 [32 V.S.A. § 5811(21)].

For taxable years 2008 and after, the **capital gains exclusion** taken on a Vermont return may not exceed forty percent of federal taxable income. Act 190, Sec. 19 [32 V.S.A. § 5811(21)(B)].

Beginning with the 2008 tax year, individuals, trusts, estates and corporations may claim a credit against income tax equal to 100 percent of the Vermont-property portion of the business **solar energy investment credit** component of the federal investment tax credit allowed against the taxpayer's federal tax. In prior years, 24 percent of the federal credit passed through to individual, trust and estates. This change allows those taxpayers the remaining 76 percent of the federal credit on the Vermont investment. The credit is new for corporations. If the federal credit is recaptured, the Vermont credit will be recaptured as well. Act 92, Secs. 27, 28, 29 [32 V.S.A. § 5822(c)(1)(B) and (d), 5930z, session law].

The **wood products manufacturer tax credit** was to expire July 1, 2008 with no further credit available for taxable years beginning after that date. Instead, the credit is extended to July 1, 2011. Act 190, Sec. 29 [Sec. 9 of No. 212 of the Acts of 2005 Adj. Sess. relating to 32 V.S.A. § 5930y].

The **credit for affordable housing** is expanded. It is now available for rental housing projects identified in 26 U.S.C. § 42(g) *and* certain owner-occupied housing that is eligible under VHFA "allocation plan" criteria. These criteria include ensuring that housing is maintained as affordable by subsidy covenant on a perpetual basis. VHFA may award up to \$100,000 per year for the new credit. The credit awarded to a taxpayer under this section is available for five consecutive tax years. This credit is in addition to \$400,000 of tax credit that VHFA may award for rental housing projects every year. These credits are also available to the taxpayer for five years. Act 176, Sec. 13 [32 V.S.A. § 5930u].

Technical changes were made to the refund provisions of Chapter 151, clarifying that when the Department denies a refund request, the taxpayer has 60 days to appeal to the Commissioner for a hearing and correcting references to the interest statute. The law also provides that if a notice of

deficiency is issued with respect to a refund paid in error, then notice given within the usual three-year period or one year after the date the erroneous refund was paid is timely. Act 190, Sec. 20 - 22 [32 V.S.A. §§ 3203, 5882, 5882].

Land Gains Tax

The transfer of undeveloped land in a “**Vermont neighborhood**”,⁶ which is the first transfer of that parcel following the original designation of the Vermont neighborhood, is exempt from land gains tax. Act 176, Sec. 12 [32 V.S.A. § 10002(p)].

Meals and Rooms Tax

The commissioner may petition a court to require a taxpayer file meals and rooms tax returns. This authority already existed with respect to sales tax and income tax. Act 190, Sec. 25 [32 V.S.A. § 9243].

Property Tax Adjustments

Under Act 185, if a property tax adjustment amount exceeded the current and prior year taxes, the town had to refund the excess to the taxpayer. Beginning with 2008 claims, if the adjustment amount **changes after December 31 of the claim year** (usually because household income has been amended or valuation has been lowered following appeal), the State, and not the town, will refund the excess to the taxpayer. Act 190, Sec. 14 [32 V.S.A. § 6066a(c)].

The law that allowed towns to decide how to apply property tax adjustment amounts to property taxes billed in installments is replaced with the requirement that the adjustment amount be applied **pro rata (in equal amounts) to each installment** that includes education tax. Act 190, Sec. 16 [32 V.S.A. § 6066a(f)].

When homestead property is transferred, the default rule is now specified in law and provides that the property tax adjustment amount shall be **allocated to the seller**. The parties may agree otherwise. Act 190, Sec. 17 [32 V.S.A. § 6063].

Claimants who filed **incomplete 2007 adjustment claims** before September 4, 2007 and failed to respond to requests for additional information will now get another chance to receive a 2007 property tax adjustment. This retroactive relief is available if: the complete claim is re-filed before August 1, 2008; the claimant files a written request for reconsideration of the claim; the written request is signed under pains and penalties of perjury; the first 2007 property tax bill issued in the claimant’s town was issued after September 4, 2007; the commissioner finds that

⁶ “Vermont neighborhood” is defined in 24 V.S.A. § 2791(15) as an area of land that is in a municipality with an approved plan, a confirmed planning process, zoning bylaws and subdivision regulations and is in compliance with all requirements set forth in new legislation passed in H. 863.

the claimant was unable to complete the filing or provide the missing information prior to December 1, 2007 as a result of sickness, absence, or other disability, or other good cause. Act 190, Sec. 37 [session law].

If a claimant is required to pay back a property tax adjustment, interest does not begin to run until December 1. Act 190, Sec. 45 [32 V.S.A. § 6071(b)].

Property Transfer Tax

No tax is due on the first \$110,000 in value of the property transferred if the purchaser obtains a purchase money mortgage funded in part with a homeland grant through the Vermont Housing and Conservation Trust Fund or which the Vermont Housing Finance Agency or the U.S. Department of Agriculture and Rural Development has committed to make or purchase. The value of the property over \$110,000 is taxed at one and one-quarter percent. A similar exemption (on the first \$100,000 of value for properties with a VHFA commitment) had been in law since 1999. Act 176, Sec. 14 [32 V.S.A. § 9602(1)].

Sales and Use Tax

There will be a **sales tax holiday** on July 12 and 13, 2008. No State or local options sales tax will be charged on sales to individuals for personal use of items of tangible personal property with a sales price of \$2000 or less. For Energy Star appliances, the sales tax holiday extends through July 18, 2008. The \$2000 price cap also applies to Energy Star appliances. Vendors in good standing with respect to tax laws may claim reimbursement for reprogramming their cash registers and computers for the holiday. The reimbursement payments will not exceed the least of the following amounts: actual cost of reprogramming; \$50.00; or \$50,000.00 divided by the number of qualified vendor applicants. Claims must be filed on or before November 1, 2008. Any municipality with a local option sales tax affected by the holiday will receive an amount in addition to the local option sales tax payment made under 24 V.S.A. § 138(d). The Commissioner will develop a methodology for determining the amount of reimbursement. The deposit into the PILOT special fund will also be adjusted if there are sufficient funds from the appropriation for this section. Act 190, Sec. 73[session law].

The sales tax exemption for **airplane parts, machinery and equipment** installed in private airplanes was enacted in 2007 with an expiration date of 2011. The exemption now will not expire until 2018. Act 190, Sec. 43 [32 V.S.A. § 9741(29)].

The Town of Middlebury is authorized through charter amendment approved by the General Assembly to impose **local option taxes**. The following taxes may be imposed on the same base as the state taxes: a one percent sales tax; a one percent meals and alcoholic beverages tax; and a one percent rooms tax. If Middlebury chooses to impose the tax it will be imposed, collected and administered in accordance with the provisions of section 138 of Title 32. No. M-17.

Tax Expenditure Reporting

The Commissioner is required to recommend to the General Assembly that any expenditure that has cost less than \$50,000 or has been claimed by fewer than ten taxpayers in each of the three preceding years be repealed two years hence. Act 190, Sec. 24 [32 V.S.A. § 312(c)].

Vermont Economic Growth Incentive

In the first year of a Vermont Employment Growth Incentive (VEGI) plan, a business that does not meet its employment and wage requirements is given a **grace period**, similar to the grace period already allowed in the second and third years. Now, to the extent that the business reaches its first year award period targets within two calendar year reporting periods immediately succeeding year one, such business may claim incentives in five-year installments as otherwise provided in the law. Act 190, Sec. 28 [32 V.S.A. § 5930b].

An enhanced economic growth incentive is available for **environmental technology businesses** (so-called “green” businesses). To qualify, the economic activity of the business in Vermont must be certified by the Secretary of Commerce and Community Development to be primarily research, design, engineering, development, or manufacturing activity related to waste management, natural resource protection and management, energy efficiency or conservation, or clean energy. For qualified businesses, the incentive ratio is 90 percent instead of 80 percent and the payroll threshold is 20 percent of the expected average industry payroll growth. Act 190, Sec. 41 [32 V.S.A. § 5930b(g)].

The term “**full-time job**” is redefined to mean a permanent position filled by an employee who works at least 35 hours per week. Prior law specified 37 hours per week. The amendment also clarified that income from non-statutory stock options are not part of “**Vermont gross wages and salaries**” for purposes of calculating the incentive. Act 190, Sec. 42 [32 V.S.A. § 5930b(a)(9) and (23)].

Highlights of 2009 Tax Legislation

Introduction

The 2009 legislative session saw significant changes to the tax laws. Individual income tax rates were reduced while the pass-through of the federal deduction of state income tax was limited and the taxation of capital gains income was restructured to provide for two methods of excluding a portion of capital gain income from taxable income. Taxes were increased on cigarettes, tobacco products, gasoline, and spirituous liquor. A tax amnesty and two sales tax holidays were authorized. Several tax expenditures were authorized with the beneficiaries including the City of Burlington, the Town of Milton, the Town of Springfield, two recreational facilities (in Springfield and Derby), and recipients of federal research and development credits. An appropriation was made for increasing compliance staff at the Tax Department over the next three years. These and other legislative changes are described below.

Amnesty and Compliance

Amnesty: There will be a six week amnesty beginning July 20, 2009 and ending August 31, 2009 during which certain tax penalties will be forgiven upon payment of tax and interest. Rules pertaining to the amnesty are available on the Department's website. The amnesty will be followed by increased compliance efforts by the Department. Nine new employees will be hired in fiscal year 2010 (beginning July, 1, 2009); six additional employees in fiscal year 2011 and five additional employees in fiscal year 2012 to augment the current staff. H. 441, sec. H.1, H.2; H 313. sec. 76.

Good standing: Prior to being hired by the State of Vermont, new employees must certify that they are in good standing with respect to state taxes. A person is in good standing if: no taxes are due and payable from the person and all returns have been filed; the liability is on appeal; or the person is in compliance with a payment plan approved by the commissioner of Taxes. H. 441, sec. H. 19 (32 V.S.A. § 3113(i)).

Unclaimed property: Unclaimed property of a taxpayer may be used to pay state tax liabilities after the taxpayer is notified of the right to appeal the payment on the basis that the liability is not the owner's debt; the debt was paid; the debt was timely appealed after assessment and the appeal has not been determined; or the debt was discharged in bankruptcy. H. 441, sec. H.20 (32 V.S.A. § 3113a).

Cigarette Tax and Tobacco Products Tax

Cigarette tax rate: The tax on a pack of cigarettes will increase \$0.25 when the rate goes from 99.5 mills per cigarette or little cigar to 112 mills per cigarette or little cigar on July 1, 2009. H. 441, sec. H. 37 (32 V.S.A. § 7771(c)).

Cigarette floor stocks tax: A floor stock tax is imposed on wholesalers and retailers in possession of more than 10,000 cigarettes or little cigars on July 1, 2009. The tax is the difference between the tax already paid and tax at the new rate. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of a wholesaler on July 1, 2009 that is not yet affixed to a cigarette package. The tax is \$0.25 per stamp. The floor stock taxes are due together with a report on or before July 25, 2009. H. 441, sec. H. 39 (32 V.S.A. § 7814).

Tobacco products tax definitions: The definitions of "snuff", "tobacco products" and "new smokeless tobacco" are amended to ensure that all tobacco for consumption is subject to an excise tax, including new products coming on the market. H. 441, sec. H. 36 (32 V.S.A. § 7702(13), (15) and (20)).

Tobacco products tax rate: The tax on tobacco products is increased from 41 percent of the wholesale price to 92 percent except: (1) snuff, which continues to be taxed at \$1.66 per ounce; and (2) "new smokeless tobacco", which will be taxed at the greater of \$1.66 per ounce or, if packaged to contain less than 1.2 ounces, at \$1.99 per package. H. 441, sec. H. 38 (32 V.S.A. § 7811).

Corporate Income Tax

Unrelated business income: Unrelated business income of nonprofits will be subject to corporate income tax effective for taxable years beginning on and after January 1, 2010. This will conform Vermont law to federal law. H. 441, sec. H. 25 (32 V.S.A. § 5811(3) and (18)).

Digital corporations: Effective for tax years beginning on or after January 1, 2010, certain corporations may elect to be taxed under a new franchise tax instead of the corporate income tax. To qualify, the corporation may not be a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income tax; have any Vermont property, payroll, or sales; or perform any activities in Vermont which would constitute doing business for purposes of income taxation except for fulfillment operations and web page or internet site maintenance. In addition, the corporation must have used mainly computer, electronic, and telecommunications technology in its formation, in the conduct of its business meetings, in its interaction with shareholders, and in executing any other formal requirements. The franchise tax is graduated based on the value of assets or stock but in most cases will be \$250.00. H. 441, sec. H. 51- 54 (32 V.S.A. §§5811(26), 5832(2), 5832a, 5838).

Credit: A new credit for research and development will take effect for eligible expenditures made on or after January 1, 2011. See **Tax Expenditures** section.

Current Use

At its November 9, 2009 meeting, the Joint Fiscal Committee will discuss strategies to achieve \$1.6 million in savings or increased revenue in the Use Value Appraisal Program. H. 313, sec. 81.

Education Property Tax

Rates: Both the homestead and nonresidential education tax rates are reduced one penny for fiscal year 2010. The homestead rate will be \$0.86 and the nonresidential rate will be \$1.35 per \$100.00 of equalized property value. The homestead rate is further adjusted for district spending. These rates will apply to an equalized grand list that will grow, on average, 6.9 percent in fiscal year 2010. H. 12, sec. 1.

Base education amount: The base education amount for fiscal years 2010 and 2011 is set at \$8,544.00. (The fiscal year 2009 base education amount was \$8,210.00.) H. 12, sec. 2.

TransCanada: Two hundred thousand dollars (\$200,000.00) has been appropriated for the 2010 reappraisal of hydro electric plants and other property owned by TransCanada Hydro Northeast, Inc. in the State of Vermont. H. 441, sec. E. 141.

Glastenbury and Somerset: The state tax of \$0.50 annually assessed upon the grand lists of the town of Glastenbury and the unorganized town of Somerset is replaced by a tax rate set through a budget process in which the supervisor proposes a budget and tax rate for the ensuing year that is reviewed by the Tax Commissioner. H. 438, sec. 91 (32 V.S.A. § 4961).

Also see the **Tax Expenditures** section for tax increment financing changes benefitting the City of Burlington and the Town of Milton; property tax exemptions for Southern Vermont Recreation Center in Springfield and the IROC in Derby; and legislation freezing the education property tax liability of Springfield's J&L site for 7 years.

Fuel Gross Receipts Tax

Prior law imposed the tax on, among other fuel types, "heating oil and kerosene not used to propel a motor vehicle." Effective July 1, 2009, "other dyed diesel fuel" was added to heating oil and kerosene. Stationary machinery such as compressors and generators that use new dyed fuels (low-sulfur off-road diesel and ultra low-sulfur off-road diesel) are now subject to the tax. The \$0.5 Petroleum Distributor's License Fee was similarly expanded to sellers of "other dyed diesel

fuel.” H. 83, sec. 9a as amended by S. 1, sec. 18 (33 V.S.A. § 2503); H. 83, sec. 5 (10 V.S.A. § 1942).

Gasoline Tax

In addition to the current 19 cent per gallon gasoline tax, a motor fuel transportation infrastructure assessment equal to 2 percent of the retail price exclusive of all state and federal taxes is imposed on each gallon of motor fuel sold by a distributor. The retail price will be based upon the average retail price for regular gasoline determined and published by the Department of Public Service. For June 2009, the average price is \$2.03 per gallon. H. 438, sec. 24 (23 V.S.A. § 3106(a)).

Estate Tax

The Vermont estate tax exclusion amount will remain at \$2 million and not follow the January 1, 2009 federal increase in the exclusion to \$3.5 million. Estates between \$2 million and \$3.5 million that will not have to file a federal estate tax return will be required to file a *pro forma* federal return with its Vermont return. These provisions apply to estates of individuals dying on or after January 1, 2009. H. 441, secs. 31 – 35 (32 V.S.A. §§ 7442a, 7444, 7445, 7446, 7475).

Individual Income Tax

Capital gains: Beginning on and after July 1, 2009, the 40 percent exclusion of capital gains income is converted to a flat exclusion *except* for gains from the sale of a farm, the sale of standing timber, and sales by individuals aged 70 years or older as of the last day of the tax year. For farm and timber sales, the 40 percent exclusion will continue to be the rule. Sale of a farm means the disposition of real and personal property owned by a farmer as that term is defined in 32 V.S.A. § 3752(7) and used by the farmer in the business of farming as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986. Sale of standing timber means the disposition of standing timber by an owner of timber that would give rise to the owner recognizing a capital gain or loss as defined in Section 631(b) of the Internal Revenue Code. Over-70 taxpayers may choose the 40 percent or the flat exclusion. The over-70 carve-out ends January 1, 2011. For

tax years 2009 and 2010, the exclusion amount is \$2,500; then it goes to \$5,000. Because the change is effective mid-year, the 40 percent exclusion applies to gains received in the first half of the year and the flat exclusion applies to gains received on and after July 1, 2009 (other than gains received by individuals over age 70 who opt for the percentage exclusion and farm and timber gains). H. 442, secs. 16a, 16b, 17 – 19; S. 1 (Special Sess.), sec. 22b.

State and local tax deduction: Beginning January 1, 2009, the pass-through of the deduction for state and local income taxes from federal adjusted gross income is limited to \$5,000.00. The limitation of the state and local income tax deduction will require an addition to Vermont taxable income of the amount of the federal deduction in excess of \$5,000.00. This add-back will be adjusted for the amount of taxable refund that was included in federal taxable income and not taken against Vermont income tax. H. 441, secs. 47 - 49 (32 V.S.A. §§ 5811(21)).

Rates: For 2009, the tax rates are lowered on all taxpayers as follows:

<u>2008 rate</u>	<u>2009 rate</u>
3.60% reduced to	3.55%
7.20% reduced to	7.00%
8.50% reduced to	8.25%
9.00% reduced to	8.90%
9.50% reduced to	9.40%

For taxable years 2010 and after, the income tax rates for four brackets are lowered again as follow:

<u>2009 rate</u>	<u>2010 rate</u>
3.55% remains	3.55%
7.00% reduced to	6.80%
8.25% reduced to	7.80%

8.90% reduced to	8.80%
9.40% reduced to	8.95%

New vehicle credit: For taxable year 2009 only, taxpayers are required to add back to Vermont income tax the new federal deduction for taxes paid on the purchase of a new vehicle. H. 441, sec. H. 47b.

Research and development credit: See Tax Expenditures section.

Meals and Rooms Tax

A licensed manufacturer of wine may now serve wine and beer at events held on its premises. Meals tax must be collected on the beverage sold and use tax must be remitted on the product served without charge. Similarly, a licensed manufacturer of spirits, now authorized to sell and serve spirits on its premises, must collect meals tax on spirits sold by the glass, sales tax on spirits sold by the bottle and use tax on spirits served without charge. S. 27. Sec. 1 (7 V.S.A. § 2(15)).

Property Tax Adjustments

Property tax adjustments that are resolved after September 15 will be paid directly to the claimant by the Department of Taxes rather than to the municipality in which the homestead is located. Under prior law, the resolution date was December 31. H. 441, sec. 29 (32 V.S.A. § 6066a).

Property Transfer Tax

The Department of Taxes is required to submit its implementation plan for electronic filing and payment of property transfer tax with the Joint Fiscal Committee by August 1, 2009. H. 441, sec. H. 39.

Sales and Use Tax

Digital downloads: The sales and use tax is extended to “specified digital products transferred electronically to an end user” effective July 1, 2009. “Specified digital

products” means digital audio-visual works, digital audio works, digital books, or ringtones that are transferred electronically. This means that downloaded music, movies and books are subject to the six percent sales tax, but no transaction shall be taxed more than once. H. 441, secs. 40, 41, 43 (32 V.S.A. §§ 9701(45), (46) and (47), 9771, 9773)

Liquor: Spirituous liquor becomes subject to the six percent sales tax effective July 1, 2009. H. 441, sec. H. 44 (32 V.S.A. § 9743(1)).

Tax holidays: There will be two sales tax holidays, the first on August 22, 2009 and the second on March 6, 2010. On these days no sales tax is imposed on sales of items of tangible personal property to individuals for personal use sold for \$2,000.00 or less. H. 442, sec. 24.

Springfield site: Sales of building materials, machinery, equipment or trade fixtures purchased by the qualified redeveloper for incorporation into the J&L redevelopment site in Springfield are exempt from tax for seven years. A sales tax exemption certificate must be presented to a vendor in order to obtain the tax exemption. H. 313, sec. 84. See **Tax Expenditures** section below.

Cancelled accounts: An annual filer that cancels its sales and use tax account must now file the final return no later than 60 days after the cancellation (rather than waiting until after the end of the year). H. 441, sec. H. 45 (32 V.S.A. § 9775).

Tax Expenditures: Credits, Exemptions and Tax Increment Financing

a. Credits

Downtown credits: Beginning in 2010, the amount of tax credits that may be awarded annually by the Vermont Downtown Development Board for historic rehabilitation, façade improvement and code improvement is increased from \$1.6 million to \$1.7 million. H. 313, sec. 29.

Investment tax credit: An investment tax credit may only be taken for the *Vermont-property* portion of the investment. This applies to credits related to investments made on and after January 1, 2009. H. 446, sec. 9 (32 V.S.A. § 5822(d)).

Research & Development credit: A new research and development credit is authorized for eligible expenses made on or after January 1, 2011. The credit is equal to 30 percent of the amount of federal tax credit allowed in the taxable year for research and development expenditures eligible under Section 41(a) of the Internal Revenue Code and which are made within Vermont. H. 442, secs. 22, 23 (32 V.S.A. § 5930ii).

Seed Capital Fund: The Vermont Seed Capital Fund is renamed the Vermont Entrepreneur's Seed Capital Fund and the initial capitalization is increased from \$5 million to \$7.15 million. Effective upon passage, the credit may be applied against the tax imposed on captive insurance companies under 8 V.S.A. § 6014 in addition to income taxes, bank franchise tax and insurance premiums tax. H. 313, sec. 27.

Solar credit: The rules for claiming a business solar energy tax credit were clarified:

- Effective January 1, 2009, a taxpayer who receives a grant or similar funding from the Clean Energy Development Fund under 10 V.S.A. § 6523 for a project is not eligible to claim the business solar energy tax credit for the same project. For investments made on or after October 1, 2009, the tax credit will only apply to project costs not covered by any grants or similar funding from a public or private program that assists in providing capital for renewable energy projects. H. 446, sec. 9, 9a (32 V.S.A. §§ 5822(d), 5930z(a)).
- An unused business solar energy investment tax credit may be carried forward for no more than five years following the year in which the credit was first claimed. H. 446, sec. 9, 9d (32 V.S.A. § 5822(d), session law).

- The business solar energy investment tax credit is repealed for investments made on or after January 1, 2011. H. 446, secs. 9b, 9c, 16(2)(32 V.S.A. § 5822(d)).
- The cost of the business solar energy income tax credit will be paid by the Clean Energy Development Fund. H. 446, 9e; H. 446, sec. 9e (10 V.S.A. § 6523(d)(6)).

Underutilized credits: Two credits were repealed:

1. An income tax credit for eligible venture capital investment is repealed for tax years beginning on or after January 1, 2010. (32 V.S.A. § 5930v).
2. A property tax exemption for fallout shelters is repealed for grand lists prepared for April 1, 2010 and after. (32 V.S.A. § 3802(13)).

H. 441, sec. H. 28.

b. Exemptions

Digital corporation exemption from corporate income tax. See **Corporate Income Tax** section.

Recreation facilities: A “one-year” exemption from education property tax for two recreation centers enacted for fiscal year 2009 in the last session has been extended for two more years. The beneficiaries of the exemption are the Southern Vermont Recreation Center in Springfield and the IROC facility in Derby. This exemption applies notwithstanding the provisions of subdivision 3832(7) of Title 32. H. 441, sec. H. 49.

Springfield site: A redevelopment site in the Town of Springfield (J&L site) is eligible for three unique tax expenditures for the redevelopment period (7 years):

1. Stabilization of the education property tax liability of the site at its 2009 level.

2. An income tax credit equal to three percent of the total wages and salaries paid by a qualified business or redeveloper during the taxable year for services performed within the site.
3. Exemption from sales and use tax for materials and trade fixtures purchased by the qualified redeveloper for incorporation into the site. H. 313, sec. 84.

c. Tax increment financing

Special provisions were enacted for two municipalities.

- City of Burlington. The authority of the City of Burlington to incur indebtedness for its currently-existing TIF is extended for 5 years beginning January 1, 2010, contingent on Joint Fiscal Committee approval. Burlington's authority to incur debt on its TIF - and therefore divert additional education taxes from the education fund to pay the debt - had expired but for this act. H. 313, sec. 83.
- Town of Milton. Retroactive legislation allows Milton to use financing types other than those specified in 24 V.S.A. § 1891(7). These additional types of financing are conventional bank loans and, if approved by the State Treasurer, certificates of participation, lease-purchase, and revenue notes. Milton is also granted the authority to incur debt up to 10 years after the creation of the TIF district; the usual rule is 5 years. H. 313, sec. 82, as amended by S. 1 (Spec. Sess.), sec. 10.

Vermont Economic Growth Incentive Program

Two technical changes were made to the program:

1. Clarified that an initial approval of an incentive may be granted followed by final approval before December 31 of the calendar year in which the economic activity commences. H. 313, secs. 12, 13 (32 V.S.A. § 5930b(b)(2)).

2. Conformed language in 32 V.S.A. § 5930a and 5930b to a statutory change made in the 2008 session eliminating allocation of property tax value under 32 V.S.A. § 5404a(e). H. 313, secs. 14, 15.

The Vermont Economic Incentive Review Board may require a third party financial and technical analysis as part of a municipality's application for tax increment financing and if so the municipality must cover the cost of the analysis. H. 136, sec. 6 (32 V.S.A. § 5404a(k)).

The Vermont Economic Incentive Review Board is renamed the Vermont Economic Progress Council (the former Vermont Economic Progress Council ceased to exist on April 1, 2009 when its duties were assumed by the newly created Economic Incentive Review Board pursuant to 2005, No.184 (Adj. Sess.), §13). H. 313, secs. 64, 65.

Department and Other Changes

Mapping: Responsibility for creating and distributing orthophotographic maps is transferred from the Department of Taxes to the nonprofit Vermont Center for Geographic Information under a memorandum of understanding with the Department. The Center shall provide to the clerk and to the listers or assessors of each town such maps as have been prepared by it of the total area of that town. These maps shall also be provided to Regional Planning Commissions, State Agencies, and the general public at a scale appropriate for the production and revision of town property maps as resources allow. H. 4411, sec. H. 21 (32 V.S.A. § 3409).

Revenue Department: The Department of Taxes will be converted to the Department of Revenue no later than June 30, 2012. To accomplish this transition, the Tax Commissioner will review each state revenue source and determine whether the management of the source should: (1) remain substantially as it is; (2) be transferred to the Treasurer's lockbox system; (3) be transferred to the Department of Taxes; or (4) be transferred to another entity. The Commissioner's recommendations shall be reviewed by a Revenue Transition Committee, which

will report its findings and recommendations to the General Assembly by February 15 of 2010, 2011 and 2012. H. 441, sec. H.6.

Lien Filing Fee: Effective July 1, 2009, the fee charged by town clerks to record any public document is increased from \$8 to \$10 per page. This means that the increased cost of filing a tax lien in the land records will be passed on to the delinquent taxpayer. The recording fee for a property transfer tax return will continue to be charged on a per-document rather than per-page basis. H. 138, sec. 13 (32 V.S.A. § 1671(a)(6) and (8)).

Highlights of 2010 Tax Legislation

Introduction

The General Assembly made significant changes to the calculation of property tax adjustments and the taxation of capital gains. Changes were enacted affecting certain sales tax exemptions and the property transfer tax laws were updated to allow for a new on-line system of filing property transfer tax returns that will begin on January 1, 2011. The education property tax rates remain the same as last year - \$0.86 for homesteads and \$1.35 for nonresidential property. The requirement of filing a homestead declaration is eliminated for certain people and the renter rebate program is simplified. Finally, the valuation of hydroelectric facilities will not be reduced below the April 1, 2009 values on the 2010 and 2011 grand lists. These and other changes to the tax laws are summarized below.

Compliance

Audit expenses: The commissioner may charge travel expenses and a reasonable per diem to companies that are unable or unwilling to provide books or records for audit at either the department's Montpelier office or an in-state location of the company. Act 160, sec. 4. 32 V.S.A. § 3201(a)(4).

Debt offset: Beginning July 1, 2010, the fee the department charges for setting off debts owed to state agencies against tax refunds, will be charged to the debtor and not to the claimant agency. The department will determine the per-offset fee annually to reflect the actual cost to the department. Act 160, sec. 6. 32 V.S.A. § 5938.

The commissioner is authorized to enter into agreements with other states to set-off the amount of a certified tax debt to that state against a Vermont tax refund. Act 160, sec. 7. 32 V.S.A. § 5942.

Staffing: Six additional compliance positions will be added in fiscal year 2011 and 5 positions in fiscal year 2012. Revenue targets are established for these years. Act 156, Sec. 107.

Education Property Tax

Rates: For fiscal year 2011, the tax rate for nonresidential property will be \$1.35 per \$100.00 of equalized property value and the tax rate for homestead property will be \$0.86 multiplied by the district spending adjustment for the municipality per \$100.00 of equalized property value. These are the same as the fiscal year 2010 rates. The “applicable percentage” for claims filed in 2011 will be 1.8 percent as it has been since 2007. Act 160, sec. 28.

Effective July 1, 2010, incentives for voluntary school district mergers include a decrease of the education property tax rate in the first 4 years after the merger. The rate decrease is \$0.08 in year 1; \$0.06 in year 2 ; \$0.04 in year 3 and \$0.02 in year 4. It is applied to the tax rate of the newly created district, but the rate for each town within the district cannot increase or decrease by more than 5% in a single year. The common level of appraisal will continue to be calculated independently for each town within the new district. Act 153, sec. 4.

Homestead Declaration: A person who acquires a homestead or owns a property that is made a homestead must file a homestead declaration by the next April 15. The declaration shall remain in effect until the earlier of (1) the transfer of title of all or a portion of the homestead; or (2) the time at which the property or any portion of the property ceases to qualify as a homestead. If the property is transferred or any portion ceases to be a homestead, the owner must notify the commissioner within 30 days. A person who files a declaration for a nonresidential property, fails to file a required declaration or fails to file the notification is subject to a penalty equal to either 3 or 8 percent of the education tax on the property depending upon which rate (homestead or nonresidential) is higher in the municipality. Act 160, sec. 47. 32 V.S.A. § 5410(b) and (g).

*****This change does not eliminate the ANNUAL requirement to file a property tax adjustment claim (HS-122) and household income schedule (HS-144) in order to receive an adjustment on a property tax bill*****

Clarendon/Rutland City tax sharing agreement: A 1981 Act relating to an agreement to split the value of an industrial park between the municipalities’ grand

lists is repealed effective June 4, 2010. The agreement is inconsistent with the education tax provisions of Chapter 135 of Title 15. Act 160, sec. 51(e).

Skating rinks: The education property tax exemption for a skating rink used by a school is extended for another year (FY 2011). Such facilities are not exempt under 32 V.S.A. § 3802 (public, pious and charitable uses), but are temporarily exempt as the result of session law enacted in 2008. Act 160, sec. 22.

Clarendon: Due to an error on the Town of Clarendon's 2009 grand list that the Town did not discover until after the grand list filing deadline, its education payment amount was lower than it would have been had Clarendon filed a correct grand list. This section provides that the town's fiscal year 2011 education tax liability will be reduced by the difference. Act 160, sec. 21.

Tax increment financing: The fair market value of TIF property, not the original taxable value, is included in the equalization study. Act 160, sec. 14. 32 V.S.A. § 5405(a).

Hydroelectric Generating Facilities: 2010 and 2011 grand list values of hydroelectric generating facilities will not be lower than their 2009 values. This law does not amend existing agreements between municipalities and owners or prohibit tax stabilization agreements in effect as of September 1, 2009 that do not reduce the grand list value below the 2009 valuation. The grand list value may be changed pursuant to a townwide reappraisal conducted after April 1, 2009. Act 160, sec. 59.

Estate tax

Excluded amount: For estates of decedents dying after December 31, 2010, Vermont is decoupled from the federal exclusion amount. Instead, estates will calculate the Vermont estate tax as though the applicable exclusion amount under the Internal Revenue Code were \$2,750,000. Act 160, secs. 33a, 33b. 32 V.S.A. §§ 7442a(c), 7475.

Refunds: Refunds of estate tax bear interest from 45 days after the date of the amended return. Act 160, sec. 32. 32 V.S.A. § 7488.

Fuel Gross Receipts

Imposition of the fuel gross receipts tax to heating oil, kerosene, and dyed diesel fuel was clarified effective July 1, 2010; those fuels are subject to fuel gross receipts tax when they are delivered to a residence or business. Act 160, sec. 44. 33 V.S.A. § 2503(a). The petroleum distributor's licensing fee imposed on sellers of heating oil, kerosene or other dyed diesel fuel sold in Vermont and not used to propel a motor vehicle is increased from one-half cent per gallon to one cent per gallon. This fee is deposited into the petroleum clean-up fund. Act 160, sec. 43. 10 V.S.A. § 1942(b).

Income Tax

Capital gains: Vermont's treatment of capital gains is changed again effective for taxable years 2011 and after. Individuals may reduce taxable income by *either*:

- (1) the first \$5000 of adjusted net capital gain income or
- (2) 40 percent of adjusted net capital income from the sale of assets held by the taxpayer for more than 3 years *except* from sale of the following:
 - any real estate or portion of real estate used by the taxpayer as a primary or nonprimary residence
 - depreciable personal property other than farm property and standing timber
 - stocks or bonds publicly traded or traded on an exchange or any other financial instruments.

As under current and prior law, the total amount of decrease due to capital gains exclusions cannot exceed 40 percent of federal taxable income. Act 160, sec. 60. 32 V.S.A. § 5811(21).

Check-off boxes: There will be a new check-off box on the 2010 individual income tax return form for contributions to the Vermont Veterans' Fund. The check-off box for campaign contributions will be removed from the 2010 return. Act 160, secs. 49, 51(c). 32 V.S.A. § 5862e.

Solar tax credits: Certain deadlines pertaining to investments that qualify for solar tax credits were amended. The credits, which may be taken against the individual and corporate income taxes, must be certified by the Clean Energy Development Board to the Department of Taxes. The Board cannot certify more than \$9.4 million in total and no taxpayer's award can exceed the amount awarded as the federal credit amount. There are two categories of investments that may be certified.¹

1) Investments made after January 1, 2010 that pertain to a solar energy plant with a capacity of 2.2 MW or less for which the owner has filed a complete petition for a certificate of public good. These plants must be commissioned or ready to be commissioned by September 1, 2011. The taxpayer must provide all information necessary to determine its eligibility to the public service board by July 15, 2010.

2) Investments made after January 1, 2010 and before December 31, 2010 that pertain either to a system that constitutes energy property as defined in 26 U.S.C. 48(a)(3)(A)(i) that does not require a certificate of public good or to a net metering system of no more than 150 kilowatts (AC) capacity. The taxpayer must provide all information necessary to determine its eligibility to the board by December 15, 2010.

Act 159, sec.11. 32 V.S.A. § 5930z.

Machinery and equipment tax credit: A credit against corporate income tax is available to a manufacturer of tangible personal property operating as a C corporation that: was in business on January 1, 2010 in a Rural Economic Area Partnership (REAP) zone in Vermont; employed at least 200 people in full-time jobs; and proposes to make at least \$20 million of qualified capital expenditures in a REAP zone that will contribute substantially to the REAP zone's economy. The credit equals 10 percent of the total qualified tax expenditures up to \$1 million a year and a total of \$8 million. The credit applies to taxable years beginning on and

¹ The legislation references several definitions and provisions found in Title 30.

after January 1, 2012 and is repealed July 1, 2026. H.789, secs. H.1-3. 32 V.S.A. § 5930ll.

Electronic filing of W-2 data: The commissioner may require businesses and payroll service providers to file withholding tax information by electronic means. H. 792, sec. B7. 32 V.S.A. § 5842(c).

Local Option Taxes

Administrative fee: The department's per return administrative fee for administration and collection of the local option tax for municipalities is set at \$9.52 and will be reviewed every third year. Act 160, sec. 8. 24 V.S.A. § 138(c).

Property Tax Adjustments

Claims made for 2010, 2011 and 2012: Interest and dividends greater than \$10,000.00 will be included twice in household income (all interest and dividends are included once in household income). Act 160, secs. 23, 51. 32 V.S.A. § 6061(5).

No adjustment is available for equalized housesite value over \$500,000.00; education property tax at the homestead rate (adjusted for local spending and the common level of appraisal) is due on that portion of equalized value. Act 160, secs. 25, 51. 32 V.S.A. § 6066(a)(1)(B).

Claims made for 2010 and after: The additional acreage adjustment (\$10.00 per acre, up to a maximum of 5 acres, for each additional acre of homestead property in excess of the 2-acre housesite) is repealed.

Claims made for 2011 and after: Household income will not be reduced by adjustments to "total income" that are enumerated on Federal Form 1040 *except* certain business expenses of reservists, one-half of self-employment tax paid, alimony paid and deductions for tuition and fees. Current law allows all the adjustments between total income and adjusted gross income to reduce household income. Act 160, sec. 24. 32 V.S.A. § 6061(5).

The limitation that modified adjusted gross income cannot go below zero applies individually to household members as well as to total household income. Act 160, sec. 24. 32 V.S.A. § 6061(4).

Property Transfer Tax (Eff. Jan. 1, 2011)

Payment: Beginning January 1, 2011, the property transfer tax is payable to the commissioner of taxes instead of to the town clerk of the town in which the property is located. The tax is due upon transfer rather than at the time of recording. Act 160, secs. 16, 18. 32 V.S.A. §§ 9605(a), 9607.

Return: A properly executed return, complete and regular on its face, must accompany the deed when delivered to the town clerk for recording. The recording fee for the return is set pursuant to 32 V.S.A. § 1671(a)(6); the current fee is \$10.00. Act 160, secs. 17, 19. 32 V.S.A. §§ 9606, 9608(a).

Electronic transmission of acknowledged return: Town clerks are required to file the return in the land records and forward an electronic copy of the acknowledged return to the commissioner no later than 30 days after receiving a return. However, if the return was filed in paper format with the town, the commissioner may allow the town to forward a paper copy of the acknowledged return to the department. Act 160, sec. 20. 32 V.S.A. § 9619(a).

Renter Rebates

Calculation: For claims filed in 2011 and after, renter rebates will be based on 21 percent of gross rent. There will no longer be an option to use the allocable portion of property tax. The definition of “gross rent” is unchanged. Act 160, sec. 24. 32 V.S.A. § 6061(7).

Household income: For 2011 and 2012 claims, interest and dividends greater than \$10,000.00 will be included twice in household income (all interest and dividends are included once in household income). Act 160, secs. 23, 51. 32 V.S.A. § 6061(5).

For claims made in 2011 and after, household income will not be reduced by adjustments to “total income” that are enumerated on Federal Form 1040 *except*

certain business expenses of reservists, one-half of self-employment tax paid, alimony paid and deductions for tuition and fees. Current law allows all the adjustments between total income and adjusted gross income to reduce household income. Act 160, sec. 24. 32 V.S.A. § 6061(5).

Landlord certificates: Beginning in 2011, an owner of a rental property that consists of more than *one* rented homestead is required to provide a certificate of rent to each person who rented a homestead from the owner during the preceding calendar year regardless of whether the tenant requested a certificate or waived the right to receive a certificate. The penalty for knowingly failing to furnish a certificate is increased from \$100.00 to \$200.00. Likewise, the minimum penalty for reporting rent in excess of the actual amount paid is increased to \$200.00. Act 160, sec. 26. 32 V.S.A. § 6069.

Sales and Use Tax

Use tax: Individuals must report either the actual amount of their use tax or a percentage of their Vermont adjusted gross income as use tax on the Vermont income tax return. Effective for taxable years beginning on or after 2010, the percentage increases from 0.04 to 0.08. H.783, sec. 37. 32 V.S.A. § 5870.

Schools and municipalities: When schools or municipalities hold events such as ski and skate sales, vendors who are required to register with the commissioner under 32 V.S.A. § 9707 and who receive a share of the proceeds from the sale of property must collect and remit tax on the total sale price regardless of who is the direct recipient of the payment. Act 160, sec. 41. 32 V.S.A. § 9743(6).

Exempt organizations: Effective for charges made on or after April 1, 2011, the law which required 501(c)(3) organizations to collect sales tax on performances that are jointly produced or presented with another person or entity is repealed and replaced with a rule that requires collection of the tax if the organization's gross sales of entertainment charges in the prior calendar year exceeded \$50,000.00. Act 160, secs. 38, 39, 41.

Such organizations do not have to collect tax on charges for performances that are jointly produced or presented which occur after December 31, 2009 and before

April 1, 2011, or which arise out of a written contract offer, or contract entered into after December 31, 2009 and before June 1, 2010. Taxes, interest and penalties assessed after January 1, 2010 under the joint production rule are legislatively abated. Act 160, secs. 40a, 40b.

Tax Expenditures

Downtown and village tax credits: These credits may now be transferred to an insurance company that can use them to reduce its insurance premiums tax. The applicant may request an insurance credit certificate in the amount of the unused credit that the insurance company may accept in return for cash. The credit is available to reduce the company's tax liability in the first tax year in which the qualified building is placed back in service or in the subsequent 9 years. Act 160, secs. 30, 31. 32 V.S.A. §§ 5930dd(f), 5930ff.

For fiscal year 2011, \$100,000 is appropriated to the downtown and village center tax credit program, which amount is in addition to the statutory cap of \$1.7 million. Act No. 78, sec. 10a.

Repeals: Two underutilized expenditures, the exclusion from Vermont income of support payments of a developmentally disabled person to the extent that amount is included in federal adjusted gross income and the credit for income received for a dramatic performance in a commercial film, are repealed for tax years beginning on and after January 1, 2013. Regarding the exclusion, the express legislative intent is to appropriate the estimated \$5000 savings to the Department of Disabilities, Aging, and Independent Living. In addition, the exclusion from nonresident individual income of income received for a dramatic performance in a commercial film to the extent such income would be excluded from personal income taxation in the state of residence is repealed for taxable years 2013 and after. Act 160, secs. 51(a), 52, 53. 32 V.S.A. §§ 5823(a)(6) and (b)(3), 5826

Sales tax reallocation: The Vermont Downtown Development Board is authorized to certify an additional \$600,000 - above the current limit of \$1,700,000 – for sales tax reallocation under 32 V.S.A. 5930ee. Act 160, sec. 54.

Other expenditures:

See **machinery and equipment credit, capital gains and solar tax credits** under Income Tax.

See **skating rinks and Clarendon** under Education Property Tax.

See **schools and municipalities and exempt organizations** under Sales and Use Tax.

Tobacco Taxes

Roll-your-own tobacco: The amount of roll-your-own tobacco that constitutes a cigarette for purposes of paying the cigarette tax is changed from 0.09 ounces to 0.0325 ounces effective July 1, 2010. Act 160, sec. 35. 32 V.S.A. § 7771.

Rates: On July 1, 2010, the tax on snuff increases from \$1.66 to \$1.87 per ounce; and the tax on new smokeless tobacco increases to the greater of \$1.87 per ounce or, if packaged to contain less than 1.2 ounces, the rate of \$2.24 per package (up from \$1.99 per package). A separate tax scheme on cigars is imposed as follows:

1. If the whole sale price of the cigar is \$1.08 or less, the tax will continue to be 92 percent of the whole sale price.
2. If the wholesale price of the cigar is greater than \$1.08 and less than \$10.00, the tax is \$2.00.
3. If the wholesale price of the cigar is more than \$10.00, the tax is \$4.00.

A definition of “cigar” is added which reads: “any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subdivision (1) of this section or is a little cigar within the meaning of subdivision (6) of this section).” Act 160, secs. 34, 36. 32 V.S.A. §§ 7702 (21), 7811.

Use Value Appraisal Program

Development definition: The definition of “development” is amended to slightly expand an exception that exists to the rule that subdivision of land that creates a parcel of less than 25 acres constitute “development.” Under prior law, if the subdivision resulted from a transfer to a close relative (specified in the law) and the

transferee enrolled the newly created parcel, there was no “development” for program purposes. Now if it is the *transferor’s* parcel that is less than 25 acres following subdivision and the land is re-enrolled, the exception would also apply. Act 160, sec. 12. 32 V.S.A. § 3752(5).

Current Use Advisory Board: The board’s current method of calculating land use change values is deemed to have the force and effect of administrative rules and any modification of the method must go through administrative rulemaking. Act 160, sec. 13.

Vermont Economic Growth Incentives (VEGI)

Recapture: The recapture provision that applies to VEGI awards is amended as follows:

1. “Year” is changed to “period” to prevent businesses that would otherwise trigger a recapture of benefits due to elimination of workforce from avoiding the obligation to repay benefits due to the timing of the workforce reduction. Act 160, sec. 10. 32 V.S.A. § 5930b(d).
2. Application of recapture to start-up businesses is clarified.
3. The commissioner’s authority to assess penalty *at the time* recapture and interest is assessed is clarified.
4. The department may initiate recapture prior to notification by a business of a drop in payroll when the department discovers layoffs through other means, such as news reports.
5. The general withholding provisions, including personal liability for the recapture amount, apply to VEGI credits taken against wage withholding.

Act 160, sec. 10. 32 V.S.A. § 5930b(d).

Studies and Reports

Tax Expenditure Report: This biennial report is expanded to cover diesel fuel tax, gasoline tax and motor vehicle purchase and use tax in addition to personal and corporate income taxes, sales and use tax, meals and rooms tax, insurance

premium tax, bank franchise tax and education property tax. The next report is due on January 15, 2011 to the following standing committees: House Ways and Means; House Appropriations; Senate Finance; and Senate Appropriations. It will also include the pass-through of federal tax expenditures from personal income tax reported on Federal Schedule A to Form 1040. The January 2013 report will also include the recommendation of the Tax Department, the Joint Fiscal Office and Legislative Council as to what other federal expenditures should be included in the biennial report. Act 160, secs. 1, 2. 32 V.S.A. § 312 and session law.

VAST trails: The director of Property Valuation and Review will meet with representatives of the Vermont Association of Snow Travelers, the Vermont Assessors and Listers Association, the Town of Canaan, the Vermont League of Cities and Towns and other interested parties with respect to what are “appropriate factors in assessing the value of land that has or is in proximity to recreational trails such as the statewide snowmobile trails.” A report is due to the House Ways and Means and Senate Finance Committees on January 15, 2011. Act 160. Sec. 11.

State Collection of Education Property Tax: The Department of Taxes must provide to the Joint Fiscal Committee a feasibility report on developing an electronic system for the department’s administration, billing and collection of the education property tax. The report is due no later than July 15, 2011. Act 160, sec. 45.

State education tax adjustments: The commissioner’s annual recommendation to the General Assembly to adjust the education tax rates shall include, for 2011 only, information on: (1) the total amount of annual education property tax adjustments (2) the percentage of Vermont households that are provided an education property tax adjustment or renter rebate based on household income and (3) the dollar limitations that are used for each of the computations. Act 160, sec. 50. 32 V.S.A. § 5402b(c).

Compliance: The department must file a report with the House Ways and Means and Senate Finance Committees with detailed findings and recommendations on further enhancing the State’s compliance and collection of taxes. The report is due no later than January 15, 2011. H. 792, sec. B8.

Electronic filing of tax returns: The department must file a report with the House Ways and Means and Senate Finance Committees that details the fees charged and expenses incurred in making refund payments electronically and by physical check. The report is due no later than January 15, 2011 and must include recommendations to provide incentives for taxpayers and tax preparers to file returns and pay or receive refunds electronically. H. 792, sec. B9.

Valuation of hydroelectric generating facilities: The department, in conjunction with the department of public service and representatives of Vermont municipalities must prepare findings regarding the feasibility of implementing an appraisal method that uses 3- to-5 year rolling appraisal values on hydroelectric facilities. The report is due to the House Ways and Means and Senate Finance Committees no later than January 15, 2011. Act 160, sec. 59.

Highlights of 2011 Tax Legislation

Introduction

Most of the tax law changes summarized below are part of ACT 45, the so-called miscellaneous tax bill. That bill also included increased assessments on home health agencies hospitals, nursing homes, ICF/MRs and health care claims that are not administered by the Department of Taxes.

Compliance

Lottery winnings: Allows lottery winnings to be set off against tax liabilities. Act 45, sec. 1.

Power of attorney forms: A power of attorney form that satisfies IRS requirements may also be used for Vermont tax purposes, eliminating the need for a notary signature. Act 45, sec. 31.

Offer in compromise program: Makes explicit the commissioner's authority to compromise tax liabilities if the commissioner has reason to doubt collectability or liability. The decision of the commissioner to reject an offer in compromise is not subject to review. Act 45, sec. 36f.

Cigarettes and Tobacco Products

Cigars: The low price threshold on cigars that are taxed at the \$2.00 rate is increased from \$1.08 to \$2.17. Act 45, sec. 22.

Cigarettes: Effective July 1, 2011 the tax on cigarettes increases \$0.38 per pack. In terms of millage, the rate goes from 112 to 131. A floor stocks tax is imposed on wholesalers and retailers that have more than 10,000 cigarettes or little cigars or \$500.000 or more of wholesale value of roll-your-own tobacco in their control on July 1, 2011. Act 45, sec. 27, 27a.

Education Property

Rates: For fiscal year 2012, the tax rate for homestead property is \$.87 per \$100.00 of equalized property value and the tax rate for nonresidential property is \$1.36 per \$100.00 of equalized property value. The "applicable percentage" for claims filed in 2012 will be 1.8 as it has been since 2007. Act 45, sec. 4.

Glastenbury and Somerset budget approval: Prior law provided that if the Tax Commissioner did not approve the budget of either Glastenbury or Somerset by September 10, then the budget and tax rate would remain the same as the prior year. The reference to "tax rate" was deleted because even with the same budget, the tax rate should change to reflect the current grand list which may be different than the prior year grand list. Act 45, sec. 10.

Homestead Declaration: The penalty language enacted last year is corrected so that the higher penalty applies only when the failure to declare a homestead (or the incorrect declaration of property that is not a homestead) benefitted the taxpayer in the form of a lower education property tax rate. Municipalities are given discretion regarding whether to impose the penalty. Also the penalty for failure to inform the commissioner within 30 days of a transfer of change of use of a homestead is eliminated (rather, that

information should be conveyed by means of a new declaration filed on or before April 15). Act 45, sec. 11.

Recreation facilities and skating rinks: Two recreation facilities – one designated by the Springfield Hospital and one by the North Country Hospital - were exempted from property tax in fiscal years 2009-2011. For fiscal year 2012 the exemption is reduced by 50 percent. Act 45, sec. 13e.

The property tax exemption for certain skating rinks used for public schools which has been in effect since fiscal year 2009 was step down to a 50 percent exemption for fiscal year 2012. Act 45, sec. 13f.

Tax Increment Financing Districts (TIFs): Effective for audits initiated after January 1, 2012 the cost of audits performed by the State Auditor of Accounts pursuant to 32 V.S.A. §5404a(1) shall be charged to the TIF municipality, but such audits will be performed every 4 years instead of 3 years. Session law was enacted reflecting the terms of the **Burlington** TIF, approved by the Joint Fiscal Committee in 2009.

Milton may elect (retroactively to July 1, 2008) to treat the Husky and Catamount TIFs as a single district for accounting and reporting purposes. When considering a re-approval for the purpose of extending the period for incurring indebtedness, VEPC will only consider "material changes" in the TIF application and shall presume that the inability of a district to incur indebtedness was the result of the macro-economic conditions in the first 5 years after the creation of the district. This was enacted to benefit, but is not limited to, **Colchester**. Act 45, sec. 15, 15a, 15b, 16.

Fuel Gross Receipts

Extension: The fuel gross receipts tax is extended through June 30, 2016 (formerly the expiration date was June 30, 2011). Act 45, sec. 32.

Income

Withholding reconciliations: Once the due date has passed, withholding reconciliation returns can only be amended for administrative error, which is an error that does not change the amount of tax withheld. Act 45, sec. 3.

Emergency medical personnel survivor payments: Payments made by the state to the survivors of emergency medical personnel who die in the line of duty or die from a work related illness are exempt from State income tax. According to the IRS, these payments are not taxable at the federal level in which case they would not be part of Vermont taxable income making this provision unnecessary. Act 45, sec. 3a.

Wood products manufacture credit: The credit (2 percent of the wages paid in the taxable year by employers in designated locations for services performed in the manufacture of finished wood products) was extended for 2 years - until July 1, 2013. Also, "finished wood products" was defined as "wood products that are manufactured into the form in which they are offered for sale to consumers". Act 45, sec. 17, 17a.

Downtown and Village Center Tax Credit: The State Board may allocate the credit awarded under the downtown and village center tax credit program as soon as a distinct phase of a qualified project is

complete. Also credit that has been rescinded is now available to the Board for award in subsequent years. Act 45, sec. 18, 19.

Composite Filing: The Commissioner may require composite filing and payment of tax by S corporations, partnerships and limited liability companies that have more than 50 nonresident shareholders, partners or members. Act 45, Sec. 20, 21.

Repeal: The wage deduction related to federal tax credit incentive work programs and an expense deduction related to the federal disabled access credit are repealed effective July 1, 2013. These deductions were under-utilized under the criteria of 32 V.S.A. §312. Act 45, sec. 36k.

Veterans' credit: A qualified employer is eligible for a \$2000 credit for each new full-time employee hired for a position at a Vermont business location and a recently deployed veteran is eligible for credit of \$2000 associated with a start-up business in Vermont. The employee must be hired and the business must be started after passage of the act but before December 31, 2012. The terms "expenses associated with a start-up business", "new full-time employee", "qualified employer" and "recently deployed veteran" are all defined in the legislation. Act 44.

Property Tax Adjustments

Household income: Amounts paid by self-employed people for health insurance premiums are excluded from the definition of household income for purposes of property tax adjustment beginning with 2012 claims. Act 45, sec. 13.

Veterans: For claim years 2011 and after, property tax adjustments will be calculated without regard to any veteran's property tax exemption under 32 V.S.A. §3802(11). Act 45, sec.13b.

Property Transfer

Rate: The preferential rate for land enrolled in use value appraisal is repealed so the general rate of 1.25 percent applies. The amount of property transfer tax revenue allocated to PVR is increased from 1 to 2 percent for 5 years with the increased revenue to be used to fund transition of the use value appraisal program to electronic administration. Act 45, sec. 33-35.

Sales and Use

Entertainment: The \$50,000 exemption level for entertainment charges made by Section 501(c)(3) organizations is increased to \$100,000 effective July 1, 2011. Also effective on passage, the pre-2010 law is restored with respect to nonprofits organized under Sections 501(c)(4) – (13) and (19) of the Internal Revenue Code; these organizations may hold 4 events per year before being required to collect sales tax on charges for entertainment without also being subject to the \$100,000 limit. Act 45, sec. 36.

Internet sales tax notification: Out-of-state sellers, including internet sellers and auction houses, are required to notify in-state purchasers of their use tax liability. Act 45, sec. 36b.

Affiliate nexus (delayed effective date): A person making taxable sales is presumed to be soliciting business through an independent contractor, agent or other representative if the person enters into an

agreement with a Vermont resident under which the resident, for a commission or other consideration, directly or indirectly refers customers, whether by a link on an Internet website or otherwise, to the person if the cumulative gross receipts from sales by the person to customers in the state who are referred to the person by all residents with this type of an agreement with the person are in excess of \$10,000 during the preceding tax year. Act 45, sec.36a.

Auctioneers: An exemption for licensed auctioneers is created under which a licensed auctioneer may receive payment for auction sales without being required to collect sales tax, but if property of different owners is comingled at one auction sales tax must be collected. Act 45, sec. 36g.

Spirituosous Liquor

Rate: Effective July 1, 2011, the tax changes from a uniform 25 percent of gross revenues to a graduated tax – from 5 to 25 percent - based on the amount of sales. Act 45, sec. 36d.

Use Value Appraisal

Land use change tax: In addition to development, the tax can be triggered by the passage of 2 years after the issuance of all permits legally required by a municipality for any action constituting development or the issuance of a wastewater system and potable water supply permit under 10 V.S.A. §1973. Act 45, sec. 13a.

Vermont Economic Growth Incentive (VEGI)

Administrative changes: The date that VEGI claims must be filed is changed from the last day of February to the last day of April; the commissioner may allow additional time for the completion of timely filed but incomplete claims; that the consequence of failure to file a claim in each year of the utilization period is the recapture of previously paid installments is clarified. Act 45, sec. 14.

Reports, Studies, Recommendations and Evaluations

Education funding: Mandate for Blue Ribbon Tax Structure Commission to evaluate Vermont's education financing system is repealed and replaced with another study of Vermont's education financing system. The Joint Fiscal Office is authorized to spend \$210,000 for the study. The report must be submitted to the Governor, the President Pro Tempore of the Senate, the Speaker of the House, and the Joint Fiscal Committee by January 18, 2012. Act 45, sec. 7 - 9.

Renewable energy property: Director of Property Valuation and Review and Commissioner of Public Service are directed to study property tax issues related to renewable energy plants. Their findings and analysis must be reported to the House Committees on Ways and Means, Commerce and Development, Housing and Natural Resources and Energy and the Senate Committees on Finance, Economic Development, Housing and General Affairs and Natural Resources and Energy by January 15, 2012. Act 45, sec. 12.

State billing and collection of education property tax: A report on the feasibility of developing an electronic system for the Department of Taxes' administration, billing and collection of education property tax will now also include a report on the application of the common level of appraisal separate

from the tax rate. This report is due July 15, 2011 from the Department of Taxes to the Joint Fiscal Committee. Act 45, sec. 6 (amending sec. 45 of No. 160 of the Acts of the 2009 Adj. Sess.).

Tax expenditure budget: The budget will be reported in 3 parts. The part covering tax expenditures related to nonprofits and charitable organizations and miscellaneous expenditures is due in January 2012 and every 3 years thereafter. The part covering tax expenditures related to economic development is due in January 2013 and every 3 years thereafter. The part relating to human service is due in January 2014 and every third year thereafter. The requirement that the Department of Taxes recommend repeal of under-utilized credits is repealed. Act 45, sec. 36i, 36j, 36k.

Taxpayer Advocate: The taxpayer advocate, whose position is now codified, is charged with various education and reporting responsibilities. The Advocate's report is due to the Senate Finance Committee and House Ways and Means Committee by January 15 each year. Act 45, sec. 36e.

Outreach recommendations: The Department of Taxes will make recommendations to the Senate Finance and House Ways and Means committees by January 18, 2012 regarding ways in which it can improve education outreach to taxpayers, its appeals system and protocols for tracking taxpayer inquiries and responses. Act 45, sec. 36h.

Link-based use tax returns: The Department shall evaluate – and then report to the Senate Finance and House Ways and Means committees by January 15, 2012 – on the feasibility of providing a volunteer link-based use tax reporting system that can be accessed via the notice required by out-of-state sellers to buyers regarding use tax responsibilities. Act 45, sec. 36m.

Highlights of 2012 Tax Legislation

Administrative Provisions

The requirement of a **notary's signature** on power of attorney forms authorizing people to represent taxpayers before the department of taxes is eliminated. Legislation passed last year authorized the disclosure of information to authorized representative without a notary signature, but did not remove the notary requirement in cases in which authority is given to bind a taxpayer. Act 143, sec. 3, amending 14 V.S.A. §3502(f).

The **Taxpayer Advocate** will play a new role in formalizing requests for abatement of tax, interest or penalty which may result in a written recommendation to the Commissioner for this extraordinary relief if after investigation the Advocate finds that:

- (1) Vermont tax laws apply to the taxpayer's circumstances in a way that is unfair and unforeseen or that results in significant hardship; and
- (2) The taxpayer has no available rights or administrative remedies to correct the issue that led to such unfair result or hardship.

"Extraordinary relief" means a remedy that is within the power of the Commissioner to grant, a remedy that compensates for the result of inaccurate classification of property as homestead or nonresidential through no fault of the taxpayer, or a remedy that makes changes to a taxpayer's property tax adjustment or renter rebate claim.

The Taxpayer Advocate is also tasked with proposing a draft taxpayer statement of rights to the Senate Committee on Finance and the House Committee on Ways and Means by January 15, 2013 and the Advocate's role in assisting individual taxpayers in resolving disputes with the Tax Department is also codified. This role does not extend to representing taxpayers at a Commissioner's Hearing. Act 143, secs. 6-8, adding 32 V.S.A. §3206 and session law and amending 32 V.S.A. §3205(b).

The calculation of **interest on unpaid liabilities and refunds** has changed. The rate paid on refunds will be calculated as follows: the average prime rate charged by banks during the immediately preceding 12 months shall be rounded up to the nearest *quarter* percent instead of *whole* percent and this rate will be converted to a monthly rate, which shall be rounded upwards to the nearest tenth of a percent. The interest charged on unpaid liabilities shall be 200 basis points over the rate paid on refunds. For example, if refunds bear interest at 3.6 percent, interest charged on liabilities is 5.6 percent. This takes effect for 2013 rates. Act 143, sec. 15, amending 32 V.S.A. § 3108(a).

Business Entity Withholding

Partnerships and limited liability companies engaged solely in the business of operating one or more **federal new market tax credit** projects in the state are exempted from paying income tax estimates on behalf of its nonresident partners and members. Instead, the entity is required to notify its nonresident partners or members of their Vermont filing and payment obligations and to file copies of all schedules K-1. A "federal new market credit project" means a business that is intended primarily to benefit low income Vermont residents throughout the period of investment and that is subject to the following: (A) has been determined by the US Department of the Treasury to be a community development entity; (B) has been awarded an allocation of federal new market tax credits under 26 U.S.C. § 45D; and (C) is a partnership or limited liability corporation which is a pass-through of the federal new market credit to the nonresident investor. Act 143, sec. 17, adding 32 V.S.A. § 5920(g).

Cigarette Tax

The definition of “**little cigars**” – which are taxed as cigarettes – is amended so that if 1000 units weigh four-and-one-half pounds or less, the rolls are classified as little cigars. The triggering weight was formerly 3 pounds. Act 143, sec. 13a, amending 32 V.S.A. §7702(6).

Corporate Income Tax

The period of time the Department has to **process corporate income tax returns** before interest is due on overpayments is enlarged from 45 to 90 days after the return was either due or filed, whichever is later. Act 143, sec. 15, amending 32 V.S.A. §3108(b)(2).

The **minimum tax on C corporations** is increased from \$250 to \$300 if the corporation has gross receipts of \$2,000,000 or less; to \$500 if the corporation has gross receipts greater than \$2,000,000 to \$5,000,000; and \$750 if the corporation has gross receipts greater than \$5,000,000. Act 143, sec. 16, amending 32 V.S.A. §5832(2).

Current Use

The definition of “development” has been amended to provide that enrolled land is also considered developed – and therefore ineligible for continued enrollment – if a **wastewater system permit** has been issued for the land pursuant to 10 V.S.A. § 1973 *and* the Commissioner of Forests, Parks and Recreation has certified to the Director of Property Valuation and Review that the permit is contrary to a forest or conservation management plan or the minimum acceptable standards for forest management; use of the parcel would violate the conservation management standards; or after consulting with the Secretary of Agriculture, Food and Markets, the Commissioner certifies that the permit is not part of a farm operation. This replaces the legislation enacted last session regarding a broader group of permits, is retroactive to July 1, 2011 and applies only to wastewater permits issued after that date. Act 143, secs. 41-44, amending 32 V.S.A. § 3752(5), 3757, 3758(d).

Several clarifying and **technical amendments** were made to the current use statutes, including that timber cutting contrary to a forest or conservation management plan during the remaining term of the plan or contrary to the minimum acceptable standards for forest management if the plan has expired will constitute development and that renewal plans must be filed no later than April 1 of the year in which the initial 10-year plan expires. Act 143, secs. 45, 47, amending 32 V.S.A. §3752(5) and 3755(b).

Energy Taxes

An annual tax of \$4.00 per kW plant capacity is imposed on any renewable energy plant in Vermont commissioned to generate **solar power** except that plants with a capacity equal to or less than 10 kW are exempt from the new tax as well as existing municipal and education property tax until January 1, 2023. This tax does not replace property tax on the land underlying the fixtures and personal property of a plant. The tax is due to the Department each year no later than April 1 and shall be deposited into the Education Fund. Property Valuation and Review will provide advice to listers on methods of valuing these plants for municipal purposes. The tax takes effect January 1, 2013. Act 127, secs. 1-4 and 6, enacting new secs. 32 V.S.A. §§ 8701, §3802(17) and amending 32 V.S.A. §5401(10)(J).

The threshold triggering a generation tax on **wind facilities** has been decreased from 5 megawatts to 1 megawatt. This takes effect January 1, 2013. Act 127, sec. 5.

The electric generating plant education property tax is repealed and the rate of the electric generating plant tax is increased to \$0.0025 per kWh of electric energy produced. The rate increase is effective for electricity generated after July 1, 2012. The taxes had been imposed on generation tax since 2005 (to that, they were imposed on net book value) but beginning July 1, 2012 the tax will be imposed on energy produced in the preceding quarter rather than based on average production for sale in the 3 preceding years. Act 143, sec. 57, 58, repealing 32 V.S.A. §5402a and amending 32 V.S.A. §8661.

Local Option Sales Tax

A resident of Vermont who purchased a **mobile home** after April 1, 2011 and before July 1, 2012 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage caused by a federally declared disaster in Vermont in 2011 is not subject to local option sales tax with respect to that purchase and the resident purchaser is entitled to a reimbursement of sales tax paid. The Department will establish procedures for reimbursements. Act 143, sec. 55, session law.

The voters of a municipality that has a local option tax may rescind that tax by a majority vote at an annual or special meeting warned for that purpose. Act 143, sec. 48, amending 24 V.S.A. §138(g).

Malt and Vinous Beverages Tax

The Department of Taxes may disclose to the Department of Liquor Control sales and use tax and meals and rooms tax account information of **liquor license** holders seeking renewal and new applicants. Act 143, sec. 4, amending 32 V.S.A. § 3102(e).

Effective July 1, 2012, beer and wine bottlers and wholesalers are required to report to the Commissioner the description, quantity and price of malt and vinous **beverages sold to each retail dealer**. The reports are due at the same time as bottler/wholesaler returns are due and must be in electronic format except that manufacturers or rectifiers of vinous beverages may submit reports of direct sales to retail dealers in non electronic format. Act 143, sec. 14, amending 7 V.S.A. §421(c).

Meals and Rooms Tax

The exemption from tax for charges for rooms situated in and meals served at “a sanatorium, convalescent home or ... home for the aged” has been replaced with more modern language. Now the rooms tax exemption extends to nursing homes, residential care homes, assisted living residences, homes for the terminally ill, therapeutic community residences and independent living facilities. Similarly, meals prepared and served by employees, volunteers or contractors of any of these facilities are exempt from tax. The term “contractor” excludes restaurants (as defined in 32 V.S.A. §9292(10)(D)(ii)(15)) when those meals are not otherwise available generally to residents of the facility. **“Independent living facility”** means a congregate living environment, however named, for profit or otherwise, that meets the definitions of housing complexes for older persons as enumerated in 9 V.S.A. § 4503(b) and (c), or housing programs designed to meet the needs of individuals with a handicap or disability as defined in 32 V.S.A. §4501(2) and (3). Act 143, secs. 59-60, amending 32 V.S.A. §9202(3), (10)(D)(ii) and (18).

Petroleum Distributor Licensing Fee

Effective July 1, 2012, the imposition of the petroleum distributor licensing fee is limited to *bulk* retail sales of heating oil, kerosene or other dyed diesel fuel sold in the state. The exemption for fuels used to propel a motor vehicle is eliminated. Act 143, sec. 1, amending 10 V.S.A. § 1942(b).

Property Tax

Both the homestead and nonresidential education tax rates are **increased 2 cents** for fiscal year 2013 over fiscal year 2012. The homestead rate will be \$0.89 and the nonresidential rate will be \$1.38 per \$100.00 of equalized property value. The homestead rate is further adjusted for district spending. The base education amount for fiscal year 2013 is \$8,723. Act 143, secs. 38, 39, session law.

Beginning in 2013, **homestead declarations** are again required to be filed annually. However, a special 2013 transition provision allows the Commissioner to provide a remedy for a taxpayer who fails to file or files an inaccurate classification through no fault of the taxpayer. Act 143, sec.25, 25a, amending 32 V.S.A. §5410(b), session law.

Where common elements of a **condominium or planned community unit** cross town lines, a town other than the town in which the common elements are located may designate that portion of the common element within its boundaries as a parcel for property tax assessment purpose. This is an exception to the rule that no separate tax may be imposed against common elements where the developer has not reserved development rights. Act 143, sec. 33, amending 27A V.S.A. § 1-105.

The statute governing county taxes is amended to include the unified towns and gores of Essex County in addition to unorganized towns and gores. These are technical changes. Act 143, secs. 35, 36, amending 32 V.S.A. §4301.

The requirement that a **veteran** had to have served in a war to be eligible for the \$10,000 reduction of value from his or her residence was removed. Effective for claims made after January 1, 2012, all veterans are eligible for this reduction in value. Act 111, amending 32 V.S.A. §3802(11)(A).

Municipalities that **abated taxes** assessed on property lost or destroyed due to the Irene or the May flooding could apply for reimbursement of education taxes. The abatement had to have been granted prior to April 15, 2012. Municipalities that demonstrated that due to disruption to tax collections resulting from such flooding it incurred unanticipated interest expenses on funds borrowed to make payments to the Education Fund were also eligible for reimbursement of the reasonable interest expense incurred. Act 67, session law.

Property Tax Adjustments and Renter Rebates

Property tax adjustment and renter rebate claims continue to be due by April 15 each year, but the last date on which they will be accepted is moved from September 1 to **October 15**. The commissioner shall notify municipalities of these late property tax adjustment claims on November 1. Act 143, sec. 27-29, amending 32 V.S.A. §§6066a, 6968 and 6074.

Property tax adjustment amounts are now **“confidential” information**. This means that while property tax bills sent to property owners will show that amount of tax due from the owner (i.e., net of adjustment), bills and information given to others will show only the gross (pre-adjustment) amount of tax except that municipal officers and the commissioner *may* provide the information to the following persons:

- (1) An escrow agent, the owner of the property to which the adjustment applies, a town auditor, or a person hired by the town to serve as auditor;

(2) A lawyer, including a paralegal or assistant of the lawyer, an employee or agent of a financial institution as that term is defined in 8 V.S.A. § 11101, an employee or agent of accredited union as that term is defined in 8 V.S.A. § 11101, a realtor, or certified public accountant as that term is defined in 26 V.S.A. § 13(12) who represents that she or he has a need for the information as it pertains to a real estate transaction or to a client or customer relationship; and

(3) Any other person as long as the taxpayer has filed a written consent to such disclosure with a municipality.

Act 143, secs. 5 and 11, amending 32 V.S.A. §3102 and §6066a(f).

Beginning with claim year 2013 (2012 Household Income), a claimant who has two or more businesses operating as sole proprietorships may net the loss of one sole proprietorship against the income of another sole proprietorship as long as the loss and gain are incurred in the same tax year. Act 143, sec. 10, amending 32 V.S.A. §6061(5)(A).

Health savings account deductions for self-employed individuals are added to the list of items excluded in determining **household income** effective for claims filed for 2013 and after. Act 143, sec. 26, amending 32 V.S.A. §6061.

Property tax adjustments will continue to be limited to \$500,000 or less of **equalized housesite value** for claim year 2013 and after. As originally enacted in 2010, the limitation was repealed for claims filed after January 1, 2013. Act 143, sec. 31.

Beginning with claim year 2013 (2012 Household Income), **interest and dividend income** over \$10,000 will continue to be counted twice in household income for claimants under age 65. Act 143, sec. 31a, amending 32 V.S.A. §6061(5)(E). A similar provision without the age ceiling was repealed. Act 143, secs. 31, 31a, amending 32 V.S.A. §6061(5)(E).

The **maximum renter rebate** is lowered from \$8000 to \$3000. This change is effective for rebates paid in 2013. Act 143, sec. 30, amending 32 V.S.A. §6067.

Property Transfer Tax

A transfer in fee by a 501(c)(3) organization that has as its primary purpose the provision of housing to low income individuals is exempt if made concurrently with the transfer of an improvement located on the property. The intended beneficiaries of this exemption are transferees of housing from **Habitat for Humanity**. Act 143, sec. 24, amending 32 V.S.A. §9603(23).

A resident of Vermont who purchased a **mobile home** after April 1, 2011 and before July 1, 2012 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage caused by a federally declared disaster in Vermont in 2011 is not subject to property transfer tax with respect to that purchase and the resident purchaser is entitled to a reimbursement of property transfer tax paid. The Department will establish procedures for reimbursements. Act 143, sec. 55, session law.

Sales and Use Tax

A resident of Vermont who purchased a **mobile home** after April 1, 2011 and before July 1, 2012 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage caused by a federally declared disaster in Vermont in 2011 is not subject to sales tax with respect to that purchase

and the resident purchaser is entitled to a reimbursement of sales tax paid. The Department will establish procedures for reimbursements. Act 143, sec. 55; session law.

The **manufacturing exemption** has been expanded to include machinery used for secondary packaging if it is part of the same machine that performs the initial packaging and is part of an integrated process. Act 143, sec. 54, amending 32 V.S.A. §9741(14).

The imposition of sales tax on **specified digital products** (music, books, movies and ringtones) was amended to bring it into compliance with the Streamlined Sales and Use Tax Agreement, adding the phrase “regardless of whether for permanent use or less than permanent use and regardless of whether or not conditioned upon continued payment from the purchaser.” Act 143, sec. 50, amending 32 V.S.A. §9771(8).

A temporary moratorium on enforcement of sales tax on **prewritten computer software** accessed remotely was enacted. Notwithstanding that the law imposes sales tax on such software, the tax will not be enforced for the period from January 1, 2007 to July 1, 2013 and timely and documented refunds may be requested. “Charges for remotely accessed software” means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer or a related company. Act 143, sec. 52, session law.

Toothbrushes, dental floss and similar items of nominal value given by dentists and hygienists to patients during treatment are exempt from sales and use tax effective July 1, 2012. Act 143, sec. 54, amending 32 V.S.A. §9741(2).

Natural gas used to propel a motor vehicle is subject to sales tax effective July 1, 2013 with the tax being allocated to the Transportation Fund. Act 153, sec.42, amending 32 V.S.A. §9741(7).

Tax Credits and Incentives

The amount that may be awarded to applicants for owner-occupied **affordable housing tax credits** is increased from \$100,000 to \$300,000 beginning in fiscal year 2013. This credit may be taken against individual income, corporate, franchise, or insurance premium tax liability. Act 143, sec. 21, amending 32 V.S.A. §5930u(g).

An additional one-time, refundable **downtown credit** of 10 percent of the qualified expenditures resulting from damage caused by a federally declared disaster in Vermont in 2011 may be awarded to qualified applicants to take against the individual income tax. The total available for tax credits under this section is \$500,000. Act 143, sec. 22, 23. 32 V.S.A. §5930bb(d), session law.

Vermont employment and growth incentive (**VEGI**) claims must be filed annually no later than the last day of April of each year of the utilization period. The law now clarifies that to be timely, all forms and workbooks must be completed and all underlying documentation must be filed with the Department. Act 143, sec. 18, amending 32 V.S.A. §5930b(c)(9).

The date by which the report of Vermont Economic Progress Council and the Tax Department on the **VEGI** is due is moved from May 1 to September 1 and the subject of the report is clarified. Act 143, sec. 19, amending 32 V.S.A. §5930b(e).

The authority of the Economic Incentive Review Board to grant incentives under the **VEGI** program is extended to July 1, 2017. It had been due to expire on July 1, 2012. Act 143, sec. 20.

HIGHLIGHTS OF 2013 TAX LEGISLATION

Administrative Provisions

The requirement of a witness or notary signature on a power of attorney form appointing an individual to represent a taxpayer before the Department of Taxes is eliminated. Act 73, Sec. 2. 14 V.S.A. § 3502(f).

The Department may file tax liens electronically with municipalities. Act 73, Sec. 7. 32 V.S.A. §3262(b).

The spending authority for Department's tax computer system modernization fund is expanded to cover information technology systems necessary for implementation and continued operation of the data warehouse project. Prior authorization was specific to the ETM system. The current appropriation of \$7,500,000 is carried forward through fiscal year 2018 and an additional appropriation of \$9,022,173 is authorized through 2018. Act 1, Secs. 65-67.

By August 1, 2013, the Commissioner and the Chief Fiscal Officer of the Joint Fiscal Office (JFO) shall enter into a memorandum of understanding in order to provide the JFO with state returns and return information. The MOU shall provide for:

- (a) Mechanisms to prevent the identification of individual taxpayers, including the redaction of any information that identifies a particular taxpayer;
- (b) Protocols for handling and transmitting returns and return information;
- (c) The designation of specific employees of the JFO with access to the information provided by the Department of Taxes;
- (d) The incorporation of unauthorized disclosures under subsections (a) and (h).

Act 73, Secs. 6, 6a. 32 V.S.A. §3102(l).

The commissioner may waive the requirement of a written declaration that a licensee applicant is good standing with respect to all taxes if the Commissioner deems it appropriate to facilitate the Department of Financial Regulation's participation in a national licensing or registration system for persons required to be licensed or registered by the Commissioner of Financial Regulation. Act 73, Sec. 58, 59. 32 V.S.A. §3113(b), 8 V.S.A. § 15(c).

The Department is directed to develop and pursue further strategies and redeploy resources to close the tax gap during fiscal year 2014 with the goal of increasing current collections by \$1,500,000. Act 73, Sec. 8.

Cigarettes and Tobacco

The prohibition on the sale of cigarette stamps during the period from June 15 through June 30 each year is repealed. This end-of-fiscal year black out period is no longer administratively necessary. Act 73, Sec. 9. 32 V.S.A. § 7772(b).

The period for the Department to assess additional tobacco products tax may be extended by consent of the taxpayer. This change parallels extension provisions relative to other taxes. Act 73, Sec. 10. 32 V.S.A. §7817.

Provisions unique to cigarette or tobacco products liability appeals to superior court are removed to conform to other tax appeals; specifically, the directive that such appeal be given preference on the superior court docket, the provision for interest at 6 percent rather than the rate established annually under 32 V.S.A. §3108, and the award of triple costs for appeals taken without probable cause, are removed from the statute. Act 73, Sec. 11. 32 V.S.A. §7783.

The definition of “manufacturer”, “wholesale dealer”, “wholesale outlet”, and “whole sale price” are updated to specifically reference the different types of tobacco subject to tax. The term “distributor” is removed because for purposes of administering the tax it is interchangeable with the term “wholesale dealer” and so was redundant. Accordingly, the term “distributor” was deleted throughout Chapter 205 (Cigarettes and Tobacco Products). References to “wholesale dealer” were amended to be prefaced by “licensed” through Chapter 219. The definition of “retail dealer” was amended to directly incorporate the definition of the same term in Title 7, where retail dealers are regulated. The adjective “moist” before snuff was removed from the definition of “other tobacco products”. Act 14, Sec.8. 32 V.S.A. §7702(4), (7), (10), (15), (16), (18) and (19).

The law requiring each licensed wholesale dealer to secure a license from the Commissioner before engaging in the business of selling cigarettes now expressly provides that licensed wholesale dealers shall sell these products only to other Vermont licensed wholesale dealers or to retailers licensed under Title 7. Act 14, Sec. 9. 32 V.S.A. § 7731.

There is a presumption that if a licensed wholesale dealer cannot produce proper evidence of cigarette stamps purchases to cover the dealer’s receipts that the product was sold without tax having been paid. This presumption is extended to roll-your-own tobacco. Act 14, Sec. 17. 32 V.S.A. §7777.

Statutes providing for imposition of the tobacco products tax and record keeping are amended to reflect the new tobacco types. Act 14, Secs. 19 and 21. 32 V.S.A. §7811.

Current Use

A lessee with a perpetual lease could enroll land in the current use program. That provision of law has been amended to specify that in this context, a “perpetual lease” means a lease that endures for more than 999 years. Act 73, Sec. 12. 32 V.S.A. § 3752.

The Commissioner is authorized to subordinate current use liens and to charge a fee of \$179.00 for reviewing a subordination request. Act 72, Sec. 14. 32 V.S.A. §3777.

The current use appeal statute is clarified to provide that appeal from a decision of the Commissioner or Director goes to superior court in the county in which the land is located and the period for appeals to the Commissioner of the Department of Forests, Parks and Recreation from an adverse inspection report is sixty days. Act 73, Sec. 13. 32 V.S.A. §3758.

The provision that enrolled land is considered developed if a wastewater system permit has been issued for the land pursuant to 10 V.S.A. 32 V.S.A. §1973 and the Commissioner of Forests, Parks and Recreation has made a certification to the Director is repealed in response to the practical problem of tracking local permits. Act 73, Sec. 14. 32 V.S.A. §3752(5).

Estate Tax

The link to the federal estate tax law is updated to incorporate changes adopted through December 31, 2012. Act 73, Sec. 15. 32 V.S.A. §7475.

Interest paid to taxpayers on estate tax is changed slightly so that it is computed from the *latest of* 45 days after the date the return was filed or was due, including any extensions of time thereto or, if the taxpayer filed an amended return or otherwise requested a refund, 45 days after the date the petition or amended return was filed. Act 73, Sec. 16. 32 V.S.A. §7488(b).

Fuel Gross Receipts Tax

The exemption for sellers of receiving \$10,000 or less annually from fuel sales is repealed. Act 73, Sec. 56. 33 V.S.A. §2503.

Health Care Claims Tax

Effective July 1, 2013, administration of this tax is moved to the Department of Taxes and it is re-codified as Chapter 243 of Title 32. The tax is imposed annually on health insurers in the amount of 0.999 of one percent of all health insurance claims paid by health insurers for its Vermont members in the previous fiscal year ending June 30. It is due in one installment by January 1. The revenues are deposited into the Health IT-Fund (0.199 percent) and the State Health Care Resources Fund (0.8 percent). On July 1, 2017, the tax is reduced to 0.8 percent and the deposit into the Health IT-Fund ceases. Former Health Care Claims Assessment (8 V.S.A. §4089l) and Health Care Information Technology Reinvestment Fee (8 V.S.A. §4089k) are repealed and sunset respectively. The Commissioner may disclose these returns or return information to the Commissioners of Vermont Health Access and Financial Regulation. Act 73, Secs. 48-53. Title 32, Chapter 243, 32 V.S.A. §3102(e), 32 V.S.A. §10301, 32 V.S.A. §10402.

Income Tax

The wood products manufacturer tax credit is extended for another six months. It now is repealed effective January 1, 2014 and no credit is available for tax years beginning on or after January 1, 2014. Act 73, Sec. 24. 32 V.S.A. §5930y, 2005 Spec. Sess. Acts and Resolves No. 2, as amended by 2006 Acts and Resolves No. 212, Sec. 9 and 2008 Acts and Resolves No. 190, Sec. 29, and as further amended by 2011 Acts and Resolves No. 45, Sec. 17.

The link to the Internal Revenue Code is updated to incorporated changes in effect for taxable year 2012. Act 73, Sec. 20. 32 V.S.A. §5824.

A technical correction is made that conforms the definition of “Vermont net income” with the adoption of Vermont net operating losses and decoupling from federal net operating losses 3 years ago. Act 73, Sec. 17. 32 V.S.A. §5811(18).

The reference to “applicable percentage” in 32 V.S.A. §5822 has been changed to 24 percent because the term was a holdover from when Vermont piggybacked to federal income tax liability. Act 73, Sec. 21. 32 V.S.A. §5822.

An amendment the definition of “taxable income” clarifies that “qualified dividend income” is not treated as capital gain income for purposes of the capital gains exclusion. Act 73, Sec. 18. 32 V.S.A. §5811(18)(A)(i).

Local Option Tax

The charters of the Cities of St. Albans and of Winooski were amended to allow the imposition of a one percent meals and alcoholic beverage tax, a one percent rooms tax, and a one percent sales tax if approved by the voters of the City. The taxes will be collected under general state law (24 V.S.A. § 138). Act M00, Sec. 2; H. 534, Sec. 3. 24 App. V.S.A chapter 150, §3; 24 App. V.S.A. chapter 19, Article 7, §719.

Property Tax

Both the homestead and nonresidential education tax rates are increased for fiscal year 2014 over fiscal year 2013. The homestead rate will be \$0.94 up from \$0.89 and the nonresidential rate will be \$1.44 up from \$1.38 per \$100.00 of equalized property value. The homestead rate is further adjusted for district spending. The base education amount for fiscal year 2014 is \$9,151.00; it was \$8,723 for fiscal year 2014. Act 52, secs. 1 and 2.

The temporary exemption for skating rinks that are used by a public school for a sport has been extended again for fiscal years 2013 and 2014. Act 73, Sec. 43. 2008 Acts and Resolves No. 190, Sec. 40, as amended by 2010 Acts and Resolves No. 160, Sec. 22, as amended by 2011 Acts and Resolves 45, Sec. 13f.

Owners of properties exempt under 32 V.S.A. §3802(4)-(6), and (12)-(15) and §5401(10)(D), (F), (G), and (J) must provide to their listers the insurance replacement cost or a written explanation of why the property is not insured before April 1 each year. The listers must include that value on the grand list if provided and also identify whether the value is the insurance replacement cost provided under 3802a or the full listed value under 4152(a)(6). Act 73, Secs. 29, 30. 32 V.S.A. §§3802a, 4152(a)(6), 4152(c).

When a certificate of exemption for land held by a qualified environmental conservation organization is granted by the Commissioner, it becomes effective for the April 1 grand list the follows the Commissioner's receipt of all information necessary for a determination on qualification. Act 73, Sec. 26. 10 V.S.A. § 6306(b)(3).

A new exemption, effective January 1, 2014, is enacted for the land owned by the Town Hardwick located in the Town of Greensboro that provides public access to Caspian Lake and land owned by the Town of Thetford and located in Fairlee and West Fairlee that provides public access to Lake Fairlee. Act 73, Sec. 28. 32 V.S.A. §3802(11)(B).

The sum of \$150,000 is appropriated for payment of expenses associated with a reappraisal as of April 1, 2012 of the hydroelectric plants and other property owned by TransCanada Hydro Northeast, Inc on the Connecticut River. Act 1, Sec. 75. In addition, \$50,000 was appropriated for payment of legal expenses incurred by towns in defense of grand list appeals of the assessment of TransCanada hydroelectric property. The Attorney General will review and approve reasonable reimbursement up to the appropriation. Act 50, Sec. E. 139.

Property tax valuation appeals from local boards of civil authority may be taken to either to Superior Court or to State Appraisers, who are appointed by the Director of Property Valuation and Review to act as hearing officers in such cases. Their title is changed from "State Appraiser" to "Hearing Officer" to more accurately reflect the role of these appointees in tax disputes. Act 73, Secs. 32- 34. 32 V.S.A. §§4465, 4466, 4467.

Several obsolete statutes concerning reporting of delinquent taxes to the Director of Property Valuation and Review are repealed. Act 73, Secs. 35-37. 32 V.S.A. §5165, 5166, 5167.

The reference to the repealed tax on steamboat, car and transportation companies is deleted from the definition of "nonresidential property". Act 73, Sec. 38. 32 V.S.A. §5401(10)(B).

Beginning with the study of the 2013 grand list, the Unified Towns and Gores of Essex County may be treated as a uniform assessment district for equalization purposes if they are determined to have a common grand list for valuation. Act 73, Sec. 39. 32 V.S.A. § 29.

Property Tax Adjustments

The requirement that a renter must have rented property during the entire claim year is added to the subdivision containing other eligibility conditions. This requirement already existed in 32 V.S.A. §6062(a). Act 73, Sec. 40. 32 V.S.A. §6066(b) and (c).

Property Transfer Tax

The Commissioner may dispense with the requirement of signatures on the property transfer tax. This will enhance taxpayers' ability to file transfer tax returns electronically using the Department's EPTTR system. However, the return will include a notice that the property may be subject to regulations governing potable water supplies and wastewater systems under 10 V.S.A. Chapter 64 and to building zoning and subdivision regulations and that parties have an obligation to investigate and disclose his or her knowledge regarding flood regulation affecting the property. Act 73, Sec. 44. 32 V.S.A. §9606.

Reports

The tax expenditure report shall contain the statutory purpose explaining the policy goal behind the exemption, exclusion, deduction or credit. A tax expenditure listed in the report that lacks a statutory purpose in statute shall not be implemented or enforced until a statutory purpose is provided. This shall take effect July 1, 2014. The Joint Fiscal Committee will draft the statutory purpose of each tax expenditure listed in the report. Act 73, Secs. 4, 5. 32 V.S.A. §312(d).

A committee shall study the public, pious and charitable property tax exemption and make recommendations related to the definitions, listing, valuation, and tax treatment of properties within this exemption. The Director of Property Valuation and Review is a member. The Committee shall report to the Senate Finance and House Ways and Means Committees by January 15, 2014. Act 73, Sec. 42

The date on which VEPC and the Tax Department must report to the General Assembly on TIFs is changed from January 15 to April 15 and additional reporting requirements are added, including on the date of creation, a profile and map of the district, the original taxable value, the scope and value of projected and actual improvements and developments, projected and actual incremental revenue amounts and division of the increment revenue between district debt, the Education Fund, the special account required by 24 V.S.A. §1896 and the municipal general fund, projected and actual financing, and a set of performance indicators developed by VEPC. S. 37, Sec. 13.

A report on compliance program revenue targets, collection trends, and program activities is due from the Tax Commissioner to the House and Senate Committees on Appropriations, the House Committee on Ways and Means, and the Senate Committee on Finance on January 15, 2014. The report shall include program outcomes and measures to evaluate program activity. Act 50, Sec. E. 111.

Sales and Use Tax

The sale, purchase, installation, or transfer, or possession of "automated sales suppression device" – also known as "zappers" – is prohibited and violations are punishable by imprisonment for not less than one year and not more than five years and fined not more than \$100,000, or both. Zappers are devices that falsify transaction data, transaction reports, or any other electronic record of electronic cash registers and other point-of-sale systems. Act 13. 13 V.S.A. §2032.

Durable medical equipment used in *diagnosis* intended to alleviate human suffering as well as such equipment used in *treatment* is exempt from sales tax. Act 73, Sec. 45. 32 V.S.A. §9741(2).

Property must be used outside the State before being brought into the State to qualify for exemption from use tax. Act 73, Sec. 46. 32 V.S.A. §9744(a)(2).

Interest paid on a claimed refund of sales and use tax will be calculated from 45 days after the date of the refund claim rather than the date of the overpayment. Act 73, Sec. 49. 32 V.S.A. §9781(c).

The temporary moratorium on enforcement of sales tax on prewritten software accessed remotely (“cloud” software) is allowed to expire on June 30, 2013 in accordance with law enacted last session.

Solar Tax

Clarifying language is added to the solar tax providing that the existence of a solar plant does not make the underlying land subject to property tax if it is otherwise exempt from property tax. Act 73, Sec. 41. 32 V.S.A. § 8701(d).

Tax Increment Financing

In 2011 and 2012, the State Auditor performed audits of the four existing tax increment financing districts and concluded that collectively they had underpaid the Education Fund by \$6 million dollars. The law contained no specific remedy to recover the underpayment from the municipalities. In order to resolve all disputes with the municipalities, only the following amounts will have to be repaid:

The City of Burlington will remit \$200,000 out of the increment over a 5 year period.

The Town of Milton will remit \$22,000 from municipal revenues other than the increment over a 2 year period; \$160,000 to the Catamount Husky Increment Fund over a 5 year period from municipal nonincrement revenues; and \$17,000 to the Catamount Husky Tax Increment Fund for repayment of debt from the Town Core Tax Increment Financing Fund no later than December 15, 2013.

The City of Winooski will remit \$1,300 to the Education Fund from municipal nonincremental revenues by July 1, 2013 and \$62,000 to the Tax Increment Financing Fund from municipal nonincremental revenues over a 5 year period.

Payments that are not remitted within 60 of the scheduled payment date may be withheld from any funds otherwise payable by the State to the municipality. If the legislative body of the municipality does not approve the payment(s), the underpayments identified by the Auditor are considered owed to the Education Fund. S. 37, Sec. 1.

The definition of “improvements “ was broadened to include infrastructure that will serve a public purpose and fulfill the purpose of tax increment financing districts as stated in 24 V.S.A. § 1893. It includes utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation. It does not include soft costs. S. 37, Sec. 2. 24 V.S.A. § 1891(4).

A definition of “original taxable property” is replaced with a definition of “original taxable value”, which is determined on the date the TIF was created. A TIF is created on 12:01 a.m. on April 1 of the calendar year so voted by the municipality. This definition is cross-referenced with § 1892 to make it clear when taxable value is determined. S. 37, Sec. 2, 3. 24 V.S.A. §§1891(5), 1892(b).

The definition of “related costs” now allows municipalities to include personnel costs related to administering the district but only to the extent that they are paid from the tax increment realized from municipal and not education taxes and use only that portion of the municipal increment above the required percentage in serving the TIF debt. Municipalities may designate a coordinating agency from

outside the municipality's departments to administer the district and claim that as a related cost. S. 37, Sec. 2, 3. 24 V.S.A. §§1891(6), 1892(c).

Originally, bonds were the only permissible form of debt, then the law was expanded to include other types of debt such as Housing and Urban Development Section 108 financing instrument and "interfund loan" within a municipality. Now permissible financing includes any type of debt authorized by the voters of the municipality. However, municipalities will not be permitted to charge interest on intercompany loans (which would have had the effect of allowing one municipal department to borrow from and another municipal department and charge the Education Fund interest on the loan). Municipalities can also now pay for the cost of district improvements directly if approved by the voters and part of the municipality's tax increment plan. S. 37, Sec. 2. 24 V.S.A §1891(8).

A definition of "committed" is adopted and replaces the term "pledged". This is the increment that is generated and retained each year for payment of TIF district debt. S. 37, Sec. 2. 24 V.S.A. § 1891(8).

Vermont Economic Progress Council (VEPC) is not authorized to approve any TIF districts beyond those that have already been authorized to use education tax increment financing which are:

- (1) The City of Burlington, Downtown;
- (2) The City of Burlington, Waterfront;
- (3) The Town of Milton, North and South;
- (4) The City of Newport;
- (5) The City of Winooski;
- (6) The Town of Colchester;
- (7) The Town of Hartford;
- (8) The City of St. Albans;
- (9) The City of Barre; and
- (10) The Town of Milton, Town Core.

S. 37, Sec. 3. 32 V.S.A. §1892(d). Notwithstanding this section, VEPC is authorized to approve a TIF in South Burlington up until December 31, 2013. S. 37, Sec. 17. The City of Burlington is also authorized to extend its borrowing period by five years beginning January 1, 2015 (without extending its retention period). S. 37, Sec. 18.

Numerous other amendments to Chapter 53 of Title 24 and Chapter 135 or Title 32 were enacted including provisions that:

Allow districts a total of ten years from the creation date to incur additional debt if any debt is incurred within the first five years. If no debt is incurred in the first five years, the district shall terminate unless an extension is granted by VEPC.

Require municipalities to notify VEPC and the Tax Department when first debt is incurred.

Require VEPC approval of a TIF financing plan prior to public vote.

Specify that a TIF district will terminate when the debt is retired or within five years if no debt is incurred.

Establish that the retention period begins the year the first debt is incurred and is limited to 75 percent of the increment for 20 years.

Require more comprehensive notice and information to be provided to voters prior to a public vote.

Reaffirm that all property taxes assessed within a district must be used for financing and related costs. Designating, by charter or otherwise, an assessment as special or for a particular purpose does not change this result.

Repeal provision for adjustment upon reappraisal.

Require information reporting (including performance indicators) to VEPC and Department of Taxes and include TIF finances in municipal audit cycle.

S. 37, Secs. 4-10.

VEPC shall adopt a “single rule” for all tax increment financing districts that will further clarify the statutes and establish a process for municipalities to distribute excess increment to the Education Fund. However, TIFs in existence prior to January 2006 may be exempted from the “single rule” if specifically provided in the rule. S. 37, Sec. 14. 32 V.S.A. § 5404a(j).

The Secretary of Commerce and Community Affairs may issue decisions relating to the administration of TIFs and noncompliance. The Secretary may permit an interlocutory appeal for questions of law before issuing a final decision. If the Secretary issues a decision finding noncompliance, the Secretary may request the Treasurer to issue a bill for the underpayment and/or refer the matter to the Attorney General for civil action. The appeal to the Secretary is subject to the provisions 3 V.S.A. chapter 25 relating to contested cases. S. 37, Sec. 14. 32 V.S.A. §5404a(j).

The State Auditor no longer is required to audits TIFs every four years. Instead audits will occur in accordance with a schedule arrived at in consultation with VEPC. S. 37, Sec. 16. 32 V.S.A. §5404a(l).

June 10, 2013

