Report of the Commission on Financing and Delivery of Affordable Housing and Conservation

Pursuant to Sec. E. 810.4 of No. 156 of the Acts of the 2009 Adj. Session (2010)

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Part I. Statutory Authority and Responsibilities of the Commission on Financing and Delivery of Affordable Housing and Conservation

The Commission on Financing and Delivery of Affordable Housing and Conservation (Commission) was created by the general assembly in Act 156 of the 2009-2010 Biennium. (See Appendix #1.) The eight-member Commission was charged to review and assess the work of the four statewide entities that are responsible for funding organizations and individuals who provide and receive affordable housing, conserve important natural areas, and preserve Vermont's working landscape and historic sites: The Vermont Housing Finance Agency (VHFA), the Vermont Housing and Conservation Board (VHCB), the Vermont State Housing Authority (VSHA), and the Department of Economic, Housing and Community Development (DEHCD). Particularly, the Commission was charged to do the following:

1. In assessing whether the statewide entities are meeting their respective requirements, determine whether the statewide entities are:

A. Assembling multiple funding sources to address a full range of housing needs, including emergency, transitional, assisted-living, multi-family rental, and home ownership.
B. Leveraging federal, state, private, and philanthropic resources.
C. Serving Vermonters with the lowest incomes and special needs.
D. Promoting housing and economic development in downtowns and village centers.

2. To review the report required by Executive Order Number 02-10 of March 18, 2010 (The Weidner Report) that addresses the potential merger or consolidation of the statewide entities.

3. To determine the impact of a merger or consolidation of the statewide entities on the production of permanently affordable housing, land conservation, and historic preservation.

4. With respect to the Vermont Housing and Conservation Board, to determine whether it is fulfilling its statutory mission to develop permanently affordable housing and protect at-risk housing; to conserve Vermont's working landscape, important natural areas, and historic properties; and to build effective community-based nonprofit capacity to advance these goals.

Part II. Summary of Commission Activities

The Commission met six times between August and December 2010, one of which was a public hearing. The Commission heard testimony from over 50 scheduled witnesses and members of the public. The Commission took testimony from senior staff of the statewide entities, from directors of Vermont nonprofit agencies that provide affordable housing, from individuals and organizations providing services to people who are homeless or have special needs, as well as from conservation organizations, farmers, business people, residents of affordable housing, advocates, a banker, and home builders who have worked with one or more of the statewide entities. (See Appendix # 2.)

Part III. Summary of Commission Findings

- **1. The Commission finds that the statewide entities have done an excellent job fulfilling their statutory requirements.**

  A. The Commission finds that the statewide entities have fulfilled their statutory requirements to address multiple funding sources in order to provide a range of affordable housing needs, including emergency, transitional-assisted living, and multi-family rental and home ownership. The statewide entities have done this by engaging in a careful process of priority-setting based on state and federal requirements and by aggressively pursuing a variety of funding sources.

  B. The Commission finds that the statewide entities leverage a very large amount of funds from federal, state, private, and philanthropic sources.

  Further, the Commission finds that in addition to leveraging millions of dollars directly to the state economy, substantial additional economic benefits flow into Vermont as a result of the integrated approach taken by the statewide entities in combining affordable housing, conservation of Vermont's working landscape and natural areas, historic preservation, and downtown revitalization.

  Additional economic benefits flow to the state from the work of the statewide entities through short- and long-term employment opportunities for those who design, construct, and maintain affordable housing, and for individuals and families who are employed in agriculture or forestry.

  C. The Commission finds that the statewide entities have prioritized providing affordable housing to low- and very-low income persons and persons with special needs, and the Commission approves the work of the statewide entities in carrying out this very important legislative priority.

  D. The Commission finds that the promotion of affordable housing and economic development in downtowns and village centers constitutes a central component in the priorities of the statewide entities.

- **2. The Commission found so many fundamental flaws in the report required by Executive Order Number 02-10 of March 18, 2010, that it rejects the findings and recommendations contained in the report (The Weidner Report).**

- **3. The Commission finds that consolidation of the statewide entities would irreparably harm Vermont's carefully constructed system for linking the delivery of affordable housing with conservation, historic preservation, and preserving the working landscape.**

- **4. The Commission finds that the Vermont Housing and Conservation Board is fulfilling its statutory mission to develop permanently affordable housing and protect at-risk housing; to conserve Vermont's working landscape, important natural areas, recreational lands, and historic properties; and to build effective community-based nonprofit capacity to advance these goals. The Commission's review reveals that the Board's work in each of these activities has been highly successful. VHCB is an outstanding example of a quasi-public state agency and has an extraordinary record of achievement.**

Part IV. Background

A. The Statewide Entities

Vermont's system of affordable housing and conservation is in many respects a partnership between public and private entities. The four statewide entities are the Vermont State Housing Authority, the Vermont Housing Finance Agency, the Vermont Housing and Conservation Board, and the Department of Economic, Housing and Community Development.

<u>The Vermont State Housing Authority</u>: The VSHA was created in 24 V.S.A. § 4005 in 1968. It was the first housing authority of its kind created in the United States. It was created with the purpose of improving housing conditions and facilities by identifying and applying for federal resources to provide rental assistance to low-income families and individuals. It is the lead public housing agency with statewide responsibility to administer federal low-income rental housing assistance funds. It receives no state funding. VSHA receives 100% of its public funding through the Federal Government (HUD) and is primarily accountable to HUD. Unlike VHFA and VHCB, VSHA does not provide funding for new or rehabilitated affordable housing. It does not work with affordable housing organizations on development issues. Instead, it works directly with users of affordable housing and with private landlords in implementing the federal Section 8 program. Additionally, unlike any of the other statewide entities, VSHA has a significant program for the management of affordable housing projects. VSHA founded a separate, independent nonprofit, Housing Foundation, Inc., to develop and own affordable rental housing and mobile home parks.

<u>The Vermont Housing Finance Agency</u>: The VHFA was created in 1974, in 10 V.S.A. Chapter 25, to finance and promote affordable housing opportunities for low- and moderate-income Vermonters. VHFA primarily promotes single-family home ownership through its single-family mortgage purchase program and provides multi-family rental

housing debt directly to community-based or statewide nonprofit agencies or organizations and to private for-profit developers committed to creating and preserving housing for low- and moderate-income Vermonters. This is done primarily through the issuance and sale of agency bonds. VHFA also provides some HUD Section 8 contract administration for multi-family assisted housing. VHFA is the designated entity in the state which administers federal low-income housing tax credits and Vermont affordable housing tax credits. VHFA has developed significant data resources and supports a statewide housing data bank and the statewide Directory of Affordable Rental Housing. VHFA also originally assisted in the creation of Housing Vermont, a statewide private nonprofit syndication and development company founded in 1988 to create permanently affordable rental housing through partnerships with local organizations, public agencies, and the private sector. (Testimony of and information from Dave Adams, Sarah Carpenter, VHFA; and Kenn Sassorossi, Housing Vermont.)

<u>The Vermont Housing and Conservation Board</u>: The VHCB was created in 1987, by 10 V.S.A. chapter 15 with the purpose of improving the quality of life for Vermonters by implementing the dual goals of creating "affordable housing for Vermonters, and conserving and protecting Vermont's agricultural land, important natural areas, recreational lands, and historic properties." The VHCB administers the Vermont Housing and Conservation Trust Fund and is allowed to make expenditures from the fund to implement and effectuate the dual purposes of affordable housing and land conservation. The VHCB is required by statute to "seek out and fund not-for-profit organizations and municipalities that can assist any region in the state which has high housing prices, high unemployment and low per capita incomes in obtaining grants and loans…for perpetually affordable housing." The VHCB administers HUD's HOME program which is the largest federal block grant to state and local governments designed exclusively to create affordable housing for low-income households. (Appendix # 10, at page 5.) The VHCB is also charged by statute to seek out and administer federal farmland protection funds to acquire interests in land to protect and preserve in perpetuity farmland for future agricultural use.

<u>The Department of Economic, Housing and Community Development</u>: The DEHCD, created in 3 V.S.A. §§ 2471-2 in 1971, is charged with, among other things, being the central State agency to coordinate, consolidate, and operate, to the extent possible, all state housing programs. The DEHCD is the state's designated recipient for HUD funds, and the DEHCD's Grants Management Division is responsible for monitoring and ensuring regulatory compliance of all HUD funds received by the state. The DEHCD administers HUD Community Development Block Grant ("CDBG") funds through its Vermont Community Development Program ("VCDP") and receives Home Investment Partnerships Program ("HOME") funds directly from HUD which are administered by VHCB through a Memorandum of Understanding with DEHCD. The CDBG funds represent the largest HUD block grant to the state, and DEHCD's administration and oversight of these funds has leveraged approximately $4.1 billion in other resources to directly benefit low- and moderate-income Vermonters. The DEHCD is also comprised of the Division for Historic Preservation, Community Planning and Revitalization, the Vermont Downtown Program, and the Mobile Home Park Program, and administers the

state and federal rehabilitation tax credit programs designed to preserve the economic vitality of Vermont's traditional commercial districts. DEHCD, in collaboration with the other statewide entities, is also responsible for the preparation of one of the state's primary planning tools for affordable housing and economic development: The "Consolidated Plan."

B. Changing Trends in Federal and State Housing Policy

Through the mid to late 1980s, most of the affordable assisted and subsidized housing was provided through the HUD Section 8 New Construction and Substantial Rehabilitation ("NCSR") program, municipal public housing authorities, and the USDA\Rural Development (Farmers Home) 515 program. Much of this housing was developed by private developers, generally with no restrictions on the use of the properties at the end of the (usually 20–30 year) contract with the federal government. In Vermont, the majority of the subsidized housing built through the HUD Section 8 NCSR program was financed by VHFA. Each of these projects came with a long rental assistance contract that paid for most of the operating costs (including debt service) and allowed the resident household in each unit to pay no more than 30% of their income for rent.

During the Reagan era, the HUD Section 8 NCSR program was primarily eliminated in favor of tax-incented development assistance (the Low Income Housing Tax Credit program, often referred to as "LIHTC"), and there were virtually no new Section 8 contracts. The LIHTC allowed developers to sell (syndicate) the credits for cash equity into the affordable housing, lowering debt service payments. Congress also had passed the 1986 Tax Act, doing away with certain passive losses and other tax incentives that were used by a wide variety of real estate developers, including many small "mom and pop" owners in Vermont. The LIHTC program favored much larger development with corporate investors. For the first few years of the LIHTC program, resources were under-utilized in Vermont. Out-of-state investors were not interested in smaller, rural projects. To address this gap, Housing Vermont was created to specifically work with communities and nonprofits in using the federal LIHTC program.

At that same time, some of the earlier funded assisted housing projects were coming to the end of their rental assistance contracts and were eligible to convert their properties to market rentals. The most notable of these projects at that time were the "Gates," which had a total of 686 units in four locations, including Northgate in Burlington with 336 units. Vermont had already lost a few other federally assisted projects, and with this loss of units looming, there began a huge policy concern about how to keep units affordable for the long term.

Also, at that same time, it was clear that affordable housing would not be created without resources from the state. Debt and tax credit equity in most cases were not enough, and many private developers in Vermont were not interested in using the LIHTC program, particularly to meet the needs of our smaller communities. Development in other residential and commercial sectors was booming in Vermont, and there were growing concerns about land use, development patterns, and the loss of agricultural and conservation resources. All of these factors pushed the state to create and fund the Vermont Housing and Conservation Board, and to adopt statewide housing priorities to maintain the values that fit Vermont communities.[1]

With this history in mind, we turn to features of the Vermont affordable housing system that account for its unusual success.

A. Public-Private Partnership

With certain important exceptions, such as VHCB's Farm Viability Program, VHFA's single-family mortgage purchase program, and VSHA's Section 8 programs, all of which provide funds and services directly to families and individuals, the role of the statewide entities is to secure federal, state, and private funds; assess proposals made by community-based organizations or municipalities or, in some cases, private for-profit developers that seek to develop projects and programs for affordable housing, economic development, conservation, or historic preservation; and to fund those projects that meet the Vermont priorities and funding requirements. With the shifts in federal funding over the last two decades, most developers of affordable rental housing collaborate with for-profit investors, such as banks, to create equity by utilizing the Federal Low Income Housing Tax Credit program. With this type of financing, a real estate partnership is created, and commonly the sponsor/developer serves as the general partner, but with a 1% or smaller ownership interest. The tax benefits accrue to the limited partner investors. Development fees, which must be approved by VHFA when tax credits are used, are paid to the sponsor of a project for time, capacity, expertise, and risk. However, the vast majority of the affordable housing proceeds (upwards of 90%) are used for property acquisition and to pay private vendors (architects, engineers, contractors, material suppliers, consultants, attorneys, etc.) to build and renovate the housing. During construction and after disbursing the funds, the statewide entities continue to provide oversight, technical assistance, compliance monitoring and support to these projects. The general partners are responsible for arranging for the ongoing management of the housing, either by self-management or through contracts with private management companies. (Testimony of Sarah Carpenter, VHFA.)

B. Experience

Many of the senior staff of the statewide entities have worked in their agencies for many years. They are highly experienced and dedicated individuals who understand the mission of their agencies, and can identify the sources of funding available to them. The importance of an experienced and dedicated staff cannot be overstated and is reflected in both the numerous awards the statewide entities have received from governmental and private agencies outside Vermont, and the extraordinary success of the statewide entities in securing resources from the federal government and private businesses to help carry out their work. The experience of the senior staff and the specialized nature of each of

[1] This history was provided to the Commission by VHFA staff and is consistent with the testimony and submissions of other witnesses.

the statewide entities have allowed them to seize opportunities on behalf of the State. For example, the statewide entities responded rapidly to secure and disburse Federal Stimulus funds. These same attributes of experience and specialized knowledge have enabled the statewide entities to take a leadership role in implementing methods to reduce the cost of affordable housing while at the same time preserving its quality. As seen later in this report, these methods include working with affordable housing developers so that projects are energy-efficient, provide adequate reserves for replacement, and use professional management.

C. A Bottom-up Approach to Housing and Conservation

Vermont has developed a sophisticated, grass roots approach to financing and delivering services for affordable housing, conservation, and historic preservation because the identification and development of specific projects originate and are carried out primarily by Vermont nonprofit organizations. Some of these organizations, particularly in areas of conservation and historic preservation, are statewide in nature. These organizations will typically work with local communities in identifying and undertaking projects.

In the case of affordable housing, Vermont has a statewide network of local, nonprofit affordable housing providers with community-based boards of directors.[2] These organizations identify a need, prepare a proposal to meet that need, and bring the proposal to one or more of the statewide entities for consideration. They often collaborate or partner with private investors and, in the case of nonprofit developers, with Housing Vermont, a nonprofit developer of affordable housing which has great expertise with the federal low-income housing tax credit program. Instead of having a top-down system in which state agencies identify and try to fill a need, Vermont uses a grass roots, bottom-up approach for affordable housing, conservation, and historic preservation. The advantages of this system in terms of continuous accountability, transparency, and effectiveness cannot be overstated. When combined with the oversight and technical assistance provided by the statewide entities, the system has been successful in ways that few other governmental programs can match.

D. An Integrated Approach to Housing and Conservation

Vermont takes an integrated approach to housing, conservation, and historic preservation due to a combination of legislative and executive requirements to integrate the need for affordable housing, conservation of important natural areas, preservation of the working landscape, and preservation of historic properties. This integrated approach has been effectively implemented by the statewide entities. Instead of putting an affordable housing project outside a downtown and far from needed services for residents, the statewide entities have made a deliberate effort to place projects in downtown areas and village centers, thereby preserving the working landscape and natural areas, and helping to revitalize downtowns which otherwise would be at risk of deterioration. The statewide entities have done a good job preserving historic buildings in downtown areas, typically

[2] See Appendix # 19. Additionally, there are a handful of for-profit developers who work throughout the state to develop subsidized housing.

using these buildings for a combination of retail businesses and affordable housing units. These efforts provide important benefits to the local economy and help preserve the vitality of downtowns and village centers to which businesses and visitors are attracted.

A major benefit of this integrated approach, seen most obviously in the combination of goals set forth in the legislation establishing the Vermont Housing and Conservation Board, is the preservation of what witnesses have referred to as the "Vermont Brand." By preserving and rehabilitating historic buildings or placing new affordable housing in village and municipal centers, providing assistance and support to Vermont's farmers, and preserving the natural landscape, Vermont has maintained the reality of its image of working farms, village centers that bustle with shops and activities, and a beautiful natural landscape. The Commission has heard testimony from businesspeople and state officials that this integrated approach has helped preserve what visitors and businesses expect to see when they come to Vermont, a key ingredient to Vermont's economic vitality. To the farm families who benefit from VHCB services and the residents of affordable housing located in downtowns and village centers, the preservation of the "Vermont Brand" produces real, tangible results. The Commission believes that the statewide entities play an essential role in preserving and securing this "Vermont brand."

E. Perpetual Affordability and Permanent Conservation

Another bedrock characteristic of the statewide entities and the nonprofit agencies with which they work is the commitment to perpetual affordability of housing for low-income persons and the permanent conservation of land. These concepts, which are incorporated into Vermont law and enforced through binding agreements, provide assurance to low-income persons that they will not be displaced from their homes, and that land preserved with the help of VHCB is preserved in perpetuity. Indeed, the fact that the statewide entities have long agreed on the same fundamental priorities of perpetual affordability, the smart growth principles of compact villages surrounded by a working landscape, and the need to serve low-income persons, makes their operations efficient and effective. This agreement allows the statewide entities to coordinate their efforts, whether around a single project or the development of a set of priorities such as the Consolidated Plan. Other benefits of the preservation in perpetuity of affordable housing, the working landscape, and recreational lands are found later in this report, particularly in Finding 3 regarding the VHCB. As discussed in subsequent parts of this Report, the Commission finds that the concept of perpetual affordability is one which provides the greatest impact in terms of the effective use of dollars and the protection from displacement of low-income residents. Perpetual preservation of agricultural lands creates a mechanism to preserve farmland in a way which ensures intergenerational transfer of farms and support for the family farm in Vermont.

Part V. Commission Findings and Recommendations

Finding 1. THE STATEWIDE ENTITIES HAVE DONE AN OUTSTANDING JOB IN FULFILLING THEIR STATUTORY REQUIREMENTS

A. The Commission Finds That The Statewide Entities Have Fulfilled Their Statutory Requirements to Assemble Multiple Funding Sources In Order To Provide A Range Of Affordable Housing Needs, Including Emergency, Transitional, Assisted Living, And Multi-Family Rentals, And Home Ownership

1. Assembling funding sources. The statewide entities have assembled multiple funding sources for the development of affordable housing. Of the $354 million in financing that went into Vermont affordable rental housing projects between FY 2008 and FY 2010, only 9% came from VHCB state funds. The other 91% of the funding came from nonstate sources. (Statewide Housing Information, Appendix # 13 at attachment B) The statewide entities in concert have assembled federal, state, private, and philanthropic funding sources. For example, the VSHA, which receives no state funding, administers $44 million in federal dollars controlled by the Department of Housing and Urban Development (HUD). It administers HUD's Section 8 program, $2.6 million in McKinney-Vento Homeless assistance funding, and serves over 8,200 Vermont families, including the lowest income Vermonters and those with special needs. (Testimony of Richard Williams,VSHA 8/20/10; Appendix # 26.)

In 2009, the DEHCD received $9.2 million in CDBG and CDBG-ARRA funds. Eight municipalities received grants totaling nearly $5 million for affordable housing which leveraged $52 million in other resources and created or preserved 414 units. In 2010, the Department received $7.4 million in CDBG funds. Six municipalities received grants for affordable housing projects totaling more than $3 million which leveraged over $34 million in other resources and created or preserved 261 units. Also in 2009, the state received an additional $19.6-million allocation of Neighborhood Stabilization Program ("NSP") funds. The DEHCD was primarily responsible for developing the state's NSP Plan and is responsible for overseeing and monitoring the implementation of Vermont's NSP Program. The DEHCD granted $7 million in NSP funds to VHFA to implement the Housing Acquisition and Rehabilitation Program ("HARP") and $3 million to VHCB for the "Project Specific Program" of the state's NSP Plan; and awarded in excess of $8 million to five other recipients, including the cities of Burlington and Barre and three nonprofit affordable housing developers, for the creation and preservation of 85 affordable housing units, including the preservation of 41 Section 8-vouchered units. In FY 2010, DEHCD awarded $1.8 million in state downtown rehabilitation tax credits to rehabilitation and code compliance projects in designated downtowns and village centers. (DEHCD FY 2011 Budget, Strategic Overview/Performance Narrative; Appendix # 12.)

The VHFA funds its operations from income derived from interest and fee income from its lending activities. As with the VSHA, it receives no state funds. VHFA sells bonds and awards tax credits to housing developers who, in turn, sell them to private investors. VHFA administers $7 million of Federal Home Acquisition and Rehabilitation Program funds through a Neighborhood Stabilization Grant. (Appendix # 9 at page 13.) VHFA also allocates Federal Low Income Housing Tax Credits. Since the inception of the federal tax credit program in 1987, the VHFA has awarded approximately $36.5 million in federal allocated tax credits to developers for over 5,139 units of affordable rental housing. These credits have raised hundreds of millions of dollars in private equity investment. (Appendix # 9 at page 7.)

The VHCB operates 23 state, federal, and privately funded programs in the areas of housing, land conservation, and historic preservation, including HUD's HOME program. (Appendix # 10.) The major state-funded program for affordable housing and conservation is the VHCB-administered Vermont Housing and Conservation Trust Fund, which is funded through a portion of the Vermont Property Transfer Tax and legislatively appropriated funds.

The statewide entities have also been successful in receiving funding from philanthropic sources. The VHFA and VHCB collaborated in winning a $2.6-million grant and program-related investment funding from the MacArthur Foundation. (Appendix # 10 at page 8.) In addition, the nonprofit Cathedral Square recently won a grant of $50,000.00 from the Met Life Foundation for its work serving low-income senior citizens. (Appendix # 14) The Champlain Housing Trust, a nonprofit serving Chittenden, Franklin, and Grand Isle Counties, won the U.N. World Habitat Award which carried with it a $20,000.00 award. Many other awards and recognitions of the Statewide entities are listed in Appendix # 14.

2. Unmet Need. Although the statewide entities have done an excellent job in leveraging additional resources, there is no question that the need for affordable housing remains great. The 2010 Vermont Housing Needs Assessment, prepared by VHFA, confirms the continuing need for affordable housing for low-income families and individuals. Having reviewed the evidence, including the ICF's report that the cost of development of affordable housing in Vermont is comparable or better than in other New England states, and based on our review of the performance of the statewide entities, the Commission expressly finds that the need for additional affordable housing in Vermont is a function of resources available for that purpose, and is not a reflection on the operating efficiency or the effectiveness of the statewide entities. The statewide entities are doing the best that they can in using available resources to provide sound affordable housing that meets Vermont's priorities. ("The FHLB [Federal home Loan Bank of Boston] shows that Vermont has the lowest per-unit development costs in the region and the second lowest cost on a net square-feet basis.") ("Final Report Management of Vermont's NonProfit Housing Development Organizations" referred to as the ICF Report; Appendix # 4 at page 20.)

B. The Statewide Entities Have Leveraged Federal, State, Private, And Philanthropic Resources.

The Commission finds that the statewide entities leverage an extraordinarily large amount of funds from federal, state, private, and philanthropic sources.

A joint summary provided by the VHFA and the VHCB showed that through a combination of private equity investments using the low-income housing tax credit, federal funding, and debt, state funds have been leveraged at a ratio of almost 10:1 for low-income housing. (See Appendix # 13 at page 1.)

Tax credits sold to private investors through the VHFA administered low-income housing tax credit program have shown significant return. Over the past three years, for every $1 of tax credit awarded, another $8.60 of private equity was invested into affordable housing projects. For the period of FY 2008-2010, VHFA awarded $7.95 million in tax credits generating a private capital investment of $68.27 million. (Testimony of David Adams; Appendix # 26 at section II.B.)

According to the VHCB 2009 Annual Report, every dollar of state funding distributed by the VHCB results in the investment of $7 in federal and private funds for rental housing and $5 in funds in for-sale homes. A private developer who worked with a nonprofit provider testified that VHCB's funds to a 500-unit housing project in South Burlington (the O'Dell project) leveraged other funding sources by a factor of 14:1. The developer also noted that "without the nonprofits and VHCB funding, O'Dell would not have happened." The O'Dell project received the 2006 Smart Growth Award from the Vermont Forum on Sprawl. (Testimony of Eric Farrell, Appendix #26.) As noted earlier, 90% of leveraged funds for new or rehabilitated affordable housing goes to the private economy for land acquisition, construction, engineering, and similar development costs. (Testimony of Sarah Carpenter, VHFA.)

Research conducted by VHFA in 2005 shows that for every 25 modest single-family homes constructed, an estimated $6.3 million in additional income for Vermont businesses and 61 Vermont jobs are created or supported. Moreover, the construction or rehabilitation of 1,899 multi-family assisted rental units during the past three fiscal years "likely created or supported 2,000 local jobs during the construction phase and 570 longer-term jobs after the project was completed". (VHFA, "Economic Impact of Housing Development," Appendix # 20.)

Since its 1985 inception, the DEHCD's VCDP Program has provided over $184 million in CDBG funds to towns, villages, and cities throughout Vermont. More than $85 million of these CDBG funds were awarded for affordable housing projects. These CDBG funds leveraged approximately $4.1 billion in other resources to directly benefit low- and moderate-income Vermonters. In 2009 and 2010, the $8 million in CDBG funds awarded to affordable housing projects leveraged $86 million in other resources and resulted in the creation and preservation of 675 units.

Since FY 2007, the state has invested $8.3 million in the downtown tax credit program administered by the DEHCD which has leveraged $133 million in outside investment (every $1 of downtown tax credit leverages $16 more). Since FY 2007, the DEHCD has administered $23.8 million in federal tax credits, resulting in $119 million in construction activity. (Source: DEHCD.)

C. The Commission finds that the statewide entities have prioritized providing affordable housing to low- and very low-income persons and persons with special needs and have done an exceptional job serving Vermonters with the lowest incomes and with special needs.

In 2004, the ICF Report noted that Vermont was serving the very lowest income persons at the highest rate in New England, and was matched among rural states only by Idaho. Since that time, the income profile of Vermonters served by affordable housing programs has remained unchanged. (ICF Report, Appendix # 4 at page 9; see also Appendix # 13 at page 2.) The most recent survey of 5,000 households housed in tax-credit-funded units shows that three-quarters of those earn less than $25,000.00. About one-half of the 5,000 households earn less than 30% of the HUD Area Median Income despite the fact that the tax credit program is designed to serve households with incomes almost twice as high. Vermont's commitment to creating housing for extremely low income households continues with its recent allocations as well. 53% of the low income housing tax credit units funded in 2008 were affordable to households with incomes below 30% of the county median. The national average is 11%. Vermont ranks second highest in the nation. ("Statewide Housing Information, Appendix # 13 at Att. C; "How Does Vermont's Housing Delivery System Compare? Appendix # 14 at page 2.)

The statewide entities have prioritized providing affordable housing to the lowest income Vermonters and those with special needs. The state's Consolidated Plan for 2010–2015, prepared by the DEHCD through a public process with the cooperation, input, and assistance from the other statewide entities, and approved by HUD, sets forth the priorities for affordable housing in Vermont. (Appendix # 7.)

Citing the VHFA 2010 Housing Needs Assessment (Appendix # 6), the Consolidated Plan states that "an estimated 62% (27,000) of lower income renter households in Vermont (those with incomes less than $41,000.00) spend more than 30% of their income for housing, and nearly 17,000 of these households pay 50% or more of their income on housing." "In light of this, the State of Vermont's highest priorities will continue to be to create housing and employment opportunities with preference for facilitating development and growth in Designated Downtowns and Village Centers. The activities and actions in the Consolidated Plan are designed to benefit extremely low, low, and moderate income persons as defined by HUD ("lower income") and persons with disabilities or other special needs." (Appendix # 7 at page 1.) The statewide entities have made it a priority to serve the most vulnerable Vermonters.

The Consolidated Plan's Summary of Priorities and Specific Objectives lists "Provide Decent Housing" as its first objective. That objective states, "To accomplish the objective of providing decent housing, the Department has established goals and will continue to encourage activities that retain the existing affordable housing stock; increase the availability of permanent housing that is affordable to lower income families and individuals without discrimination; assist homeless persons to obtain appropriate housing and assisting persons at risk of homelessness; increase supported housing that enables persons with special needs to live in dignity; and provide housing affordable to lower income individuals that is accessible to job opportunities." (Appendix # 7 at page 39.)

The VHFA Qualified Allocation Plan for the federal Low Income Housing Tax Credit program, prepared by the statewide entities and the Director of Housing for the Agency of Human Services have included as a priority, "Any project that incorporates a majority of Special Needs populations and provides service-enriched housing." These priorities are made with reference to the Consolidated Plan. Special Needs populations are defined by the plan to include persons needing transitional housing to avoid homelessness; frail elders; persons with developmental or mental disabilities; and at-risk youth, among others. (Appendix # 8 at pages 7 and 22.)

Additionally, Act. No 156 of 2009–10, (The appropriations act) Sec. E. 803(b)(3) states priorities for the Community Development Block Grant administered by the DEHCD: "Among affordable housing applications, the highest priorities are to preserve and increase the supply of affordable family housing, to reduce and strive to eliminate childhood homelessness, to preserve affordable housing developments and extend their useful life, serve families and individuals at or below 30% HUD area median income and people with special needs. Housing for seniors should be considered a priority when it meets clear unmet needs in the region for the lowest income seniors." (Appendix # 3.)

There is a clear commitment on the part of the legislature and the statewide entities to prioritize providing affordable housing to low-income and special needs Vermonters, and this commitment has achieved significant results. Appendix # 14 provides the following data:

- 72% of low-income housing tax credit units in Vermont house families, as opposed to the elderly and single individuals; the national average is 53%.

- 12% of low-income housing tax credit units in Vermont house people with physical disabilities; the national average is 3%.

- 53% of low-income housing tax credit units in Vermont serve households with incomes below 30% of the county median. The national average is 11%. Vermont ranks second highest in the nation.

- Vermont is one of only 11 states with low-income housing tax credit extended use restrictions of greater than 50 years.

- 58% of units in Vermont funded with mortgage revenue bonds serve households with incomes below 80% of the county median. The national average is 53%.

- Contributions to reserves for replacement (replacement reserves are funds set aside from the rental housing budget to pay for future capital needs): The monthly per-unit replacement reserve contribution in Vermont is the highest among the 50 states.

- The VSHA has successfully grown its rental program by 13% since 2005 in spite of constrained federal resources.

- Vermont's rental assistance voucher utilization rate is consistently 98% or better.

- 86% of households receiving rental assistance vouchers in Vermont have incomes below 50% of the county median.

- The VSHA serves over 8,200 Vermont families, including the lowest income Vermonters and those with special needs. (Source: Testimony of Richard Williams, 8/20/10; Appendix # 26.)

- In 2004, Vermont's HOME-funded projects were targeted much deeper than the national averages in terms of households below 50% of Area Median Income (90.1% of units for Vermont compared with 73.4% nationally) (ICF Report, Appendix # 4, at page 9.)

- In 2010, 56% of Vermont's HOME funded units benefited extremely low income households (below 30% of Area Median Income) and in this category Vermont ranks 3rd in the nation. Overall, Vermont's HOME program is ranked 1st among state participating jurisdictions.

- A total of $5,635,400 in NSP funds, nearly 28% of the $19.6 million the DEHCD received, was awarded to housing for individuals and families whose incomes do not exceed 50% of the area median income. This performance exceeds the 25% requirement imposed by HUD.

- In a recent study by DEHCD covering three years, 90 units of transitional or emergency housing were developed, and 56 units of assisted living housing were created. (Appendix # 13 at page 1.)

The VHCB has administered over $51 million in HUD HOME funds and awarded HOME funds to a total of 236 projects, containing a total of 1,395 HOME units. In 2008, the Board committed funds to 13 projects, totaling $2.99 million in HOME funds. In that year, 14 HOME projects were completed, including 116 HOME units (54 units of which were occupied by households below 30% of median income; 47 at 30–50% of median income; and 15 at 51–80% of median income). In 2009, the Board committed funds to 14 projects, totaling $2.9 million in HOME funds. In that year, five HOME projects were completed, including 36 HOME units (18 of which were occupied by households below 30% of median income; 15 at 30–50% of median income; and three at 51–80% of median income). (Appendix # 10 at page 5.) Additionally, the statewide entities have often been able to provide support to the most vulnerable Vermonters at considerable savings to the state. The ICF Report states that, "perhaps the most striking quantifiable benefit is the incorporation through coordination between VHCB and the Agency of Human Services (AHS) of services that allow individuals who were formerly cared for in State hospitals (at a cost of approximately $900.00 per day) or other institutions to be housed in supportive housing projects." (Appendix # 4 at page 12.)

The more than $184 million in CDBG funds awarded by DEHCD's VCDP Program has benefited in excess of 340,000 low-income Vermonters through services and activities that include job creation and retention, housing creation and rehabilitation, child care centers, teen and senior centers, and access improvements for public buildings.

Other examples include funding by the statewide entities to programs that permit the elderly or persons with disabilities to stay in their own homes or at an Affordable Assisted Living Residence (AARL) instead of a nursing home facility. Using 2004 figures, the ICF Report found that the AARL program saved the state $68,525.00 per person and $53,034.00 to the federal government. (Appendix # 4 at page 12.)

D. The Commission Finds That The Promotion Of Affordable Housing And Economic Development In Downtowns And Village Centers Constitutes A Central Component In The Priorities Of The Statewide Entities.

The recently approved Consolidated Plan for 2010–2015 states that "Vermont's highest priorities for 2010–2015 will continue to be to create housing and employment opportunities with preference for facilitating development and growth in Designated Downtowns and Village Centers." (Appendix # 7 at page 1.)

Under the Qualified Allocation Plan issued by the VHFA for the low-income housing tax credit program, all projects are required to maintain the historic settlement patterns of compact village and urban centers. Higher priority is given to projects that are in a downtown or village center or projects that support downtowns or village centers. (Appendix # 8 at page 22; see also Testimony of David Adams, Appendix # 26.)

The VHCB's priority areas for housing as established by its Board, and consistent with the Consolidated Plan include "Projects that involve neighborhood or downtown revitalization." (Appendix # 24 at page 3.)

The DEHCD's Mission as described in its FY 2011 budget narrative reflects its efforts to bring jobs and businesses to Vermont, as well as "preserving Vermont's heritage, promoting vibrant communities, and creating housing that is affordable for low and moderate income Vermonters." (Appendix # 12 at page 1.) Further, Act No. 156 of 2009–10, Sec. E. 803(b)(5) states in regard to the Community Development Block Grant program administered by DEHCD: “Preference shall be given to projects that maintain the historic settlement patterns for compact village and downtown centers separated by a rural landscape. Funds generally should not be awarded on projects that promote or constitute sprawl, defined as dispersed development outside compact urban and village centers or along highways and in rural areas.” (Appendix # 3.)

This statewide commitment to promoting downtown and village center development has produced real results:

- In the past three years, the VHCB and VHFA have funded projects that developed or rehabilitated 47 projects involving 1,234 units in downtowns, village centers, and adjacent neighborhoods. (Appendix # 13 at page 2.)

- In FY 2011, the Downtown Program of DEHCD will award all $1.7 million in state tax credits to rehabilitation and code improvement projects in designated downtowns and village centers. The Department has also awarded $750,000.00 in Downtown Transportation Fund grants. (Appendix # 12 at pages 11–12.)

- The DEHCD’s Downtown Program, established in 1998, provides incentives for projects located in Vermont’s historic downtown centers. To date, the Program has officially designated 23 downtowns, 102 village centers, six growth centers, and two Vermont neighborhoods, making them eligible for a variety of economic and regulatory incentives designed to increase activity, investment, and commerce in these areas.

- The DEHCD was awarded $19.6 million through the HUD Neighborhood Stabilization Program in 2009, “to buy, refurbish, and resell foreclosed homes, apartments, and other blighted or abandoned properties.” DEHCD will receive an additional $5 million in NSP funds in FY 2011. (Appendix # 12 at page 11.)

- Of this amount, VHFA was assigned $7 million to administer the Home Acquisition Rehabilitation Program in coordination with six homeownership centers around the state. (Appendix # 9 at page 13; see also Testimony of David Adams, Appendix # 26.)

- The VHCB administered $3 million in 2009 Neighborhood Stabilization Program funds for the redevelopment of vacant, blighted, and foreclosed multi-family properties in four Vermont communities. All of the properties are in downtown locations, and their redevelopment will contribute to the vitality of the communities in which they are located. (Appendix # 10 at page 10.)

- The balance of the NSP funds was administered directly by DEHCD to two municipalities and three affordable housing developers for multi-family and single-family projects, resulting in the creation of 85 affordable housing units, including the preservation of 41 Section 8 voucher units.

Finding 2. THE COMMISSION FOUND SO MANY FUNDAMENTAL FLAWS IN THE REPORT REQUIRED BY EXECUTIVE ORDER NUMBER 02-10 OF MARCH 18, 2010 (THE WEIDNER REPORT) THAT IT REJECTS THE FINDINGS AND RECOMMENDATIONS CONTAINED IN THAT REPORT

A. INTRODUCTION

Pursuant to its charge, the Commission reviewed the report required by Executive Order Number 02-10 of March 18, 2010 (The Weidner Report) that addresses the potential merger or consolidation of the statewide entities. (See Appendix # 1.) What follows is a summary of the Weidner Report and the Commission's reasons for rejecting its recommendations. (The Weidner Report is located at Appendix # 5.)

The Weidner Report makes four principal recommendations:

- The statewide entities should be consolidated into a single entity with its own board, and that certain programs, such as conservation programs, be separated from the housing programs.

- The statewide entities should establish the quantitative measurement tools recommended by Weidner.

- The statewide entities should use the particular quantitative measures of performance recommended by Weidner.

- The VHCB should establish new policies and procedures concerning the repayment of loans to affordable housing projects.

Commission response to principal recommendations:

The balance of this section represents the Commission's response to the Weidner Report's recommendations and observations as well as the Commission's assessment of the impact of consolidation on Vermont's system of affordable housing, conservation, and historic preservation. (See subdivisions (b)(3) and (4) of the Commission's charge; See Appendix # 1.) Because of the limited scope of review given to Weidner by the State, and the Commission's grave concerns about the resulting limits on information gathered by Weidner, the Commission's observations of the methods used by Weidner are integrated throughout this report, with a summary at the beginning of this section.

Background:

It is essential that the Weidner Report be read in context. That context is provided earlier in this report, and shows widespread consumer satisfaction with the statewide entities; performance ratings demonstrating that the statewide entities are at or near the very top in terms of national performance; and recognition by private and public entities for superior performance. None of this is mentioned in the Weidner Report. Based on testimony from Weidner at the November 5, 2010 Commission meeting, the Commission believes that these national performance data were not considered by Weidner in its investigation.

B. SUMMARY COMMENTS ON THE METHODOLOGY AND LIMITED SCOPE OF INQUIRY

While the Weidner Report contains several suggestions that may be helpful to the statewide entities, the principal recommendations are strongly rejected for the following reasons:

1. The Weidner Report imputes "universal" attributes to particular entities.

In substantial part, the Weidner Report employs a questionable syllogism in evaluating Vermont's statewide entities, one that imputes defective performance of the statewide entities on attributes they are presumed to share with agencies in other states. Weidner argues that:

> Public sector organizations exhibit a "traditional government culture" that yields poor results, operates without transparency or accountability, and resists innovation;
>
> Vermont's statewide entities are public sector organizations; and therefore,
>
> Vermont's Statewide entities are opaque, unaccountable, and resistant to change.

This syllogism, which appears in one form or another throughout the report, has three fundamental flaws. It assumes that a negatively defined "traditional government culture" is universal throughout the public sector. It ignores the real-world differences in culture, structure, and operation that exist among the statewide entities. More damaging is that a report assessing the performance of the statewide entities, finds fault with Vermont's housing delivery system based on analogy and inference, and not evidence. The Statewide entities are deemed to operate with an inner-oriented focus on themselves (as opposed to a focus on the consumers and beneficiaries of their services) because Weidner, without any empirical data, assumes that the statewide entities resemble public agencies in other states. In testimony before the Commission, the Weidner consultants admitted this conclusion that a lack of customer focus was not based on interviews with customers because they did not interview any customers or beneficiaries.

2. The Weidner Report assumes that its "Performance-Based Management" model is the only path to achieving good results.

The Weidner Report posits numerous operational goals to which a well-functioning organization should aspire, and asserts that the "means" by which these operational goals are to be achieved are simple and obvious. Weidner uses a "Performance-Based Management" model which, according to the Weidner website and its representatives' testimony before the Commission, is likely to make any organization more effective, efficient, accountable, transparent, and consumer-oriented. Weidner's assessment of the statewide entities is rooted in its assumption that its model is the only way for an organization to reach the operational goals of being efficient, transparent, and customer-friendly. The Report fails to acknowledge that there are any other organizational means for achieving the same worthy goals.

3. The Weidner Report reduces complexity to "either/or" choices.

The Weidner Report stuffs the often complex world of affordable housing, community development, and social services into neat pairs of boxes. Instead of weighing the pros and cons of three, four, or five practical options for addressing an identified problem, the report repeatedly reduces complexity to black and white choices. The most extreme examples of this are the Report's assertions that Vermont can either preserve the status quo of a traditional government structure that is not accountable for results, or use a particular, quantitative approach which Weidner calls "managing for results." Similarly, the Report postulates that Vermont can either preserve the status quo of four separate, autonomous, organizational entities or combine all four into a single, consolidated "super-agency." The Commission found no evidence to support the assertion that the status quo is as bad as Weidner suggests, and in any event, Weidner's suggested approach to management and reorganization is only one of several options that any objective, nuanced, and rigorous assessment should consider. Weidner's methodology excludes such multiplicity and any shades of gray. (In testimony before the Commission, Weidner acknowledged that the statewide entities are well managed.)

4. The Weidner Report had a limited scope of review.

As discussed in greater detail below, the Commission's rejection of most of the findings, conclusions, and recommendations of the Weidner Report is based on flaws in the Weidner Report's methodology, and dismay at the limitations that the administration then in place at the Department of Economic, Housing, and Community Development either imposed or accepted as the scope of Weidner's inquiry. As a result of the limited scope of its assessment:

- Weidner never spoke with anyone outside the Strategic Leadership Group or the staff of the statewide entities. Therefore, the following individuals were not consulted: residents or developers of affordable housing (whether nonprofit organizations or their for-profit partners using low-income tax credits); board or staff members of conservation organizations; advocates for low-income Vermonters or people with disabilities; municipal officials using CDBG monies from DEHCD to promote affordable housing; farmers who seek or use VHCB assistance or programs; or federal officials at HUD or Rural Development. Weidner also failed to consult with any agencies or departments of state government as to their capacity or willingness to accept VHCB's conservation and farm preservation programs should Weidner's recommendations for dissolving VHCB be put into effect.

- Weidner failed to examine, understand, or appreciate the importance of the relationship among affordable housing, land conservation, historic preservation, and the preservation of Vermont's working landscape; a relationship mandated by Vermont law.

- Weidner failed to conduct an assessment of either the current performance of the statewide entities or the actual system for the delivery of affordable housing and conservation programs in Vermont. The Commission is at a loss to understand how any recommendations to change the present system can be made without a data-based assessment of how the current system is working to meet the needs of Vermont's citizens, and the operational needs of the organizations that actually deliver affordable housing services. The ICF Report, also commissioned by the Douglas Administration, previously concluded that the statewide entities and their nonprofit partners are performing at a very high level. No witness before the Commission argued that the conclusions of the ICF Report had changed. Thus, one would expect compelling evidence before recommending that this successful system be scrapped. Yet, evidence to support the Weidner recommendations was noticeably absent.

- Because Weidner failed to speak with individuals and organizations that develop affordable housing in Vermont, its Report fails to discuss the way that affordable housing is developed in Vermont. Currently, the development of affordable housing in Vermont is a community-based grass roots undertaking, with the statewide entities providing an assessment of each proposal brought to them, coordinating and providing funding best suited to meet the needs of each proposal that is accepted, and providing ongoing oversight and technical assistance. Because Weidner failed to understand that Vermont, with the exception of VSHA (which deals directly with customers), uses a decentralized, community-based housing delivery system, its assumption that the Statewide entities are not "customer oriented" is without basis in fact. Weidner fails to recognize that the structure of Vermont's system ensures that the statewide entities are focused on the customer. This conclusion was repeatedly confirmed by testimony from those who use the statewide entities.

- The recommendation for consolidation is not supported by empirical data showing that consolidation is likely to result in improved performance. The Weidner Report does not compare the performance of Vermont with the performance of those states that have chosen a consolidated structure. The Commission is presented only with Weidner's opinions and an inaccurate projection of cost savings based on staff cuts (including the most experienced personnel).[3] Two examples are provided by Weidner of

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[3] In discussing some of the costs of consolidation, Bruce Pacht, Executive Director of Twin Pines Housing Trust in White River Junction, noted: "'Consolidation' and 'merger' are popular solutions to 'saving money' because on paper they look good…such paper calculations make the tired old assumption that if

recent consolidations, both with large government entities: HUD and the consolidation of certain New York State housing agencies. In neither case is the reader told whether the consolidation resulted in improved or diminished services. The New York consolidation is too recent to yield such information, and there was testimony presented to the Commission from one of the statewide entities that frequently works with HUD that consolidation there has done more to create confusion in the agency than to eliminate it. (Testimony of Richard Williams, VSHA 9/28/10; Appendix # 26.) To suggest a radical restructuring of these entities through what can only be described as big-government, bureaucratic consolidation, without any data or information to justify such a change, would, in the Commission's opinion, be a mistake. Vermont has a highly specialized and successful system for the financing and delivery of affordable housing, conservation, and historic preservation. As witness after witness remarked, why are we trying to fix a system that is not broken and works well?

- Further, the Weidner Report does not provide any data of the burdens and costs that are associated with such a consolidation. According to testimony given by Weidner's representatives and Commissioner Brooks, an analysis of consolidation costs was outside the scope of the consultants' work. The consultants were asked to identify only the benefits of consolidation. No consideration was given to the investment needed, time required, or obstacles presented in restructuring a system that has been in place for 25 years.[4]

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folks are working for the government, they must be sitting around doing nothing much, so their positions can be eliminated without harming the agency's purpose. As I mentioned, supposed savings gained from elimination of this job or that job will be absorbed in additional training, creation of new communications and decision-making structures, additional compensation for those taking on additional responsibilities, etc., not to mention the myriad one-time costs of consolidation such as physical moving, consolidating records, changing letterheads, aligning benefits, moving hardware and software systems, etc…." (Testimony of Bruce Pacht; Appendix # 26) "Any consolidation will ultimately result in more staffing not less. The additional level of bureaucracy that will eventually be added will consume any savings initially projected and more. Once again it is a myth that bigger is better." (Testimony of Richard Williams, 11/5/10; Appendix # 26.) The complexity, difficulty, and cost of consolidation would be compounded by the fact that two of the statewide entities do not have unions, and the two that do are each represented by a different union. The Weidner Report makes no mention of this challenging reality.

[4] "The creation of superagencies is not new to Vermont. All one needs to do is look at how effective these have been in other areas of state government. It is safe to say that none of these consolidations has created more efficiency in the long haul nor have they saved any money. Quite the opposite has been the case. Additional levels of bureaucracy have been created and responsibility has been diluted. (Testimony of Richard Williams, 11/15/10; See Appendix 26.) As noted by Bruce Pacht, Executive Director of Twin Pines Housing Trust in White River Junction, "Vermont's affordable housing program is and has been a model adopted by many other states, adapted to serve their particular mix of urban and rural populations. I've been through such forced consolidations before and have never seen one deliver the so-called 'savings' projected by the studies used to convince those in power that they will not hurt their constituents by reducing the resources available to get the job done." (Testimony of Bruce Pacht; Appendix # 26.)

C. THE WEIDNER REPORT FAILED TO EVALUATE VERMONT'S SYSTEM FOR FINANCING AND DELIVERY OF AFFORDABLE HOUSING, CONSERVATION, AND HISTORIC PRESERVATION

Although the Weidner Report summarizes the various activities of the statewide entities and provides a quantitative summary of certain aspects of those programs, including a handful of quantitative "performance measures," the Report itself fails to evaluate the performance of the Statewide entities with any concrete information or data. Neither the quantitative performance measures nor any other information is applied to an evaluation of how the statewide entities are performing. No effort was made to benchmark the performance of these entities against a reasonable standard such as the performance entities in other states. The Commission asked for and received a summary "How Does Vermont's Housing Delivery System Compare? – Some Measures and Comparisons." (Appendix # 14.) This was not asked for by Weidner. Weidner also received significant detail on multi-family project costs which was not analyzed. According to VHFA, these costs are well within industry standards, which is consistent with the findings in the ICF Report. (Appendix # 4 at page 20.)

The Weidner Report does not evaluate the performance of the statewide entities with regard to meeting the standards established by either the Vermont legislature or the Consolidated Plan that the entities are legally bound to follow. Weidner and the Commission were provided a "Summary of Statewide Housing Information" which covers much of this, but was not included in the Weidner Report. (Appendix # 13.)

The Weidner study's key recommendations and observations about the characteristics of the statewide entities are not supported by analysis other than the subjective opinions of the drafters of the Report. Furthermore, the fact that the consultant testified that he did not have expertise in affordable housing and had not conducted a similar statewide study of affordable housing makes these unsubstantiated opinions less credible. Because of this, the Commission believes that the Report is of limited value.

In addition to failing to interview anyone who has worked with or relied on the statewide entities, the Weidner Report failed to include any of the widely available information about program quality contained in the annual reports of the agencies, performance data available from federal agencies, and comparative data with other states.

The Report unfairly and without justification assumes that the statewide entities act in ways common to large bureaucracies. In fact, numerous witnesses who utilize the services of the statewide entities testified that the statewide entities' operation is the opposite of the problematic operation of large bureaucracies identified in the Report. This is attributable to several characteristics of the affordable housing system in Vermont: the relatively small size of the statewide entities, the small size of Vermont, common experience and knowledge of those in the field, and the presence of community-based nonprofit affordable housing organizations throughout Vermont; these organizations are mission-driven. Moreover, the nonprofits have local boards and dedicated staff members who would readily object if the statewide entities assumed a bureaucratic posture. In addition, Vermont has sophisticated affordable housing, conservation, and historic preservation advocacy groups that would also object if the statewide entities demonstrated the characteristics attributed to them in the Weidner Report.

D. CONSOLIDATION OF THE STATEWIDE ENTITIES WOULD IRREPARABLY HARM VERMONT'S CAREFULLY STRUCTURED SYSTEM FOR THE DELIVERY OF AFFORDABLE HOUSING WITH HISTORIC PRESERVATION, THE CONSERVATION OF NATURAL AREAS, RECREATIONAL LANDS, AND THE WORKING LANDSCAPE

Ironically, after noting the self-absorbed, unresponsive characteristics of large government bureaucracies, as opposed to the customer-oriented approach typically seen in smaller organizations, the Weidner Report advocates the creation of a classic, large-scale government super-agency to fund and deliver affordable housing.

For the reasons stated below, the Commission believes that consolidation would not only dismantle and cripple the state's award-winning system for the financing and delivery of affordable housing, but would also severely damage the carefully planned and structured links between affordable housing, conservation, and historic preservation in Vermont.

1. The Weidner Report recommends the separation of affordable housing and conservation, which is contrary to Vermont law. The integration of these activities has been essential in preserving the Vermont Brand of villages with vibrant downtowns, working landscapes, natural areas, and affordable housing in town and village centers near services. The testimony before the Commission was overwhelming that preservation of the Vermont "Brand" was essential for agriculture, tourism, other businesses, and the preservation of Vermont's downtowns. The Weidner Report simply assumes that VHCB's programs for conserving natural areas and protecting working farms will be absorbed by other agencies. Agriculture Secretary Roger Allbee testified before the Commission that he questioned the ability of his agency to absorb VHCB's program for supporting working farms.[5] The Commission is convinced that the separation of affordable housing from conservation and historic preservation would be highly detrimental to Vermont's economy and quality of life.[6]

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[5] Secretary Allbee also said that he did not have the desire or staff to run VHCB's Farm Viability program. Several beneficiaries of that program drew a distinction between the Agency of Agriculture, Food and Market's regulatory role and the assistance VHCB provides. They questioned the wisdom of trying to combine both roles in the same agency were VHCB to be dismantled and its Farm Viability Program transferred to the Agency.

[6] At the Commission's hearing on the Weidner Report, Weidner backed away from its suggestion to separate conservation from affordable housing if it was important to the state to preserve this integrated approach. This "on-the-spot" reversal of a major recommendation reinforces the Commission's concern that Weidner failed to understand the importance of Vermont's integrated approach to affordable housing, conservation, and historic preservation.

2. Consolidation would result in a large government agency, instead of the highly accessible smaller agencies that now exist. Large government agencies frequently suffer from the very bureaucratic characteristics that are identified in the Weidner Report. Most importantly, a central entity would almost certainly be less accessible to those who rely on the Statewide entities, including the staff of affordable housing organizations, farmers who receive technical and other assistance from VHCB, members of conservation organizations and their staff, realtors, lenders, and the Homeownership Centers who work with VHFA to deliver its single-family loan program and assistance to prospective homeowners. The ability to develop and maintain personal relationships is achieved with far greater ease through small agencies such as the statewide entities and would almost certainly be lost or impaired if the respective agencies were combined. (See testimony of Bruce Pacht and Elizabeth Nickerson, Appendix # 26.)

3. Vermont would lose the skill and experience of the three boards that presently serve the statewide entities.[7] These board members have important knowledge and provide a broad range of diverse perspectives that help guide each agency in the development of specific programs and services provided by their agencies. They are able to bring that knowledge and skill to their review of requests for project funding. A single, centralized board would have no way to replicate the specialized knowledge of the separate boards which are able to focus solely on the programs of their respective agencies. Moreover, it is likely that a single consolidated board would not be able to review individual project requests, and all such requests would only be reviewed by staff.[8]

4. Because many affordable housing projects require assistance from more than one of the statewide entities, the boards and staffs are able to cross-check each other with respect to any given project. Citing failures in several localities outside Vermont, where millions of dollars in affordable housing funds are wasted, the ICF Report states: "In these (non-Vermont) programs developers blatantly defy the rules, pocket revenue, and allow projects to decay so that value is lost before the funding entity can react. The Vermont system that provides for multiple skilled underwriters to review project financing, allows for reevaluation of funding as projects are developed, and provides monitoring and assistance to build projects appears to have avoided these major problems." (Appendix # 4 at page 30.) Moreover, having several boards reduces the risk of political influence over the system. Changes in policy or direction as a result of changes in political leadership would be especially detrimental in the development of affordable housing and the preservation of the natural landscape. Projects in each of

[7] DEHCD has an advisory board for its CDBG program. Because it is part of state government, DEHCD does not have a governing board.

[8] The Weidner Report criticizes having four different boards. The Commission would submit that the blend of 37 board members from a variety of backgrounds with a focus on affordable housing brings a unique perspective to the affordable housing arena. Presently, the various agency boards are concerned with specific aspects of the housing delivery system. That concentration provides oversight and assures that those parts of the system are getting the job done. Consolidating the boards would cause a dilution of effort and create an overall lack of focus. (Testimony of Richard Williams, Executive Director, VSHA, 11/5/10; Appendix # 26.)

these often complex endeavors take many years to complete and a steady approach is an essential element to success. (Testimony of Erhard Mahnke, Appendix # 26)

5. VHCB, VSHA, and VHFA have highly experienced, skilled, and dedicated senior staff. There is an enormous risk that if the statewide entities are consolidated, many of these senior staff would be lost. Indeed, the Weidner Report identifies the reduction in executive directors as the only significant source of cost savings resulting from a consolidation. That, of course, would cause the statewide entities to lose the very people that have made them into nationally recognized, top-performing organizations. It would also greatly diminish their capability to secure outside funding from sources such as the federal government and investors, including local banks, which provide 91% of the money that goes into affordable housing.

6. The Weidner Report emphasizes the overlap between the programs and funding of the statewide entities in a way that is quite simplistic. Affordable housing and conservation programs are funded and provided through a complex array of highly specialized programs and regulated funds. Nothing can change that complexity, because it is inherent in the methods used to secure funding (e.g., the use of private bond issues by VHFA to lend funds to borrowers) or it is the result of a vast number of specific federal programs that are tightly regulated.

7. The genius of the Vermont system for the financing and delivery of affordable housing and conservation is that it has developed separate, highly specialized agencies with great experience in dealing with different parts of the overall system. Saying that each of the entities should be consolidated because they all deal with "affordable housing" is the equivalent of saying that all of the departments in a large hospital should be consolidated because they all deal with health. The staff of each of the statewide entities have specialized skills that are vastly different from the skills and experience of any of the other agencies. These differences allow each agency to provide innovative solutions, understand risks, and leverage funding within its specialty area to a far greater extent than would a generic housing agency.[9]

8. A summary of the responsibilities of each agency appears at pages 3–5 of this report. That summary illustrates the significant differences in the responsibilities, skills, and experience needed by the staff of each agency. Consolidation will only dilute the specialized knowledge of those agencies. This will result in less skill and experience in

[9] According to Elizabeth Nickerson, a former administrator of the Federal Home Loan Bank Affordable Housing Program and currently a consultant to Seattle's Federal Home Loan Bank: "Compared to states in which a single entity controls access to all funding, Vermont's system of agencies with divergent primary interests allows for the implementation of more innovative solutions." (Appendix # 26.) In response to the suggestion by Weidner that consolidation would result in improved alignment of resources to achieve Priorities and Results, Richard Williams, Executive director of VSHA and a 35-year veteran of Vermont's affordable housing system testified: "This assumes that all financial resources are interchangeable. They are not. In the case of VSHA, if funds are not used for their specific purpose, they cannot be used for any other. In fact, to do so would result in a reduction in those funds for future years. This is one of the biggest fallacies in the Weidner Report and a disaster waiting to happen. The parts of the affordable housing delivery system in Vermont are not interchangeable." (Testimony of Richard Williams; Appendix # 26.)

leveraging funds for Vermont, an increased likelihood that Vermont will lose its national standing as a top-performer, and most importantly, damage to the Vermont "Brand" that is essential to the economic health and values of this state.

9. The ICF Report made a single finding with respect to the Vermont delivery system for affordable housing. That finding reads: "Multi-Layered, Effective System. The multi-layered housing delivery system provides the state with a range of highly specialized expertise. Although this expertise is housed in a number of different organizations, the system is well coordinated. While the segmented delivery system might not prove effective in every state, it appears to be working well in Vermont. This is largely due to the sophistication of the funding entities and the level of coordination that takes place among them." (Appendix # 4 at page 46.)

10. All of the testimony the Commission received indicated that each of the statewide entities operates efficiently and with strong results. The senior managers and directors are necessary to the efficient operation of each agency. A merger would simply add another layer of management from outside the agencies. From what the Commission has heard, it is clear that a merger would likely add to costs with no assurance of better results.

11. Compared to the relatively meager savings (if any) that might be attained through a merger, Vermont's system of perpetual affordability results in substantial savings to the taxpayer. Contrast this to the old system of federal financing of affordable housing, which only assured a limited life span of affordability—with affordable housing organizations and their funders having to then start over to provide equivalent housing. To give but one example of the economic impact of permanent affordability, a study of the land trust model of home ownership conducted by Champlain Housing Trust (CHT) found that "An initial public investment of $2,172,207 in those homes that resold one or more times allowed CHT to bring homeownership within the reach of 357 lower income households. Had these subsidies not been retained in the homes, allowing their owners to pocket both the public's investment and all capital gains when reselling, the size of the public's investment needed to serve the same number of households at the same level of income as CHT had served would have been five times greater." (Source "Lands in Trust, Homes that Last," Executive Summary, available from Champlain Housing Trust.)

12. A number of witnesses testified that Vermont has a funding and delivery system for affordable housing, conservation, and historic preservation that is the envy of other states. (See e.g., Testimony of Paul Costello, Vermont Council on Rural Development, and Robert McDonald, U.S. Rural Development; Elizabeth Nickerson, Nickerson Development Services; Appendix # 26.) Based on the extensive evidence presented to the Commission and the lack of evidence or empirical data in the Weidner Report, we believe that it would be reckless and unwise to consolidate these entities.

E. THE STATEWIDE ENTITIES ALREADY ENGAGE IN A HIGH DEGREE OF COOPERATION AND COORDINATION

Finally, as confirmed by Weidner, the ICF Report, and the testimony received by the Commission, the statewide entities do a good job of collaborating with each other when there are opportunities to avoid redundancy. This collaboration includes the following:

1. The development of a HUD-required Consolidated Plan establishing statewide housing policy, including a housing needs assessment.

2. A joint committee on housing tax credits which helps to develop priorities under the state's qualified allocation plan which guides the allocation of federal housing tax credits.

3. A housing council that meets approximately six times a year.

4. Cross-Board membership between VHCB and VHFA and between VHFA and the Community Development Block Grant advisory committee.

5. Quarterly meetings with the state housing agencies and the Agency of Human Services to ensure that all existing and proposed special needs and service-enriched housing projects are successful, as well as other AHS and housing-related programs such as weatherization assistance. In addition, all state housing agencies participate in the State's Interagency Council on Homelessness with the AHS.

6. Coordination of investment of weatherization resources through the Vermont Fuel Efficiency Partnership.

7. A coordinated effort by all the entities to develop and implement a common application for multi-family developers.

8. Through the MacArthur Foundation grant, a Preservation Council has been established that includes all the entities and has become a vehicle to prioritize projects for preservation and coordinate preservation policy. (Appendix # 13.)

9. Coordination of efforts and information sharing during the project development and construction phase of new and rehabilitated projects. (Testimony of Sarah Carpenter.)

Secretary of Agriculture, Food and Markets Roger Allbee praised VHCB's effectiveness in "breaking down silos" between housing and conservation, an outcome he attributed not only to VHCB's dual mission, but to the diversity of interests and agencies represented on VHCB's board. If that board were eliminated, he stated that "we would need some other vehicle to continue the dialogue and to re-create those inter-agency linkages." (Testimony of Roger Allbee.)

F. WEIDNER'S RECOMMENDATION TO USE PARTICULAR PERFORMANCE MEASURES WOULD REDEFINE VERMONT'S WELL-ESTABLISHED PRIORITIES

Introduction: The issue of accountability.

The Commission is sensitive to the need for accountability by all agencies of government, including the statewide entities. There are many ways to achieve accountability. The Weidner Report makes recommendations that the statewide entities adopt certain prospective quantitative measurements in order to promote accountability. For the reasons described below, the Commission finds that the use of quantitative measurements without factoring in qualitative priorities that have been established by the state will not work. In the discussion which follows, the Commission addresses its concerns with the approach to measurement of results recommended by Weidner. We conclude with a suggestion for the limited use of measurement devices that are both quantitative and qualitative in nature and which reflect the state's priorities.

As noted in the initial summary to this section, the Weidner Report makes two recommendations concerning the adoption of performance measures. The first is that the statewide entities adopt performance measures that (a) can be quantified; and (b) are prospective. In this fashion, the argument goes, one can easily determine if a government agency is in fact producing results for its customers when the period of time for performance has expired. The second recommendation is that the statewide entities adopt particular measures of performance.[10]

The recommendations to adopt particular measures for Vermont's system of affordable housing go beyond the suggestion to use a particular "measurement tool." Using prospective quantitative measures as a way to measure performance in this field, if done in a thoughtful, inclusive process, based on existing priorities, may be of some practical use. That is very different from having a small group and a consultant determine the measures. (Discussion of the risks of using a quantitative measurement device for affordable housing without regard to content is found at pages 29-30)

Although the Weidner Report emphasizes the importance of defining priorities for affordable housing in Vermont, it ignores the fact that the legislature and numerous administrations have already defined these priorities, and that additional priorities are established by federal housing laws and programs. In addition, the Report is critical of the manner in which priorities for affordable housing and related issues are described in the recently completed and very detailed Consolidated Plan for 2010–2015.[11]

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[10] Weidner confirmed to the Commission that its recommendation concerning performance measures could be implemented without the need for consolidation.

[11] The Consolidated Plan is a HUD requirement, and Vermont's plan was recently approved by HUD. It was prepared by the statewide entities with substantial public participation and was informed by a "Needs Assessment" that was prepared by VHFA and adopted by the statewide entities. (Appendix # 6.) The Needs Assessment contains a wealth of information, and formed the basis for establishing many of the priorities in the Consolidated Plan. The Needs Assessment is not discussed in the Weidner Report.

G. ALTHOUGH THE COMMISSION SUPPORTS CONSIDERATION OF PERFORMANCE MEASURES BY THE BOARDS OF THE STATEWIDE ENTITIES, WEIDNER'S APPROACH TO QUANTITATIVE MEASURES IS REJECTED

The Commission finds that the use of prospective performance measurements may be helpful to the statewide entities as an additional tool to set targets and assess performance and should therefore be seriously considered by the Board of Directors of each of the statewide entities. The Commission notes that there are many limitations on the use of performance measurements, particularly in light of the qualitative requirements that are an essential part of the missions of the statewide entities and the difficulties of incorporating such qualitative requirements into performance measurements. These concerns are discussed below. Before turning to that discussion, the Commission wishes to set forth its reasoning in rejecting the Weidner Report's recommendations concerning performance measurements.

We start with the issue of methodology. Rather than relying on the priorities for affordable housing that have been established in Vermont law and in the transparent and inclusive process of adopting and updating the Consolidated Plan, the Weidner Report established priorities based on the suggestions of a small group of people that met for 1 ½ days in June 2010. As is made clear in statements made at a meeting of that group (the "Strategic Leadership Group") in September, and from testimony before the Commission, the participants believed it was a flawed process, and were unwilling to endorse the Weidner Report. (Testimony of Allan Hunt and Christine Hart.)

The Weidner Report not only recommends that the affordable housing system in Vermont adopt a quantitative "method" for measuring performance, but goes further and recommends specific or particular quantitative measurements with respect to particular outcomes. The use of particular quantitative measures will inevitably affect the direction that affordable housing will take in the future. If, as recommended by Weidner in several of its performance measures, the state projects how many units are to be constructed per set number of dollars, then performance is inevitably going to be based on how many units have been constructed for that amount of money rather than concerns about the quality, location, and inclusion of other values that have been identified by the state. A focus on numbers of units built has historically resulted in the creation of poorly constructed, large projects for low-income persons. The Commission finds that performance measures that focus on the number of units produced per million dollars constitutes poor public policy, will be harmful to the Vermont "Brand," and is likely to result in the development of poor quality housing which will undermine public support and funding for affordable housing. In responding to the consultants' suggested measure of number of units per million dollars of expenditure, VHFA, VSHA, and VHCB noted:

"Quantifying a goal of the number of units per million dollars could incent simplistic, poorly built housing development in easier-to-develop locations. Vermont's state priorities (and those confirmed by this process here) are instead to focus on households with additional barriers like special needs populations (who can be costlier to house), building in downtowns, elderly developments (which often come with service plans and elevators which can be costly) and high quality, energy efficient housing. Sometimes a higher upfront investment during a development's construction can create long term savings to the project (especially in terms of energy savings). (VHFA, VHCB, VSHA response; Appendix A to the Weidner Report.)

The Commission agrees with this assessment by the statewide entities. Vermont has learned from the sorry history of housing for low-income individuals and has gone out of its way to avoid an affordable housing system based solely on the number of persons housed without regard to qualitative measurements that have evolved through conscious planning and effort over the past 25 years. (Kochman, Meaningless Metric, November 9, 2010; Appendix # 23.)

Vermont's housing and conservation delivery system is a national example precisely because of its concern with matters of public policy and quality. Affordable housing in Vermont exists in the context of legislative mandates that the creation of such housing be undertaken, when possible, in conjunction with other values which reflect the unique qualities of the state.[12]

Weidner responds to concerns about quality by noting that its Strategic Leadership Group did include certain qualitative measures in its proposed Priorities and Results. This response missed the point. While suggesting the use of quantitative measures is within the purview of any consultant, recommending particular measures that would have the effect of altering established state priorities should be considered as beyond the scope of any consultant's services. This is especially true if the proposal is made without public input, and with no analysis of how existing priorities came about and how they are being implemented on an ongoing basis.[13]

H. ALTHOUGH THE COMMISSION RECOMMENDS CONSIDERATION OF PROSPECTIVE PERFORMANCE MEASUREMENTS BY THE BOARDS OF THE STATEWIDE ENTITIES, THE USE OF SUCH MEASUREMENTS SHOULD BE CONSIDERED IN LIGHT OF A NUMBER OF CONCERNS

- Reliability: By its nature, the development of affordable housing is subject to many variables which change over time and which cannot be predicted. These include the availability of property, which is controlled by the seller; changes in funding and

[12] Additional qualitative measures also must be considered in any effort to measure performance in the field of affordable housing. These measures include: incorporation of energy efficiency measures to reduce the costs of operation; durable construction materials to reduce deterioration; requirements for replacement reserves to maintain the housing in good condition; and other qualitative measurements which have been established by the statewide entities to ensure that the housing is something of which the residents can be proud, and that the community can embrace because it is consistent with Vermont values. Quantitative measures which do not include or which reduce the importance of Vermont's qualitative values should be rejected.

[13] Certain quantitative measures suggested by Weidner were deemed acceptable by the statewide entities. Others were unobtainable or had other deficiencies that were explained by the agencies in Appendix A to the Weidner Report. The explanations are reasonable on their face. See also discussion starting on page 29.

programs; a vigorous review process by local and in some cases state land use boards; the price of real estate; changes in the economy having an impact on the availability of private investment and bonds; and exigencies such as fires (common in Vermont's older structures). Since these factors are truly unpredictable, the Commission is concerned that the use of prospective performance measurements may be an unreliable indicator of performance. (Testimony of Sarah Carpenter, VHFA; Gus Seelig, VHCB; David Adams, VHFA.)

- Need: Providing prospective quantitative measures may be of some use for state or federal agencies that are not highly accountable to the public. By contrast, the statewide entities are accountable to a variety of agencies and individuals and produce both contemporaneous and timely retrospective reports on their activities and performance. Each entity (other than DEHCD) issues an annual report to members of the public. This report contains financial information and reviews the number, type, location, and special features of housing projects and developments during the previous year (and in VHCB's case, conservation and historic preservation). In addition to the annual reports, reports of performance are issued on a regular basis to funders (including where applicable, the legislature, HUD, other federal agencies, and private grantors). Unlike departments within state government, the statewide entities are each governed by a Board of Directors to whom it is accountable. Board meetings are open to the public. (See discussion of transparency of Statewide entities at page 33.)

- Centralized planning: The responsibility of the statewide entities with respect to the development of affordable housing is to respond to funding requests by individuals, towns, and communities, and the nonprofit affordable housing network that exists throughout the state, and then to provide oversight and technical assistance for any funding that is approved. Although the statewide entities engage in a substantial amount of planning, the Vermont process for the development of affordable housing, conservation, and historic preservation derives from proposals brought to the statewide entities from the community. A community-based structure is one of the core strengths for the delivery of financing for affordable housing and conservation. Accordingly, if the statewide entities use performance measurements, they should be based on their particular responsibilities and not usurp the nonprofit organizations' role in determining local needs and making proposals to the statewide entities. The Commission is concerned that planning for affordable housing and conservation should not be turned into a "top-down" process.

- Recommendations regarding performance measures: Notwithstanding the concerns raised about performance measures, such measures can be useful as an additional tool to assess the performance of the statewide entities. While the entities have excellent, experienced staff at this time, no one can predict the future. Prospective performance measures are being increasingly adopted by institutions as a way to assess performance. After extensive discussion, the Commission finds that if approached carefully, prospective performance measurements may be a useful addition to the arsenal of measures already used by the entities to set targets and assess performance.

Although the Commission recommends the adoption of performance measurements, it recognizes the limitations associated with such prospective measures. Accordingly, the Commission recommends that:

A. Because the missions and activities of the statewide entities vary drastically, the Board of each entity should adopt performance measures that are appropriate to it. Just as consolidation of the distinct entities would be a serious error, so too would statewide performance measures for all of the entities or ones derived without a thoughtful and inclusive process.

B. Any performance measures must start with and be based on the applicable priorities established in Vermont law, the Consolidated Plan, or by the entities themselves and not be fashioned out of whole cloth.

C. Any performance measures must include the qualitative requirements contained in statute, the Consolidated Plan, and federal program requirements. The failure to include qualitative requirements raises the risk that the values that have made the Vermont system successful will be ignored, and focus will turn to a simplistic quantitative approach.

D. Because of the variables inherent in affordable housing and funding, the performance measures must take these variables into account. Moreover, for organizations such as the VHCB that are charged by law to respond to exigencies, any performance standards must clearly recognize that a particular measure may not have been reached because the Board decided that it was necessary to use funds to meet a different, more-immediate need than the one originally contained in the performance measure.

E. Performance measures should state that they are one of many tools used to assess and guide the performance of the entities.

F. Performance measures should be sensitive to the role of the statewide entities and their relationship to nonprofit organizations, private housing developers, and municipalities. Therefore, performance measures should be limited to the activities of the statewide entities, and those agencies should not provide performance measures that are properly within the scope of the activities of the project developers.

I. THE WEIDNER REPORT PROVIDES NO EVIDENCE THAT THE STATEWIDE ENTITIES ARE NOT RESULT-ORIENTED FOR "CUSTOMERS"

There is no evidence in the Weidner Report to support the claim that the Vermont system for financing and delivery of affordable housing is not customer-oriented. The conclusion by Weidner again stems simply from the unwillingness of the statewide entities to accept all the measurement tools Weidner suggested. We have previously analyzed both the strong results delivered by the statewide entities and how Vermont's community-based system and the small size of the entities prevent them from being anything other than customer-oriented. This conclusion is confirmed by all of the evidence presented to the Commission on the subject: In the face of all the evidence that these organizations are results-oriented for customers, it is surprising that the Weidner Report would simply assert the opposite without presenting any evidence to support its assertion.

J. THE ACTIVITIES AND OPERATIONS OF THE STATEWIDE ENTITIES ARE TRANSPARENT

This issue has been discussed previously at pages 7, 23-26, and 31. We discuss it again here because Weidner criticized the Statewide entities for being insufficiently transparent.

One of the great strengths of the affordable housing, conservation, and historic preservation system in Vermont is that each element of the system has highly organized constituencies. These constituencies, including the affordable housing nonprofits with their community-based boards of directors, conservation and historic preservation organizations, municipalities that are recipients or candidates for CDBG funds, and organized advocacy groups such as the Vermont Affordable Housing Coalition and the Vermont Coalition to End Homelessness, provide a structural framework which would not permit the statewide entities to operate in a nontransparent fashion.[14] These constituencies are the on-the-ground "eyes and ears" of funding agencies such as the legislature, HUD, the USDA Rural Development Program, and other public and private agencies from whom the statewide entities receive funding.

A second layer of transparency flows as a consequence of the work of individual nonprofits or for-profit partnerships who work with the entities on particular projects. In addition to the global oversight provided by the organized constituencies, when a nonprofit organization works with the statewide entities, line-by-line scrutiny is given to the standards and requirements of the statewide entities in connection with those projects.

The Commission received extensive testimony from a variety of people and organizations that work with and use the statewide entities. Not a single witness criticized the statewide entities for having bureaucratic tendencies, and the Commission did not receive a single complaint that the statewide entities operated in a way that was not transparent. The testimony was the opposite; people found the statewide entities to be accessible, professional, and helpful.

Additional reasons for this level of transparency are:

- Each of the entities (except DEHCD) has its own Board of Directors appointed by the governor or the legislature. The executive directors of VHFA and VHCB sit on each other's boards. The executive director of VHFA sits on the DEHCD advisory board for the CDBG Program. These boards meet regularly and the

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[14] Compare this to government entities that also provide services, but do not have strong grass-roots constituencies to whom the entity must be accountable.

meetings are open to the public. Because each board deals with a specialized agency, it is familiar with the work of its agency. As with all governing boards, each board has a fiduciary duty to act in the best interest of its agency and to carry out its mission.

- Funding allocations are made by the boards at publicly warned meetings.

- VHCB, VHFA, and DEHCD are required to report their activities to the legislature. This includes review of productivity and results. VHCB reports annually to the legislature on the amount of each project award and the total cost of each project.

- Each agency receives an annual audit.

- Each agency except for DEHCD issues an annual report, and all the statewide entities issue reports to their funding agencies and are monitored for program compliance by the federal government.

- VHFA is reviewed by national rating agencies for its financial strength. These ratings are widely available. (Testimony of Sarah Carpenter.)

- Developers of affordable housing seeking funds from VHCB, VHFA and DEHCD must provide and justify their costs. Construction costs are almost always subject to competitive bidding, and developer fees are subject to limitations set forth in written policies that are consistent with fees allowed for tax credit projects nationally. (Appendix # 8 at page 3.)

- Housing costs have been the subject of several analyses by VHCB, VHFA, the ICF Report, and others. The ICF Report concluded that costs were within regional norms. (Appendix # 4 at page 20.)

K. VHCB'S POLICIES ON REPAYMENT OF DEFERRED, ZERO-INTEREST LOANS: 1) ARE A CONSEQUENCE OF THE LIMITATIONS OF THE PRINCIPAL FEDERAL FUNDING FOR AFFORDABLE RENTAL HOUSING; 2) ARE SIMILAR TO PRACTICES IN OTHER STATES; 3) LEVERAGE ADDITIONAL FUNDS FOR AFFORDABLE HOUSING; 4) REFELECT VERMONT'S GOAL TO SERVE ITS LOWEST INCOME RESIDENTS AND COMMUNITIES; AND 5) HAVE BEEN REVIEWED WITHOUT OBJECTION BY APPROPRIATE FEDERAL AND STATE AGENCIES

Background:

Any discussion of loan repayment of deferred, zero-interest loans must begin with the understanding that federal operating subsidies for low-income housing (such as "project based" Section 8 assistance) are generally no longer available.[15] (Testimony of Gus Seelig, VHCB; Nancy Owen, Housing Vermont; Sarah Carpenter, VHFA.) As described in detail on pages 5-6 of the report, instead of operating subsidies, the federal government has turned to a program called the Low Income Housing Tax Credit Program (LIHTC) as the primary method to finance new and rehabilitated multi-family rental housing. (See Kochman; Appendix # 23 for a discussion of the history of federal funding for affordable housing.) Since 1986, the LIHTC program has been the primary source of federal assistance for the production of rental housing affordable to households below 60% of AMI. Affordable housing organizations in Vermont and elsewhere have relied heavily on it to fund their projects. Under this program, private investors (in Vermont, typically banks) invest up to 40–60% of the cost of a new project and receive a return through federal tax credits.

As a matter of federal law under the LIHTC program, rents for affordable housing are restricted. Moreover, as acknowledged by Weidner and the ICF Report, Vermont provides substantially more housing to persons with lower incomes than the national average. Data collected by VHFA show that rental housing in Vermont is serving a very economically distressed population, and the economic status of that population has not changed in many years. (Appendix # 13 at page 2.) The Weidner Report states that "deferral of debt for affordable housing, such as been done by VHCB, is a commonly used financial tool for housing trusts and similar funding organizations across the nation. The stated rationale for providing 'soft/deferred' debt as a financing tool is that it makes the provision of housing for lower-income residents possible, and particularly in perpetuity."[16] (Weidner Report at page 42.)

In short, the near-elimination of project-based rent subsidies has shifted the affordability mechanism for affordable rental housing from a reliance on operating subsidies to minimizing debt service. Debt service is minimized through the use of grants, tax credit equity, and deferred loans. The deferred loans supplied by VHCB constitute an essential ingredient necessary to close the financing gap and make a project viable. Although these are true loans, the fact that payment is deferred allows projects to achieve greater long-term financial stability; leverages other non-debt resources; provides greater depth and length of affordability; and serves as a mechanism to keep the project in the affordable housing inventory.[17] (Testimony of Nancy Owen, Executive Director, Housing

[15] There are some federal programs that still provide operating subsidies, but they are few and far between.

[16] The federal government has taken the position in the HOME and CDBG programs that funds lent under those programs need not be lent at the applicable federal rate. (Submission by Robert Gensburg, Esq. Appendix # 21.) Most CDBG loans in Vermont are 30-year deferred loans. Municipalities that lend CDBG funds to developers of affordable housing have the authority to extend or modify these loans and have done so from time to time. The practice of loan deferrals (not requiring amortizing payments) reflects the reality of providing affordable housing to low and very low income persons and the lack of other operating subsidies to support such housing.

[17] In Vermont, deferred, zero-interest loans issued by VHCB are evidenced by typical loan documents: a promissory note and a mortgage that is recorded in the land records. Moreover, the loan is accompanied by a housing subsidy covenant. The covenant is a binding agreement that ensures that the project will remain

Vermont; Larry Mires, VHCB; Merten Bangemann-Johnson, Gilman Housing Trust; Appendix # 26.)

Deferred loans provide major advantages to everyone involved. Most important, the loans are included in a project's tax credit basis, leveraging significant additional investment through the LIHTC program. Second, deferred loans attract other sources of federal funds because they permit the project to be affordable to low- and very-low-income persons. Third, deferred loans provide longer-term financial benefit to the taxpayer because the cost of replacement housing is not required, and residents are not displaced from their homes. Fourth, these loans give VHCB control over the projects for which they are provided. If, for example, a project owner decided to convert an affordable housing project into a market rate development, the loan can be called. Studies done by VHCB and VHFA confirm that the tenants in Vermont's affordable housing projects are indeed low income and could not possibly afford to pay VHCB loans through rent increases. This is also confirmed by the Weidner Report at page 46 and by the ICF Report at page 9. Finally, the conditions at the time of maturity may allow for the repayment of these loans. VHCB has undertaken a number of steps, particularly in the area of increased energy efficiency, increased capital needs planning, and improvements to property management, to improve repayment capacity. This is why requests for additional deferral are reviewed by VHCB on a case-by-case basis.

Robert Gensburg, a Vermont attorney with extensive experience in affordable housing, and the LIHTC, has written the Commission: "There is nothing unique about the deferred VHCB loans. Other federal loan programs use deferred debt, including: CDBG/VCDP; Federal Home Loan Bank's Affordable Housing Program; HUD 202 (40 years); Stewart McKinney Homeless Program; HUD 811 (40 years); HUD EDI; HUD HOME Program; and others." (Memo, January 7, 2011; Appendix # 21.)

The practice at VHCB has been for its Board of Directors to review requests for extensions of deferred loans on a case-by-case basis. This is consistent with the advice of counsel and has been reviewed by the Vermont Office of Attorney General and the Vermont State Auditor of Accounts. Neither office raised objections to VHCB's procedures.[18] The board review includes an analysis of the financial capacity of a project, resident incomes, and the project's ability to generate more income, its future capital needs, and its other refinancing opportunities. (Memo by Gus Seelig; Appendix # 17.) These reviews take place within a context provided in statute to seek permanent affordability and avoid displacement of lower-income Vermonters. Contrary to the suggestion of the Weidner Report at page 44, the decisions made are completely transparent. Thus far, "the VHCB board has voted on eight occasions to either change terms or extend deferral periods. These votes were taken at publicly warned meetings and passed unanimously with support from both Governor Douglas's citizen appointees

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perpetually affordable. Deferred loans come due at a maturity date typically 30 years from the date of the loan or resale of the property, whichever comes first.

[18] VHFA's outside counsel confirmed that zero-percent deferred loans are a practice nationally in tax credit transactions, and the practice is consistent with IRS rulings. (See Appendix # 22, letter dated June 18, 2010 from John J. Wagner, Kutak Rock LLP to Sarah Carpenter, VHFA.)

and ex officio members of the administration who serve on the board." (Memo by Gus Seelig; Appendix # 17.)

Weidner Recommendations:

The Weidner Report recommends that the VHCB Board should set targets for the degree to which affordable housing supports lower-income occupants. The Board's existing priorities to serve low-income persons reflect Vermont law and public policy, as set forth in the VHCB statutes, 10 V.S.A. chapter 15, and Act. No 156, Sec. E.803 (Concerning CDBG Grants; Appendix # 3) and the Consolidated Plan. The Commission commends the Statewide entities for their track record in housing the lowest-income Vermonters and supports a continuation of that focus, as required by law and policy.

The Weidner Report acknowledges that Vermont's low-income tenant population cannot afford rent increases which would support repayment of deferred loans. (Weidner Report at pages 45-46.) It also acknowledges that the nonprofit developers would be unable to repay the deferred loans in the short term. (Weidner Testimony.) It instead suggests that certain nonprofit entities that own affordable housing projects may be able to repay these loans in the long run by drawing upon general organizational resources.

Weidner goes further, however, and recommends that policies be established by VHCB that would require the repayment of loans except in extraordinary circumstances. Weidner wants the nonprofits to "reserve" a monthly amount to repay the deferred loan. (Weidner Report at page 49.) This would effectively convert the deferred loans into amortizing loans. The loans are deferred precisely because the projects are not able to amortize repayment. Imposing that requirement, whether as a true amortization payment or as a mandatory reserve, would stop most development of affordable housing in some areas of the state. (Testimony of Merten Bangemann-Johnson, Kenn Sassorossi, Housing Vermont, and Gus Seelig, VHCB, among others.) In some areas of Vermont, development would be possible, but the housing would have to be targeted away from lower-income Vermonters to people in the upper support strata of eligible income. Vermont would lose the depth of affordability and length of time that the housing would remain affordable. Neither of these results is consistent with Vermont's housing goals.

The suggestion by Weidner that certain nonprofits have the ability to routinely set aside funds on a monthly basis is not correct. Nonprofits do not have a "pool" of general funds from which they can repay deferred loans. Nonprofit accounting is required and performed on a "project-by-project" basis. The only source of income available for individual projects is rent. Weidner has acknowledged that low-income tenants are not able to pay increased rent in order to amortize the deferred loan.[19]

Individual projects providing housing for low-income persons must be self-sufficient in order to remain perpetually affordable. That means that the projects must maintain

[19] It should be noted that while Weidner looked at the financial statements of 12 nonprofits, because they chose not to question the nonprofits as part of their analysis of these complex financial statements, they overestimated the unrestricted cash revenues and reasons behind the variability in income.

adequate reserves for replacement, hire knowledgeable property managers, remain attractive to any future owner should a transfer in ownership be necessary, and ensure that nonprofit developers are not placed at financial risk by having to subsidize projects. Taking additional funds away from projects to pay what amounts to an additional amortizing loan is simply not possible under these circumstances.

Apparently, Weidner assumes that there is a pool of undedicated funds held by the nonprofits, and that these funds should be used for reserves to repay the loans. This is not true. The "general" funds of a nonprofit are needed for their routine operations, such as personnel costs and office expenses. There are no undedicated funds on the books of the nonprofits. Moreover, Weidner and other witnesses before the Commission acknowledged that nonprofits are cutting staff and otherwise feeling the effects of the economic downturn. (Weidner Report at page 47.)

What was absolutely clear from the testimony before the Commission was that there are no undedicated funds. That a requirement that deferred loans always be repaid as a matter of policy would almost certainly result in the displacement of low-income persons from affordable housing, bankrupt many of the affordable housing nonprofits, and impair the future development of affordable housing for low-income persons.

In conclusion, the Commission finds that financing of affordable rental housing is possible only because of the availability of deferred loans. The Commission further finds that the VHCB Board has handled requests for further deferral in a careful, professional, and appropriate manner.[20]

In addition to its recommendations that the nonprofits set up a monthly reserve for repayment of deferred loans, Weidner recommends that VHCB adopt a series of policies that "achieve the repayment of loans, limit the impact on the cost of rents and ownership for individuals, increase the amount of funds available for affordable housing, and is fiscally achievable and sustainable by the local/regional housing organizations,

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[20] The Commission asked Larry Mires, the administrative officer for VHCB, to analyze the table at the top of page 50 of the Weidner Report which suggests that certain nonprofits have the ability to set aside funds on a periodic basis to repay deferred loans. Mr. Mires testified as follows: "I do not know why, in their chart, the Weidner Report chose the indicators of total revenue, expense and unrestricted cash to relate to the ability of an organization to meet additional obligations. These figures have little or nothing to do with whether the business will have flexible cash. In the case of organizational revenue and expense, the size of those numbers is heavily influenced by whether a new project or projects have been developed in the given year. If a significant project has been developed, the revenue and expense numbers will be far larger than in a year where there is little or no development. While the dollars may be large, they all go to project development, and are not an indicator of discretionary cash. Revenue and expense can easily vary by more than 100% from year to year. In the case of "unrestricted cash", the term is an accounting term. "Unrestricted" does not mean that there are not programmatic restrictions on the cash. It should not be interpreted to mean that the funds are available to offset additional obligations. The "unrestricted cash" figure varies by as much as 300% year to year. As used in the Weidner table on page 50, it is merely a mathematical exercise to calculate the percentage of unrestricted cash represented by theoretical payments using a one-year figure, but it has no bearing on an actual organization's ability to meet additional obligations" (Appendix # 26.)

recognizing that some restructuring may need to occur in those entities." (Weidner Report at page 51.) The use of predetermined criteria for deciding whether to treat a loan as an investment deprives the VHCB Board of the discretion and flexibility to decide how a request for deferral of repayment should be treated at the time of the request. No one can anticipate what circumstances will exist when a 30-year loan becomes due. That is true whether the loan is due in 2012 or 2030. VHCB is entrusted to spend millions of dollars on projects. There is no reason why it cannot use its judgment to determine how to deal with an outstanding loan in any given instance. Since it is impossible to predict the conditions that may be involved in such a decision, the use of fixed and inflexible policies or procedures is both undesirable and unwarranted. The Commission finds that the current system of having the VHCB Board make the final decision on treatment of any particular loan on a case-by-case basis works well and is proper.

In this regard, the first recommendation of the ICF Report for the "delivery system" reads as follows" "Continue Flexible Style: Maintain VHCB's operating style and delivery system. Their collaborative mentoring approach and flexible underwriting augmented with training and careful organizational monitoring has strengthened and hardened the nonprofit industry in Vermont appropriately." (ICF Report at page 46.)

Other recommendations made by Weidner with respect to collection of information and updating of databases may or may not be helpful. In each instance, the statewide entities need to weigh whether the expense of maintaining a particular database is worth the expense, both in actual dollars and in diverting staff resources from other activities.

Finding 3. THE COMMISSION FINDS THAT VHCB IS MEETING AND EXCEEDING ITS STAUTORY RESPONSIBILITIES

Background

The Legislation that created VHCB recognized that it was necessary to both the "economic vitality" of the state and the "quality of life" of its citizens for the state to encourage and assist in creating affordable housing and to preserve "the state's agricultural land, historic properties, important natural areas and recreational lands." VHCB's enabling law contemplates that VHCB would work with eligible applicants, nonprofit entities, and government agencies in carrying out its activities. Section 5 of the Legislature's Charge to the Commission asks the Commission to determine whether VHCB is meeting its statutory mission. The Commission finds that VHCB is meeting and exceeding its statutory responsibilities.

Basis for VHCB's Success

The results of VHCB's work in conjunction with Vermont nonprofit organizations and state agencies in the areas of affordable housing, land conservation, protection of farmland, and historic preservation can only be described as outstanding. All witnesses who testified about VHCB were effusive in their praise. Not a single witness raised concerns about the operation, programs, dedication, or skill of VHCB or its staff. In a number of cases, these witnesses were providing services to persons who were homeless, disabled, extremely poor, or whose conservation activities started from scratch with a few enthusiastic volunteers in a local community. All expressed gratitude that the state of Vermont had an agency that was responsive to their needs, both financially and in terms of accessibility and technical assistance. The Commission heard strong support for VHCB's work from farmers, businesspeople, bankers, private developers of housing, a regional planner, and a federal official from USDA Rural Development.

Although VHCB has been charged by the legislature with the seemingly disparate missions of promoting perpetually affordable housing as well as the conservation of Vermont's working landscape, natural areas, recreational lands, and historic properties, these activities all share the common theme of providing permanent protection of vital resources. In practice, VHCB has done a masterful job in integrating these statutory goals. VHCB's efforts have demonstrated the value of developing or rehabilitating affordable housing projects in town centers which bring people and retail services to these centers so that Vermont towns do not have the abandoned look and feel of downtowns in so many other states. Further, a focus on development in town centers has the beneficial effect of reducing developmental pressure on agricultural lands and natural areas.[21] These concepts are incorporated in Vermont law. 24 V.S.A. § 4302(c), dealing

[21] The Vermont Smart Growth Collaborative noted that 94% of VHCB's grants and loans supported smart growth principles, far more than most of the other state agencies reviewed. See Vermont Smart Growth Collaborative, 2007 Progress Report, pgs 2-3. The smart growth model is so important that it has been adopted in a variety of legislation and executive orders that have been adopted by the Vermont Legislature and Executive Branch in a variety of contexts. See 24 V.S.A. § 4302 and in particular § 4302(e)(2)(A),

with municipal and regional planning, states: “In addition, this chapter shall be used to further the following specific goals: (1) To plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.”

VHCB has been instrumental in helping Vermont’s affordable housing nonprofits and the other statewide entities to integrate these smart growth activities.[22] One of the reasons that VHCB has been so successful is that it has been able to vastly expand its reach by working with other state agencies and a network of experienced nonprofit organizations. These collaborations, contemplated in VHCB’s enabling legislation, have multiple benefits, including community “ownership” of individual projects (legally, financially, and in terms of public support), the ability to leverage additional funds and human resources for projects, and the strengthening of community-based nonprofit organizations whose missions are similar to those of VHCB.[23] Because Vermont is such a small state, most small towns and villages do not have community development departments. The nonprofits effectively fill this void with the result that they are able to secure needed services. (Comments of Gus Seelig to Strategic Leadership Group 9/28/10; Appendix # 16.)

Once community-based investors, lenders, and donors see that VHCB has committed to a project, they are far more willing to invest or lend their own funds. The result is that for a relatively small investment of state dollars, Vermont has been able to leverage substantial sums of funds from a variety of public and private sources. In total, VHCB investments of $230 million across all of its programs have leveraged almost $900 million from other sources. (Testimony of Gus Seelig, 8/20/10; Appendix # 26.) See discussion at pages 11–12, for a fuller discussion of the ability of the statewide entities to leverage additional funds.

Because VHCB receives state funds that are not tied to particular funding streams, it has the flexibility to undertake projects that agencies with greater funding restrictions cannot pursue, no matter how worthwhile. It also has the ability to compete for federal funds which complement VHCB’s broad legislative mission.

The importance of this flexibility cannot be overstated. Brenda Torpy, the Chief Executive Officer of Champlain Housing Trust, Vermont’s largest affordable housing

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Executive Order #15, State Buildings, Development Cabinet Law, 3 V.S.A. § 2293 (2000); Executive Order #01-07 (2001) (Interstate Exchanges)(requiring state agencies to ensure that the “historic settlement patterns of compact villages and urban centers surrounded by rural countryside is maintained” around interstate exchanges).

[22] VHCB’S Policy Position on Funding for Affordable Housing makes multiple references to location of projects in or near village centers. For example, section E.1. of the VHCB Priorities for Funding states that: “Those endeavors which provide a community with both affordable housing and preservation of important Vermont lands will be a very high priority. (Appendix # 24.)

[23] As noted in the ICF Report, Vermont is rare among rural states in having statewide nonprofit coverage that reaches every part of the state. (ICF Report at page 40). See Appendix # 19 for the geographic coverage of the Vermont nonprofit affordable housing organizations.

organization (and winner of the United Nations World Habitat Award because its investment in owner-occupied homes provides for permanent affordability), testified that "VHCB was created in the 80s when the Federal Government began its retreat from affordable housing programs and funding. States like Vermont that created capital sources have been able to secure the competitive federal program dollars as entitlements have shrunk. Because we have this source … we leverage federal funding that otherwise would go to other states." (Appendix # 26.)

Permanently Affordable and At-Risk Housing

The Commission received testimony from a wide variety of individuals that a key element of Vermont's success in affordable housing is the concept of perpetual affordability and the commitment of all of the statewide entities to that concept. "The overarching principle that drives all of Vermont's efforts in affordable housing is to continue to strive to achieve perpetual affordability through the use of mechanisms which produce housing resources that remain affordable over time." (Consolidated Plan 2010–2015 at page 1; See also 10 V.S.A. Ch. 15 (VHCB enabling legislation); and Act 156; Appendix # 3.) As noted on pages 5-6 of this report, prior to the development of VHCB and its cooperating network of community-based nonprofit agencies, private developers of non-profit housing who received federal assistance were required to maintain that housing for only a limited period of time. At the end of the required waiting period, low-income residents faced the risk of displacement, as the housing could be converted to market-rate units. Governments and nonprofits who wished to assure the availability of affordable housing for low-income persons had to start from scratch, with new projects at a higher cost. (Testimony of Brenda Torpy, Appendix # 26.) Obviously, that was an expensive and inefficient way to provide affordable housing.

Vermont replaced that model through a system of agreements spearheaded by VHCB, in which funds are provided in exchange for a legally binding agreement that the housing would remain perpetually affordable. **Since 1987, Vermont has lost virtually no affordable housing units. Moreover, all affordable housing assisted by VHCB with either state or federal funds must agree to a legally binding agreement of perpetual affordability**.[24] (Testimony of Nancy Eldridge, Cathedral Square Associates; Appendix # 26.) The concept of perpetual affordability is found in a number of places in Vermont law, including Act No. 156, Sec. E.803; see also 10 V.S.A. § 321(b)-(d), the Housing

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[24] Ms. Eldridge was Director of Housing for the State of Vermont in the mid to late 1980s. She testified: "Our housing policy adopted in 1987 made a commitment to permanent affordability, but it was not until VHCB was formed that we had the vehicle to implement this policy on a statewide scale, with the teeth to enforce the policy and the resources to make the deals work." See also, Testimony of Brenda Torpy: "VHCB's most valuable contribution to the mix – especially to this whole discussion of how to get the most 'bang' for our housing bucks – is permanent affordability. If the goal of the Tiger Team and for your commission is to create the most housing and use all our public funding most efficiently and effectively, then permanent affordability is your answer. This is not a question of philosophy, ideology or faith. It is an obvious material fact that can and has been measured and demonstrated….By mission and enforced for the state by affordability covenants, we never ever sell off that real real-estate (used for affordable housing) for profit." *(*Appendix # 26.)

and Conservation Trust Fund Act (requiring the Board to take steps to increase perpetually affordable housing and preserve farmland in perpetuity), and 10 V.S.A. § 6093(a)(1)(B)(ii) (Act 250) concerning a waiver of certain mitigation fees for affordable housing provided the developer agrees to a housing subsidy covenant that preserves affordability for 99 years.

Since the nonprofit affordable housing organizations are themselves committed to the concept of perpetual affordability, and have no need or desire to take funds "out" of a project, the principle has become well established in Vermont. (Testimony of Brenda Torpy; Appendix # 26.)[25]

All told, VHCB has helped create and preserve more than 10,000 homes and apartments, including 1,500–2,000 apartments in projects similar to Northgate in Burlington and Highgate in Barre that had been privately owned and were at risk of loss as affordable housing. These large projects, which were the state's most dramatic examples of at-risk housing, have been preserved and rehabilitated as permanently affordable housing with Section 8 subsidies.

VHCB's efforts to preserve at-risk housing has changed according to the need. The agency administers some $3 million in HUD Neighborhood Stabilization Funds to assist communities that have suffered from foreclosures and abandonment of homes. VHCB has also done an outstanding job in working with other agencies to provide transitional housing to vulnerable persons. These programs provide services through social service agencies and help reduce the need for more expensive state or federally funded programs and institutions. The ultimate goal is for individuals to become self-sufficient. Populations served include persons with emotional and developmental disabilities, individuals leaving the correctional system, persons with substance abuse issues, and victims of domestic violence. (Appendix # 10 at page 7.)

In addition, VHCB has made a concerted effort to provide assistance to the elderly and persons with physical disabilities so they may remain in their own homes. Harold Nadeau of the Vermont Center for Independent Living discussed VHCB's "unique" program to provide funds for handicap accessibility, thereby allowing low-income persons with physical disabilities to remain in their own homes, as opposed to far more expensive nursing homes. (Appendix # 10 at page 8.)

Similarly, VHCB has assisted in the development or preservation of projects for the elderly. "These are properties where the average age of residents exceeds 80 years old – where service needs are extraordinary. The preservation of that housing is a direct benefit to Medicaid and Medicare." (Testimony of Nancy Eldridge; Appendix # 26.)

In all, VHCB has helped to develop over "1,300 units of service-supported housing for frail elders, youth at-risk, persons with developmental disabilities, physical disabilities, or

[25] "We never take any of the added-value out of the property for any other purpose. Everything that we earn or any surplus (a rare thing) thrown off by any property goes straight back into the production and management of affordable housing." (Testimony of Brenda Torpy, Appendix # 26.)

chronic and persistent mental illness, ex-offenders, (and) battered women. These programs often help Vermont avoid the cost of institutional care." (Appendix # 17.)

In addition to state funding for housing, VHCB receives a substantial amount of federal funds, directly or through other state agencies, for a variety of affordable housing programs. These programs provide major support for the development and preservation of affordable housing in Vermont. A full description of these and other VHCB programs is set forth in Appendix # 10. We briefly mention three of the major programs here:

- The HOME program provides federal funding to assist with housing for very low and low-income persons. HOME is the largest federal block grant to state and local governments designed for low-income housing. VHCB has administered over $55 million in HOME funds and awarded such funds to 236 projects containing a total of 1,395 units. Studies of resident incomes by VHCB disclose that "Vermont's HOME program is a program serving among the lowest income households in the country." (Appendix # 10 at page 5.)

- Since its inception in 1995, HUD has awarded VHCB a total of $19.5 million in Lead Paint Hazard Reduction Funds to provide funding and technical assistance to low-income families to reduce the hazards of lead poisoning. The program has reached 2,000 units of low-income housing.[26] (Appendix # 10 at pages 8–9.)

- VHCB has engaged in important work in the area of energy conservation. With a $2-million grant under the American Recovery and Reinvestment Act, VHCB has undertaken energy audits, weatherization of units which are unable to use traditional weatherization funds, deep retrofit, and alternative energy sources. This work, which includes existing affordable housing projects, is especially important given Vermont's severe climate and the high cost of heating. These efforts are designed to benefit residents and lower the cost of maintenance of the projects that receive assistance. (Appendix # 10 at pages 10–11.)

Other Measures of Success in VHCB's Affordable Housing Programs

In addition to receiving testimony and documentation from a wide range of people who work with VHCB on its affordable housing programs, the Commission requested and received information about how the statewide entities compared to agencies in other

[26] Other federal programs administered by VHCB include HUD Special Project Grant Funds for affordable housing projects and rent subsidies and other assistance under the Housing Opportunities for Persons with AIDS; See the VHCB Program Description attached to this Report as Appendix # 10 for a full description of each of the VHCB programs.

states that were performing comparable activities. By doing so, the Commission sought an independent "check" of the information that we were hearing from the entities and from those who work with the statewide entities.

A sample of these measures with respect to VHCB's work in the field of affordable housing follows:

- Vermont is ranked # 1 in the HOME Program Snapshot Rankings Overall by State (in Vermont, the HOME program is administered by VHCB and the City of Burlington).

- VHCB had a score of 100 from HUD for its HOPWA program in the most recent review.

- Vermont is ranked # 1 among recipients covered by the Boston Field Office for the Neighborhood Stabilization Program.

- The VHCB Lead Paint Hazard Reduction Program received a performance assessment from HUD of at least 96 out of 100 during 11 out of the 12 most recent quarters and received a score of 100 during six of those quarters.

- VHCB has received numerous awards, grants, and other forms of recognition by organizations such as the large MacArthur Foundation grant (with VHFA under their program for affordable housing); the Doris Duke Charitable Trust (Buildings Efficiency Grant with Vermont Energy Investment Corporation and the Champlain Housing Trust); the U.S. Environmental Protection Agency (for SmartGrowth Achievement in Policies and Regulations); HUD (Doorknocker award for outstanding work in rural housing); and the National Trust for Historic Preservation for housing and new construction policies and separately for VHCB's contribution to restoring significant historic structures for housing and public use. (See Appendix # 14 for the above statistics.)

VHCB has been highly successful in preserving Vermont's natural environment, working landscape, important natural areas, recreational lands, and historic properties

It is important to understand VHCB's work on conservation issues in context. The Report of the Council on the Future of Vermont, published in 2009 and prepared after extensive public meetings throughout the state, concluded, in part, "People in this state constantly describe their love for the special place in which they live. **The connection to the land is an identifying element for Vermonters…**Perhaps in part because of their attachment to it, **Vermonters often emphasized preservation of the environment** and opposed risking any natural resource through overuse of development." (Council Report at 11.) In one poll taken by the Council, 98% of respondents agreed with the statement that "I value the working landscape and its heritage." (Testimony of Paul Costello, Vermont Council on Rural Development; Appendix # 26.)

VHCB has played a central role in the state's efforts to conserve the working landscape and its natural areas. The importance of this effort, not only to the values and tradition of Vermonters, but also to the Vermont economy, cannot be overemphasized.[27]

The structural mechanisms which characterize VHCB's efforts in affordable housing are replicated in its conservation work. These include legal agreements to preserve agricultural or recreational land in perpetuity and VHCB's work with other state agencies and community organizations. A summary of VHCB's achievements in conservation and historic preservation will demonstrate the crucial work being performed by this agency.

VHCB has a number of programs which provide direct assistance and support to farmers and preserve Vermont's natural areas and historic sites. These include the Farmland Protection Program, which has resulted in the conservation of 503 farms comprising more than 130,000 acres of farmland. This program is intended to preserve farms with some of the best agricultural soils in the state. In addition to giving farmers the resources needed to modernize and expand their farms, the program has facilitated transfer of farms to the next generation. (Appendix # 10 at page 11.) The VHCB Vermont Farm Viability Program (operated in conjunction with the Vermont Agency of Agriculture, Food and Markets) has assisted approximately 230 farms with the development of business plans. These farms provide over 750 full-time jobs and contain more than 69,000 acres of farmland. (Appendix # 10 at pages 12–13.) (See also, Vermont Farm Viability Enhancement Program, 2009 Annual Report to the General Assembly.)

VHCB also administers Federal Farm and Ranchland Protection (FRPP) funds in Vermont. Vermont has conserved more acres of farmland through the use of FRPP funds

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[27] In 2009, National Geographic Traveler rated Vermont tied for the 5th best destination in the world. "Criteria were: environmental and ecological quality; social and cultural integrity; condition of historic buildings and archeological sites; aesthetic appeal; tourism management and outlook for the future. The Vermont Housing and Conservation Board, and the state's anti-billboard law were cited as two key factors in the ranking. (Appendix # 15.)

than any other state. The total to date includes 253 farms and 53,158 acres. From 1987 to 2007, Vermont protected three acres of farmland for every acre lost to development. (See, "Land Conservation in Vermont-Performance Measures"; Appendix # 15.)

VHCB's record in preserving recreational lands is equally impressive. The agency has helped preserve a total 250,000 acres of land for recreational use. Virtually all (97%) of the conserved land co-held with VHCB and other organizations is not posted. It is a requirement of the Forest Legacy Program that there be dispersed public access for activities such as hunting and fishing.[28] (Appendix # 15.)

Consistent with its mission to preserve Vermont's historic properties, VHCB's work with the Preservation Trust of Vermont has resulted in the preservation of some 48 historic buildings and properties, ranging from the Putney General Store and Greensboro Historical Society to the Ferrisburgh Grange Hall. (Historic Project List, Appendix # 25.) Numerous additional historic properties have also been preserved in conjunction with the development and rehabilitation of affordable housing.

As with its work in affordable housing, VHCB has been highly successful in taking advantage of available resources and in leveraging additional funding for state contributions. In total, VHCB's natural area, recreation lands, and historic building protection program of $47 million in VHCB state funds has leveraged $138 million from other sources. VHCB's contributions of $4.5 million in historic preservation projects alone have leveraged some $40 million from other sources. In 2008, Vermont utilized historic buildings in its tax credit program at 20 times the national average. (Appendix # 15.)

Other conservation, natural resource, and farmland protection programs administered by VHCB are contained in Appendix # 10. By working with farmers and nonprofit organizations dedicated to conservation and affordable housing, and by leveraging federal and private funds, VHCB has acted as a catalyst in preserving the Vermont landscape, natural areas, and historic sites.

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[28] One example will illustrate VHCB's natural areas preservation work. A community organization called the Windmill Hill Pinnacle Association has created an 1,825-acre reserve with land in the towns of Westminster, Brookline, Athens, Rockingham, and Grafton. The land is open to the public, and its uses include hunting, fishing, hiking, mountain biking, horseback riding, and education programs for schoolchildren and graduate students. The Association has 1,200 members, many of whom volunteer at the project. In speaking for the Association, Elizabeth Mills testified to the Commission that the project "NEVER would have happened without the steady solid support of the Vermont Housing and Conservation Board." Ms. Mills noted that VHCB support "has made possible what amounts to a small state park, run entirely on volunteer labor. Our entire project is a glorious testimony to VHCB's ability 'to build effective community based nonprofit capacity to advance these goals' – in this case, conservation of natural areas and historic properties." Moreover, the Association has raised an almost equal amount of money as contributed by VHCB from individuals, businesses, and foundations. That does not count gifts of land, time, and a strong partnership between this community organization and the State. (Testimony of Elizabeth Mills; Appendix # 26.)

A number of witnesses commented on the uniqueness of having one organization that funds both affordable housing and conservation. In some states, these constituencies battle over the same properties. It is a tribute to VHCB that in Vermont, these constituencies work collaboratively and understand and agree with the integrated approach to affordable housing and conservation.

Part VI. Conclusion and Recommendations

The State of Vermont is fortunate to have agencies such as the statewide entities. It is rare that one finds agencies that are so dedicated to their missions and have such highly experienced staff. These agencies know how to work collaboratively; leverage their impact far beyond their individual resources; support the public-private partnerships that are central to Vermont's system of affordable housing and conservation; and provide the technical skills and oversight to ensure that the system performs well.

With that said, the Commission believes there are opportunities for improvement. The shortage of affordable housing in Vermont means every resource and every dollar is critical. It is beyond the scope of this Commission to investigate all the ways these agencies might do better, but we would offer the following recommendations.

In addition to the recommendations that have already been made in the body of this report, the Commission makes the following recommendations for consideration:

1. The statewide entities should develop a single, statewide report on an annual basis to be presented to the legislature and the public. The report should identify strategies for the next fiscal year to meet state priorities, including development of perpetually affordable housing in village and town centers for Vermonters of low income and with special needs, preservation in perpetuity of natural areas, working farms and forests, and recreational areas.

2. The statewide entities should continue its cost-savings efforts, including the promotion of energy-efficient housing, professional management, and sufficient reserves to ensure that affordable housing remains in good condition.

3. The statewide entities should consider expanding their electronic databases, while weighing the cost of such databases in funds and staff resources against the benefits which may result from having data available in an electronic form.

4. The legislature should increase funding for VHCB, so that it can help meet the need for affordable housing, conservation, and assistance to family-operated businesses that work in farming and forestry.

APPENDICES

Note: The Commission's Report and Appendices are available electronically at http://www.leg.state.vt.us/reports/externalreports.cfm and from the Vermont Housing Finance Agency website at http://www.vhfa.org/resources/agencies_study.php. Electronic references for individual items at the VHFA website can be obtained by going to the web site and clicking on the appendix number next to the appendix desired. The same is true for witness testimony and statements that were provided in written form to the Commission.

1. Commission Charge

2. Full Witness List

3. Excerpt from Act No. 156: An Act Making Appropriations for the Support of Government (FY11 Appropriations Act), Sec. E.803

4. ICF Report

5. Weidner Report

6. 2010 Statewide Housing Needs Assessment

7. Vermont Consolidated Plan

8. Qualified Allocation Plan

9. VHFA Program Description

10. VHCB Program Description

11. VSHA Mission Statement and Statistics on Housing Assistance

12. DEHCD Strategic Overview and Program Performance Fiscal Year 2011

13. Statewide Housing Information - Joint Submission to Commission of VHFA and VHCB

14. How Does Vermont's Housing Delivery System Compare? Some Measures and Comparisons

15. Land Conservation in Vermont – Performance Measures

16. Approximate Remarks of Gus Seelig to the Strategic Leadership Group, September 28, 2010

17. Memo from Gus Seelig, dated October 27, 2010, Response to Draft Weidner Report

18. Comments by Richard Williams, Executive Director, VSHA before the Strategic Leadership Group, September 28, 2010.

19. Map of Development Service Areas of Vermont Nonprofit Housing Organizations

20. VHFA, Economic Impact of Housing Development

21. Memo, Robert Gensburg to Neil Mickenberg, January 17, 2011

- 22. Letters concerning Loan vs. Grant Issue: Letter dated August 4, 2010 from Michael McShane, State of Vermont, Assistant Attorney General; Letters from Thomas Salmon, Vermont State Auditor, dated June 2, 2010 to Gus Seelig, Rep. Brian Savage and Commissioner Tayt Brooks; Letter dated June 18, 2010 from John J. Wagner to Sarah Carpenter, Executive Director, VHFA

- 23. "The Governor's Affordable Housing Report: Meaningless Metric Over Matter" by Frank Kochman, Esq.

- 24. VHCB Board Policy Position, Funding for Affordable Housing

- 25. VHCB/PCT (Preservation Trust of Vermont): Historic Project List

26. Testimony of the Following Witnesses referenced in the Report and available on line:

- David Adams, Chief of Program Operations, VHFA
- Paul W. Bohne, Shelburne Town Manager and President, Champlain Housing Trust
- Melinda Holden Bussino, Executive Director, Brattleboro Area Drop In Center
- Paul Costello, Executive Director, Vermont Council on Rural Development
- Nancy Eldridge, Executive Director, Cathedral Square Corporation
- Eric Farrell, Private Developer
- Robert Klein, Director, Vermont Chapter of the Nature Conservancy
- Land Trust Alliance, Washington, D.C., December 3, 2010 (submission)
- Erhard Mahnke, Coordinator, Vermont Affordable Housing Coalition

- Robert McDonald – Housing Program Director, U.S. Rural Development
- Elizabeth Mills, Windmill Hill Pinnacle Association
- Larry Mires, Operating Officer, VHCB
- Elizabeth Nickerson, Housing Consultant
- Nancy Owens, Executive Director, Housing Vermont
- Bruce Pacht, President, Twin Pines Housing Trust
- Lawrence Pyne
- Kenn Sassorossi, Vice President for Asset Management, Housing Vermont
- Gus Seelig, Executive Director, Vermont Housing Conservation Board
- Brenda Torpy, Chief Executive Officer, Champlain Housing Trust
- Connie Snow, Executive Director, Windham Housing Trust
- Richard Williams, Executive Director, Vermont State Housing Authority
- August 20, 2010 testimony
- September 28, 2010 statement to the Strategic Leadership Group
- November 5, 2010 testimony
-