

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

October 2013

VLCT-DEMHS STORM RECOVERY CONFERENCE CALL

The Vermont League of Cities and Towns and the Vermont Division of Emergency Management and Homeland Security (DEMHS) will co-host a Storm Recovery Conference Call on **Friday, October 11, from 2-3 p.m.**

DEMHS is working with numerous cities and towns as a result of a series of floods last May, June, and July and the federal Disaster Declarations for those events as well as earlier declarations (including Irene). Ben Rose, Recovery and Mitigation Section Chief for the division, will lead a discussion about the situation with the Federal Emergency Management Agency. This will be an opportunity for towns having issues with FEMA paperwork, eligibility, or funding to have their questions addressed.

Vermont's Disaster Declarations:

- May 2013 (DR 4120)
- June, July 2013 (DR 4140)
- May 2012 (DR 4066)
- August 2011 [Tropical Storm Irene] (DR 4022)
- Spring 2011 (DR 4033, 1995)

Topics to be covered include recent declarations, how DEMHS can help, and a Q&A session.

To participate in this conference call, please call 800-791-2345. **The teleconference code is 92211.**



Gilead Brook Road in Bethel following Tropical Storm Irene (L) and after a FEMA public assistance grant helped rebuild it (R).

WORKERS AGE 65+ AND THE EXCHANGE (VHC)

Vermont's health insurance Exchange, which is accessed through Vermont Health Connect (VHC), is now open for employees of groups with 50 or fewer employees to purchase their 2014 health insurance, but **no Medicare**

(continued on page 14)

PACIF Members

Be sure to complete your 2014 Renewal Application. Return it to the Underwriting team by **October 11, 2013**. See page 10 for more info.



2014

INSIDE THIS ISSUE

Ask the League	4
Legal and Regulatory Notes	6
Health Insurance Reform	9
Trivia	9
2014 Dental Coverage	10
Risk Management Services	10
RMS Calendar	11
VECAN Conference	12
Classifieds	17
Upcoming Events	20



VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

89 Main Street, Suite 4
Montpelier, VT 05602-2948
Tel.: (802) 229-9111 • Fax: (802) 229-2211
Email: info@vlct.org
Web: www.vlct.org

Follow us on:

Twitter: [@VLCTAdvocacy](https://twitter.com/VLCTAdvocacy)
Facebook: [VLCT Advocacy](https://www.facebook.com/VLCTAdvocacy)
YouTube: [youtube.com/vlctexec](https://www.youtube.com/vlctexec)

VLCT Board

Hunter Rieseberg, President
Town Manager, Hartford

Sandra Harris, Vice-President
Selectperson, Vernon

Bill Shepeluk, Immediate Past President
Municipal Manager, Waterbury

Richard Baker
Interim Town Manager, Brandon

Jared Cadwell
Selectperson, Fayston

Bill Fraser
City Manager, Montpelier

Alison Kaiser
Town Clerk/Treasurer, Stowe

Tammy Legacy
Town Clerk, Roxbury

Honorable Chris Louras
Mayor, Rutland City

Eric Osgood
Selectboard Chair, Johnson

Kathleen Ramsay
Town Manager, Middlebury

Honorable Miro Weinberger
Mayor, Burlington

Brendan Whittaker
Selectperson, Brunswick

Steven E. Jeffrey
Executive Director

Allyson Barrieau
Design/Layout

David Gunn
Editor/Copy Editor

The *VLCT News* is published eleven times per year (the August and September issues are combined) by the Vermont League of Cities and Towns, a non-profit, nonpartisan organization founded in 1967 to serve the needs and interests of Vermont municipalities. The *VLCT News* is distributed to all VLCT member towns. Additional subscriptions are available for \$25 to VLCT members (\$60, non-members), plus sales tax if applicable. Please contact VLCT for subscription and advertising information.

“REGISTER IN OCTOBER” LIKELY MEANS YOU!

In Vermont, all small employers (groups with 50 or fewer employees) that plan to **offer a 2014 health insurance benefit to their employees** must, during October, create an Employer account in The Exchange via Vermont Health Connect (VHC).

Yes, this *does* apply to *all* current VLCT Health Trust members with 50 or fewer employees. You must register with VHC in October so your employees can sign up for their health insurance in November.

The VHC registration process includes listing specific information (such as full name and Social Security number) for every employee who is eligible for your health insurance benefit, so put your ducks in a row before time runs out!

“Yes, this *does* apply to *all* current VLCT Health Trust members with 50 or fewer employees.”

RE

- Redefine the Landscape
- Redesign for Low Impact
- Renew Energy
- Recharge Stormwater
- Reassess Transportation Systems
- Rehabilitate Infrastructure
- Redevelop Brownfields
- Reduce GHG Emissions

future rethinking
DESIGN WITH THE FUTURE IN MIND

VHB's innovative environmental, land planning, and site development strategies help clients optimize the performance of their real estate assets and create value that endures.

VHB

Northern New England offices:
Vermont
New Hampshire
Maine
22 offices along the east coast

www.vhb.com
Contact Mark Colgan, PE at
802.497.6100 x6156 or mcolgan@vhb.com



Helping you help your community.

The pressure has never been greater for municipalities and public sector entities to reduce their expenditures without sacrificing the services they provide. TD Bank has a long track record of providing solutions to meet your operational needs while making the most of taxpayer dollars.

- Dedicated and experienced local Government Banking team
- Specialized products designed to meet the needs of municipalities and public sector entities
- Premier banking platforms that make managing your accounts easier

Put TD Bank to work for you.

To speak with a Government Banker in your area, call **1-888-751-9000**
or visit **www.tdbank.com**.



America's Most Convenient Bank®



ASK THE LEAGUE

HOW TO RESPOND TO A RESIDENT'S REQUEST TO INSPECT A TOWN'S FINANCIAL RECORDS

A resident has asked to inspect some of the town's financial records. These records are generated and kept in an electronic format on the town's computer network. We are concerned that if the original records are accessed by the requestor, the integrity of the records might be compromised. How do we respond to the request?

The Vermont Public Records Act affords persons the basic right to inspect any non-exempt public record. 1 V.S.A. §§ 316(a), 317(c). The Act also allows municipalities to "make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage." 1 V.S.A. § 316(j).

Allowing a requestor to inspect the town's paper documents is usually a fairly straightforward task. Since an altered paper record can be more readily recognized than an altered electronic file, there is usually less concern about the security of paper documents. If there is a concern about damage to a paper record, the custodian can supervise its inspection to ensure that the record is not harmed. Electronic records can present a challenge in that they may be more easily lost, damaged, or altered. But the right to inspect any public record cannot be denied on the basis that the custodian believes the record might be damaged, altered, or compromised.

In these circumstances, a reasonable rule for the municipality to adopt would be that

when inspection of an electronic record is requested and when the inspection of the original record might jeopardize the security of that record or could cause it to be damaged, the custodian will provide the requestor with either an electronic, read-only copy of the record or a paper copy print-out of the record, as the requestor directs.

If the sole request is to inspect the electronic record, the requestor should not be charged for the copy of the record provided. If exempt information is redacted from the copy, the custodian must produce an explanation of the basis for denial of the redacted information, citing the statutory basis for the denial and a brief statement of the facts supporting the denial. 1 V.S.A. § 318(a)(2),(e).

*Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center*

**NEED A WRITTEN LEGAL OPINION?
LOOKING FOR EXPERTISE DRAFTING A NEW ORDINANCE?
NEED HELP UPDATING THAT PERSONNEL POLICY?**

VLCT's attorneys can provide your municipality with legal assistance at highly competitive rates. Please call **Abby Friedman** for more information at **1-800-649-7915**.



SAMPLE PROJECTS:

- Water & Sewer Ordinances
- Zoning Bylaws
- Municipal Charter Amendments
- Highway Ordinances

DRAFT 2014 MUNICIPAL POLICY

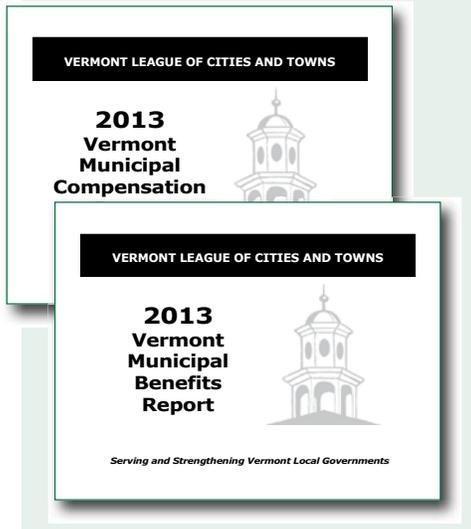
The draft 2014 VLCT Municipal Policy is now posted on our website at www.vlct.org/assets/Advocacy/Legislative_Platform/2014_VLCT_municipal_policy_board_approved.pdf. We encourage you to discuss the Policy at a selectboard or council meeting, for the issues in this document will drive VLCT Advocacy's actions at the State House during the upcoming legislative session. We welcome comments and proposals of amendment! Remember to attend the VLCT Annual Meeting at Town Fair on Thursday, October 3, in Killington, where the Municipal Policy will be debated and adopted. Use your municipality's vote!



2013 VERMONT MUNICIPAL COMPENSATION AND BENEFITS REPORTS AVAILABLE IN OCTOBER

We in the Municipal Assistance Center want to thank everyone who participated in this year's compensation and benefits surveys. The response was great!

We are happy to say that both reports will be available in October, hopefully by mid-month to assist in your municipality's budget preparation. As usual, we will send complimentary copies of the reports to those municipalities that completed and returned the surveys by the deadlines. If you want to purchase a copy of the report, please visit www.vlct.org/marketplace/bookstore/other/.



For registration, agendas, and other information, please visit www.vlct.org/eventscalendar, call 800-649-7915, or email info@vlct.org.

UPCOMING MUNICIPAL ASSISTANCE CENTER WORKSHOPS

FALL AUDITORS WORKSHOP

Thursday, October 17, Lake Morey Resort, Fairlee
Tuesday, October 22, Middlebury Inn, Middlebury
(Sponsored by the VLCT Municipal Assistance Center)

Designed for both newly elected and seasoned municipal auditors, this workshop will review the statutory duties and responsibilities of auditors, discuss best practices, plus review how to use internal controls and audit checklists to help you conduct the annual audit of your town's accounts.

FALL SELECTBOARD INSTITUTE

Saturday, October 19, Killington Grand Resort Hotel, Killington
Saturday, November 2, DoubleTree Hotel, Burlington
(Sponsored by the VLCT Municipal Assistance Center)

This new workshop will expand our training on the unique roles and responsibilities of Vermont selectboard members. We will discuss timely town meeting preparation topics, including drafting articles, preparing the warning and dealing with petitioned articles, as well as how to prepare and manage the annual budget. In addition, we will review employee termination and ordinance adoption and enforcement. Designed for both newly elected and seasoned selectpersons, this highly interactive workshop allows attendees to learn from each other's experiences.

FALL PLANNING AND ZONING FORUM

Tuesday, November 19, Capitol Plaza Hotel and Conference Center, Montpelier
(Sponsored by the VLCT Municipal Assistance Center)

Meet with planning officials to discuss emerging and important topics in planning and land use. Join us to hear from experts on a range of topics that include responding to request for and managing public records, the new flood resilience town plan element, a review of the requirements of H.520 that addresses Building Energy Standards and the responsibilities of administrative officers, and an update on Vermont Neighborhood Development Areas and other designation programs.

PROTECTING YOUR INCREASINGLY INSECURE DATA - INFORMATION, TECHNOLOGY AND SECURITY FOR MUNICIPALITIES AND SCHOOLS

Wednesday, December 11, Capitol Plaza Hotel and Conference Center, Montpelier
(Sponsored by the VLCT Municipal Assistance Center, VLCT PACIF, and the Vermont Association of School Business Officials)

Is your electronic data secure? How can you be sure? These days, every function in municipal government has data stored on a computer somewhere, either at the town office or in the "cloud" or even on a laptop a telecommuting employee takes home. Come hear experts from banking, academia, and business discuss cutting edge technology and data security and describe what municipal officials need to know and how to make sure their computer systems are secure.

MAC MUNICIPAL CONSULTANTS

MAC is pleased offer the services of our expert municipal consultants. To learn more or discuss a possible project, contact Abby Friedman at 800-649-7915, extension 1926, or afriedman@vlct.org.

MAC's consulting team consists of:

- Bill Hall, Senior Financial Consultant
- Doug Hoyt, Municipal Law Enforcement Consultant
- Brendan Keleher, Municipal Management and Finance Consultant



BILL HALL

DOUG HOYT

BRENDAN KELEHER



Brief updates on Vermont's changing legal and regulatory environments

LEGAL AND REGULATORY NOTES



U.S. SUPREME COURT "SETTLES" TAKINGS CASE

The power of the lawyer is in the uncertainty of the law. – Jeremy Bentham

As the final arbiter of legal questions in the country, the U.S. Supreme Court is expected to resolve uncertainty in the rules governing our lives. Even when the questions raised by the cases and controversies are

answered, uncertainty in how those answers will be interpreted in the real world persist and breed anxiety.

The facts of this case date back to 1972 when Coy A. Koontz purchased 14.9 acres of land in Orlando, Florida. Later that same year, the State of Florida enacted a regulatory regime placing Mr. Koontz's property under

the permitting authority of the St. Johns River Water Management District (District), one of five water districts in the state with jurisdiction for ensuring compliance with Florida's Water Resources Act and in 1984 the Warren S. Henderson Wetlands Protection

(continued on next page)

WHAT DO MORE AND MORE VERMONT MUNICIPALITIES HAVE IN COMMON?

US.



Vermont's Number One Team for Government Banking.

In Vermont, every municipality is unique. So it takes an experienced banking team to understand and meet the ever-changing financial demands of Vermont's municipalities. At Merchants Bank, our Vermont-based team has over 50 years of combined experience helping municipalities be successful. Please contact us today and we will show you how local experience and local commitment can benefit your municipality.

CALL OR EMAIL US TODAY.

Jeanie: 802-775-3348, jkelly@mbvt.com **Shelley:** 802-865-1644, squinn@mbvt.com
Stacey: 802-773-4627, styler@mbvt.com **Anita:** 802-865-1641, abourgeois@mbvt.com



Member FDIC 



LEGAL AND REG.

(continued from previous page)

Act. Fast forward to 1994 when Mr. Koontz sought permission to develop 3.7 acres of his property. His application called for elevating a portion of his land to construct a building, erecting a dry-bed pond to manage stormwater runoff from the development, and deeding an 11-acre conservation easement to the District to preclude any future development on the parcel. The District responded with two counterproposals: (1) reduce the size of the area to be developed to one acre and deed the District a conservation easement on the remaining 13.9 acres; or (2) move forward with his proposed development (develop 3.7 acres and conserve 11) so long as he also funded about 50 acres of offsite mitigation work of District-owned wetlands.

Unwilling to accept either proposal, Mr. Koontz filed suit in state court against the District, claiming that its “exaction” violated the Fifth Amendment to the U.S. Constitution which states, in relevant part, that “... nor shall private property be taken for public use, without just compensation.” This section of the Fifth Amendment, referred to as the “Takings Clause,” has been interpreted to mean that government must compensate a landowner when a government regulation is so unduly restrictive that it prevents a

landowner from enjoying his or her property. After the case worked its way up, down, and up again through the Florida court system, that state’s Supreme Court ultimately ruled in favor of the District. Because this decision relied upon an interpretation of federal constitutional law, Mr. Koontz was able to appeal to the U.S. Supreme Court (Court).

When evaluating whether land-use exactions – that is, when “government demands that a landowner dedicate an easement’ or surrender a piece of real property ‘as a condition of obtaining a development permit” – qualify as unconstitutional takings warranting compensation, the Court applies what

has become known as the Nollan-Dolan standard. Nollan and Dolan were the names of two cases decided by the U. S. Supreme Court – the first, *Nollan v. California Coastal Commission*, 483 U.S. 825, decided in 1987 and the second, *Dolan v. City of Tigard*, 512 U.S. 374, decided in 1994. Together, these cases stand for the proposition that a governmental exaction of an interest in property as a condition of the permitting process will not constitute a taking so long as there is a “nexus” and “rough proportionality” between

(continued on page 19)

CORRECTIONS TO THE VLCT 2013-2014 MUNICIPAL CALENDAR

12/24/13 (70 days before Town Meeting) If a town will hold a charter adoption, amendment, or repeal hearing 30 days from the annual Town Meeting, this is the first day to warn that hearing. Nothing prevents a town from holding a hearing more than 30 days out from Town Meeting with the appropriate notice. 17:2641(a), 2645(a)(3)

1/3/14 (60 days before Town Meeting) If a town will hold a charter adoption, amendment, or repeal hearing 30 days from the annual Town Meeting, this is the last day to warn that hearing. 17:2641(a), 2645(a)(3)

ON-SITE WORKSHOPS LET THE VLCT MAC STAFF TRAVEL TO YOU!

Since 2005, VLCT Municipal Assistance Center staff have been conducting customized on-site workshops in municipal offices across the state.

Each workshop costs \$825, though VLCT PACIF members are eligible for a reduced rate of \$415 for many of the topics listed below (except for land use). PACIF members may also be eligible for a PACIF scholarship, which can cover the cost of the training. Please call PACIF Loss Control at 800-649-7915, or visit www.vlct.org/rms/pacif/pacif-scholarships/ for more information on the program. In addition, MAC can develop custom workshops upon request. To discuss or schedule a workshop, please contact Abigail Friedman or call 800-649-7915.

ON-SITE WORKSHOP PROGRAM OFFERINGS:

- Improving the Relationship Between Independent Officers and the Selectboard
- Roles and Responsibilities of Town Officers
- Conducting Effective Selectboard Meetings
- Conducting Effective Tax Appeal Grievances and Hearings
- A Field Guide to the Open Meeting Law and Executive Session
- How to Write a Good Hearing Decision
- The Role of the Manager and the Role of the Selectboard
- An Orientation to Local Government for New Selectboard Members
- How to Respond to a Public Records Request
- Developing and Managing the Town Budget
- Financial Management, Internal Controls, Fraud Risk Assessment
- Inter-local Agreements
- Municipal Charter Adoption and Amendment
- Many specific topics for local land use boards

PICK FROM THESE TOPICS OR DEVELOP YOUR OWN!



Throughout the spring and summer, Montpelier downtown streets have been torn up and driving patterns have shifted as the city lays pipe for a city-state district heating project, an ambitious project brought to fruition with the support of the Montpelier Energy Advisory Committee. The project, which will provide local renewable energy to downtown Montpelier, is funded in part with an \$8 million grant from the Department of Energy.

Don't dig yourself into trouble...



The Perfect Excavation:

- Pre-mark the location of intended excavation using white stakes, paint or flags.
- In MA, ME, NH and RI, notify Dig Safe® at least 72 business hours in advance.
- In Vermont, notify Dig Safe® at least 48 business hours in advance.
- Notify non-member facility owners.
- Maintain the marks placed by underground facility owners.
- Use caution and dig by hand when working within 18" of a marked facility.
- If a line is damaged, do not backfill. Notify the affected utility company immediately if the facility, its protective coating, or a tracer wire is damaged.
- Call 911 if the damaged facility poses a risk to public safety.
- Know your state's excavation requirements. Go to digsafe.com for educational material and current laws.



Call **811** before you dig.
digsafe.com

Call Dig Safe®. It's Smart, It's Free, and It's the Law.



HEALTH INSURANCE REFORM SPURS HEALTH TRUST TO CLOSE TWO PROGRAMS

In response to implementation of health insurance reform at the state and federal levels, the VLCT Health Trust Board of Directors voted to make two changes in the services that the Trust will offer in 2014.

Section 125 Administration

Section 125 plans are financing arrangements designed to complement health insurance plans. They include IRS-approved Health Reimbursement Arrangements (HRAs), Flexible Spending Accounts (FSAs), and Health Savings Accounts (HSAs). Many Health Trust members currently purchase Section 125 or “Cafeteria” plan services at group rates from our partner Choice Strategies. The majority of Health Trust members are currently enrolled in health insurance plans offered by Blue Cross Blue Shield of Vermont (BCBSVT). BCBSVT recently announced that, effective with coverage beginning January 1, 2014, the plans it offers on The Exchange (i.e., available to individuals and small groups) will include integrated Section 125 plan services at **no additional cost to BCBSVT subscribers**. Moreover, these services will be **available at BCBSVT’s group rate to people who purchase coverage through MVP**. To accomplish this, BCBSVT is partnering with Health Equity, a customer-focused company with ten years’ experience in managing Section 125 accounts.

The Health Trust Board of Directors is convinced that Health Equity will offer cost-effective and accessible service to its members. Therefore, **after December 31, 2013, the VLCT Health Trust will no longer sponsor Section 125 services through Choice Strategies.**

Health Trust members may continue to use Choice Strategies by paying for the service themselves. To do so, please notify Kelley Avery no later than December 1, 2013, and she will notify Choice Strategies of your intention.

All remaining Choice Strategies accounts will be terminated on December 31, 2013. For claims that occurred and were submitted prior to December 31, Choice Strategies will process claim run-outs through the end of March. Some fees may be charged to your group for service during the claim run-out period. If you have questions, please call the New England Client Services team at 888-278-2555, option 5.

COBRA Administration

Because all current health insurance plans will cease to exist for small groups renewing in January, **current COBRA subscribers will lose their COBRA coverage and will have to use The Exchange** to obtain health insurance for 2014. Considering this, the Health Trust Board of Directors decided to discontinue offering Choice COBRA services effective December 31, 2013. Please understand that **COBRA coverage is still federally mandated** and will still be required for employers with more than 20 employees that offer health insurance and benefits such as vision, dental, and Section 125 plans.

Groups that want to continue to receive COBRA services may purchase them directly from Choice COBRA. In early November, all Health Trust member groups currently using Choice COBRA will receive an email from Choice COBRA explaining that the services will end on December 31, 2013 unless you notify it by December 1st that you want to retain its services. Choice COBRA will waive the \$75 renewal fee for 2014 for groups who continue their services and will charge either a \$30/month fee or 85 cents per employee per month, whichever is greater. If you have questions regarding continued COBRA services, please contact Tammy Parr at Choice COBRA at 888-343-0133.

For groups that plan to resume conducting their COBRA responsibilities themselves, please note that employers are required to use a new model election notice which includes language regarding ACA and the health insurance marketplace. This new model COBRA Continuation Coverage Election Notice is posted at www.vlct.org/rms/health-trust/cobra-administration/.

If you have questions regarding Section 125 or COBRA services in 2014, please contact Kelley Avery or your Member Relations Representative at 800-649-7915.

TRIVIA

Marianne Blake, Cheryl Barker, Carol Hammond, Louise Luring, Mardee Sanchez, Karen Utiger, John Weir, Ann Myers, and Jane Fletcher of Windsor, Weston, Vernon, Saxtons River, Randolph, Peru, Fayston, Essex, and Brattleboro, respectively, somehow knew that Timothy Green’s surname became the name of Greensboro, Vermont, supplanting Coltkiln, as it was previously called. Excellent!

Nothing morbid about the following question; it’s just a run-of-the-mill statistic: **In Vermont, what is the minimum depth to bury an infant under four years of age below the natural surface of the ground?**

If you know the answer – and no fair conducting your own research in the local potter’s field! – email it to dgunn@vlct.org. Trivia Central’s solution will appear in the nominally nonpareil November issue.

 **Eastern Analytical, Inc.**
Professional laboratory & drilling services

- GROUNDWATER
- SOIL & SLUDGE
- WASTEWATER
- STORMWATER
- DRINKING WATER
- SURFACE WATER



we’re with you every step of the way
www.eailabs.com | 800.287.0525

2014 DENTAL COVERAGE FOR DEPENDENTS

The health insurance available to small employers through the Exchange (Vermont Health Connect, or VHC) starting in January of 2014 will include pediatric dental coverage for dependents through December 31 of the year the dependent turns 21. As compelling as this provision sounds, **employers may find good reason to continue offering their group dental coverage to both employees and dependents in 2014.**

First, it is important to note that the Exchange's medical plans include only pediatric – not adult – dental coverage. Second, its pediatric dental coverage is very different from

(continued on page 18)

A PACIF Reminder

Don't be surprised if someone from UIS Group visits your office to look at and ask about certain buildings. PACIF has contracted with UIS to conduct building valuations between last February and December 2015.



Newport Police Department

222 Main Street
Newport, VT 05855
Chief Seth C. DiSanto Tel: (802) 334-6733
seth.disanto@state.vt.us Fax (802) 334-2818



Joe,

Pursuant to your request, I wanted to notify you in writing of the feedback I received from my Officers in reference to Jack Ryan's Twelve Critical Tasks Training held on 9/4/13 in Newport.

All attendees advised that it was a great training. In fact, one Officer, with 23 years of service, stated to me it was the best training he had in his career.

Jack "personalized" this training not only to Vermont statutes, but to Newport PD cases. This was extremely important to my Officers and Dispatchers as it was not only case review from an expert, but applicable to actual incidents conducted by our Department.

We are looking into making this training a bi-annual event intermixed with the available online trainings of the same nature. Thank you again for the scholarship opportunity that made this training possible.

Sincerely,

Chief Seth C. DiSanto

PACIF RENEWAL APPLICATIONS DUE OCTOBER 11

All PACIF members should have received their 2014 renewal application by now. Please update and complete this application conscientiously, keeping in mind the importance of reviewing your municipality's needs, adding or deleting exposures, and adjusting values on your property and vehicle schedules so that your 2014 coverage and contribution will be accurate.

Our Underwriting team must receive your completed renewal application **by Friday, October 11**, in order for the PACIF invoice that you receive on December 1 to be accurate for your 2014 coverage. If we receive your application after this date, your 2014 contribution amount may need to be updated after the first of the year, causing you to receive an invoice for the difference in January.

Please follow the instructions in the letter that we sent with the application. For additional information, feel free to contact Vicky Abare (vabare@vlct.org or 800-649-7915, ext. 1941) or Pam Fecteau (pfcteau@vlct.org or 800-649-7915, ext. 1934) in Underwriting.

2013 RMS CALENDAR

Deadline for PACIF Members to return updated 2014 Renewal Application. Friday, October 11, 2013. To return your completed application, scan and email it to vabare@vlct.org or mail it to Vicky Abare, VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602.

The Vermont Safety & Health Council Expo. 8:00 a.m. to 4:00 p.m., Friday, October 11, 2013, Sugarbush Resort, Warren. Topics will include fire safety and employee training, a wellness/safety panel, walking/working surfaces, and best practices roundtable. Visit vendor exhibits during the breaks to check out the new products and tap into the vendors' wealth of knowledge in solving any safety concerns. This expo is a great way to attend an excellent safety seminar, network with area safety professionals, and get ideas to improve your own worksite safety program. \$65 for VSHC members, \$85 for non-members, includes continental breakfast and lunch. Agenda and online registration are available in the Events Calendar at www.vshc.org.

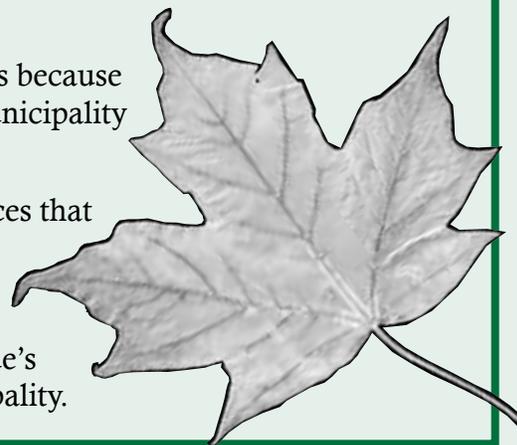
Deadline for PACIF Member Volunteer Fire Departments (VFDs) to return their completed Annual Assigned Risk Contact Form. Tuesday, October 15, 2013. Susan Benoit sent this form on October 1st to all of last year's VFD Workers' Comp Roster and Billing Contacts. The completed form must identify the one person who can *both* provide 2013 volunteer firefighter roster and payroll information in late December *and* handle payment of Assigned Risk Workers' Compensation invoices throughout 2014. To return your completed form, scan and email it to sbenoit@vlct.org; mail it to Susan Benoit, VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602; or fax it to Suzie's attention at 802-229-2211.

OSHA Course 3095 Electrical Standards. 8:30 a.m. to 4:30 p.m. November 5 through 8, 2013, Windjammer Conference Center, South Burlington. Presented by OSHA Training Institute Education Center, Region 1. Tuition: \$855.00 per person includes lunch daily. Pre-registration required. Obtain registration form and additional location information at www.OSHAedcenter.com, or contact the OSHA Training Institute Education Center at 800-449-6742.

Fall is the season of renewal for school, work and ... INSURANCE!

October is the ideal time to prepare for year-end insurance renewals because reviewing your coverages and considering how to position your municipality for the best possible outcome deserves time and careful attention.

VLCT's three Trusts offer municipality-focused products and services that provide the best value proposition for Vermont local governments. Invite your Member Relations representative or a member of VLCT's Loss Control or Underwriting team to your next meeting to explain ways you can optimize your spending and put the League's vast array of Risk Management resources to work for your municipality.





VECAN CONFERENCE AND COMMUNITY ENERGY AWARDS NOMINATIONS

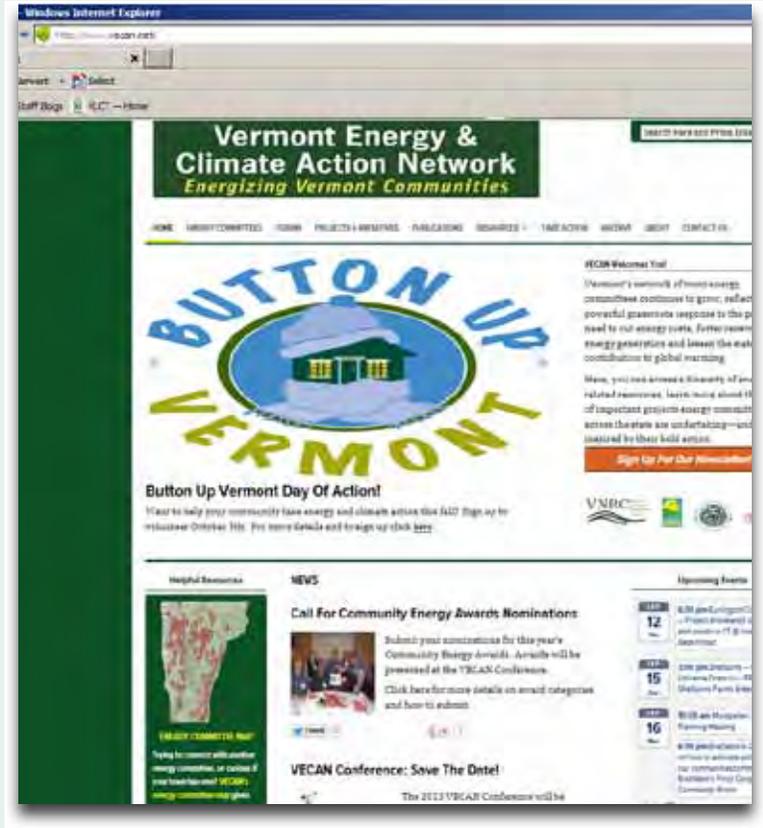
The 6th Annual Vermont Energy and Climate Action Network (VECAN) Conference – “Climate Action! Strengthening Connections and Advancing Total Energy Solutions” – will take place on Saturday, December 7, 2013, at the Lake Morey Inn in Fairlee, Vermont.

Designed to inspire and support the statewide network of town energy committees and other energy-conscious Vermonters, this conference emphasizes clean energy and climate action strategies that can be implemented locally. Workshops and roundtables will address energy efficiency, transportation, renewable energy, legislative action, coalition building, and other solutions needed to meet Vermont’s energy and climate goals. The day also offers networking opportunities and features keynote speaker May Boeve, director of 350.org. (350 refers to the target level in parts per million of CO₂ in the atmosphere advocated by some climate scientists. The current level is 392 ppm.)

VECAN will also present its annual Community Energy Awards at the conference. The awards recognize the work Vermont’s town energy committees are doing and VECAN is currently seeking award nominees. Awards will be presented in three categories: Individual Energy Leadership, Best Overall Energy Committee, and Best Project. Details are posted on VECAN’s website, www.vecan.net/.

The cost is \$30 before Nov. 22, \$40 after Nov. 22, and includes a largely local lunch.

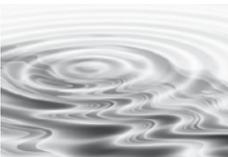
For more information about the VECAN awards or process, contact Keil Corey at kcorey@vnrc.org.



AEEngineers.com

Engineers dedicated to innovative water resource solutions for municipalities.

- Water
- Wastewater
- Stormwater



6 Market Place, Suite 2,
Essex Jct., VT 05452
802.879.7733
www.AEEngineers.com




**DUFRESNE GROUP
CONSULTING ENGINEERS**



Windsor (802) 674-2904
Barre (802) 479-3698
St. Johnsbury (802) 748-8605
Manchester (802) 768-8291

Defining Solutions for Environmental Challenges
www.dufresnegroup.com



WHY BELONG TO NLC?

The National League of Cities is THE voice for municipalities of all sizes in Washington, DC, as well as THE resource for local leaders and city staff to find solutions to the most pressing challenges in their communities.

Did you know...?

NLC shares a close relationship with the 49 state municipal leagues. It was originally formed by a core group of state leagues to ensure representation in Washington for local governments. NLC still counts all of the 49 state leagues as voting members, and cities are required to belong to their state league prior to joining NLC.

Cities who are members of the National League of Cities enjoy distinct benefits from those afforded by membership in the state municipal leagues, including:

- Representation and advocacy on the federal level,
- A vast pool of geographically diverse members to connect with,
- Its own unique set of solutions and programs designed to save your city and residents time and money, and
- Abundant NLC resources, publications, and technical assistance to help your city navigate the most difficult local government challenges.

See for yourself what it's all about! Have your city join today and begin the NLC experience! Contact memberservices@nlc.org or (877) 827-2385, or visit www.nlc.org for more information.



THE EXCHANGE (VHC)

(continued from page 1)

Section 5—Get Information about Your Medicare Health Coverage Choices | 67

Medicare & You



This is the official U.S. government Medicare handbook.

- ★ What's important in 2014 (page 4)
- ★ What Medicare covers (page 29)

CENTERS FOR MEDICARE & MEDICAID SERVICES

If you have **creditable prescription drug coverage** from an employer or union, call your employer or union's benefits administrator before you make any changes to your coverage.



Your employer or union plan will tell you each year if your prescription drug coverage is creditable. If you drop your employer or union coverage, you may not be able to get it back. You also may not be able to drop your employer or union **drug** coverage without also dropping your employer or union **health** (doctor and hospital) coverage. If you drop coverage for yourself, you may also have to drop coverage for your spouse and dependents.

What are Medicare Supplement Insurance (Medigap) policies?

Original Medicare pays for many, but not all, health care services and supplies. Medicare Supplement Insurance policies, sold by private companies, can help pay some of the health care costs that Original Medicare doesn't cover, like **copayments**, **coinsurance**, and **deductibles**. Medicare Supplement Insurance policies are also called **Medigap policies**.



Some Medigap policies also offer coverage for services that Original Medicare doesn't cover, like medical care when you travel outside the U.S. If you have Original Medicare and you buy a Medigap policy, Medicare will pay its share of the **Medicare-approved amount** for covered health care costs. Then, your Medigap policy pays its share. You have to pay the **premiums** for a Medigap policy.

Supplement Insurance plans are being offered on The Exchange. Medicare eligible individuals must buy their own supplemental plans outside the Exchange. Also, whereas associations such as **AIVIS** and **VACE** have in the past been reliable sources of Medicare supplemental coverage, they **will cease to exist on January 1, 2014**. Therefore, **employees over age 65 must go elsewhere to obtain their 2014 Medicare supplemental coverage.**

At the same time, federal and state Medicare regulations are affecting the primary/secondary status of Medicare-related coverage for 2014. Beginning January 1, Medicare will:

- be primary for subscribers age 65 or older who are not retired and who work for a group with fewer than 20 subscribers,
- stay secondary for subscribers over age 65 who work for employers with 20 or more subscribers, and
- always be primary for subscribers over age 65 who are retired.

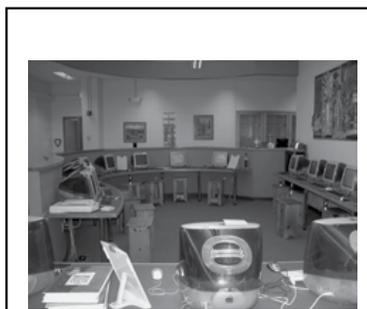
What exactly does this mean for older workers? If they are not already enrolled in Medicare Parts A and B, their first step is to contact Social Security and enroll

(continued on next page)



Meeting the capital needs of Vermont's municipalities since 1970

The VMBB provides Bond Financing to Vermont Municipalities at low interest rates with a very low cost of issue.



Albert Bridge School Library

For more information contact:

Vermont Municipal Bond Bank
20 Winooski Falls Way, Suite 305
Winooski, VT 05404

(802) 654-7377 (phone)
(802) 654-7379 (fax)
Bond-bank@vtbondagency.org
www.vmbb.org

morethanever

We now offer cost-effective solutions to more of your most pressing concerns...including:

- water resources
 - wastewater
 - stormwater
 - Brownfields redevelopment
 - transportation
 - geotechnical and structural
 - landscape architecture
 - DPW facilities
 - renewable energy
 - energy conservation
- Serving Municipalities since 1899

Weston & Sampson[®]
environmental/infrastructure consultants

contact:
Ken Bisceglia, P.E., CHMM 802-244-5051

98 South Main Street, Waterbury, VT 05676
offices in: VT, MA, CT, NH, NY, NJ, PA, SC & FL
www.westonandsampson.com



THE EXCHANGE (VHC)

(continued from previous page)

between October 15th and December 7th. While they're at it, they can also discuss their options for Part D, the mandatory

Medicare Resources List

The U.S. Social Security Administration. Three offices cover Vermont as follows:

- Addison, Chittenden, Franklin, Grand Isle, and Lamoille counties:
- **802-951-6753**, 58 Pearl Street, Burlington, VT 05401 (next to Bove's Restaurant)
- Bennington, Rutland, Windham, and Windsor counties:
- **802-775-0893**, 88 Merchants Row, Rutland, VT 05701
- Caledonia, Essex, Orange, Orleans, and Washington counties:
- **877-505-4542**, 33 School Street, Montpelier, VT 05602 (around the block from VLCT)

Medicare & You 2013, the official U.S. government Medicare handbook. The print-ready file, written for individuals, is online at www.medicare.gov/publications/pubs/pdf/10050.pdf.

1-800-MEDICARE (1-800-633-4227) and www.medicare.gov. Get general or claims-specific Medicare information. When calling, if you need help in a language other than English or Spanish, say "Agent" to talk to a customer service representative. TTY: 1-877-4862048.

Health Advocate. Health Trust subscribers needing answers to care and coverage questions or help with a particular situation can call **1-866-695-8622**. While calls are answered 24/7, the best time to call is between 8 a.m. and 9 p.m.

prescription drug coverage. October 15 to December 7 is also the open enrollment period for Medicare prescription coverage.

With Medicare Parts A and B both in place, an older worker can proceed to buying Medicare Part D and Medicare Supplement Insurance (formerly known as Medigap). Within Vermont, Blue Cross and Blue Shield (BCBS) offers both of these for individuals. However, MVP does not offer them, and (as we already mentioned) AIVIS and VACE can no longer offer them. There are various sources outside of Vermont, and some of them, including AARP, offer plans that are comparable to BCBSVT's and have competitive rates.

Where to go for help with Medicare related issues? People over 65 who are still

working for groups with fewer than 20 employees can always call or visit their local Social Security office for assistance. These offices and other helpful Medicare resources are listed in the sidebar on page [?]. We strongly encourage Medicare subscribers who work for Health Trust members to contact Health Advocate for information. And although the complex variables involved with Medicare mean that VLCT staff cannot provide direct support, we stand ready to help as far as we can, so please feel free to contact your Member Relations representative for assistance.

*Kelley Avery
Health Benefit Programs Administrator
and Unemployment Insurance Underwriter*



Water, the most powerful force on earth.

Now at your beck and call.

Knowing that the water you deliver to customers is safe, and of the highest quality possible. What could be more satisfying? Knowing you've done the right thing for your budget and for the environment, too.

Since 1955, municipalities have entrusted Team EJP to deliver high quality water systems solutions.

TEAM EJP
Pipeline Specialists

Montpelier (Barre): 802-223-2385
So. Burlington: 802-865-3958

1-800-EJP-24HR
(357-2447)

www.ejprescott.com

WATER, SEWER, DRAIN & STORMWATER SOLUTIONS



GHS TRAINING IS JUST ONE FACET OF OSHA/VOSHA HAZMAT COMPLIANCE

The December 1, 2013 deadline for training employees about the recent revisions to the VOSHA Hazard Communication Standard (1910.1200) is coming right up! PACIF members can train their employees who work with or near hazardous chemicals by having them go to www.vlct.org/rms/pacif/pacif-online-university/ and take the PACIF Online University course HC12, *Hazard Communication*.

While providing training on the GHS revisions to the Hazard Communication standard is imperative, it is equally important to be aware that the standard already requires that a written hazard communication program be in place and that each facility has a hazardous chemical inventory and a safety data sheet for each hazardous chemical/material. In addition, there are specific training requirements to ensure that employees understand not only the hazards of the chemicals they use or are exposed to but also the ways they can minimize or protect themselves from the physical or health hazards that these products pose. If your municipality were to be inspected by VOSHA, missing any one of these elements could be grounds for a costly citation. For advice on how to fill any gaps in the way your organization addresses these hazard communication requirements, call your Loss Control Consultant.

Do you know what these symbols mean?

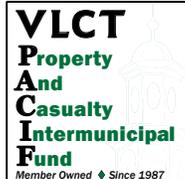


More important: Do your employees who handle chemicals know?

PACIF Online University has updated its Hazard Communication course to meet OSHA/VOSHA's new GHS-compliant Standard 29 CFR 1910.1200. That's very good, because all employees who work with or near hazardous chemicals must be trained in the new VOSHA standard by December 1, 2013.

PACIF member employees can visit www.vlct.org/rms/pacif/pacif-online-university or call Jim Carrien at 800-649-7915 for help getting started.

Train Any Time, Any Place, Any Pace



Pace & Hawley Certified Public Accountants

**Audit Services for
Governmental Entities,
School Districts
And
Non-Profits**

Please contact us when you are planning your next audit

PO Box 603
Montpelier, VT 05601
www.paceandhawley.com
(802) 461-2587

LOW-INTEREST LOAN FUNDS AVAILABLE THROUGH THE VERMONT STATE INFRASTRUCTURE BANK (SIB) LOAN FUND



Jointly operated by VEDA and VTrans, the Vermont State Infrastructure Bank (SIB) has low-interest loan funds available for transportation-related projects that enhance economic opportunity and help create jobs. Municipalities, RDCs, and certain private sector companies may qualify for financing to:

- Construct or reconstruct roads, bridges, sidewalks and bike paths;
- Make safety improvements such as highway signing and pavement marking;
- Make operational improvements such as traffic control and signal systems; and
- Construct rail freight and intermodal facilities.

Also, in certain cases, electric vehicle charging stations and natural gas refueling stations for trucks and other vehicles available for public use are eligible for SIB financing.

FOR MORE INFORMATION: www.veda.org ♦ 802-828-5627



CLASSIFIEDS

Please visit the VLCT website www.vlct.org/marketplace/classifiedads/ to view more classified ads.

VLCT NEWS Advertising Information

The *VLCT News* is published eleven times per year – the August and September issues are combined – and reaches readers no later than the first week of the month.

Two kinds of advertising are available in the *VLCT News*:

CLASSIFIEDS

(Posted online and also placed in the printed VLCT News)

The *VLCT News* publishes classifieds from municipal entities, public agencies, businesses, and individuals. This service is free for VLCT members (regular, contributing, and associate); the non-member rate is \$41 per ad.

While there is no deadline for posting classifieds online, the print advertisement deadline (below) applies to classifieds that run in the printed VLCT News.

Classifieds are generally limited to 200 words due to limited space in the newsletter, but they may be longer when posted online. The online version can also include hyperlinks to images or other websites.

For more information on placing classifieds, contact classifieds@vlct.org.

DISPLAY ADS

(Placed in the printed VLCT News)

The deadline for submitting display advertisements is the first Friday of the month prior to the issue date.

Download a calendar of print deadlines or read information on print ad requirements and prices at www.vlct.org/advertising-information.

For answers to specific questions about print advertising, email vlctnews@vlct.org.

Visit the VLCT website www.vlct.org/marketplace/classifiedads/ to view more classified ads. You may also submit your ad via an email link on this page of the site.

HELP WANTED

VPolice Officer. The Town of Morristown is accepting applications for a full-time Police Officer. Applicants must be willing and able to work a rotating schedule that includes nights, weekends, and holidays. Overtime and “call-out” work may also be required as needed. Applicants must possess or be able to acquire certification through the Vermont Criminal Justice Training Council as a full-time Police Officer. All applications will be considered confidential. To apply, please email cover letter and resume by **Wednesday, October 2, 2013**, to richard.keith@state.vt.us, or mail to Chief Richard H. Keith, Morristown Police Department, PO Box 665, Morrisville, VT 05661. EOE. (08-27)

Mack Truck. The Readsboro Selectboard is accepting bids on a 1988 four-wheel drive Mack truck. The vehicle includes a seven-yard stainless steel hopper sander mounted on frame, highway plow, and cable shelving wing. This truck is being sold in “as is” condition with no warranties. To inspect the truck, please contact Barry Howes, DPW Superintendent, at 802-423-5730. For more information, contact Mark S. Shea, Town Administrator, at admin@readsborovt.org or 802-423-5652. Email bid by **Wednesday, October 2, 2013**, to Mark S. Shea at admin@readsborovt.org with “Bid for 1988 four-wheel drive Mack Truck” as the subject line, or submit bid in a sealed envelope labeled “Bid for 1988 four-wheel drive Mack Truck” to Mark S. Shea, Town Administrator, 301 Phelps Lane, PO Box 187, Readsboro, VT 05350. Bids will be publicly opened and read aloud at the Selectboard’s public meeting on October 3. The Town of Readsboro may waive any informalities or minor defects and/or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. The Readsboro Selectboard reserves the right to reject any and

all offers as deemed in the best interest of the Town. (9-5)

Police Chief. The Town of New London, N.H. seeks a police chief to serve in a senior management level professional position responsible for administering and managing the town’s police department. New London is in the heart of the Kearsarge-Lake Sunapee region and halfway between Boston, Mass. and Burlington, Vermont. A unique New England town with a population of more than 4,000 people, New London is home to Colby-Sawyer College and New London Hospital. The successful candidate will be adept at establishing department goals, objectives, policies, and regulations; directing and coordinating all department procedures, practices and functions; inspecting police personnel to ensure proper discipline is maintained and cooperating with other law enforcement agencies; and serving as the principal department representative and overseeing the department’s financial management system. The Chief serves as primary spokesperson for the department; maintains positive relationships with the media, local community, other law enforcement agencies, etc.;

(continued on next page)



Great-West
RETIREMENT SERVICES

The Power of PartneringSM

Kay M Kuzmik
Office Manager

Ronald “Chip” Sanville
Account Executive

Jonathan Smith
Account Representative

100 State Street, Suite 346
Montpelier, Vermont 05602
(802) 229-2391
(800) 457-1028 x 2
(802) 229-2637 Fax
www.gwrs.com

kay.kuzmik@gwrs.com
ronald.sanville@gwrs.com
jonathan.smith@gwrs.com

Securities offered through
GWFS Equities, Inc.
A Great-West Company





CLASSIFIEDS

(continued from previous page)

and provides oversight to seven full-time police officers, several part-time officers, and an administrative assistant. He or she works under the general direction of the three-member Board of Selectmen and Town Administrator. Requirements: Bachelor's degree with major course work in police administration or related field and eight years of progressively responsible experience in law enforcement and crime prevention work, including five years in a supervisory capacity, or an equivalent combination of education and experience; valid motor vehicle operator's license; candidate's proximity to town in terms of response time in an emergency will be considered; current NH Police Standards & Training Council certification preferred, otherwise, certification must be obtained within 6 months of hire; must be of good moral character as presented in N.H. Police Standards and Training Rules; and must pass a thorough and comprehensive background investigation and meet all entrance standards, which may include fitness, psychological, and medical testing, as well as a polygraph examination. Salary, \$65,701 to \$80,302. An application and a full job description can be downloaded from the Town's website, www.nl-nh.com, or are available at the New London Town Office, 375 Main Street, New London, NH. Send completed application, cover letter, and resume to Kimberly A. Hallquist, Town Administrator, Town of New London, 375 Main Street, New London, NH 03257, or email to townadmin@nl-nh.com. (9-10)

REQUEST FOR PROPOSALS

Vacuum Tanker. The Town of Littleton, N.H., is seeking proposals to purchase a new 3500-gallon vacuum tanker apparatus for its Fire Department. For a complete bid package, please email the Fire Chief at jmercieri@littletonfirerescue.org with Tanker Bid Request as the subject line, or call the fire station at 603-444-2137. Bids will be opened on Friday, October 11, 2013, at 10 a.m. The Town of Littleton reserves the right not to accept any received bids. (9-10)

DENTAL COVERAGE

(continued from page 10)

what Northeast Delta Dental provides in its group dental plans. For example, in the Exchange plans, the costs of routine dental care – such as regular cleanings, exams, fluoride treatments, x-rays, and sealant application – all count toward the medical deductible. This means that **participants have to pay for these services out of pocket until the medical deductible is met.** In Delta Dental's group plans, these preventive care services are covered at 100%. Also of note is that VHC plans only cover orthodontic expenses for children under age 21 *if deemed medically (not cosmetically) necessary.* Finally, group dental plans outside the Exchange allow for children to be covered up to age 25 if they are full-time students, or up to age 26 if your group has chosen the up to age 26 dependent coverage opt-in. For these reasons, employees who currently have their children covered under your group plan may find it more beneficial to keep them there.

As an employer, however, you do have options. Under the current VLCT group dental program, employers can choose one

of two funding methods: pay either for all employees and dependents, or for employees only. Starting on January 1, 2014, Delta will simplify this for all VLCT dental groups by having employers pay only for their employees. You can then choose to fund your dependents however you wish. For example, you could pay the full premium for:

- employees only,
- employees and spouses only,
- employees, spouses, and dependents over age 21 only, or
- all employees, spouses and dependents.

You could even choose now to pay a percentage or a flat dollar amount for each dependent. Keep in mind, however, that if you decrease your group funding for 2014, you should inform your employees of your planned changes by December 1st so they can anticipate the additional payroll deductions that will start January 1st.

If you have any questions about this information, feel free to call your Member Relations representative or Kelley Avery at 800-649-7915.



Make oral health a priority.



Dental insurance programs prompt health conscious lifestyle behaviors and, by design, emphasize diagnostic and preventive services. Seeking care early is encouraged, which often helps minor problems from escalating.

Through your membership in the Vermont League of Cities and Towns, you have access to Northeast Delta Dental's dental plans designed with you and your employees in mind.

For more information, contact the VLCT Member Relations staff, or Kelley Avery at 1-800-649-7915, or Northeast Delta Dental at 1-800-329-2011.

www.nedelta.com



LEGAL AND REG.

(continued from page 7)

the interest demanded and the impact of the proposed development. With this analytical background in mind, the two questions brought before the Court to resolve were:

1. Do Nollan-Dolan requirements apply when a permit is denied?
2. Do Nollan-Dolan requirements apply when the demand is for money and not an interest in property?

The Court's answers to these questions were succinctly summarized at the end of its opinion: "We hold that the government's demand for property from a land-use permit applicant must satisfy the requirements of Nollan and Dolan *even when the government denies the permit* and *even when its demand is for money*." (Emphasis added.) The impact of these answers is open to debate.

The District tried to keep the Court from even reaching the first question, arguing that a Nollan-Dolan analysis is unnecessary because the District had provided Mr. Koontz with an alternative for permit approval. Nollan-Dolan precedent demands that so long as a permitting authority offers at least one alternative to off-site mitigation, a landowner hasn't been subject to an unconstitutional taking. The only problem with the District's argument was that Mr. Koontz wasn't offered an alternative to off-site mitigation for his proposed development of 3.7 acres of land. He was offered an alternative to off-site mitigation for developing one acre of land and then precluded from developing on the other 2.7 acres unless he agreed to a monetary exaction to fund offsite mitigation on District lands. The District's proposed alternative, therefore, wasn't a true apples-to-apples alternative, but rather an entirely different proposal from that put forth by Mr. Koontz. Undeterred, both the majority and minority agreed that the Nollan-Dolan standard is to be applied even when a permit is denied, thereby allowing a landowner to challenge the denial of a permit on the grounds that the government's unconstitutional conditions lacks the requisite "nexus" and "rough proportionality" to address the development's impact. At first glance, this decision leads to the absurd result of compensation being awarded when no "taking" of property has actually occurred. The Court, however,

never held that Mr. Koontz was due constitutional compensation for a taking. Because the permit was denied, no taking occurred and, consequently, no entitlement to compensation was due under the Constitution. It did rule, though, that he may be entitled to a monetary remedy under state law, but that was a question it left for the Florida courts to decide on remand. (Florida law permits landowners to recover monetary damages in response to "an unreasonable exercise of the state's police power constituting a taking without just compensation." Fla. Stat. § 373.617(2))

The uncertainty generated by this case mostly surrounds the Court's answer to the second question. Here, the Court split. The majority opinion (written by Justice Alito and joined by Chief Justice Roberts and Justices Scalia, Thomas, and Kennedy) held that "so-called 'monetary exactions' must satisfy the nexus and rough proportionality requirements of Nollan and Dolan." If the exactions meet this standard, then they are permissible. If not, then some compensation must be afforded the landowner.

The dissent (written by Justice Kagan and joined by Justices Ginsburg, Breyer, and Sotomayor) disagreed, echoing the District's position that the Takings Clause has "no bearing when the government imposes 'an ordinary liability to pay money.'" *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1988). The majority's counter to this argument was that both the District and the minority interpret *Eastern Enterprises* too broadly; it does not stand for the proposition that the Takings Clause can never apply to government imposed financial obligations, but rather that it can't apply when those monetary exactions "[d]o not operate upon or alter an identified **property interest**." (Emphasis added.) The majority goes on to distinguish its prior holding in *Eastern Enterprises* from the present case on the grounds that the demand for payment in *Eastern Enterprises* was for medical benefits, while those in *Koontz* were directly tied to the applicant's land. "In this case, unlike *Eastern Enterprises*, the monetary obligation burdened petitioner's ownership of a specific parcel of land. ... The fulcrum this case turns on is the direct link between the government's demand and a specific parcel of real property. Because of that direct link, this case implicates the central concern of Nollan and Dolan" – the coercive power of government.

Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take

property but because they impermissibly burden the right not to have property taken without just compensation.

Turning to the practical implications of this case, the minority characterized the reach of the Court's "new rule" as "uncertain" and forewarned that "it threatens to subject a vast array of land-use regulations, applied daily in States and localities throughout the country, to heightened constitutional scrutiny." The majority downplayed the predicted dire consequences wrought upon the use of monetary exactions in the permitting world by its decision. "Finally, we disagree with the dissent's forecast that our decision will work a revolution in land use law by depriving local governments of the ability to charge reasonable permitting fees ... state law normally provides an independent check on excessive land use permitting fees." In Vermont, that law can be found in 24 V.S.A. §§ 5200, et. seq. governing the imposition of impact fees.

Wise as they may be, the Supreme Court justices are not soothsayers. There is no magical crystal ball under armed guard in its hallowed halls. Not only can they not predict the future consequences of their own decisions, but sometimes they even disagree internally as to the practical effects of how their decisions will play out outside their doors in communities like ours around the country. Only time will tell whether the majority's opinion will sufficiently assuage the uncertainty in the country surrounding this case, though it seems the impact of this decision will be mitigated in Vermont more so than in other states like Florida. Until that time, that ol' adage from Bentham will probably ring true, "(t)he power of the lawyer is in the uncertainty of the law."

The *Koontz* decision is posted online at www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf

Garrett Baxter, Staff Attorney II
VLCT Municipal Assistance Center

Please Support Our Advertisers

If your municipality is planning a purchase of products or services offered by our advertisers, please consider contacting them. Don't forget to say you saw their ad in the VLCT News.

Thank you.



89 Main Street, Suite 4
Montpelier, VT 05602-2948

PRSR STD
U.S. Postage
PAID
Montpelier, VT
Permit No. 358

UPCOMING EVENTS

Questions? Visit www.vlct.org/eventscalendar to register and for the most updated information and events.

FALL AUDITORS WORKSHOP

October 17, Lake Morey Resort, Fairlee
October 22, Middlebury Inn, Middlebury

FALL SELECTBOARD INSTITUTE

October 19, Killington Grand, Killington
November 2, DoubleTree, Burlington

FALL PLANNING AND ZONING FORUM

November 19, Capitol Plaza, Montpelier

TOWN HEALTH OFFICERS WORKSHOP

December 3, DoubleTree, Burlington
December 5, Quality Inn, Brattleboro

PROTECTING YOUR INCREASINGLY INSECURE DATA – INFORMATION, TECHNOLOGY, AND SECURITY FOR MUNICIPALITIES AND SCHOOLS

December 11, Capitol Plaza, Montpelier

PROTECTING YOUR INCREASINGLY INSECURE DATA – INFORMATION, TECHNOLOGY, AND SECURITY FOR MUNICIPALITIES AND SCHOOLS



December 11, Capitol Plaza, Montpelier

Is your electronic data secure? How can you be sure? These days, every function in municipal government has data stored on a computer somewhere, either at the town office or in the “cloud” or even on a laptop a telecommuting employee takes home. Come hear experts from banking, academia, and business discuss cutting edge technology and data security and describe what municipal officials need to know and how to make sure their computer systems are secure.

www.vlct.org/eventscalendar