



CHALLENGES AND RECOMMENDATIONS
ON IMPROVING THE STRUCTURE OF
PLANNING IN VERMONT

FINAL REPORT OF THE VERMONT COUNCIL ON PLANNING

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EXECUTIVE SUMMARY

The Vermont Council on Rural Development (VCRD) founded, produced, and facilitated the Vermont Council on Planning to evaluate the structure of the planning system in Vermont and to consider ways to strengthen planning efforts and their outcomes to Vermont communities. Instituted in September of 2004, the Vermont Council on Planning had a one-year mission: to consider the challenges before municipal, regional and state agency planning and build recommendations to improve the system. The 22-member council represented leaders in state agencies, the Vermont Legislature, business, housing, and environmental groups, non-profit directors, federal leaders, legal experts, regional and local planners, and local officials.

The VCP heard from hundreds of Vermonters—planners, business and governmental leaders, environmentalists, and local officials. Much of the testimony pointed out that Vermont is at a crossroads. While Vermont has made significant progress in the development and implementation of plans, and many planners at all levels of government throughout Vermont are doing excellent work, the system is challenged by gaps in communication, collaboration, and implementation; and the promise of the system in law is only partially fulfilled.

To respond to these challenges, and others detailed in this report, and to advance the system of planning, improve capacity, and extend the communications and collaboration that will make plans effective in guiding Vermont forward, the Vermont Council on Planning advances 17 recommendations toward four major goals as follows:

Advancing Governance, Authority, and Leadership

Recommendations in this section call for leadership to clarify authority and accountability in the entire planning system, update planning laws and eliminate unfulfilled statutes, give power to local and regional plans, and build more effective ties between local, regional and state planning.

Improving Coordination and Collaboration

These recommendations aim to improve communications and effectiveness throughout the system. This would include building a strong “Office of Planning Coordination” in the Agency of Commerce and Community Development. This office would staff and convene a coordinative “State Agency Planning Consortium,” serve as a center for planning information and assistance, coordinate the use of all state funds for regional and municipal planning, education, and grants, and staff the “Vermont Planning Commission.” The Commission would review regional plans and state agency outlines for conformance with state planning goals, mediate between planning levels, and advise on growth center designations.

Expanding Education and Training

Recommendations in this section are designed to improve training for local and regional planning board members and staff, coordinate existing resources, expand offerings and resources, and build an Annual Vermont Planning Conference.

Addressing Issues of Growth and Scale

This section supports the development of growth center legislation, the enabling of Councils of Governments, and the addition of economic development elements to local and regional plans.

Vermont Council on Planning Report

This report sets a platform for state leaders and the public to consider. In creating this report, the Vermont Council on Planning did not seek to create new planning goals for the state. The Council felt that the planning goals currently articulated in state law have the general support of most Vermonters. However, the Council felt there has been a need in the past and currently for leaders in state government to articulate clearly their vision, strategic choices, and top priorities around planning and development in Vermont. That crucial step is necessary for the recommendations in this report to be most effective. The VCP also recognizes that rigorous work will be required to fill in the details needed to enact the recommendations and fulfill the goals of this report. Those details and the political and legal processes necessary toward implementation are beyond the scope of the Vermont Council on Planning's work.

This final report of the Vermont Council on Planning proceeds from our vision statement to an introduction

that overviews the importance of planning and our process. Subsequent sections outline a history of the planning process; Vermont's state planning goals; local, regional and state planning efforts; a review of what's working well; and a description of challenges inherent in the existing structure of the system. The VCP's recommendations to address these challenges comprises the next section.

The recommendations passed the muster of the Council—but not without dissent or qualification. Knowing that some of these recommendations may be controversial, and that some readers may wish other recommendations had been included, the report then gives an overview of questions and challenges that remain from members of the VCP. In addition, an appendix contains the charge of the VCP, a description of the public input gathered, and a partial list of plans produced by the state.

With the publication of this report, the Vermont Council on Planning concludes its work. The Council, along with VCRD, thanks the many partners in this effort—especially the planning community and the volunteers who are on the line today working for the best possible future for their communities and the state of Vermont.

VERMONT COUNCIL ON PLANNING VISION

The Vermont Council on Planning envisions a future in which coordinated municipal, regional, and state plans are implemented in line with statewide goals to guide development, conservation, and resource protection in the interests of all Vermonters. Municipal, regional, and state levels of planning have the resources to spend the necessary time on planning and authority commensurate with their responsibilities. Plans at all levels have “teeth” and meaning, and development and conservation occurs in accordance with the plans.

Municipal

Local planning commissions build visions for their communities, based on a diversity of public participation and develop effective plans that clearly define municipal interests and priorities. Municipal plans guide economic development, land use, transportation, housing, community facilities, and natural resources to produce an optimal environment for Vermonters to live, work, and play.

Regional

Regional planning commissions provide needed technical assistance to communities and work with their

member municipalities, regional development corporations, and other regional and state entities to develop effective regional plans that clearly define regional interests and priorities.

State

Strategic state agency planning is comprehensive and valued, and state agencies work with each other, regional and local authorities, and other interests to produce usable agency plans that clearly define state interests and priorities and incorporate, to the extent relevant, adopted municipal and regional plans.

Coordination

Planning is respected as an important foundation for decision-making. Planning is coordinated across each sector of government. Local visions are communicated to the region and state, and state and regional priorities are clearly articulated. There are clear lines of responsibility and authority on all planning levels. Democratically decided plans are the bases for the permitting and implementation processes to create the future that plans articulate, and they offer predictability to projects proposed in the community.

INTRODUCTION

The Importance of Planning

Vermonters plan in order to use the state's most remarkable resources wisely – our environment, sense of place, heritage, working landscape, and social and cultural life. They do much of this work as unpaid volunteers on municipal planning commissions, zoning and development review boards, and as members of regional planning commissions; and also as paid staff members of municipalities, regional planning commissions, and state agencies. They spend untold hours in meetings, face the contentiousness of interested parties on all sides, and look to find consensus – because they know it is so important that they get it right.

Good planning ensures that the human and financial resources of government are coordinated effectively to meet the most pressing needs of the diverse population, municipalities, and regions of the state. Planning is the essential tool to maintain the quality of life for which the state is famous, and to support the infrastructure needed for the state to successfully participate in the global economy of the future.

Origin and Purpose of the Vermont Council on Planning

The Vermont Council on Rural Development

The Vermont Council on Rural Development (VCRD) is a non-profit organization dedicated to helping Vermonters and Vermont communities develop their capacity to create a prosperous and sustainable future

through coordination, collaboration, and the effective use of public and private resources. Its work is actively non-partisan, placing it in a unique position to sponsor and coordinate committees concerned with policy questions of rural import.

VCRD regularly produces summits on issues of historic consequence for rural areas of the state – sometimes as retreats for the Gubernatorial Administration, federal agencies and congressional delegations, and sometimes as full public dialogues. For years, issues around planning have been of major concern at summits examining affordable housing development, telecommunications deployment, agricultural viability, transportation, rural economic development, and land use.

2004 Summit on the Structure of the Planning System in Vermont

Based on the challenges articulated in past summits, and on requests from members of the state administration, legislature, and VCRD membership, VCRD produced an August 2004 summit on the “Structure of the Planning System in Vermont.” About 180 state agency planners, concerned citizens, regional and municipal planners, environmental and business leaders, legislators, and leaders in the Douglas Administration attended the summit and outlined challenges and recommendations to improve the system. This summit was intended to serve as a starting point for a strategic planning process to improve the structure of the planning system in the state. The final report from this session¹ was used as the launching pad for the Vermont Council on Planning's work.

Vermont Council on Planning

In response to the challenges outlined by summit participants, VCRD instituted the Vermont Council on Planning in September 2004 with a one-year mission (see the VCP charge in the appendix). VCRD invited 22 members to comprise the Vermont Council on Planning (listed at beginning of this report), and organized monthly meetings. With financial support from the State of Vermont, VCRD has served as the neutral

manager, producer, and facilitator of this strategic planning process.

The Vermont Council on Planning was charged with the development of a set of systematic recommendations to improve the structure of planning in Vermont to present to the governor's office, legislature, and all concerned parties. This report and its recommendations completes the work of the Vermont Council on Planning.

VERMONT PLANNING: PAST AND PRESENT

A History of Planning in Vermont

Planning is the process of projection. A community imagines what the future should be, and then starts putting those ideas into action. It begins with a hard look at what exists, and then squints forward to a time when there is more development, and more residents, predicting trends and considering alternative visions of the town. Then it introduces hope into the process. The community makes choices on the geography of growth. Finally, it puts those projections down on paper, in the form of a local plan, and adopts it. In the fifties, “central planning” meant socialism and mind control, but planning in a democratic society isn’t subversive. It is the elaboration of the ideas of a community of people.

Most of Vermont’s towns, villages, and highways are unplanned. They just grew up and out, according to the needs of the topography, the landowners, and the market. Roads were laid over trails. Uses were regulated only by the relative success or failure of the business, and residences were built where convenience directed. People wanted to live at river fords, places where there appeared to be an opportunity for harnessing water power, or at corners where paths or early roads came together, and so they built in these locations, without any direction from government. If they owned the land, they did with it what they wanted.

As villages grew in size, some communities made decisions affecting land use. Following the great Montpelier fire of 1875, for example, the selectboard adopted a rule that all downtown buildings had to be constructed of brick or stone.² That is how zoning started, from a concern for fire in villages where houses

were too close. Fire is the most severe form of land use control. It wipes away non-conformity and invites better designs in reconstruction. The question is, how should it look?

Before zoning, before any control of land use, there must be a plan. Zoning without planning—or zoning disconnected to a plan—is the rawest form of the police power. It has no conscience, no history or context. In Vermont we don’t plan well enough in certain communities or levels of government. What passes for planning is often the recitation of homilies about the future, without any real vision or inspiration. The best municipal plans are articulations of concrete ideas about how the community should grow, written from a deep awareness of the limitations of the space.

The Planning Act of 1921

The modern planning movement in America began in the first decades of the twentieth century, but there is a long history of planned cities stretching back to the Roman Empire. The idea of planning first came to Vermont in a pamphlet, printed by Norwich University in 1919. Professor K.R.B. Flint, in “Town Planning: A program of civil preparedness for Vermont communities,” wrote:

The most casual observer must note that the development of our villages is largely a matter of chance, and that the failure to plan for the future is proving to be both costly and inconvenient. During the next few decades many Vermont hamlets will become villages, and many villages good sized towns. The undeveloped water power of the state; its mines of talc, asbestos, and copper; its quarries of slate, marble and granite; its agricultural products; and with all these its

unsurpassed scenic beauty, are a guarantee that the next few decades will witness a great growth. The responsibility rests squarely upon the people of today whether that growth will be scientific and in the long run economic or unscientific and costly. Hundreds spent today in planning will save thousands tomorrow in correcting. In the average Vermont community, industries are located by accident, streets are laid out as the need requires, and sewers are laid down with no thought of how they will fit with extensions of the sewerage system; a man builds a house not knowing whether it will sometime be on a wart or a ditch; the danger of fire is always present; trees are planted in a haphazard fashion and the natural beauties marred--because there is no plan, no thought of the morrow.

The professor's urging may have been the inspiration for Vermont's first law on planning, enacted in 1921. It authorized towns to create planning commissions, who could propose comprehensive plans "for the future development of the municipality which shall be based primarily upon public welfare." Once adopted,

. . . no highway, street, bridge, viaduct, park, playground, square, statue, monument, street fixture, park fixture, sewerage system, water system, public building, or any other public improvement proposed to be erected or constructed wholly or in part from public funds and not included in such plan as adopted by the municipality, shall be authorized to be erected or constructed within the municipality until the location of the same has been submitted to the planning commission.³

The commission could object, within 30 days, in writing to the legislative body (city council, selectboard, village trustees), or the project would be deemed approved. By majority vote, the legislative body could overrule the disapproval.

This early planning law does not address private property directly. It regulates public property and public officials, forcing them to consult with the plan before making any binding decisions affecting the highways or public areas of a town. Its default provision is a precursor of the present law's concern

with government inaction, as is the condition that if the proposed use is not on the plan, then it cannot be allowed. These are still features of zoning law in this state. At this point in the state's history, the plan was also the bylaw. The two processes—planning and zoning, legislative and executive—were merged into one.

The first Vermont law of zoning was enacted in 1931.⁴ Some municipal charters had allowed zoning before that time. St. Johnsbury had zoning as early as 1930.⁵ Randolph adopted it in 1931.⁶ The 1931 act authorized the legislative body to appoint two boards. One was a zoning commission, to recommend bylaws and boundaries for districts to the legislative body, and eventual possible adoption by the voters. The other was a board of adjustment that would deal with appeals of the decisions of the administrative officer, grant special exceptions, "subject to appropriate conditions and safeguards," while respecting the "general harmony and intent" of the regulations and variances. Variances were allowed if the use was "not contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done."⁷

Under this law, the zoning commission wrote the bylaws and created the local zoning map. Under the 1921 law, the planning commission produced the plan, and there was no direct linking of zoning and planning. The merger of legislative functions in a single planning commission took another 47 years, until the laws on zoning and planning were comprehensively revised by the legislature in 1968.

The 1968 Revision

The Central Planning Office (see description below) drafted the legislation that became the first modern law on planning and zoning in Vermont during the last years of Governor Philip Hoff's administration. The

process took two years, but in 1968, the legislature established the enabling law used today in more than 200 communities.

The 1968 act began with a list of the purposes planning and zoning should achieve. The Central Planning Office was put in charge of preparing a planning and land use manual for use by the towns, with examples of model plans, and conducting educational sessions to implement the laws of planning among the towns. The legislative body appoints a planning commission of three to nine members, charged with drafting the plan and bylaws. Its work is to be done in public, and may include conducting studies, holding hearings, and participating in a regional planning program.

The law prescribed the contents of municipal plans, as well as the process for adoption. The planning commission would hold hearings then send the plan to the legislative body for additional hearings, and ultimately the plan would be adopted by vote of the legislative body. Every plan would expire five years after taking effect, forcing a new plan and new adoption process. Bylaws were frozen in place, without amendment, until a new plan was in force.⁸ These staples of the law remain in place today.

State Planning

Hand in hand with Vermont's long tradition of local control over planning and other issues has gone a long tradition of decentralized state government. Nevertheless, some early beginnings of statewide planning started in the 1930s.

In 1931, the Vermont Commission on Country Life, a group of around 300 citizens, published *Rural Vermont: A Program for the Future*. This was the first attempt in Vermont to make statewide planning recommendations. The report included a discussion and recommendations relating to agriculture, forestry, wildlife preservation, land use, community life, summer residents and tourism, recreation, health care (medical facilities),

educational facilities, the handicapped, rural government, art and architecture.⁹ Later, in 1935, the legislature appointed a five-member State Planning Board in anticipation of national legislation related to the Social Security Act.¹⁰

In state government, there had been a gradual proliferation over the years of agencies, governing boards, and commissions, many of which reported to the legislature rather than to the governor. As a result, there was no coordinated administrative system in Vermont state government. There were repeated attempts to reorganize and simplify the structure of state government, and in 1957 the legislature established the Commission to Study State Government, known as the "Little Hoover Commission" (because it was patterned after a similar federal effort). The Commission worked for two years and produced a report with 135 recommendations, including the creation of a Department of Administration, a cabinet system of executive management, and a restructuring of major departments and agencies.¹¹

Implementation of the recommendations proceeded slowly. By the time Governor Philip Hoff entered office in 1962, he had to deal with only twenty administrative heads instead of the hundred or more that existed in previous years. However, many of these were beyond his direct control, due to rules relating to their appointments. Most of the agency heads had a great deal of independence and no allegiance to Hoff. And "the tendency of agency heads to avoid communicating with each other or with the governor doomed most efforts at coordinating policies, practices and procedures," according to *Freedom and Unity: A History of Vermont*.¹² This made Hoff's campaign promise of a "bold new approach" to state government difficult to achieve.

Nevertheless, Governor Hoff created the Central Planning Office in 1965 by executive order, as a part of the Department of Development. In 1970, it became an adjunct to the Executive Office, and was renamed the

State Planning Office (SPO).¹³ At first its principal duty was land use planning and drafting legislation, but its responsibilities expanded over time to include staffing of the governor on regional and national organizations, and coordination of various parts of state government, including the development of five year plans for the various agencies and departments and the administration of federal grants.

The SPO published a variety of studies during its years, including *Vision and Choice: Vermont's Future; the State Framework Plan* (1968). After the passage of Act 250, the SPO drafted a capability and development plan for Vermont. In spite of the support of Governors Davis and Salmon, the plan did not pass the legislature in 1973. That year Act 250 was amended to reflect some of the proposals, including the addition of 11 subcriteria to Criterion 9.

In 1972, the Agency of Development and Community Affairs replaced the State Planning Office as the entity responsible for providing assistance and direction to local planning and zoning efforts.¹⁴

The SPO name changed again in 1985 to the Office of Policy Research and Coordination, and then was ended during the Dean administration in the late 1990's. The law creating the State Planning Office remains on the books today, although no entity with that name currently exists. The duties associated with the State Planning Office were absorbed into other agencies and departments.

When Act 200 was passed by the legislature in 1988 (see description below), it required that the state agencies whose programs affect land use should produce a land use plan every two years. Further, the Act created the Council of Regional Commissions (CORC) to review state agency plans for consistency with statutory planning goals, and for compatibility with municipal and regional plans, among other duties. The first state plans under Act 200 were completed in 1991, but waning interest from state agency leadership

and the revenue crisis of the mid-1990s effectively ended this planning effort.

Today, state planning is done by agencies, without any formal organization or oversight of the work of planners. Most agencies have plans. When it occurs, coordination among plans is conducted through ad hoc communications among agency planners.

Under Governor Dean, a Development Cabinet was instituted, and was formalized in state law in 1999. Made up of the secretaries of five agencies related to planning and development, the Development Cabinet has most often focused on specific on-going issues or controversial projects in the state permit process. It provides for coordination at the agency secretary level, but does not communicate widely with other levels.

Regional Planning Commissions

Regional planning commissions (RPCs) were also treated in the 1968 act, although the first regional planning law was enacted in 1957.¹⁵ That early law authorized two or more towns to join together to form a regional commission, deferring to the towns how the commission would be constituted, staffed, and funded. The commission's duty was to draft a master plan "and make such surveys and studies as may be essential thereto for the physical development of the region." The act authorized a commission to accept and expend federal grants. It includes among its purposes the need to "prevent the spread of slums and blight."

The 1957 act was amended in 1965 to require a minimum of five towns to form a regional planning commission. Commissions were authorized to receive funds from the State Planning Office, and other sources. No regional plan would apply to a town unless the voters had adopted the plan. The legislative body could designate the regional planning commission as the local planning commission. Regional plans were also submitted to local planning commissions, for possible adoption as all or part of the municipal plan.¹⁶

These same provisions were added to the general revision of the planning and zoning laws in 1968 with one notable exception. The requirement of a town vote to have the regional plan applied to it was deleted. After 1968, the regional plan was adopted by the legislative body of the municipality.

Today we use “Chapter 117” to mean the state’s zoning and planning act. The designation of Chapter 117 is a creation of 1968. Comparing that early act to what exists today shows the laws on planning have changed relatively little, in spite of three comprehensive revisions of Chapter 117; one in 1974, another in 1987, and most recently in 2004. Before 1968, only about 30 or 35 towns had enacted zoning bylaws. After that date, largely because of the work of the RPCs, the number of towns with planning and zoning programs swelled.

The duties of the RPC are varied (see the Regional Planning section of this report). Although its original mandate was to write a regional plan, and to plan regionally, over the years the RPC has become the delivery mechanism for many diverse programs, including GIS, TACs (Transportation Advisory Councils), approval of local plans and planning grants, preparation of guidelines for affordable housing, and anti-sprawl efforts, through the designation of growth centers.

Today, 11 RPCs operate in Vermont. After Act 200, they became responsible for approving all municipal plans and planning processes. By custom and practice, they give comfort and direction to local planning efforts. They serve as a clearinghouse for studies on transportation issues, model ordinances, and technical information about enforcement and the process of enacting local plans, subdivision regulations and zoning bylaws.

In Chittenden County, the RPC works closely with the MPO (Metropolitan Planning Organization), on transportation issues. In other districts, transportation planning by local officials is staffed and supported by the RPC. In the Northeast Kingdom, the RPC

(Northeastern Vermont Development Authority) also serves as the administrative home of the Regional Development Corporation.

Planning in Act 250

Act 250 was enacted in 1970 to provide regulatory review and approval for major development. Projects under the jurisdiction of Act 250 are reviewed by district commissions based on ten criteria. Criterion 10 requires the commission to find the development:

is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24. In making this finding, if the district commission finds applicable provisions of the town plan to be ambiguous, the district commission, for interpretive purposes, shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence.¹⁷

Thousands of permits later, the district commissions and now the Vermont Environmental Court (successor to the former Environmental Board for appeals from district commissions) still confront the challenge of applying the language of local and regional plans to the review of proposed development.

The 1974 Revision

In 1974, the state’s planning and zoning laws underwent a revision. As in earlier years, most of the attention of the revisers was on zoning, not planning. None of the critical details of planning commissions’ powers and appointments, or of the development and adoption of local plans changed in this revision.

Act 200

Governor Madeline Kunin made Act 200 one of her priorities, and this first comprehensive revision of the law of planning in Vermont was enacted in 1988, and implemented over the next several years.¹⁸ The Governor’s Commission on Vermont’s Future, also

known as the Costle Commission, held hearings throughout the state, and produced a report calling for changes in the process of adopting consistency in planning.

If planning in Vermont had a golden era, it was the time leading up to the passage of Act 200 and the years following, when state planning money began to flow to the towns from the Property Transfer Tax. Act 200 was a strong incentive to improving plans at the town, regional, and state levels. It began with the conviction that planning was the best hope for responding to the pressures of growth in developing parts of the state.

The need for coordination among communities was another focus of Act 200. The goal of consistency among local, regional, and state plans was to be achieved through the adoption of statewide planning goals and a plan approval process. (See a following section for a fuller discussion of the Act 200 goals.) Municipal plans, as well as a town's diligence in following through on a continuing planning process, were reviewed and approved by the RPC. Regional plans were reviewed by the newly created Council of Regional Commissions.¹⁹ The council also was to review state agency plans for consistency with statutory planning goals, and for compatibility with municipal and regional plans.

Amendments to Act 200 in 1994 allowed municipalities to create development review boards (DRBs) to handle all of the regulatory duties of zoning and to conduct "local Act 250 reviews," leaving planning commissions free to plan.

The legacy of Act 200 was muted in the 1990s by the inconsistency of funding for local planning, although in recent years the legislature has appropriated funds to the Agency of Commerce and Community Development for regional planning and municipal planning grants. The Council of Regional Commissions has not met in several years, due to a rescission of its funding, leaving the review function for state plans unfinished. That part of Act 200 has been neglected.

Many local and regional plans have improved considerably since Act 200 became law, and the momentum continues.

The Revision of 2004

In 2003, the legislature created a Municipal Planning Review Commission, commonly known as the Chapter 117 Commission, to review the state's planning and zoning laws. One of the goals of the review was to improve opportunities for affordable housing development in Vermont. The report from this effort²⁰ led to an act, No. 115 of the Acts and Resolves of the 2004 legislative session.

As with earlier revisions of the law, the principal focus of the new law is the improvement of zoning appeals and enforcement. Act 115 made few changes to the laws relating to the appointment and powers of the planning commission, the content or adoption of the local plan, or RPCs, but it included within it the strongest link between planning and bylaws of all the revisions. The law mandates that bylaws must be in conformance with the plan.²¹ The law has never made that connection as direct before. "Conformance with the plan" is defined to mean all of the following three criteria:

- (A) Makes progress toward attaining, or at least does not interfere with, the goals and policies contained in the municipal plan.
- (B) Provides for proposed future land uses, densities, and intensities of development contained in the municipal plan.
- (C) Carries out, as applicable, any specific proposals for community facilities, or other proposed actions contained in the municipal plan.²²

Under this statute, bylaws no longer will be enforced by the courts if they are disconnected or inconsistent with the local plan.

The 2004 revision also authorized and encouraged towns to pursue non-regulatory means of implementing the local plan, including the development of supporting

plans relating to traffic and access onto public roads, municipal center plans and open space plans, which could be drafted by advisory commissions, in assistance to the planning commission.²³

Plans in Play

No review of planning in Vermont can ignore the hard question of how planning has fared in court. Since the beginning of land use controls in Vermont, the courts have never invalidated zoning bylaws because they were inconsistent with the local plan. In rare cases plans have prevented development from proceeding, in zoning and Act 250. In the eyes of the courts, plans are often seen as aspirational, almost idyllic dreams, not grounded in reality. They indicate the direction a community or region wants to take for development, but they often do not set absolute restrictions or prohibitions on development.

Despite the courts' recognition that plans are aspirational, Act 250 requires that projects comply with a local or regional plan, if one exists. The District Environmental Commissions and now the Environmental Court are therefore obliged by the language of the law in criterion 10 to give regulatory effect to documents that are often not written in regulatory language (because their purpose is not regulatory).

The lack of a local plan, or an expired local plan, can have consequences. In 1969, the Town of Milton saw its subdivision regulations struck down, because the town had failed to adopt a local plan as a prerequisite.²⁴ Ever since that time, the court has repeated, as if by mantra, that zoning need not be totally consistent with the local plan, and may diverge considerably, without risk to the validity of the bylaws.²⁵

In the most recent decision of the Vermont Supreme Court discussing the applicability of local plans in Act 250 proceedings, the court ruled that Criterion 10 review may utilize the wording of a pending local plan.²⁶ The Supreme Court reversed the Environmental Board in

this case, after concluding that the local plan could not be construed to prohibit the establishment of a bituminous asphalt plant. "Although the plan evinces a clear intent to protect the rural character of the area and to promote residential and 'other compatible uses,' we discern no specific policy prohibiting industrial development per se, as the Board concluded," the court explained.

In the decision entitled *In re Green Peak Estates*,²⁷ the court urged a common-sense approach to such reviews. The local plan was unclear in the facts of this case, but the regional plan was tighter, on the subject of building on slopes greater than 20%, to keep development away from mountain and forest areas. To the court, this justified a Criterion 10 denial of a permit. A few years later, the watershed decision of *In re Molgano*,²⁸ was issued. There the classic epithet of planning was first used, when the court admonished the Environmental Board not to "give non-regulatory abstractions in the Town Plan the legal force of zoning laws," and reversed a denial of a pending permit application on that ground.

No phrase so perfectly illustrates the problem with municipal plans as enforcement documents. Non-regulatory abstractions do not have the force of law. Regulatory restrictions seem more like zoning bylaws than planning. With the enactment of Act 115 (2004), that is certain to change.

How Plans Are Adopted

Zoning cannot exist without planning, and both take their authority from the constitutional authority of government to exercise police power. The court has frequently admonished planners and zoners to remember that zoning is in derogation of the common law rights of property, and must be liberally construed in favor of the interests of the landowner. The 2004 revision added a new sentence to the general purposes section of Chapter 117, stating, "In implementing any regulatory power under this chapter, municipalities

shall take care to protect the constitutional right of the people to acquire, possess, and protect property.”

How decisions are made in towns is a constant subject of conflict between voters and officials. Voters can object to what officials do. They can force a town vote with a petition signed by five percent of the voters to undo what the legislative body has done in some limited circumstances, such as the adoption of ordinances or bylaws. Sometimes, they have to live with the consequences.

The 1921 law required voter approval of the municipal plan. The 1931 law required voter approval of bylaws. The 1957 law required a town vote to approve the regional plan. But then in 1968, voters’ direct power over the plan was lost, and adoption of the local plan became the decision of the legislative body. A town vote was no longer required to have the regional plan apply in a town. The legislative body could make that decision as well.

Voters were given the authority to choose whether they or the legislative body would adopt a local plan in Act 200 (1988), by separate vote at town meeting on the question of who gets to decide. Regional plans are adopted by a vote of 60% of the commissioners of the RPC, although towns can veto it through an act of the legislative body.²⁹ In another reversal, Act 115 (2004) took away voters’ rights to adopt bylaws and

regulations, leaving that in the hands of the legislative body, in all towns, regardless of size.


The Future of Planning

Statutes don’t make plans, nor does money. Planning commissions draft them. Legislative bodies adopt them. People are affected by them. With Act 115 (2004), they are suddenly far more important to the permit process. Perhaps it is time to dedicate as much attention to planning law reform as the state has to zoning and enforcement.

The state of planning in Vermont is mixed. Good people in some towns have done remarkable work and their plans deserve the respect of all Vermonters. Many plans are empty. They say nothing. The promise of Act 200 remains unfulfilled. The mechanisms for applying municipal plans in Act 250 are out of balance with the intentions of planning commissions. State plans are not coordinated with regional and local plans. The regulatory history of planning is confused. Nobody really knows what to do with a municipal plan, or what it should be.

With the adoption of Act 115 (2004), things are changing. Bylaws must now be in conformance with the local plan. That simple connection is a rock on which to base a new direction for planning.

A Timeline of Planning in Vermont

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- 1921:** VT's first law on planning, enabling towns to create planning commissions which could prepare plans
 - 1931:** VT's first law on zoning, enabling towns to create zoning commissions and boards of adjustment; Vermont Commission on Country Life's report that includes statewide planning recommendations
 - 1957:** VT's first law allowing two or more towns to join together to create a regional commission
 - 1965:** Central Planning Office formed at state level as part of Department of Development
 - 1968:** VT's first modern law on planning and zoning, setting basics of the planning structure we still follow
 - 1968:** Eight Regional Planning Commissions had been formed by 1968
 - 1970:** The Central Planning Office was renamed the State Planning Office, and moved to the governor's office
 - 1970:** Act 250 enacted to provide regulatory review for major development, including conformance to local and regional plans
 - 1971:** Statewide interim capability plan completed
 - 1973:** The capability and development plan does not pass in the legislature, but some of its recommendations are incorporated into Act 250 revisions
 - 1974:** VT's planning and zoning laws revised, with most of the changes related to zoning
 - 1974, 1975, 1976:** Drafts of the state land use plan do not pass legislative committees
 - Early 1980s:** HUD funding for Regional Planning Commissions ends; legislature appropriates funding
 - 1984:** Legislature removes the mandate for a state land use plan from Act 250
 - 1985:** State Planning Office is renamed Office of Policy Research and Coordination
 - 1988:** Act 200 passes, a comprehensive revision to VT's planning law; municipal planning grants begin
 - 1988:** Vermont Planners Association formed to advocate for planning in Vermont
 - 1990:** Act 200 is modified, with the original 32 planning goals reduced to 12
 - 1994:** Development Review Boards and local Act 250 review established in statute; Vt. Center for Geographic Information created
 - 1995:** State Planning Office is ended by Executive Order of Governor Dean
 - 1995-1997:** Municipal planning grant funds eliminated; funds are reinstated in 1998
 - 1999:** Development Cabinet instituted in state law
 - 2004:** Act 115 passes, a revision of the planning and zoning law, with most of the focus on regulatory and non-regulatory plan implementation; bylaws must be in conformance with local plans

Vermont's State Planning Goals

The need for comprehensive a set of planning guidelines to direct statewide growth and development was recognized by the Vermont General Assembly as early as 1970, with the passage of Act 250. As originally enacted, Act 250 clearly established the link between planning and permitting – requiring the development of statewide capability and land use plans that would support associated state land use regulations.

Legislative intent was further clarified in 1973 (Act 85) “in order to provide general and uniform policies on land use and development to municipal, regional and state government agencies, for their guidance and consideration, and to provide the basis for the Vermont land use plan.” As part of this legislation, the General Assembly set forth a comprehensive set of planning guidelines under general headings of “land use and development,” “resource use and conservation,” and “government facilities and public utilities.”

Following an extended period of controversy over the role and reach of state planning, the requirement for a state land use plan (but not the state capability plan) was finally repealed by the legislature in 1984. Many related planning goals, however, found their way into Act 200 as enacted in 1988.

The authors of Act 200, heeding the recommendations of the Governor's Commission on Vermont's Future (sidebar), acknowledged the need for a common framework of planning principles to guide and coordinate local, state and regional planning. Act 200 amended the original purpose statement of the Vermont Planning and Development Act (Chapter 117) to include four “process goals” and thirty-two “planning goals” – many of which reiterated the legislative planning principles underlying Act 250. Chief among these are goals to “encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact,” and “to plan development so as to

maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.”

State planning goals, in addition to providing a common planning framework, also serve as a standard for the review of plans. Under Act 200, all regional and state agency plans, and measures implementing state agency plans, must be “consistent” with Act 200 planning goals – i.e., they must either make substantial progress toward attainment of relevant goals, or indicate why a particular goal is not relevant or attainable. Consistency is not mandated for local plans – municipal plans must be consistent with the goals only as necessary to gain the benefits of regional approval.

The Legislature Should Adopt State Guidelines

Recommendations from the *Report of the Governor's Commission on Vermont's Future: Guidelines for Growth* (January 1988).

There is a pressing need to adopt a set of principles and guidelines for planning at the state, regional and local levels. The Commission believes these principles and guidelines should be the glue that holds the whole process together.

The guidelines should be broad and timeless, and should be incorporated into the plans developed at all levels of government. These state guidelines should also form the basis for the review of plans.

As the Commission reviewed testimony, it became clear that the most often delivered message was that there is something special about Vermont, and people wish to retain that special character. The special quality seems embodied in what one witness called a “sense of place.” That sense of place is the result of traditional settlement patterns, which have given us a clear distinction between town and countryside.

The traditional settlement pattern forms the basis of the Commission's recommended principles and guidelines. Because the guidelines should be used to shape decisions that affect the future course of the state, it is essential that they receive a legislative mandate.

Political furor over Act 200, culminating in 1990, led to the consolidation of the original thirty-two goals into twelve (see below). The goals have been amended more recently to address social equity issues including, in 2003, the addition of a thirteenth goal regarding planning for child-care. Fifteen years later, there is

general consensus among the planning community that the Act 200 goals are its strongest legacy.³⁰ There are lingering concerns, however, regarding their broad application – the impossibility of “one size fits all” planning – and also the recognition that social equity issues still may not be adequately addressed.

Municipal and Regional Planning and Development Goals (Act 200; 24 V.S.A. § 4302)

(b) It is also the intent of the legislature that municipalities, regional planning commissions and state agencies shall engage in a continuing planning process that will further the following goals:

- (1) To establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions, and state agencies.
- (2) To encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact.
- (3) To consider the use of resources and the consequences of growth and development for the region and the state, as well as the community in which it takes place.
- (4) To encourage and assist municipalities to work creatively together to develop and implement plans.

(c) 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.
 - (A) Intensive residential development should be encouraged primarily in areas related to community centers, and strip development along highways should be discouraged.
 - (B) Economic growth should be encouraged in locally designated growth areas, or employed to revitalize existing village and urban centers, or both.
 - (C) Public investments, including the construction or expansion of infrastructure, should reinforce the general character and planned growth patterns of the area.
- (2) To provide a strong and diverse economy that provides satisfying and rewarding job opportunities and that maintains high environmental standards, and to expand economic opportunities in areas with high unemployment or low per capita incomes.
- (3) To broaden access to educational and vocational training opportunities sufficient to ensure the full realization of the abilities of all Vermonters.
- (4) To provide for safe, convenient, economic and energy efficient transportation systems that respect the integrity of the natural environment, including public transit options and paths for pedestrians and bicyclers.
 - (A) Highways, air, rail and other means of transportation should be mutually supportive, balanced and integrated.
- (5) To identify, protect and preserve important natural and historic features of the Vermont landscape, including:
 - (A) significant natural and fragile areas;
 - (B) outstanding water resources, including lakes, rivers, aquifers, shorelands and wetlands;
 - (C) significant scenic roads, waterways and views;
 - (D) important historic structures, sites, or districts, archaeological sites and archaeologically sensitive areas.
- (6) To maintain and improve the quality of air, water, wildlife and land resources.
 - (A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).
- (7) To encourage the efficient use of energy and the development of renewable energy resources.

(Continued)

Municipal and Regional Planning and Development Goals (Act 200) 24 V.S.A. § 4302

(Continued)

- (8) To maintain and enhance recreational opportunities for Vermont residents and visitors.
 - (A) Growth should not significantly diminish the value and availability of outdoor recreational activities.
 - (B) Public access to noncommercial outdoor recreational opportunities, such as lakes and hiking trails, should be identified, provided, and protected wherever appropriate.
- (9) To encourage and strengthen agricultural and forest industries.
 - (A) Strategies to protect long-term viability of agricultural and forest lands should be encouraged and should include maintaining low overall density.
 - (B) The manufacture and marketing of value-added agricultural and forest products should be encouraged.
 - (C) The use of locally-grown food products should be encouraged.
 - (D) Sound forest and agricultural management practices should be encouraged.
 - (E) Public investment should be planned so as to minimize development pressure on agricultural and forest land.
- (10) To provide for the wise and efficient use of Vermont's natural resources and to facilitate the appropriate extraction of earth resources and the proper restoration and preservation of the aesthetic qualities of the area.
- (11) To ensure the availability of safe and affordable housing for all Vermonters.
 - (A) Housing should be encouraged to meet the needs of a diversity of social and income groups in each Vermont community, particularly for those citizens of low and moderate income.
 - (B) New and rehabilitated housing should be safe, sanitary, located conveniently to employment and commercial centers, and coordinated with the provision of necessary public facilities and utilities.
 - (C) Sites for multi-family and manufactured housing should be readily available in locations similar to those generally used for single-family conventional dwellings.
 - (D) Accessory apartments within or attached to single family residences which provide affordable housing in close proximity to cost-effective care and supervision for relatives or disabled or elderly persons should be allowed.
- (12) To plan for, finance and provide an efficient system of public facilities and services to meet future needs.
 - (A) Public facilities and services should include fire and police protection, emergency medical services, schools, water supply and sewage and solid waste disposal.
 - (B) The rate of growth should not exceed the ability of the community and the area to provide facilities and services.
- (13) To ensure the availability of safe and affordable child care and to integrate child care issues into the planning process, including child care financing, infrastructure, business assistance for child care providers, and child care work force development.

Municipal Planning

Vermont's municipalities – its towns, cities and incorporated villages – have been planning in some form or fashion since their initial incorporation and settlement. Original land grants came with requirements for clearing and use of the land, and for setting aside land and resources for public purposes.

Municipal planning as an organized, ongoing effort, performed by locally appointed or elected planning commissions dates from the 1920s. The current Vermont Planning and Development Act (24 V.S.A. Chapter 117) enacted in 1968 allows – but does not require – communities to engage in long-term planning. It also enables the development of comprehensive municipal plans that form the basis for local land use regulations, growth management programs, and local conservation, housing and economic development efforts.

As noted earlier, the planning sections of Chapter 117 were substantially revised under the Growth Management Act (Act 200) of 1988. While planning is still optional, all municipal plans must now include ten plan “elements” and related maps, which are listed in some detail in Chapter 117 (see sidebar). Plans must also be updated and readopted every five years to remain in effect. Local regulations and other implementation measures cannot be adopted or amended unless the plan is current. Municipal plans, if they include clearly stated policies and objectives, are also given weight in Act 250 (under criterion ten) and in other state regulatory proceedings. Municipalities are statutory parties under Act 250.

A municipality has the option of requesting regional planning commission approval of the local plan. In order to approve a plan, the regional planning commission must find that it is consistent with state planning goals and compatible with the regional plan and other approved municipal plans. Related standards of review for consistency and compatibility are defined in Chapter 117. Regional approval is required for a

municipality to apply for municipal planning grants, and to levy impact fees. More significantly, regional and state agency plans and programs – including state funded programs that affect land use and development – are required under current state law to be compatible with regionally-approved municipal plans. In practice, however, this requirement is generally ignored.

In calling for more stringent and comprehensive local planning, Act 200 also provided additional planning resources through the creation of the Municipal and Regional Planning Fund. Though never funded to statutory levels, the Municipal and Regional Planning Fund has provided a fairly reliable source of funding for municipal planning projects, and for increased technical assistance and resources through regional planning commissions and the Vermont Center for Geographic Information, which also receives resources through the fund.

Recent statutory amendments governing municipal plan implementation, enacted in 2004, now clearly require that all local implementation programs – including land use regulations and other non-regulatory tools – conform to the municipal plan. These must be developed and adopted with the purpose of implementing the municipal plan and state planning goals.

Municipal plans have grown in importance and application in recent years. Today, about 197 municipalities have regionally approved plans. In addition to comprehensive plans, some municipalities write strategic plans to address specific issues, such as affordable housing, open space preservation, or infrastructure needs.

Local planning staff and volunteer board members face many challenges. Despite recent advances, there is not enough education and training, especially for volunteers. Planning is hard work and involves controversial decisions, leading to burnout among volunteers. Finding volunteers to serve on boards is a challenge in some communities. Many communities

struggle to build citizen involvement in planning decisions. Local planning has become more comprehensive and sophisticated – and more complex and costly – especially in communities undergoing rapid

change. It is difficult for volunteer planning commissions to develop plans without ongoing professional, technical and funding assistance.

Municipal Plan Elements

Required for inclusion in all municipal plans under the Vermont Planning & Development Act (24 V.S.A., Chapter 117 § 4382)

- (1) A statement of objectives, policies and programs of the municipality to guide the future growth and development of land, public services and facilities, and to protect the environment;
- (2) A land use plan, consisting of a map and statement of present and prospective land uses, indicating those areas proposed for forests, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. § 8), residence, commerce, industry, public and semi-public uses and open spaces reserved for flood plain, wetland protection, or other conservation purposes; and setting forth the present and prospective location, amount, intensity and character of such land uses and the appropriate timing or sequence of land development activities in relation to the provision of necessary community facilities and service;
- (3) A transportation plan, consisting of a map and statement of present and prospective transportation and circulation facilities showing existing and proposed highways and streets by type and character of improvement, and where pertinent, parking facilities, transit routes, terminals, bicycle paths and trails, scenic roads, airports, railroads and port facilities, and other similar facilities or uses, with indications of priority of need;
- (4) A utility and facility plan, consisting of a map and statement of present and prospective community facilities and public utilities showing existing and proposed educational, recreational and other public sites, buildings and facilities, including hospitals, libraries, power generating plants and transmission lines, water supply, sewage disposal, refuse disposal, storm drainage and other similar facilities and activities, and recommendations to meet future needs for community facilities and services, with indications of priority of need, costs and method of financing;
- (5) A statement of policies on the preservation of rare and irreplaceable natural areas, scenic and historic features and resources;
- (6) An educational facilities plan consisting of a map and statement of present and projected uses and the local public school system;
- (7) A recommended program for the implementation of the objectives of the development plan;
- (8) A statement indicating how the plan relates to development trends and plans for adjacent municipalities, areas and the region developed under this title;
- (9) An energy plan, including an analysis of energy resources, needs, scarcities, costs and problems within the municipality, a statement of policy on the conservation of energy, including programs, such as thermal integrity standards for buildings, to implement that policy, a statement of policy on the development of renewable energy resources, a statement of policy on patterns and densities of land use likely to result in conservation of energy;
- (10) A housing element that shall include a recommended program for addressing low and moderate income persons' housing needs as identified by the regional planning commission pursuant to subdivision 4348a(a)(9) of this title. The program should account for permitted accessory dwelling units, as defined in subdivision 4412(1)(E) of this title, which provide affordable housing.

Regional Planning

Regional Planning Commissions (RPCs) have served Vermont since the 1960s. Early state enabling legislation passed in 1957 gave municipalities the authority to group together to create RPCs. RPC governing boards are comprised of representatives appointed by the legislative bodies of the municipal members, with up to five “at-large” positions representing specific interests within the region. By Vermont law, all municipalities are members of an RPC. Though participation in the regional planning program is voluntary, the majority of municipalities are active members of their RPC. There are currently eleven RPCs that blanket Vermont, each employing between 6 and 13 full-time and part-time employees.

RPCs are assigned extensive responsibilities under state law (see below) and provide a diverse set of services that varies by region. The basic “bread and butter” activity of all Regional Planning Commissions is technical land use planning and permitting assistance to member municipalities, including preparing local plans, updating local bylaws, or completing special land use studies. RPCs also help member municipalities with a range of technical assistance projects, such as preparation of grant applications, GIS mapping and analysis, or special research tasks.

The second broad area of responsibility assigned to RPCs is for regional programs and projects, including the preparation of a regional plan. Vermont law requires each RPC to prepare a regional plan and to update it every five years. As with municipalities, state law stipulates the content of a regional plan, requiring nine elements ranging from land use to transportation to housing. The purpose and use of regional plans varies significantly. In addition to their use in Act 250, regional plans are intended to serve as a vehicle for identifying issues that go beyond municipal borders and therefore require broader perspective and attention.

Regional Planning Commissions are known for their ability to analyze trends, identify needed improvements or actions, and initiate change through successful, persuasive programming in response to identified local and regional needs. For example, the Windham Regional Commission created the now independent area agency on aging serving Windham and southern Windsor Counties.

RPCs have statutory authority in three areas. First, they have the authority to review and “approve” municipal plans, but only if a municipality voluntarily submits its plan for such review. Municipalities often do so, because a regionally approved plan enables a municipality to apply for grants awarded by the Department of Housing and Community Affairs to support local planning projects, and enables a municipality to charge impact fees on development. RPCs also have the authority to participate in Vermont’s state land use permit process, Act 250, as “statutory parties.” This allows RPCs to participate in all aspects of a permit review process on an equal footing with state agencies and municipalities. A related authority granted to RPCs under state law is to define the conditions under which a project would have “regional impact” within a given region. Act 250 applicants must demonstrate that proposed projects are consistent with the goals and objectives of both the municipal and regional plans. In cases where a project has “regional impact,” and where the goals and policies of the local and regional plan are not in agreement, then the regional plan supercedes the local plan.

RPCs do not have any taxing authority, and their revenue derives from several sources. One major source is an annual grant from the Agency of Commerce and Community Development (ACCD). Though there is a formula in statute that entitles RPCs to a portion of the revenues generated by the state’s Property Transfer Tax under the Municipal and Regional Planning Fund, since 1996 the legislature has set aside the statutory formula and funded RPCs through a direct appropriation.

Funding from the Agency of Transportation to support management of regional transportation planning and priority setting is another important source of income. A mixture of other grants or service contracts has become a growing portion of RPCs' funding in recent years. These range from emergency management program grants, to contracts with municipal members to provide specific technical assistance services, to revenue associated with state-funded programs such as brownfields assessment, and many others that vary by region. In addition, member municipalities pay annual dues to the RPCs. An unofficial survey of all RPCs' revenue for 2004 showed, on average, roughly one-third of their revenue came from the Agency of Commerce and Community Development, one-third from other grants for specific projects, one-fourth from the Agency of Transportation, and the remainder from municipal dues. During the same year, RPCs each had revenues of between \$450,000 and \$900,000 (some of which was pass-through money to other entities.)³¹

RPCs face several challenges. First, they have much responsibility, but little authority. The power division

between RPCs and the state is not always clear. Second, a large part of their funding is from the state, and they must meet certain state obligations and goals. But they "work for" and are "governed by" the municipalities. Thus, RPCs serve multiple masters, who have various and potentially conflicting goals. Third, some argue that state funding for RPCs is not adequate. RPCs receive a significant amount of their funding from other project-specific grants instead of general state funding, which can limit the amount of time they can devote to assisting municipalities and doing regional planning. Finally, there is inconsistent participation by RPCs in Act 250 reviews.

As the pace of change in Vermont increases and the complexity of land use and other environmental and economic issues grows, the demands on the state's RPCs will grow. Without clear authority and adequate resources, their ability to respond effectively will remain precarious and will vary depending on the stamina and creativity of staff members. This reality reduces the viability of a regional perspective at a time when it is increasingly important.

Duties of Regional Planning Commissions (V.S.A Title 24, § 4345a)

A regional planning commission created under this chapter shall:

- (1) Promote the mutual cooperation of its municipalities and assist and advise municipalities, compacts and authorities within the region to facilitate economic development programs for the appropriate development, improvement, protection and preservation of the region's physical and human resources.
- (2) Advise municipal governing bodies with respect to public financing.
- (3) Provide technical and legal assistance to municipalities in the preparation and maintenance of plans, capacity studies and bylaws and in related implementation activities.
- (4) Cooperate with the planning, legislative or executive authorities of neighboring states, regions, counties or municipalities to promote coordination of planning for, conservation and development of the region and adjoining or neighboring territory.
- (5) Prepare a regional plan and amendments that are consistent with the goals established in section 4302 of this title, and compatible with approved municipal and adjoining regional plans. When preparing a regional plan, the regional planning commission shall:
 - (A) develop and carry out a process that will encourage and enable widespread citizen involvement;
 - (B) develop a regional data base that is compatible with, useful to, and shared with the geographic information system established under 3 V.S.A. § 20;
 - (C) conduct capacity studies;

(Continued)

Duties of Regional Planning Commissions (V.S.A Title 24, § 4345a)

(Continued)

- (5D) identify areas of regional significance. Such areas may be, but are not limited to, historic sites, earth resources, rare and irreplaceable natural areas, recreation areas and scenic areas;
 - (5E) use a land evaluation and site assessment system, that shall at a minimum use the criteria established by the secretary of agriculture, food and markets under 6 V.S.A. § 8, to identify viable agricultural lands;
 - (5F) consider the probable social and economic consequences of the proposed plan; and
 - (5G) prepare a report explaining how the regional plan is consistent with the goals established in section 4302 of this title.
- (6) Prepare implementation guidelines that will assist municipalities and the regional commission in developing a planning process that will attain, within a reasonable time, consistency with the goals established in section 4302 of this title. Guidelines, which may be revised at any time, shall be prepared initially by July 1, 1989.
- (7) Prepare, in conjunction with the commissioner of the department of housing and community affairs, guidelines for the provision of affordable housing in the region, share information developed with respect to affordable housing with the municipalities in the region and with the commissioner of the department of housing and community affairs, and consult with the commissioner when developing the housing element of the regional plan.
- (8) Confirm municipal planning efforts, where warranted, as required under section 4350 of this title and provide town clerks of the region with notice of confirmation.
- (9) At least every five years, review the compatibility of municipal plans, and if the regional planning commission finds that growth in a municipality without an approved plan is adversely affecting an adjoining municipality, it shall notify the legislative body of both municipalities of that fact and shall urge that the municipal planning be undertaken to mitigate those adverse effects. If, within six months of receipt of this notice, the municipality creating the adverse effects does not have an approved municipal plan, the regional commission shall adopt appropriate amendments to the regional plan as it may deem appropriate to mitigate those adverse effects.
- (10) Develop strategies specifically designed to assist municipalities in defining and managing growth and development that have cumulative impacts.
- (11) Review proposed state capital expenditures for compatibility with regional plans.
- (12) Assist municipalities to review proposed state capital expenditures for compatibility with municipal plans.
- (13) Appear before district environmental commissions to aid them in making a determination as to the conformance of developments and subdivisions with the criteria of 10 V.S.A. § 6086.
- (14) Appear before the public service board to aid the board in making determinations under 30 V.S.A. § 248.
- (15) Hold public hearings.
- (16) Before requesting review by the council of regional commissioners or the services of a mediator pursuant to section 4305 of this title, with respect to a conflict that has arisen between adopted or proposed plans of two or more regions or two or more municipalities located in different regions, appoint a joint interregional commission, in cooperation with other affected regional commissions for the purpose of negotiating differences.
- (17) As part of its regional plan, define a substantial regional impact, as the term may be used with respect to its region. This definition shall be given due consideration, where relevant, in state regulatory proceedings.
- (18) If a municipality requests the assistance of the regional planning commission in coordinating the way that its plan addresses projects of substantial regional impact with the way those projects are addressed by its neighbors' planning efforts, the regional planning commission shall convene an ad hoc working group to address the issue. The working group shall be composed of representatives of all municipalities likely to be affected by the plan in question, regardless of whether or not they belong to the same region. With the assistance of a facilitator provided by the regional planning commission, the ad hoc working group will attempt to develop a proposed consensus with respect to projects of substantial regional impact. If a proposed consensus is developed, the results of the consensus will be reported to the planning commissions and legislative bodies represented.

State Agency Planning

State government has been involved in planning in myriad ways for the past 40 years (see the “History of Planning in Vermont” section). In 1965, the Central Planning Office (later renamed the State Planning Office) was created to perform land use planning, draft legislation, and undertake many other functions. After the passage of Act 250 in 1970, the State Planning Office drafted capability and development and land use plans for Vermont, but these did not pass in the legislature despite repeated attempts. The Agency of Development and Community Affairs took over the State Planning Office’s responsibility for providing assistance and direction to local planning and zoning in 1972. The State Planning Office’s name changed to the Office of Policy Research and Coordination in 1985, and was ended during the Dean administration in 1995. The law creating the office remains on the books today, although no entity with that name currently exists. The duties associated with the State Planning Office were absorbed into other agencies and departments. Currently, the Planning Division of the Department of Housing and Community Affairs within the Agency of Commerce and Community Development provides planning assistance and administrative duties to municipalities and Regional Planning Commissions.

When Act 200 was passed by the legislature in 1988, it spelled out a significant role for state agency land use planning in a vertically coordinated program through which municipal, regional and state agency plans would all adhere to the same set of policies and values, and would complement each other through a complex process of review, consultation and dispute resolution. Act 200 required that the seventeen state agencies whose programs affect land use should produce a land use plan every two years. Further, the Act created the Council of Regional Commissions (CORC) to review state agency plans for consistency with statutory planning goals, and for compatibility with municipal and regional plans.

This body also had appellate responsibilities for resolving disputes between state agencies and municipalities, or between municipalities and RPCs, over incompatible plan policies or goals. Membership on the Council consisted of one municipal member of each RPC board, three state agency heads, and two at-large members appointed by the governor.

The first Act 200 state agency plans were completed in 1991. This system quickly revealed its flaws. First, some of the agencies, such as the Department of Liquor Control, played minimal roles in creating land use impacts, yet they were required to complete the same level of planning as those which did. Second, the utility of state agency land use plans depended heavily on guidance and enforcement from the governor’s office. Absent direct interest, state agency leadership, stressed by intense competing demands for resources, placed less emphasis on completing the required plans. The final blow that effectively ended Act 200 state agency land use planning was the deep revenue crisis of the mid-1990s. Significant budget cuts, staff reductions, and program restraints led to elimination of funding for the Council of Regional Commissions (though its statutory enabling language remains in place), and the shifting of resources away from Act 200 planning by state agencies.

Although Act 200 state agency planning activity no longer takes place, state agencies do continue to plan, usually in response to federal program or state law requirements (see the Appendix for a partial summary of such plans). For example, the Agency of Transportation produces many plans, including a statewide transportation plan; the Department of Public Service produces a statewide energy plan. Many of the state plans do not address land use impacts or state planning goals, however. There is no formal statewide organization or oversight of the work of agency planners, and planning coordination among agencies and departments is minimal.

Under Governor Dean, a Development Cabinet was instituted, and was formalized in state law in 1999. The

Development Cabinet is made up of the secretaries of the Agencies of Administration, Natural Resources, Transportation, Commerce and Community Development, and Agriculture, Food and Markets. The Development Cabinet has a list of 12 items in state law that it is charged to undertake and encourage, including a yearly report to the governor and legislature. The Development Cabinet has most often focused on specific on-going issues or controversial projects in the state permit process. It provides a process for coordination at

the agency secretary level, but does not communicate widely with other levels.

The inconsistency of coordination of state agency planning, both among state agencies and between state agencies and municipal and regional planning, have been persistent weaknesses of Vermont's current planning program. The resolution of this dilemma is challenging, yet critical if we are to achieve a system of coordinated land use planning.

What's Working in Vermont's Planning System

Growing Community Awareness

The enactment of Act 200, Vermont's Growth Management Act, in 1988 gave planning more visibility, refueling an ongoing, statewide discussion of the importance of planning at all levels of government, and particularly at the local level. Initially viewed as a threat to local control and property rights, Act 200 engendered heated debates that ultimately helped raise awareness and discussion of critical issues facing Vermont communities. By September 2003 – 15 years after the passage of Act 200 – 192 municipalities had adopted regionally-approved municipal plans that were consistent with Act 200 planning goals. It is now unusual for a community to adopt a plan and not submit it for regional approval.

Though it has always been difficult to garner broad public involvement in the planning process, the techniques and resources available for community outreach have improved much over the last two decades. Community forums, surveys, mapping and "visioning" exercises, and the growing use of the Internet to gather and disseminate information have made the planning process more accessible – and more accountable – to more people.

In communities that are experiencing significant development pressure, planning has become increasingly relevant, sophisticated, creative, and controversial. Growing communities have found the need to hire professional planning staff to assist lay commissions and boards. In these communities, plans are given thorough consideration – as the basis for local conservation efforts, growth management programs, and land use regulations – and, as a result, generally provide informed and detailed guidance for local boards and decision makers.

More Resources and Training

A strong planning program takes a commitment of time, money, and resources. Act 200 provided an ongoing funding mechanism for planning through the property transfer tax, which remains in effect today. The Municipal and Regional Planning Fund – though never funded as prescribed in statute – has supplied a steady source of much needed financing for local and regional planning activities, and for the Vermont Center for Geographic Information.

Municipal funds were initially allocated by formula, but are now distributed annually through a competitive planning grant program. The number of applications has increased steadily each year, and funding requests regularly exceed the total amount available (see table). Municipal planning grants are most often used to pay in-house staff, or to acquire professional planning assistance to prepare plans, bylaws, and maps, and to undertake special planning projects.

Regional planning commissions also rely on the Municipal and Regional Planning Fund – as well as a variety of other revenue sources – to finance their municipal and regional planning programs. Regular state funding has allowed RPCs to retain the professional staff and equipment needed to develop regional plans, and to provide technical assistance to

Recent Award History of Municipal Planning Grants				
State Fiscal Year	No. of Applications	\$ Requested	No. of Awards	\$ Awarded
1997	0	0	0	0
1998	63	\$382,618	45	\$200,000
1999	65	\$434,673	51	\$305,000
2000	73	\$793,772	66	\$613,457
2001	86	\$993,691	75	\$792,485
2002	89	\$1,069,262	75	\$728,488
2003	88	\$939,452	84	\$823,737
2004	110	\$1,307,621	94	\$863,108
2005	109	\$1,209,960	90	\$788,984
2006	100	\$1,129,830	Pending	~\$850,000

their member municipalities. Additional funding through the Agency of Transportation, the Agency of Natural Resources, and federal grants has allowed RPCs to expand their programs to better and more creatively identify and address the resource, land use, development and infrastructure needs of their communities.

The Vermont Center for Geographic Information (VCGI), a nonprofit entity created by the state in 1994, also receives annual appropriations through the Municipal and Regional Planning Fund. VCGI is home to the Vermont Geographic Information System (VGIS), and has evolved over the years as a central source of geographic information that is unique to Vermont. VCGI was established and remains a statewide clearinghouse for mapped data, which is then made available to the public at little or no cost. The information housed at VCGI – much of which is developed through state agencies and regional planning commission GIS service centers – is critical to planning at all levels of government, and also supports private sector planning and development activities.

State planning programs have not received the same commitment of funding and staffing over the years; nevertheless, state agencies serve as an important source of technical assistance, guidance and information. At present, there is no central, readily accessible repository within state government for state data, statewide projections and information commonly used in municipal, regional and state planning. To help meet this need, the web-based “Vermont Planning Information Center”³² was recently established by the Vermont Land Use Education and Training Collaborative – an informal partnership of state planning interests.³³

Training and resource materials for planners are available through a variety of sources – including the Vermont Department of Housing and Community Affairs’ Planning Division, the Vermont Association of Planning and Development Agencies (the association of

regional planning commissions), the Vermont League of Cities and Towns, and the University of Vermont. Individual training programs, until recently, were not well-coordinated. The Land Use Education and Training Collaborative – which includes representation from each of these organizations – was established to “coordinate and improve the delivery of land use education and training for local land use officials in Vermont.” The collaborative receives limited administrative support through the Department of Housing and Community Affairs, and has been granted special legislative appropriations in support of its training programs. It does not, however, benefit from a consistent funding source, nor from more broad-based state agency involvement and support.

Better Plans

The result of sustained investment in planning over the past fifteen years has been more comprehensive, considered, and detailed local and regional planning, as evident in plans currently on file with the state. More information than ever before about a community or region is now available – neatly packaged in one document – to the benefit of local residents and property owners, municipal and state officials, policy and decision makers, and private interests.

Nevertheless, there is ongoing discussion concerning the role of the plan: whether it should present a broad vision and goals for the community or more specific guidance, whether it should be referenced strictly as a policy document, or carry weight in the regulatory arena. There are also enduring questions regarding how representative such plans are – whether they reflect the views of the drafter or planning commission, or truly represent the community at large.

The number of regionally-approved municipal plans now numbers around 197. As noted earlier, in order to approve a plan, it must be consistent with state planning goals, and compatible with regional and other approved municipal plans. This suggests that – at the local and

regional level – planning efforts are much more coordinated than they have been in the past.

Stronger Growth Management

Better plans allow for better plan implementation – by clearly defining community objectives, and by providing detailed information and guidance. Local plans are increasingly being used to coordinate and support innovative community land use, development and growth management programs, and to direct state funding and resources to meet local needs. For example:

- More detailed mapping of, and planning for, the state’s land and water resources has supported a variety of local and statewide resource conservation programs, including the work of the Vermont Housing and Conservation Board and the Vermont Land Trust. More communities are establishing conservation commissions and funds, and undertaking local conservation projects as highlighted in their municipal plans.
- Several rapidly growing communities have adopted innovative growth management programs that integrate their land use regulations, capital improvement programs, infrastructure investments, and public financing in a manner that supports growth and development within locally designated growth centers.
- Both urban and rural municipalities are conducting housing studies, often in collaboration with their regional planning commissions, to better identify and address local and regional housing needs
- An increasing number of municipalities are establishing development review boards to conduct local development reviews in a more coordinated, streamlined and timely manner.
- The number of municipalities planning for and receiving state downtown designation has grown each year. Currently there are 18 state-designated downtowns and 53 village centers that are eligible for associated incentives under this program.
- There is increased communication, if not planning coordination, among state agencies, regional planning partners, and municipalities on land use and development issues.
- State funding of regional transportation planning supports coordinated and comprehensive multi-modal transportation planning efforts. State transportation projects, and associated funding priorities, are now vetted through regional transportation advisory committees that consist largely of municipal representatives.
- A growing number of state funding programs – e.g., community development block grants and state funding for wastewater line extensions – now require project conformance with local and regional plans.
- More – though arguably not enough– credence is being given to local and regional plans in Act 250 and other state regulatory proceedings.

Challenges to Planning in Vermont

During the period from August 2004 to June 2005, the Vermont Council on Planning carried out an information-gathering and analysis process to better understand the way Vermont does local, regional and state planning. Using diverse venues, the Council talked to local planning commission members, developers, regional planning commission directors, members of the Governor's Cabinet, environmental leaders, and others actively engaged in the planning process. These sessions elicited testimony about a range of challenges to the existing structure of planning. Vermonters reported the following issues that, they say, impede truly effective planning.

- **Funding, resources, and training for local, regional and state planning are inadequate.**

In 1988, state funding for municipal planning became available. Currently, communities often use the municipal planning grants to update their local plans and bylaws. The program has become increasingly competitive, as outlined above; there are not enough funds available to cover all requested projects. The larger municipalities appropriate money from their budgets for planning, but most other Vermont municipalities do not. Incentives for local (and regional) planning are weak.

Land use planning and regulation are heavily dependent on the work of lay volunteers on local boards and regional planning commissions. The availability and frequency of training for these volunteers is not regular and coordinated, despite recent and on-going efforts of the Land Use Education and Training Collaborative. Appointments to fill vacancies on boards occur throughout the year, making it difficult to link training with the people who need it at the right times. A comprehensive and coordinated training

program requires an on-going adequate funding source.

Regional Planning Commissions have received relatively consistent amounts of funding from the state during the past several years, but they are not receiving all the funding they are entitled to in statute. As a result, RPCs increasingly rely on outside grants and funding sources that are targeted to specific projects, reducing the time they spend on regional planning.

Finally, funding for statewide planning and interagency coordination also has been inadequate.

- **Public engagement often occurs in reaction to projects instead of earlier in the planning process.**

Many communities struggle to build citizen involvement in planning decisions. The public tends to react to project proposals, rather than participate early on in the planning process. Communities struggle, and lack adequate support, to come together to envision the future that they are planning for; instead, public involvement tends to be reactive and often critical.

- **Local planning involves difficult decisions and can result in vague plans.**

Local officials, especially in small rural municipalities, can find it very challenging to craft land use plans and implement bylaws that do not generate controversy. Controversy wears on volunteers who find it disheartening for their hard work to become the target of sharp criticism from their neighbors. It is sometimes easier to leave plans vague than to make hard decisions. This makes the process of interpretation unclear and future development unpredictable.

- **Vermonters are not in consensus about whether plans should be aspirational documents or regulatory documents.**

Plans are often written and intended to be aspirational, indicating the direction a community

wants to take for development. But Act 250 requires that projects comply with local plans, thereby obliging District Environmental Commissions and the Environmental Court to give regulatory effect to the plans. This regulatory use of plans may push some municipal boards to make plans more concrete with clear mandatory language, and may push others to continue to write vague plans, which leaves the Act 250 process to make the harder decisions and takes planning decisions away from the local level. This leads to some basic confusion in the production, interpretation, and implementation of plans.

- **There is inadequate linkage between various planning and permitting procedures, and jurisdictional authority is often not clear.**

A frequent complaint about Vermont's permit process is that permit seekers need to present the same information to multiple entities, ranging from municipalities for local zoning and subdivision permits, to state agencies for state permits, to district commissions for permits through Act 250. Both planners and customers of the system say that the system of planning and permitting is unwieldy and inefficient.

While it is true that each level of government generally has its own areas of jurisdiction, it is also true that there is overlap. Municipal bylaws and permits have to be "grounded" in the policies and goals set forth in the municipal land use plan. State agencies usually ground their permit requirements in the rules they write, broad-based statements of legislative intent, or in the stipulations of federal programs that delegate enforcement of their requirements to state agencies. Thus, while there is justification and legitimacy behind state agency permits, there is no land use or development plan underlying them that can be coordinated with local and regional plans.

- **Economic development discussions are disconnected from planning processes in some communities.**

The development of local and regional plans can be disconnected from discussions around economic development. Organizations involved in planning for economic development have no way of systematically interacting with municipalities and regions during plan development phases.

- **Regional planning commissions often are caught in a power struggle between state and local government.**

Regional Planning Commissions face several difficulties related to their wide responsibilities and limited authority.

Regional Planning Commissions represent municipalities, provide assistance to them, are funded in part by them, and are governed by them through their locally appointed boards. Yet RPCs are charged with approving local plans and offering feedback on how those plans coordinate with others in the region. RPCs are asked to both advocate for municipalities and be critical of them. As a result, local plans are not always well-coordinated regionally.

In addition, most RPC board members are lay volunteers who have little knowledge or experience with regional planning. While most board members really want to contribute to the success of their RPC, many remain cautious about RPC initiatives because they may diminish local authority or benefit some municipalities over others.

RPCs receive funding from various state and non-state entities, and must meet a variety of obligations and goals related to these funding entities. Some of these obligations and goals may not be harmonious with each other or with local or regional goals. As a result of their diverse funding situation, RPCs spend relatively little time on

regional planning. Some argue that RPCs responsibilities have become too wide-ranging.

RPCs also do not have the resources or authority to create a strong and effective bridge between municipal and state planning.

Finally, the services provided to communities among different RPCs are inconsistent.

- **There is a lack of coordination among state agencies and other entities that engage in planning.**

There has been a lack of leadership from the state around planning. The problem of inadequate communication and coordination among state agencies regarding planning is long-standing. State agencies do a lot of planning, yet there is no routine way to ensure that state agencies consult with each other as they produce their plans, or to ensure that the visions of different agencies are integrated. Nor is there a consistent methodology for coordinating state planning with municipalities or regional organizations. This disconnection in “horizontal” coordination within state government, and an equally troublesome lack of “vertical” coordination with regional and municipal interests can significantly reduce the effectiveness of planning efforts, and at worst create major political criticism of state agencies that erodes their credibility.

- **Vermont’s two-year gubernatorial term discourages long-term planning.**

Because Vermont has a two-year gubernatorial term, long-term planning commitments at the state level can be under-emphasized.

- **There is a lack of consensus about a vision for Vermont’s future; planning requirements assume “one size fits all.”**

As Vermont’s population has become more diverse, and as the economic and social differences among communities and regions has grown, there has been an increasing divergence in visions for our future. Rural and urban values and needs have diverged.

This lack of consensus has a direct impact on land use planning. The deep roots of the state’s rural values are clearly expressed in our state planning goals that call for a preservation of “traditional land use patterns,” a laudable goal perhaps in rural Vermont, but a difficult fit at best in some parts of Chittenden County. An on-going challenge is to find a way to build consensus around a vision for Vermont’s land that also acknowledges, and ideally integrates, the differences among regions.

VERMONT COUNCIL ON PLANNING RECOMMENDATIONS

These recommendations set a platform for state leaders and the public to consider. In creating this report, the Vermont Council on Planning did not seek to create new planning goals for the state. The Council felt that the planning goals currently articulated in state law have general support among most Vermonters. However, the Council felt there has been a need in the past and currently for leaders in state government to articulate clearly their vision, strategic choices, and top priorities around development in Vermont as foundations for planning at all levels. This crucial step is necessary before the implementation of the recommendations of this report can be fully successful. The VCP also recognizes that rigorous work will be required to fill in the details needed to enact the recommendations and fulfill the goals of this report. Those details and the political and legal processes necessary toward implementation are beyond the scope of the Vermont Council on Planning's work.

Governance, Authority, and Leadership

Goal: By clarifying appropriate governmental responsibility and authority, and promoting strong leadership for planning, Vermont can ensure that local, regional, and state planning decisions are effective in conserving the environment and supporting appropriate community and economic development in accordance with our tradition of private property ownership, local and regional goals, and the existing statutory land use and planning goals.

1) The Governor and State Legislature Should Provide Leadership

For Vermont to conserve its key assets and heritage, guide its future development, and participate successfully in the economy of the 21st Century, the governor and legislature will need to unite in common leadership to implement the statewide planning and land use goals, and provide the resources and structure needed for an efficient and effective planning system in the state. To succeed and to unify planning efforts, the work of local and regional leadership in the planning system needs to be recognized and matched by state level political will and leadership.

2) The Legislature Should Update State Planning Statutes

The Vermont Legislature should update statutes to implement this report and eliminate provisions that exist as empty statutes.

3) Establish Clear Jurisdictional Lines of Authority in Planning

In order to fulfill the purpose of Vermont's planning and regulatory systems, planning must drive regulation. Therefore...

- a) No permit shall be inconsistent with the municipal plan. Conditional uses and subdivisions shall be consistent with the municipal plan, and a review based on consistency shall be part of every permit consideration.

- b) An approved municipal plan shall supersede all other plans if the impact is purely local in nature.
- c) A regional plan shall supersede a municipal plan if the impact is regional in nature. This shall include impacts that are cumulative in nature and would thereby have regional impact.
- d) State agency plans³⁴ are Executive Branch strategic and operational designs approved by the governor's office that clearly define areas of over-riding state interest. Issues of over-riding state interest should be developed by agencies through a public input process, including input from the municipalities and regions impacted.
- e) A municipal, regional, or state plan found to be inconsistent with state law shall have no evidentiary weight in any hearing or regulatory process.
- f) Vermont planning goals (in V.S.A. Title 24, Chapter 117) are adopted by the legislature. The legislature should review and, as necessary, amend the goals.

4) Plans Matter: State Investments Must Comply with State Planning Goals and Local and Regional Plans

State resources shall be allocated to capital investment projects that meet statewide planning goals (in V.S.A. Title 24, Chapter 117) and are in compliance with approved municipal and regional plans. This includes all state-managed resources. State agency projects and investments should only pre-empt approved municipal and regional plans when there is a clearly articulated over-riding state interest defined in statute or state agency plans developed through a specific process of taking public input; and when the state clearly articulates the reasons the local or regional plan was pre-empted.

5) Improve Public Access to Information on Regional and State Agency Plans

- a) Local legislative bodies shall hold a public hearing on all regional plan adoptions and amendments, with the municipal RPC member present to respond to questions about the regional plan.
- b) State agency plans shall be available by electronic or paper means to all Vermonters at least 60 days before presentation of the plan to the governor for certification. The state shall advertise widely the availability of the draft, and take substantial steps to educate the public to the consequences of the state plan.

6) Support Local Leadership and Strengthen Municipal Comprehensive Planning

The state should provide matching grants for staffing or consultants when municipalities write or update comprehensive plans and bylaws.

7) Regional Planning Commissions Should Provide Consistent and Effective Services

Regional Planning Commissions should continue to be responsible for providing assistance to municipalities on visioning, writing plans and bylaws, and should be accountable for addressing their statutory responsibilities to the state in performing these responsibilities. Regional Planning Commissions should be evaluated bi-annually by the Office of Planning Coordination (see Recommendation 10), in conjunction with representatives of the municipal planning commissions in the region. Evaluations should be reported to the Vermont Planning Commission (see Recommendation 11), all municipal planning commissions in the region, and the governor's Development Cabinet. After the Regional Planning Commission adopts its annual budget and receives

its financial audit, it shall send a copy to each municipal planning commission in the region.

8) Revise State Agency Planning Requirements

- a) State agency plans developed to meet federal requirements or state laws should address how the plan is consistent with state planning goals (in V.S.A. Title 24, Chapter 117).
- b) State agencies should provide Executive Summaries of pertinent agency plans (which outline the goals and priorities of agency plans and how they comply with existing state planning goals) for review and comment by regional and local planners, other state agencies, the public, and the administration. These Executive Summaries should be produced whenever a pertinent plan is drafted or revised, and should be available for review in the Office

of Planning Coordination (see Recommendation 10).

- c) Executive Summaries of state agency plans deemed pertinent by the Vermont Planning Commission should be sent to the Commission for their review and advisory comment (see Recommendation 11). Each should include review of state planning goals (in V.S.A. Title 24, Chapter 117).
 - d) The Vermont Planning Commission should establish criteria to determine which plans need to follow this process outlined in “a,” “b,” and “c.”
- 9) The Legislature Should Establish Consistent, Long-Term Funding for Municipal Planning, Regional Planning, and the Office of Planning Coordination**

Coordination and Collaboration

Goal: By improving communication between agency planners, and by increasing coordination of state plans with regional and municipal plans, Vermont can integrate the system of planning, make plans more effective and development more predictable, support local and regional decision-making processes, and ensure that plans are guided by Vermont's statutory planning goals.

10) Build an Office of Planning Coordination to Serve as Central Clearinghouse for Planning and Research

Vermont should create an Office of Planning Coordination to serve as a recognized central portal for planning information and a one-stop central clearinghouse for use by local, regional, and state planners. The Office, housed within the Vermont Department of Housing and Community Affairs, would provide the following functions directly or through collaboration with other entities:

- a) Develop, convene, and facilitate regular meetings of a **State Agency Planning Consortium** made up of agency planning directors or senior staff from all pertinent state agencies who will be responsible for coordinating cross-agency planning, developing and maintaining agency planning positions, reviewing regional plans, and reporting summations of issues on a monthly basis for the **Governor's Development Cabinet** and **Regional Planning Commission** review.
- b) Provide, through direct service or collaboration with other entities, a physical and on-line center for all types of planning information, including: state plan Executive Summaries, regional plans, local plans, and reports from the State Agency Planning Consortium; information on best and

worst practices in municipal planning; guides for navigating state agencies on planning and permitting topics; permitting information; planning information from other states; citizens' and developers' guides on navigating development processes; and other information useful to citizens, businesses and planners.

- c) Provide leadership in the use of appropriate technology for planning processes at the local and regional level.
- d) Contract with, oversee state funding for, and evaluate Regional Planning Commissions in fulfillment of their mandated services to towns and regions, and administer the Municipal Planning Grant Program.
- e) Staff the Vermont Planning Commission.
- f) Coordinate, oversee state funding for, and evaluate contractual results of the work of the Vermont Land Use Education and Training Collaborative with communities and regions.
- g) Provide population, economic and other necessary forecasting as a foundation for successful planning at all levels. Work with VCGI, UVM, VT Law School and other partners to provide other pertinent planning information as needed.
- h) Conduct or oversee contracts for studies and research policy issues for municipalities, regions, and the governor's office as needed and budgeted.

11) Establish a Vermont Planning Commission to Unify and Guide State Planning Efforts

The legislature should establish and the governor should appoint a Vermont Planning Commission, comprised of strong representation from the local, regional, and state planning communities, housed

and staffed through the Office of Planning Coordination to provide the following functions:

- a) Evaluate Regional Plans to ensure their compliance to Vermont's statutory planning goals (in V.S.A. Title 24, Chapter 117).
- b) Define criteria to determine which state agency plans should be reviewed for conformance with state planning goals (in V.S.A. Title 24, Chapter 117; see Recommendation 8).
- c) Review state agency plan Executive Summaries to evaluate their consistency with regional plans

and statutory state goals (in V.S.A. Title 24, Chapter 117), making recommendations, when necessary, for resolving conflicts and contradictions to be sent to the appropriate agency secretaries, the governor, and Development Cabinet.

- d) Approve growth centers that are determined by the municipalities (see Recommendation 14).
- e) Mediate and coordinate between state, regional, and local levels of planning.

Education and Training

Goal: By providing education and training to municipal, regional, and state planners and volunteer commissioners, Vermont can support their efforts to produce strong plans that effectively conserve land, guide economic, housing, and infrastructure development, and coordinate local and regional development in line with local, regional, and state goals.

12) Improve Training for Local Board Members and Staff

Vermont should develop an effective and coordinated training program for professional staff and volunteers on local and regional planning and zoning boards:

- a) The legislature should appropriate consistent funding to match other resources to continue the training begun by the Vermont Land Use Education and Training Collaborative. The funding should be appropriated through the Office of Planning Coordination of the Vermont Department of Housing and Community Affairs (see Recommendation 10). The Office should lead in coordinating and evaluating education and training efforts, contracting for services approved by the Collaborative, and ensuring that an effective and consistent system of training exists throughout the state.
- b) The Collaborative should design curriculums for training new planning and zoning staff and volunteer members that address their responsibilities and the limits of their authority, and provide other useful skills such as facilitation, problem solving, negotiation, and dispute resolution. The Collaborative should provide for annual sessions in every region of "Planning and Zoning 101" for new board

members and staff. Training should include sections on the importance of mandatory versus advisory language in local plans and the regulatory implications of the language. The curriculums should include materials in print, web, and video formats.

- c) The Collaborative should coordinate responsibility for types of training to the various members, including the Department of Housing and Community Affairs, the Secretary of State's Office, the UVM Extension System, the Vermont League of Cities and Towns, Regional Planning Commissions, and non-profit organizations.
- d) The Collaborative should develop a voluntary certification process for local and regional lay volunteers that provides basic training, as outlined above, and acknowledges that volunteers have received comprehensive training congruent with their responsibilities and authority.
- e) Municipalities, Regional Planning Commissions, and the governor should recognize and support local and regional volunteers, and reward their service with positive recognition.
- f) Appropriate state agencies, especially the Natural Resources Board and Public Service Board, should provide training to municipal and regional planning commissions on how local and regional plans are used in the regulatory process.

13) Establish an Annual Vermont Planning Conference

With support and state funding through the Office of Planning Coordination, the Vermont Land Use Education and Training Collaborative should institute an annual training conference to bring together planners from all levels to expand understanding about planning among residents of

Vermont communities, consider issues and challenges, and to identify possible improvements in

collaboration and coordination within the system of planning in Vermont.

Issues of Growth and Scale

Goal: By recognizing the diverse economic development, social, and environmental needs of municipalities, Vermont’s system of planning can more effectively help communities plan for appropriate development to improve opportunity and quality of life while conserving and protecting local assets.

14) Adopt Growth Center Legislation

The legislature should establish a definition for the term “designated growth center,” and pass legislation in this biennium that provides incentives to attract development within such growth centers. Municipalities shall determine where designated growth centers are located within their boundaries in consultation with abutting municipalities and their Regional Planning Commission.

- a) Certain state permitting responsibilities should be transferred to the municipality within approved designated growth centers.
- b) Municipalities with approved designated growth centers under this legislation should be able to issue conclusive, rather than presumptive, findings under Act 250 criteria 6, 7, and 10 for projects within growth center boundaries.
- c) The legislature should specify the public input process needed for local designation of growth centers.
- d) Growth center designations for consideration under state programs and regulatory proceedings should be approved by the Vermont Planning Commission.

15) Enable Councils of Governments to Replace Regional Planning Commissions

The legislature should pass enabling legislation to allow municipalities in a region to replace their regional planning commission with a “council of governments” (COGs) if they so choose. Common in other states, COGs serve all the functions of an RPC, and can serve many additional functions if their members so choose. Made up of elected officials from each municipality, in contrast to existing RPCs which have appointed officials, COGs offer the advantage of closer, direct cooperation among selectboards and city councils to address common issues or problems without compromising the integrity of municipal government. The legislature should enable voluntarily-created COGs to undertake activities that member municipalities deem to be in their joint interest without the need for further consultation or permission.

16) Add Economic Development Elements to Local and Regional Plans

The legislature should amend statute (Title 24, Chapter 117) to require municipal and regional plans to have strong economic development elements, with strategies for implementing specific projects that address municipal, regional, and state priorities.

17) Plan for Diverse Populations

In order to address the needs of all populations in Vermont, the legislature should revise the “child care” goal of Act 200 (24 VSA 117 section 4302 (13)) to read:

“To plan liveable, healthy communities that foster diversity and support all sectors of the population.”

Addendum to Vermont Council on Planning Recommendations

Through the course of the Vermont Council on Planning's work, issues around coordination and continuity of state agency planning processes continued to arise. In a variety of forums, Vermonters expressed their concern about the fact that Vermont is one of only two states that still elect the governor and other statewide officials for two-year terms. They argued that the very structure of biennial political races contributes

to the shortened planning horizon in state agencies and hence in the state as a whole. The Vermont Council on Planning holds that the State of Vermont should amend its Constitution to establish four-year terms for gubernatorial and statewide offices, and should evaluate extending legislative terms. To further extend the planning horizon in a direct and a budgetary way, the State of Vermont should, in the future, follow a two-year operational budget cycle for state agencies.

ISSUES AND CHALLENGES WITH THE RECOMMENDATIONS

The recommendations in this report were approved by the Vermont Council on Planning. In some cases that approval was not unanimous but resulted from the voted approval of a two-thirds majority. In order to further inform the debate, the Vermont Council on Planning presents the following additional points of view on some of the recommendations. The recommendations in the report represent majority decisions, but as always, there are other points of view that policy-makers may wish to consider as our recommendations go forward.

Recommendation #2: The legislature should update state planning statutes.

Some VCP members felt that the statutes to be updated should be spelled out under this recommendation. It can be considered debatable which provisions exist as empty statute.

Recommendation #3a: No permit shall be inconsistent with the municipal plan.

Some VCP members felt that reviewing every permit for consistency with the local plan added an unnecessary and complex layer of review for local staff and boards. Municipalities are already responsible in statute for ensuring the bylaws are consistent with plans. This should ensure that permits are consistent with plans.

Recommendation #3b: Municipal plans shall supersede other plans if the impact is purely local.

If municipal plans supersede other plans only when the impact is purely local, this eliminates input the municipal plan has on developments of regional impact, including cumulative impacts, some VCP members argued.

Other VCP members believe that many local decisions, when considered together with other local decisions over time, have cumulative impacts that are regional in nature. Under this recommendation, municipal plans will supersede other plans on decisions that, when taken together with other decisions, are not purely local.

Recommendation #3d: State agency plans are approved by the governor's office.

Some VCP members felt that state agency plans that define over-riding state interests should be reviewed and possibly approved by another entity in addition to the governor's office, such as the Vermont Planning Commission.

Recommendation #5a: Local legislative bodies shall hold a public hearing on regional plan adoptions and amendments.

Some hold that it is too time-consuming and expensive to expect that every community in a region will hold a public hearing on a regional plan or amendment.

Recommendation #7: Regional Planning Commissions should provide consistent and effective services.

According to some VCP members, there is no stated purpose for evaluating RPCs, and no stated link between this evaluation and the concept of providing consistent and effective services.

Recommendation #9: The legislature should establish funding for planning.

Some VCP members felt the funding mechanism, especially for state planning, should be delineated more

explicitly. For example, some felt that the property transfer tax should be increased by a small percentage.

Recommendation #10: Build an Office of Planning Coordination.

Some VCP members believed the location of the Office of Planning Coordination should be in the governor's office or Agency of Administration instead of the Dept. of Housing and Community Affairs. If it were located in the governor's office, it would have a higher stature, and could coordinate better across agencies and with the Development Cabinet.

Recommendation #11: Establish a Vermont Planning Commission.

Some VCP members did not support investing state funds in creating another "layer" in the planning process, especially if it does not provide additional benefits or authority for local planning. Instead, some proposed that other state agencies or entities work to achieve the outcomes listed under recommendation #13, especially the Agency of Commerce and Community Development. In addition, the governor's office, instead of a Vermont Planning Commission, should play a larger role in initiating state agency planning that complies with state planning goals and regional goals, and resolving conflicts in state agencies' plans. Commitment to planning does wax and wane with different administrations, but if Vermonters are empowered to do more and better planning and the system supports these efforts, good state agency planning will become more of a priority, some members argued. Other members thought that the make-up of the Vermont Planning Commission should be more clearly defined, and that the appointment of its members should be confirmed by the Senate.

Recommendation #14d: Growth centers should be approved by the Vermont Planning Commission.

Some VCP members felt that growth centers should not be required to receive state approval. Others propose that "growth centers *shall* be approved" by the state. Still others think that growth centers should be approved, not by the Vermont Planning Commission, but by the Natural Resources Board; or by the Downtown Development Board with consultation by the Natural Resources Board, and with the possibility of appeal to the Environmental Court.

Recommendation #15: Enable Councils of Governments to replace Regional Planning Commissions.

If municipalities want to cooperate, they can do so now, some members felt. For them, enabling Councils of Governments is unnecessary.

Some VCP members hold that certain important issues were not addressed in the recommendations, as follows:

They argue that the recommendations do not provide enough change in the status that local plans, zoning bylaws, or local permits have in the Act 250 or other state regulatory processes.

To some, the recommendations do not vest enough important decision-making in local land use planning. If this were done, local townspeople would make the additional investment of time and energy to address the necessary issues.

Some VCP members would like the Vermont Planning Commission to periodically review the statewide planning goals and make recommendations for their amendment based on public involvement in developing a vision for the future of Vermont.

Several members believed that all municipal plans should be approved by popular vote.

ACKNOWLEDGEMENTS

The Vermont Council on Rural Development deeply appreciates all the partners and friends who contributed time, energy and resources to the Vermont Council on Planning process and this report. The work of the Vermont Council on Planning would have been impossible without the generous financial and human resource investment of the administration of **Governor Jim Douglas** and the **Vermont Legislature**.

VCRD is deeply grateful to every member of the **Vermont Council on Planning** for their patience and good faith in working through this challenging process in common service to Vermont and its future. Special thanks go to the members who contributed hours of extra work for the Council, especially the members of the writing team and the jurisdictional issues subcommittee.

VCRD thanks the **Vermont Office of USDA Rural Development** for the use of space and for all they do to encourage our work and support the communities that we serve. In addition, VCRD is grateful to the **Vermont League of Cities and Towns** and the **Natural Resources Board** for the use of their meeting spaces. VCRD is also obliged to its contributing members for their financial support.

The VCP gathered an enormous amount of information and perspectives from hundreds of Vermonters who are involved in and are customers of the planning system. We appreciate the definition of challenges and potential solutions produced by all attendees of the **2004 Vermont Rural Summit on Planning**; these deliberations provided an excellent start to frame all subsequent discussions.

The VCP thanks those organizations that helped sponsor or produce forums to provide invaluable input from business, environmental and planning perspectives to inform our deliberations: **Vermont Natural Resources Council, Vermont Chamber of Commerce, Vermont Homebuilders Association, UVM Extension Service, Vermont Association of Planning and Development Agencies, Vermont Regional Development Corporations, Vermont Planners Association, and Town Officers throughout Vermont.**

In addition to the input we received from the VCP forums, the Council invited presentations from key leaders with expertise in the development and implementation of plans at all levels: **Secretary Charlie Smith, Agency of Administration, Tom Daniels, University of Pennsylvania Department of Planning, George Hamilton, Institute for Sustainable Communities, Fred Dunnington, Middlebury Planning Director and Chair of the Council of Regional Commissions, Julie Beth Hinds, South Burlington Planning Director, Beth Humstone, Vermont Forum on Sprawl, Matt Rubin, East Haven Wind Farm, Mark Snelling, Chair of the Governor's Committee on Downtowns and Growth Centers, James Matteau, Windham Regional Commission, Barbara Ripley, Friends of Sabin's Pasture, Catherine Dimitruk, Northwest Regional Planning Commission, and Secretary Tom Torti, Agency of Natural Resources.**

The VCP process gathered research into current planning practices, and we are grateful to all the organizations and individuals that assisted with it, especially the **Regional Planning Commissions** and **state agencies**.

The members of the Vermont Council on Planning and VCRD thank **Brenda Hausauer**, VCP Project Director, for her outstanding work consolidating ideas, maintaining communications, and managing this

complex process, and **Jolinda LaClair**, Director of USDA Rural Development in Vermont, who chaired the VCP and led our common efforts toward conclusions with characteristic diligence, grace, and diplomacy.

VERMONT COUNCIL ON PLANNING CHARGE

The charge of the Vermont Council on Planning (VCP), created in September 2004, was to evaluate issues and build recommendations to improve the system of planning in the State of Vermont.

Planning Challenges in Vermont

The Vermont Council on Rural Development held a Summit on the Structure of the Planning System in Vermont on August 11, 2004. Participants at this Summit enumerated the following issues for consideration by the VCP (see the Summit Report for a more complete transcript at www.sver.net/~vcrd):

- Planners and customers of the system have concerns that the system of planning in Vermont is unwieldy and inefficient.
- Many Vermont towns lack or have vague town plans making the process of interpretation unclear and future development unpredictable.
- Town Plans are not always well coordinated regionally, and the supports provided to municipalities by various Regional Planning Commissions are inconsistent.
- Incentives are weak for municipal and regional planning; the incentive program offered to municipalities under Act 200 remains unfulfilled.
- It is difficult to engage public participation in the planning process; many people do not see the benefits for participating or the consequences of not participating; many local planners may lack the skills and training to build engagement in community dialogue in advance of setting plans.
- Public engagement often occurs in reaction to projects (NIMBY), rather than earlier in the planning process.
- Regional Planning Commissions do not have the resources or authority to provide effective coordination between municipal and state planning.
- Because Regional Planning Commissions receive grants and funds for particular projects, their focus on coordinating a comprehensive regional plan can be diluted.
- The Act 200 statute provisions for state agency planning are not implemented; planning by state agencies isn't systematically coordinated with other agencies, or, in many cases, with regional plans. This can lead to a "crisis management" approach and one in which agencies do not recognize common ownership in plans.
- Act 200 doesn't directly consider regional differences or the realities of the State's growth and scale issues; one size doesn't fit all.
- The regulatory aspects of plans can be inconsistent with their role as guiding visions; Vermont's planning process is often too focused on regulation rather than emerging opportunities.
- Land use planning processes are currently disconnected from economic development discussions and planning; economic impacts are not fully represented in municipal and regional plans.
- Vermont's two-year gubernatorial term discourages long-term planning commitments at the State level.

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- Vertical (between towns, regions, and the state), and horizontal (between state agencies, or among Regional Planning Commissions) communications are inadequate, and the locus of authority for planning decisions is not always clear. This undermines coordination and leads to inconsistency and undue complexity.

Activities of the Vermont Council on Planning

Over the course of the next year the Vermont Council on Planning will undertake the following tasks to evaluate the structure of the planning system in Vermont and build recommendations toward its improvement.

- Evaluate the challenges of town, regional and cross-agency planning in the State of Vermont.
- Review the history of the planning system in Vermont and the current status of planning in statute and reality.
- Evaluate pertinent successful models of planning from outside the state of Vermont.
- Gather public and leadership input from Vermonters on the structure, functions, and goals of the planning system in the state.
- Using the challenges and priority recommendations developed at the Vermont Planning Summit in August 2004, build a strategic plan to address the structural challenges and opportunities in the planning system for consideration by the Gubernatorial Administration, legislature, and planning community in Vermont.
- Consider planning goals and systems of implementation.

The Vermont Council on Rural Development (VCRD)

The VCRD is a non-profit organization dedicated to helping Vermonters and Vermont communities develop their capacity to create a prosperous and sustainable future through coordination, collaboration and the effective use of public and private resources. The VCRD is a dynamic partnership of federal, state, local, non-profit, and private partners. VCRD is non-partisan with an established reputation for community-based facilitation. It is uniquely positioned to sponsor and coordinate committees concerned with policy questions of rural import.

VCRD is actively bi-partisan and politically neutral, recognizing that all sides of an issue have critical points worthy of serious consideration.

VCRD's role is to establish the collaborative framework for the Vermont Council on Planning, invite participants, build the charge to the group, and establish a reporting sequence to the governor's office and Administration, the Vermont State Legislature, and people of Vermont. VCRD will provide expert facilitation of the VPC, appoint a chair for its sessions, produce and distribute reports, and carry the recommendations of the VPC to state policy-makers.

Steering Committee

VCRD has established a strong steering committee to oversee its role in this effort. The existing VCRD Summit Committee will coordinate VCRD facilitation of the VCP and, ultimately, evaluate the state's response to VCP recommendations. Through this committee, VCRD will be in a position to advocate for VPC recommendations in the future. The VCRD Summit Committee is made up of: Jolinda LaClair (chair), State Director of USDA RD, Paul Costello, Director of VCRD, Barbara Grimes, General Manager of Burlington Electric Company, Jonathan Wood, Commissioner, Forests Parks & Recreation, Bob Ackland, Sugarbush Resort, Catherine Dimitruk, Director of the Northwest Regional Planning

Commission, Cynthia Gubb, Chittenden Bank, Steve Kerr, Secretary of Agriculture, Brian Keefe, Senator Jeffords Office, Pat McDonald, Secretary of Transportation, and Marcia Merrill of Montgomery and Merrill.

Vermont Council on Planning Participants

VCP council members have been selected to bring together a working group of more than 20 individuals with the leadership, expertise, and vision to consider and consolidate the public policy recommendations connected to the structure of planning in Vermont. The Vermont Council on Planning will be chaired and facilitated by VCRD to ensure the balance of interests, the full representation of the diverse concerns of the sector, and that the resulting recommendations represent a general consensus rather than the dominance of any particular interest or party. The Vermont Council on Planning will invite participation by members of the Gubernatorial cabinet, regional planning commissions, the VT Planners Association, the Environmental Board, key private sector and non-profit development leaders, agricultural/forestry leadership, Vermont legislative leaders, key environmental organization leaders, and individuals with experience and expertise in planning at the local, regional and state levels.

Timeline and Reporting

- VCP will meet for one year.
- VCP meetings will be scheduled every month beginning in September 2004 toward a final VCP report in October 2005.
- VCP will invite leading public and private planning experts, lawmakers, and customers of the planning system to testify about the challenges before the system and to share their recommendations for structural improvements.
- VCP will interview leading business and private developers, housing and human service providers, environmentalists and other interested parties about the challenges they have in working with the system and their recommendations for improvements.
- VCP will document and analyze instances of NIMBYism to evaluate their lessons.
- The VCP final report and recommendations will be communicated to the governor's office, the Vermont State Legislature, and the people of Vermont by January 2006.

PUBLIC INPUT IN THE VCP PROCESS

The Vermont Council on Planning took extensive public input throughout its year-long process, through a variety of venues, as summarized below.

In August 2004, the Vermont Council on Rural Development organized a day-long summit on the Structure of the Planning System in Vermont at the Statehouse in Montpelier. The summit was designed to evaluate the challenges before the planning system in Vermont and propose potential solutions, and it featured facilitated roundtable discussions of key issues in the state's system of town, regional, and state planning. The summit was attended by 180 state agency planners, concerned citizens, regional and municipal planners, environmental and business leaders, legislators, and leaders in the Douglas Administration. Participants made recommendations in eight topic areas, which were reported to the full group and Governor Jim Douglas at the end of the summit. Those recommendations served as starting points and on-going references for the work of the Vermont Council on Planning.

The Vermont Council on Planning organized its early meetings around the eight topic areas discussed at the summit. At each of the monthly meetings between November 2004 and May 2005, the Council invited presenters to discuss their views on these topic areas. The following presenters contributed to the Council's understanding and discussions:

- 11/3/04: Peg Elmer (DHCA)
- 12/2/04: George Hamilton, Institute for Sustainable Communities; Kevin Dorn, Secretary, Agency of Commerce and Community Development

- 1/4/05: Matt Rubin, East Haven Wind Farm; Barbara Ripley, Friends of Sabin's Pasture
- 2/1/05: Juli Beth Hinds, S. Burlington Municipal Planner; Fred Dunnington, Middlebury Municipal Planner
- 3/3/05: Catherine Dimitruk, Director, Northwest Regional Planning Commission; Jim Matteau, Director, Windham Regional Planning Commission; Mark Snelling, Chair, Governor's Committee on Downtowns and Growth Centers
- 4/5/05: Tom Torti, Agency of Natural Resources; Tom Daniels, University of Pennsylvania Department of Planning
- 5/2/05: Charlie Smith, Agency of Administration

In April, May, and June 2005, the Vt. Council on Planning convened several forums to gather input on the Council's work from specific sectors. Those meetings were:

- 4/7/05: Town officers from the Lyndon area
- 4/13/05: Town officers from the Fairlee area
- 4/21/05: Town officers from the Burlington area
- 4/27/05: Town officers from the Rutland area
- 5/6/05: Regional Development Corporations
- 5/23/05: Environmental leaders
- 6/9/05: Regional Planning Commission directors
- 6/14/05: Business leaders

The recommendations from each forum group were compiled and considered by the Vt. Council on Planning. The Council deeply appreciates the time and work all these individuals contributed to help us understand the issues and formulate solutions.

LIST OF STATE PLANS

The following is a summary of most of the plans related to land use produced by state agencies, compiled by the Vt. Council on Planning during our work. While it captures most of the agencies that do planning, is not comprehensive.

Agency of Commerce and Community Development

The Agency of Commerce and Community Development produces a strategic plan.

Department of Housing and Community Affairs

The Historic Preservation Division writes a Vermont Historic Preservation Plan, and the Housing Division writes a HUD Consolidated Plan.

Agency of Transportation

The Agency produces many plans, including those involving statewide transportation issues, air travel, rail, bicycles and pedestrians, trucks, buses, freight, specific highways, traffic calming, transportation across borders, and others.

Agency of Natural Resources

ANR Central Office

The ANR central office produces several strategic plans related to the entire agency or the governor's priorities.

ANR Department of Fish and Wildlife

The Dept. of Fish and Wildlife produces the following types of plans: Comprehensive Wildlife Conservation Strategy Plan, Species Plans, Recovery

Plans, Access Area Plans, Wildlife Management Area Plans, and Capital Construction Plans.

ANR Department of Forests, Parks and Recreation

The Dept. of Forests, Parks, and Recreation produces many plans, including the following: Conservation Education Plan; plans related to forest resources, forestry programs, forest products and marketing, forest stewardship; Lands Conservation Plan; Outdoor Recreation Plan; Marketing Plan, Infrastructure Assessment Plan, and Operation Plans for State Parks; long-range management plans for individual state forests and state parks; and others.

ANR Department of Environmental Conservation

The Dept. of Environmental Conservation's produces a large number of plans from the Commissioner's Office, Air Pollution Control Division, Environmental Assistance Division, Facilities Engineering Division, Waste Management Division, Wastewater Management Division, Water Quality Division, and Water Supply Division. Here is just a sampling of their plans: Air Inspection Plan, DEC Strategic Plan, Lamp Recycling Outreach Plan, Dam Safety Plan, Vt. Solid Waste Management Plan, Targeted Brownfields Assessment Plan, Wastewater Security Assessment Plan, Basin Plans, Acid Rain Long-Term Monitoring Plan, Flood Plain Management Plan, Groundwater Protection Program Plan, and many others.

Agency of Administration

Department of Buildings and General Services

The Dept. of Buildings and General Services creates plans related to the building needs of state government,

including a five-year capital plan, space planning for state agencies, project planning, energy planning for state government, recycling and resource conservation planning, security planning, and others.

Department of Information and Innovation

The Dept. of Information and Innovation updates the State of Vermont Information Technology Five-Year Plan every year.

Agency of Human Services

The Agency of Human Services produces plans through its Central Office, Dept. for Children and Families, Dept. of Health, Dept. of Corrections, and Dept. of Aging and Independent Living. Here is just a sampling of their plans: Ten-Year Plan to End Chronic Homelessness, LIHEAP State Plan, Child and Family Services Plan, State Plan for Child Care and Development Block Grant Funds, State Health Plan, Adult Mental Health System of Care Plan, State Plan on Aging, and many more.

Department of Education

The Dept. of Education produces a variety of plans, including a strategic plan, information technology plan, plan on student discipline and bullying prevention, school construction planning guide, state plan for technical education and one for adult education, early education work plan, and other plans.

Department of Public Service

The Dept. of Public Service writes the following plans: Comprehensive Energy Plan, Twenty-Year Electric Plan, Ten-Year Telecommunications Plan, and plans for efficiency delivery programs to be implemented by the Efficiency Utility.

Department of Public Safety

The Dept. of Public Safety produces the following plans: State Emergency Operations Plan, State Radiological Emergency Response Plan, State Hazard Mitigation Plan, Supplemental and Incident Specific Plans, interagency plans outlining protective actions associated with threat conditions.

Vermont State Housing Authority

The Vermont State Housing Authority produces a strategic plan.

Vermont Housing Finance Agency

The Vermont Housing Finance Agency writes a strategic plan.

Vermont Economic Progress Council

The Vermont Economic Progress Council writes a Long-Range Economic Plan.

ENDNOTES

¹ Available at www. Dover.net/~vcrd.

² In 1916, the Vermont Supreme Court invalidated a Montpelier City ordinance regulating the erection of buildings. The ordinance required a two-thirds vote of the city council to approve a building permit if the building inspector opposed its issuance, a majority vote if the inspector approved. In *State v. Gitchell*, 90 Vt. 57 (1916), Justice Seneca Haselton explained that two-thirds provision was not enforceable because it was created by ordinance, not by statute or charter. As majority vote is the implied proper method of acting as a municipal body, the council had no authority to change that standard without legislative support.

³ 1921, No. 107.

⁴ P.L. §§ 3723-3747; 1931, No. 55.

⁵ *Murphy Motor Sales v. First Nat. Bank of St. Johnsbury*, 122 Vt. 121 (1960).

⁶ <http://www.randolphvt.com/Town/pdf/zoninghistory.pdf>.

⁷ P.L. 3741.

⁸ 1967, No. 334 (Adj. Sess.)

⁹ Some of the report's recommendations were tied to the eugenics movement of the time.

¹⁰ Michael Sherman, Gene Sessions, and P. Jeffrey Potash, *Freedom and Unity: A History of Vermont*, Vermont Historical Society, 2004, 441.

¹¹ Michael Sherman, Gene Sessions, and P. Jeffrey Potash, *Freedom and Unity: A History of Vermont*, Vermont Historical Society, 2004, 506-508.

¹² Michael Sherman, Gene Sessions, and P. Jeffrey Potash, *Freedom and Unity: A History of Vermont*, Vermont Historical Society, 2004, 508.

¹³ 1969, No. 244 (Adj. Sess.)

¹⁴ 1971, No. 257 (Adj. Sess.), § 22.

¹⁵ 1957, No. 286.

¹⁶ 1965, No. 163.

¹⁷ 10 V.S.A. § 6086(b)(10).

¹⁸ 1988, No. 200.

¹⁹ 24 V.S.A. § 4348(i).

²⁰ <http://www.dhca.state.vt.us/Planning/CH117Phase1Report.pdf>.

²¹ 24 V.S.A. § 4410.

²² 24 V.S.A. § 4303(6).

²³ 24 V.S.A. §§ 4432 and 4433.

²⁴ *Flanders Lumber & Building Supply Co. v. Town of Milton*, 128 Vt. 38 (1969).

²⁵ *Smith v. Winhall Planning Commission*, 140 Vt. 178 (1981).

²⁶ *In re John A. Russell Corp.*, 176 Vt. 520 (2003).

²⁷ 154 Vt. 363 (1990).

²⁸ 163 Vt. 25 (1994).

²⁹ 24 V.S.A. § 4385.

³⁰ *Status Report: Land Use Planning in Vermont 15 Years After Act 200*. Vermont Department of Housing & Community Affairs, July 2004. *Status Report: Land Use Planning in Vermont 15 Years After Act 200*.

³¹ Vermont Council on Planning survey, 2005.

³² Vermont Planning Information Center's website is www.vpic.info.

³³ Organizations involved in the Land Use Education and Training Collaborative include the University of Vermont's Center for Rural Studies, Vermont Department of Housing and Community Affairs, Vermont Agency of Transportation, Vermont Secretary of State's Office, Vermont Forum on Sprawl, Vermont League of Cities and Towns, Vermont Association of Planning and Development Agencies, Vermont Planners Association, Burnt Rock Associates, Orton Family Foundation, Planning Commissioners Journal, University of Vermont Extension / Vermont Institute for Government, Vermont Center for Geographic Information (VCGI), Vermont Smart Growth Collaborative, Vermont Design Institute, Vermont Environmental Board, Vermont Local Roads Program, Vermont Agency of Natural Resources, Yellow Wood Associates/National Community Forestry Center (NCFC).

³⁴ "State agency plans" in these recommendations do not refer to the two-year plans for state agencies mandated by Act 200, which currently are not written by most agencies. Instead, "state agency plans" refer to the functional and other plans of state agencies (e.g., transportation plan, energy plan, etc.)

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