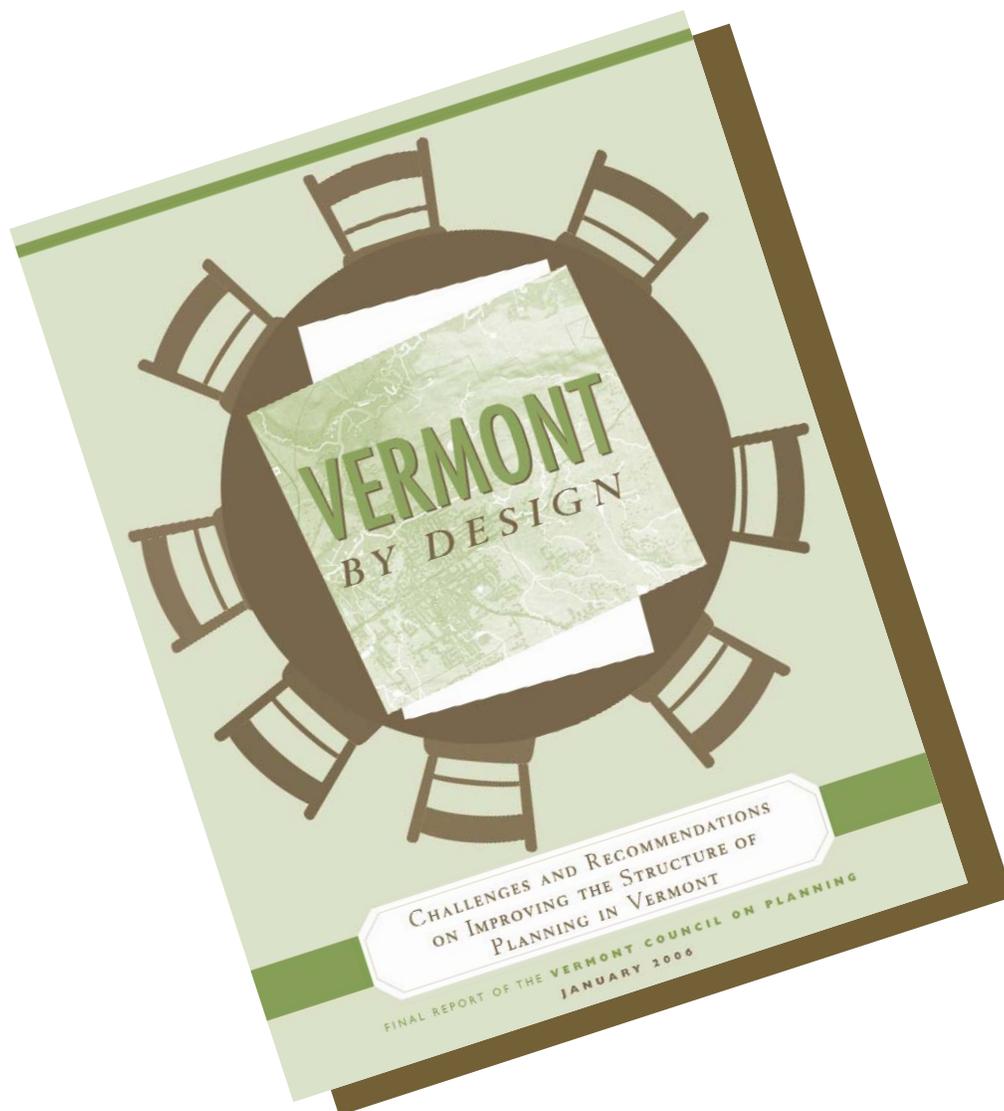


# VERMONT BY DESIGN: NEXT STEPS

REPORT OF A CONFERENCE HELD AT  
VERMONT LAW SCHOOL  
FEBRUARY 24, 2006  
and  
PROPOSED IMPLEMENTATION PLAN



The Land Use Institute  
Vermont Law School  
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L. Kinvin Wroth  
Professor of Law and Director, Land Use  
Institute

## Introduction

On February 24, 2006, Vermont Law School's Land Use Institute sponsored a day-long conference entitled "Vermont by Design: Next Steps" to consider means of implementing *Vermont by Design: Challenges and Recommendations on Improving the Structure of Planning in Vermont*, the final report of the Vermont Council on Planning, issued in January 2006 (available at [http://www. Dover.net/~vcrd/new\\_v2/vpcouncil.htm](http://www. Dover.net/~vcrd/new_v2/vpcouncil.htm)). The Council was established in September 2004 by the Vermont Council on Rural Development to develop systematic recommendations concerning planning in Vermont. *Vermont by Design* contains specific recommendations designed to further the goals of advancing governance, authority, and leadership in the planning system; improving coordination and collaboration in the planning process; expanding education and training; and addressing issues of growth and scale. At the February 24 conference, individuals from all sectors of Vermont's planning community, including the drafters of *Vermont by Design*, other experts, state and local government officials, and private consultants, met to assess and analyze the report and consider means of carrying out its recommendations.

The present report, prepared by the Land Use Institute, is intended to follow up on the February 2006 conference by

- (1) Summarizing the vision and recommendations of *Vermont by Design* as presented in January 2006.
- (2) Summarizing the plenary proceedings and the conclusions of the break-out sessions at the conference.
- (3) Proposing next steps for implementation of the January 2006 report by restating the principal challenges as seen at the conference, establishing a Consortium of stakeholders to take the steps necessary to address those challenges, and setting forth a draft implementation Plan to be refined and carried out by the Consortium.

Appended to this report are the original *Vermont by Design* recommendations, the agenda of the February 24 conference, a list of those who attended, and the remarks of Professor Richard O. Brooks of Vermont Law School and Governor James Douglas. A video of the plenary sessions of the conference may be accessed online at [www.vjel.org](http://www.vjel.org).

## 1. Vermont by Design: Summary of the Report

The recommendations of *Vermont by Design* were intended to address communication, collaboration, and implementation gaps in Vermont's system of planning and "to advance the system of planning, improve capacity, and extend the communications and collaboration that will make plans effective in moving Vermont forward."<sup>1</sup> The recommendations, based on a carefully prepared history and analysis of planning in Vermont, are intended to implement a vision of 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 interest 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 occur in accordance with the plans.<sup>2</sup>

Pursuant to this vision, municipal plans will define interests and priorities to guide economic development, land use, transportation, housing, community facilities, and natural resources are based on broad public participation. Regional planning commissions will provide technical assistance to communities and work with all stakeholders to develop effective regional plans. Comprehensive state agency planning, developed in conjunction with all relevant governmental and other interests, will define state interests and priorities and incorporate relevant elements of municipal and regional plans. Coordination of all planning levels will be assured by articulation and communication of visions and priorities and establishment of clear lines of responsibility and authority to implement on a predictable basis the vision of democratically decided plans.<sup>3</sup>

*Vermont by Design* contains 17 recommendations addressing four major goals, as well as an addendum and a summary of additional points of view. These components, which are set out in Appendix I, are here summarized:

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<sup>1</sup> *Vermont by Design*, p. 2

<sup>2</sup> *Id.*, p. 4.

<sup>3</sup> *Id.*

### *Advancing Governance, Authority, and Leadership*

1. The Governor and Legislature must work together to implement statewide planning and land use goals, provide resources and structure for *the* planning system in VT, and recognize and support the work of local and regional leadership in planning.
2. The Legislature should update statutes to implement *the* report and eliminate unused provisions.\*<sup>4</sup>
3. So that planning will drive regulation, (a) no permit shall be inconsistent with a municipal plan, and consistency review must be part of the permit process; (b) a municipal plan shall supersede all other plans for purely local impact; (c) a regional plan shall supersede a municipal plan if impact is regional; (d) state agency plans should define overriding state interests and should be developed with public input, including that of affected municipalities and regions; (e) municipal, regional, or state plans inconsistent with state law have no evidentiary weight; (f) the legislature should review and, as necessary, amend the Vermont planning goals in Title 24 V.S.A., c. 117.\*
4. State and state-managed resources shall be allocated to capital investment projects that meet statewide planning goals in Title 24 V.S.A., c. 117, and comply with municipal and regional plans. Such projects may only pre-empt municipal and regional plans when there is a clear, properly defined overriding state interest and the reasons are clearly stated.
- 5 (a) Local legislative bodies shall hold public hearings on regional plans with the municipal RPC member present to respond to questions.\* (b) State agency plans shall be publicly available and explained to the public before certification by the governor.\*
6. The state should provide matching grants to assist municipalities in writing or updating plans and bylaws.
7. Regional Planning Commissions should continue to provide planning assistance to municipalities and should be accountable to the state and evaluated by the state Office of Planning Coordination (#10) with municipal input and reports to the Vermont Planning Commission (#11), municipal planning commissions, and the governor's Development Cabinet. Copies of RPCs' budgets and financial audits shall be sent to municipal planning commissions.\*

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<sup>4</sup> Asterisks here and below refer to "additional points of view" on particular recommendations found in *Vermont by Design*, pp. 41-42, in Appendix I.

8. State agency plans meeting criteria established by the Vermont Planning Commission (#11) should address consistency with state planning goals in Title 24 V.S.A., c. 117. When such plans are drafted or revised, state agencies should provide executive summaries outlining agency goals and compliance with state goals that are available in the Office of Planning Coordination (#10) and are sent for review and comment to local, regional, and state planners, the public, the administration, and the Vermont Planning Commission.
9. The Legislature should provide long-term funding for municipal and regional planning and the state Office of Planning Coordination (#10).\*

### *Improving Coordination and Collaboration*

10. Create the Office of Planning Coordination in the Department of Housing and Community Affairs to serve as an information clearinghouse and *to* coordinate state, regional, and local funding, training, and evaluation of planning activities.\*
11. Establish *a* Vermont Planning Commission composed of representatives of state, regional, and local planning communities and staffed by Office of Planning Coordination to evaluate regional and state agency plans for consistency, approve growth centers (#14) and oversee coordination among state, regional, and local planners.\*

### *Expanding Education and Training*

12. Consistent education and training for local and regional planners should be funded and coordinated through the Office of Planning Coordination (#10) and the Vermont Land Use Education and Training Collaborative.
13. Establish through the Office of Planning Coordination (#10) an annual training conference for planners from all levels of government to be run by the Vermont Land Use Education and Training Collaborative.

### *Addressing Issues of Growth and Scale*

14. Legislation should be adopted to define and provide incentives for growth centers to be established by municipalities in consultation with regional planning commissions [Enacted as Act 183 of 2005 (Adj. Sess.)].\*
15. Legislation should be adopted to allow municipalities to replace regional planning commissions with councils of government.\*

16. Legislation should be adopted to require strong economic development components in municipal and regional plans.
17. 24 V.S.A. § 4302 (c)(13) should be revised to provide broad support of diverse populations.

### *Addendum*

The Vermont Constitution should be amended to establish four-year terms for the governor and statewide offices and consider extending legislative terms. A two-year budget cycle should be adopted for all state agencies.

## **2. Vermont by Design: Summary of the Conference**

The morning session of the conference began with an overview of *Vermont by Design* presented by Jolinda LaClair, Chair of the Vermont Council on Planning and Director for New Hampshire and Vermont of the USDA Rural Development Program, and Paul Costello, organizer of the Council on Planning and Executive Director of the Vermont Council on Rural Development. Ms. LaClair described the establishment and operation of the Council on Planning and noted that planning had been selected as the subject of the study in order to focus more public attention on it because of the need for it as well as its key role in managing development. Mr. Costello, asserting that “planning is patriotic,” summarized the provisions of *Vermont by Design*. He said that the underlying theme was the need for education and training that will enable individuals to work together through their different levels of government in establishing coordination among those levels that will allow Vermonters to develop a common vision for the future of the state and the tools to implement that vision. Following these presentations, Professor Richard Brooks, founding director of Vermont Law School’s Environmental Law Center, delivered an address, “Planning and the Uses of Disorder,” that is appended to this report.

The remainder of the morning session was devoted to three panels addressing issues from the local, regional, and state perspectives. In the first panel, Paul Gillies, Esquire, a member of the Vermont Council on Planning and a private land use practitioner, and Professor Kinvin Wroth, Director of the Land Use Institute, conducted an interactive dialogue with audience participation. The discussion covered problems with the local planning process and ways of improving it through greater citizen involvement and clearer articulation of the relationship between the vision and goals set forth in a plan and the regulatory

regime adopted to implement it. In the second panel, Gregory Brown, also a Planning Council member and director of the Chittenden County Regional Planning Commission, described the role, operations, and current problems of the state's eleven regional planning commissions. Vermont Law School Professor Faith Rivers then took a broader look at the challenges and potential of the idea of regional planning as a forum for addressing issues that concern more than one town and as an intermediary between individual concerns expressed at the local level and the goals and priorities of the state. Finally, in the third panel covering state issues, VLS Professor Mark Latham discussed examples of successful state-level planning initiatives in other states and the ways in which such initiatives, with adequate leadership, could address the deficiencies of decentralized local planning in addressing growth pressures and other issues of statewide concern. Sharon Murray, a Planning Council member, private planner, and past president of the Vermont Planners Association, gave an extensive history of efforts to develop statewide planning in Vermont since the 1930s, concluding with an analysis of problems with the present issue- and agency-focused approach to state planning and a summary of the recommendations of *Vermont by Design* that would coordinate planning at the state level and expand the state's role as coordinator of local and regional planning efforts.

The afternoon session began with remarks by Governor James Douglas that are appended to the report. Those present then separated into six break-out groups for two-hour sessions, each with a member as reporter and a law student as recorder of the discussions. The break-out groups were charged to identify and achieve consensus on three of *Vermont by Design's* recommendations that should be given priority for immediate implementation and three that should have priority for longer-term implementation. The recommendations could be specifically those of *Vermont by Design* or others designed to achieve the basic purposes noted above. The groups were also asked to identify specific next steps that must be taken by the responsible players to move forward the implementation of the priority recommendations.

The break-out groups reported their conclusions in a final plenary session. None of the recommendations received an overall negative rating, though some were not given positive support. Recommendations No. 9 calling for consistent, long-term funding for planning at the local, regional, and state levels; 10 calling for establishment of a state office of planning coordination; 12 calling for improved training for local and regional planning staffs and volunteers; and 14 supporting Growth Center legislation [Enacted as Act 183 of 2005 (Adj. Sess.)] were most strongly supported by the groups. Other recommendations receiving significant support were No. 1 calling for state executive and legislative

leadership in planning, 3 calling for the establishment of clear jurisdictional lines among planning agencies, 4 calling for compliance of state investments with state planning goals and local and regional plans, 5 calling for improved public information on planning at all levels, 7 calling for strengthening of regional planning commission support for local planning, and the recommendation in the Addendum for four-year terms for the Governor and Legislature.

As would be expected from a diverse group, differences and shadings of opinion were reflected in the discussions of the break-out groups. Thus, there were proponents both of enhanced local autonomy and control and of stronger state or regional oversight of local planning, either through approval of local plans or clearly defined mandatory planning goals. There was a general sense that there should be better definition of the state's role in the planning process and some support for a statewide coordinating commission. Opinions were divided, however, as to the scope of this function and whether it should be exercised by a state planning commission or a nongovernmental organization such as the University of Vermont or Vermont Law School. The need for better vertical and lateral communication among all levels of planning agencies was generally agreed upon, and some support was expressed for Recommendations 16 calling for planning for economic development and 17 calling for the incorporation of diversity in communities as a goal of Act 200.

Some groups made recommendations that were not explicitly made in *Vermont by Design*. A number of groups called for more public education and communication on planning and land use issues, as well as encouragement of more public participation in the process. Recommendations were made that legislation be adopted to facilitate the statewide transfer of development rights. It was also recommended that the regional planning commissions employ "circuit riders" to assist towns. There was agreement in the subsequent plenary discussion on the need for more planning concerning the maintenance and expansion of infrastructure, which many agreed was the foundation of planning for sustainable growth.

Implementation recommendations were varied in extent and scope. It was suggested that the group directly urge the Governor to endorse planning as a goal of his cabinet and to emphasize coordination among agencies as a key to planning. The Legislature should be lobbied to support planning goals in part through an annual "Planning Day" be held during the session. The group should indicate to the appropriate legislative committees its support of the pending Growth Center legislation [Enacted as Act 183 of 2005 (Adj. Sess.)]. It was suggested that the Land Use Institute might conduct a cost-benefit analysis

of the planning process as a basis for requests for funding, identify other sources of funding available to towns, convey in a report the recommendations of the conference to the Governor and Legislature, and endorse the direct recommendations proposed to the Governor and the Legislature. In conclusion, those present at the final plenary session suggested that the conference report should be circulated to those who had attended for further suggestions and comments on implementation.

### 3. Vermont by Design: Next Steps

#### *The Challenges*

As an initial basis for proposals to implement *Vermont by Design*, the principal challenges posed in the Report, in discussion at the conference, and in subsequent reflection are here restated and grouped under five headings:

#### (1) The Structure of Planning

- Inspiring leadership for a statewide vision for the role of planning in the 21<sup>st</sup> Century and to provide resources for it.
- Clarifying and confirming the jurisdiction and lines of authority of local, regional, and state planning agencies.
- Resolving the tension between the tradition of local control and the need for coordination, planning, and decision-making to serve the interests of all the people of Vermont.
- Establishing appropriate partnerships among public planning agencies, non-governmental planning organizations, and private planners.

#### (2) The Planning Process

- Clarifying the role of planning and the authority of plans at all levels of government and the relationship of plans to implementing bylaws.
- Attaining clarity and openness in the planning process.
- Increasing public participation in the planning process.

#### (3) Communication

- Providing vertical and lateral communication of plans and planning decisions between planning agencies at all levels of government.
- Improving public access to information on plans and planning decisions at all levels of government.

(4) Education and Training

- Providing educational materials and programs on planning for the public.
- Improving training for staff and volunteer participants in planning at all levels of government.
- Developing a joint graduate program in planning and law at UVM and VLS.

(5) Funding

- Establishing consistent long-term state financial support for planning at all levels of government.
- Providing state matching grants for municipalities to employ staff or consultants in updating plans and bylaws.
- Providing state funds to support education and training efforts.
- Identifying sources of private funding for innovative planning.

### *Implementation*

Implementation of measures to address these challenges requires the development of a plan consisting of specific legislative and other action initiatives and a timetable and strategy for their presentation and support. The Land Use Institute proposes to convene a Consortium of stakeholders that will refine the draft of *Vermont by Design: The Plan*, set out below, and will take responsibility for developing and presenting the components of the Plan.

#### *Vermont by Design: The Consortium*

The Land Use Institute will establish a consortium of Vermont organizations having a stake in planning structure, process, and training and convene a meeting of the Consortium to be held *during* September

2006. The purpose of the meeting will be to discuss and refine the draft of *Vermont by Design: The Plan*, to develop priorities and a timetable for implementation of the Plan, and to assign responsibility for timely completion and presentation of its components.

The Consortium should include the following agencies and organizations in its membership:

The University of Vermont (UVM)  
Vermont Association of Planning and Development Agencies (VAPDA)  
Vermont Business Roundtable (VBR)  
Vermont Council on Rural Development (VCRD)  
Vermont Department of Housing and Community Affairs (DHCA)  
Vermont Forum on Sprawl (VFOS)  
Vermont Land Trust (VLT)  
Vermont Land Use Education and Training Collaborative (VETC)  
Vermont Law School—Land Use Institute (LUI)  
Vermont League of Cities and Towns (VLCT)  
Vermont Planners Association (VPA)  
Vermont Natural Resources Board (NRB)  
Vermont Natural Resources Council (VNRC)  
Vermont/New Hampshire USDA Rural Development (USDA)

### *Vermont by Design: The Plan*

The basic purposes of *Vermont by Design: The Plan* are (1) to provide an integrated structure of planning agencies at the local, regional, and state levels that is committed to a common set of planning goals and an integrated planning process designed to assure decision-making that recognizes local and regional needs within the framework of statewide needs and goals and (2) to provide continuing public education about the goals and process of planning and its implementation, as well as continuing training both of the professionals who staff the process and the volunteer commission and board members who make it work. The draft Plan sets out specific action initiatives and a timetable to address key challenges of *Vermont by Design* as set out above.

#### 1. Leadership Initiatives

The support of Vermont's executive and legislative leadership for the principles and elements of the Plan is essential to its successful implementation. Accordingly, as soon as possible after the November 2006 election, the Consortium should meet with the Governor-elect and the prospective leadership of the General Assembly to present the Plan and ask their support

(1) For the continuing implementation of the statewide planning goals of Act 200 (24 V.S.A. § 4302) and the provision of the resources and structure necessary for that implementation.

(2) For specific legislative, administrative, and fiscal initiatives concerning planning structure, process, and training identified in section 2 below as those to be presented when the General Assembly convenes in January 2007.

## 2. Legislative Initiatives

The Consortium should prepare and obtain sponsorship for legislation on the following initiatives in time to meet appropriate filing deadlines for the January 2007 legislative session:

(1) Establishment of the Office of Planning Coordination in the Agency of Administration, charged with coordinating state agency planning; reviewing state agency plans for consistency with state planning goals and applicable regional and municipal plans; reviewing new and updated regional and municipal plans for consistency with state planning goals and applicable state plans; serving as a clearinghouse of planning information for planning agencies and the public; overseeing state funding for support of regional and municipal planning activities and public education and professional training on planning; conducting or funding research and data-gathering necessary for planning at all levels.

(2) Adoption of the planning authority guidelines and requirements proposed in Recommendation 3 of *Vermont by Design*.

(3) *Enactment of* necessary statutory amendments to increase and encourage public information and participation at all levels of planning.

(4) Development of a requirement that state capital investment projects comply with statewide planning goals and approved state agency plans, including standards for determining when such projects may override approved regional and municipal plans.

(5) Revision of other statutory provisions as necessary to comply with the foregoing legislation and to facilitate executive and other action pursuant to this Plan.

### 3. Executive Initiatives

The Consortium should prepare and propose to the Governor executive orders on the following initiatives for adoption during the 2007 legislative session:

(1) Compliance by state agency plans with state planning goals, pursuant to 3 V.S.A., ch. 67.

(2) Requirement of a public input process, including comments from affected regions and municipalities, for state agency plans that address issues of over-riding state interest

(3) Requirement that executive summaries of state agency plans, addressing compliance with state planning goals, be prepared and distributed to the Office of Planning Coordination, other state agencies, and all affected regional and municipal planning agencies and be made available to the public electronically, with a 60-day period for comments from agencies and the public prior to the effective date of a plan.

(4) Provision to recognize and provide guidelines for the Vermont Land Use Education and Training Collaborative to assure that its programs are broadly designed to reach all levels of planning addressed in this Plan.

### 4. Fiscal Initiatives

The Consortium should develop an analysis of present public expenditures for planning at all governmental levels and the revenue sources that support them and should present the analysis to the Governor, together with funding proposals for inclusion in

the budget to be submitted to the Legislature in January 2007. The proposals should address the following needs:

- (1) Sources and amounts of funds necessary to establish consistent long-term funding for municipal and regional planning and the Office of Planning Coordination.
- (2) Funds to increase state matching grants that enable municipalities to employ staff or consultants when writing or updating municipal plans.
- (3) Increased funding to support education and training programs presented by the Vermont Land Use Education and Training Collaborative.

## 5. Non-governmental Initiatives

The Consortium should develop a directory of non-governmental funding sources to which regional planning commissions and municipal planning bodies may apply for grants that will support innovative municipal planning efforts.

The Consortium should encourage appropriate partnerships between public planning agencies, non-governmental planning organizations, and private planners to assist regional planning commissions and municipal planning bodies in developing innovative planning and implementation regimes.

The Consortium should encourage UVM and VLS to continue their consideration of the development of a joint graduate program in planning and law.

## **APPENDIX I**

### **Original *Vermont by Design* recommendations (pages 32-42 in the Final Report of the Vermont Council on Planning)**

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 plans<sup>34</sup> 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 preempted.

### **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 biannually

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.

## APPENDIX II

### **Speaker Biographies and Agenda of the February 24 conference at Vermont Law School**

#### Conference Speakers and Panelists

**Richard Brooks**, Professor of Law at Vermont Law School and first Director of the Law School's Environmental Law Center, has a background in planning as well as law.

**Greg Brown**, Vermont Council on Planning member, is Executive Director of the Chittenden County Regional Planning Commission.

**Paul Costello**, Vermont Council on Planning member, is Executive Director of the Vermont Council on Rural Development.

**Hon. James Douglas**, is Governor of the State of Vermont.

**Paul Gillies**, Vermont Council on Planning member, practices land use and municipal law with Tarrant, Marks & Gillies, Montpelier.

**Jolinda LaClair**, Chair of the Vermont Council on Planning, is State Director, USDA Rural Development.

**Mark Latham**, Assistant Professor of Law at Vermont Law School, formerly practiced land use and environmental law as a partner in Gardner, Carton & Douglas, Chicago.

**Sharon Murray**, Vermont Council on Planning member, is a principal in Burnt Rock Associates and Past President and Legislative Liaison, Vermont Planners Association.

**Faith Rivers**, Assistant Professor of Law at Vermont Law School, has been active with local and regional planning agencies.

**Jeff Shields**, President and Dean of Vermont Law School, previously was a partner in Gardner, Carton & Douglas, Chicago.

**L. Kinvin Wroth**, Professor of Law and former President and Dean of Vermont Law School, is Director of the Law School's Land Use Institute.

#### Conference Schedule

9:00	Welcome, Professor L. Kinvin Wroth
9:05-9:20	Overview of the Report , Paul Costello, Jolinda LaClair
9:20-9:50	"Planning and the Uses of Disorder", Professor Richard Brooks
9:50-10:35	Panel I – Local issues, Paul Gillies and Professor L. Kinvin Wroth
10:50-11:35	Panel II – Regional issues, Greg Brown and Professor Faith Rivers
11:35-12:20	Panel III – State issues, Sharon Murray and Professor Mark Latham
1:00-1:30	Introduction of the Governor, President and Dean Jeff Shields Remarks from Governor James Douglas
1:30-3:30	Breakout sessions
3:30-4:15	Breakout session reports
4:15-4:30	Wrap up

**APPENDIX III****February 24 conference attendee list**

Adam Lougee	Deborah Wroth
Alex Elliot	Don Einhorn, Dartmouth
Alex M. Brown, Vermont Law School '08	Donna Stanton
Alison C.S. Gravel, Attorney at Law	Ellen Andrews
Andrea Silbermann	Emily Bibby, Upper Valley Housing Coalition
Anne Duncan Cooley, Upper Valley Housing Coalition	Eric Parker
Anthony Stout, Wagner, Heindel & Noyes	Erik Esselstyn
Barry Driscoll, Agency of Transportation, Policy & Planning	Evan Mulholland
Becky Basch, Southern Windsor County Regional Planning Commission	Faith Ingulsrud, VT DHCA
Bill Bridge	Francis J. Thornton, Attorney at Law
Bill Mackinnon	Frank Skiba, Vermont Law School '08
Bill Martinez	George Mathias, Gilman Housing Trust
Bill Roper, Orton Family Foundation	Gina Campoli, Agency of Transportation, Policy & Planning
Bill Shutkin, Orton Family Foundation	Glen Gross
Billy Coster, Vermont Housing and Conservation Board	Glenn McRae, Snelling Center
Bonnie Smoren, Vermont Council on Rural Development	Greg Boulbol, Vermont Law School '06
Brooke Trottier	Greg Brown, Chittenden County Regional Planning Commission
Bryan Byrnes, Vermont Community Foundation	Gregory Decker, Vermont Law School '06
Carrie Violette, Planning Assitant, Town of Milton	Hana Josephy
Catherine Dimitruk, Northwest Regional Planning Commission	India Burnett Farmer, Rutland Regional Planning Commission
Chris Walsh, CVRPC	James Palmer
Christine Ryan, Vermont Law School	Jeff Arango, Town of Essex Junction
Christopher Sargent, Two Rivers-Ottawaquechee Regional Commission	Jeff Frampton, Danville Planning Commission
Chuck Ross, Senator Leahy's Office	Jeffrey Lewis
Crystal Loffler, Two Rivers-Ottawaquechee Regional Commission	Jim Ashley, Danville Planning Commission
Cyndy Kozara, Southern Windsor County Regional Planning Commission	Jodi French
Dan Dutcher, Vermont Natural Resources Board	John D. Sayles, ANR Secretary
Daphne Moritz	John Hasen, Vermont Natural Resources Board
Darby Bradley, Vermont Land Trust	John W. Kessler, Agency of Commerce and Community Development
David Adams, Vermont Housing Finance Agency	Jolinda LaClair

David Hoeh  
David Jescavage, Planning Director, Town  
of Milton

Dean Geoffrey Shields

Deborah Markowitz, Secretary of State  
Karen Bates, State of Vermont  
Karen Horn, Vermont League of Cities and  
Towns

Karen Yacos, Orton Family Foundation  
Kate Lampton  
Kathleen Kanz, Two Rivers-Ottawaquechee  
Regional Commission  
Kelly Massicott, Vermont Law School '06  
Kenneth Niemczyk  
Kevin Ellicott  
Kevin Geiger, Two Rivers-Ottawaquechee  
Regional Commission  
Kimberlee Sturtevant, McNeil, Leddy and  
Sheahan, P.C.  
Laura Curtis, Vermont Law School '08  
Liz York, Vermont Law School  
Lori Colgan, Vermont Law School '08  
Lorraine Atwood, Vermont Law School  
M. Jeanne Veatch Bragdon, Bragdon Law  
Office, PLLC  
Marian White, Vermont Agency of  
Agriculture

Marie Levesque Caduto, State of Vermont  
Mark Blucher, Rutland Regional Planning  
Commission  
Martha Judy, Vermont Law School  
Mary Peabody, UVM Extension  
Mel Adams, Vermont Agency of  
Transportation  
Melanie Kehne, Vermont Natural Resources  
Board

Michael Brands, Town of Woodstock  
Michael D. Crane, AICP, Crane Associates

Michael Sacca  
Michael Zahner, Vermont Natural  
Resources Board  
Michele Boomhower, Lamoille County  
Planning Commission  
Michele Maresca, Vermont Law School '07

Jon Anderson, Burak Anderson & Melloni

Jonathan Frishtick  
Josephine Lavasseur, Royalton Planning  
Commission

Judith Brownlow  
Phillip Nexon

Regina Mahony, Town Planner, Town of Milton  
Rich Holmes, Vermont Natural Resources  
Board  
Richard Cawley

Richard Ewald, Town of Rockingham  
Robert A. Lloyd  
Robert McDonald, City of South Burlington  
Russell Mills, Snelling Center

Russell Prugh, Vermont Law School '08

Sam Riley Medlock, Vermont Law School '08  
Sarah Hadd, Town of Colchester  
Seward Weber  
Sharon Murray, Burnt Rock, Inc.  
Stephen Miller

Sue Fillion, Windham Regional Commission

Susan Ceglowski  
Susan McMahon, Windham Regional  
Commission  
Susan Schreibman, Rutland Regional Planning  
Commission  
Suzanne Blanchard  
Sylvia Tasseva, Upper Valley Housing Coalition

Timothy Davis

Todd Trzaskos  
Tom Murray, Deputy Commissioner  
Department of Economic Development  
Tom Jackman, Town of Stowe  
Vicky Tebbets, Vermont Chamber of  
Commerce

Will Sawyer, University of Vermont

Phillip Nexon  
Regina Mahony, Town Planner, Town of Milton

Mike Miller, Lamoille County Planning  
Commission

Noelle McKay, Vermont Forum on Sprawl

Paul Conner, Rutland Regional Planning  
Commission

Paul Costello, Vermont Council on Rural  
Development

Paul Fredette, Town of Dorset

Peg Elmer, VT DHCA

Peter G. Gregory, Two Rivers-Ottauquechee  
Regional Commission

Peter Gilbert, Vermont Humanities Council

Peter Saman

Rich Holmes, Vermont Natural Resources  
Board

Richard Cawley

Richard Ewald, Town of Rockingham

Robert A. Lloyd

Robert McDonald, City of South Burlington

Russell Mills, Snelling Center

Russell Prugh, Vermont Law School '08

## APPENDIX IV

### **Transcript of Remarks of Professor Richard O. Brooks of Vermont Law School**

I see many of my colleagues, friends, former students from the planning days as well, Peg Elmer and others. And for that reason, it's a particular pleasure for me to be here today. These are remarks. This is not a keynote address, which means that I'm not going to read a formal presentation. Rather than give a focused commentary on the excellent planning recommendations which are before you today, I thought what I would do is go back a little and talk about the more general history of planning in a general way in the United States and then how Vermont fits or doesn't fit into that.

The title of my address to you is "The Uses of Disorder," and you may think that's a somewhat disrespectful title for planners. I don't mean it to be. I believe in my heart that planning at state, regional and local levels is more important today than at any time in our nation's history. The reasons for that importance, I think, are very obvious. On the one hand, I think we are starting to see, if we haven't seen it before, an overload of the public agenda at the national level, including our war in Iraq, issues of security and so forth. And I think as a consequence, what we'll begin to see is an ultimate increase in federalism, that is, looking to states to do a lot of the hard work in the areas of land-use planning, environmental protection and the other areas pertaining to this conference today. Beyond that, however, I think there is good reason to focus on planning in this day and age. Although one of the previous speakers commented on the fact that the plans are not necessarily available to the public, I spent a thoroughly enjoyable afternoon yesterday on the net going through the regional and local plans and maps in Vermont, and it was delightful to see them there, laid out and accessible. And I think as the sophistication of the populace grows in the years coming ahead, more and more people will become aware of the availability of these plans and, more importantly, the content of the plans themselves.

The reason that I took the topic "Uses of Disorder," however, is as a cautionary note. The term comes from a book by Richard Sennett entitled *The Uses of Disorder*. In his historical studies, Sennett looked at planning – he is an urban historian – he looked at the American city in the late 1800s, early 1900s and found there are very vibrant neighborhoods without the benefit of planning. And these neighborhoods were, in part, a polyglot of people and a mix of uses. And the combination of the two gave a liveliness to the American city at the time, (one of which was noted, of course, in the better known book by Jane Jacobs dubbed *Life in the American City*.)

And the point he was making was not that disorder in the city was good, nor that planning was bad in and of itself but that there are certain other historical and social laws that are operating other than those which can be planned through the technical planning means. Perhaps Jane Jacobs gives better examples of these rules at work in the city; , she was able to find detailed operations of social rules and social customs, which governed both the safety and the use of neighborhoods and parks in New York City and which could not be replaced by planning in any way.

Paul Gillies' makes a similar point in his excellent history of Vermont planning – which I'm sure he's going to refer to when he gets up here – and one of the things he notes at the beginning of that history is that the towns that we are now working to protect were, in fact, not planned at the time they came along. And I think that should give us some pause as to planning and its consequences.

In any case, the reason I raise this point, which seems a bit arcane, is that I would like to suggest that while planning is an operation of technical reason to resolve present and future community land-use problems in particular, it primarily seeks to improve the social and ecological working values in our towns, cities and rural areas. My contention is that land use planning is only one form of human reasoning and human order in our society, whether at the federal, state local areas. Economic markets, social customs and class, environmental conditions and legal and political processes are also important exercises of reason, and they are somewhat different than those of technical planning. And I would suggest to you that one of the reasons, perhaps, we planners have some difficulties communicating with other people is not that they are unreasonable opponents of our technical plans, but rather that we planners adopt one kind of reasoning, primarily, through technical methods and that most citizens look to other forms of reasoning through markets, customs, politics - kinds of reasoning which they usually employ and which may indeed be appropriate or more appropriate depending on what the subject matter is that they're dealing with.

And I'd like to illustrate this, if I might, in a reference to the history of planning in America. Now, the context in which we are here today - to improve the land planning processes of the state, is part of an incredible rich history of efforts of planning in America. And I know some of you, perhaps all of you, know this history in America of planning, which goes back to, actually, the Utopian communities of the 1800s: Brook Farm, New Harmony and many

others: all of which were planned communities seeking, in some cases, to put into effect, through careful planning the social, economic and even environmental ideals. They were called Utopian communities because as history reveals they were unable to follow those plans. (An early cautionary tale for planners!) But in any case, the story began there, and the first plans in Vermont, and also across the country, began in the 1800's and early 1900s. They began in two places, and I think it's good to remind ourselves of this. They began partly in private sector efforts, including the planning of the railroads of this country, which was a systematic planning effort.

We saw the spirit of the kind of private planning which was undertaken at this early period in recent news, when we saw the head, the chairman or CEO of the ports project which is currently in the news; it was fascinating to hear him because as far as he was concerned, this ports issue in the United States was merely a problem of technical business matter. It was part of his strategic plan, the "Dubai plan", to acquire these ports. And he looked genuinely puzzled by the fact that at least some of the American people were worried by the fact that foreign ownership of the ports might constitute some form of security problem and might constitute, in some way, an erosion of the security and sovereignty of our nation. Well, that's a kind of a business planning model which first emerged in this country during the 1800's and I don't mean in any way to put it down. I think that, basically, it's an extremely important part of our society's planning. The reason I mentioned it is many of my friends are not friends of planning, and they would prefer not to have planning. And I remind them that if they don't do the planning, somebody else is going to do the planning, and they should be aware of that.

The other place in which planning came into the United States in the early 1900s was in the growth of land use planning; as our cities became overwhelmed, we borrowed zoning and planning, partly from Germany, as you know. And it was early in the 1900s that Vermont adopted its first planning and zoning laws as well. Planning reached its zenith, however, in the New Deal times of the 1930s. I was a child at the time – and I suspect there are some here who can remember the importance of that as a venture. Basically, there was a Natural Resource Planning Act at that time, which authorized a national planning board. And one of the focuses of that planning board was to document the availability of resources and to project the demands upon the resources in this nation. In addition, the Act promoted what was then a new settlement policy, all across the United States. Rexford Tugwell was the leader of that planning effort and, when he became Governor, he carried his planning goals and process to Puerto Rico, which had an extensive planning process in the 1930s and 1940s.

So planning has a long and general history in our country. And actually, the president – this may surprise some of you – who was the biggest friend of planning – although, in some ways, he didn't do it very well – was Richard Nixon. Richard Nixon sponsored the National Planning Act, which was not passed (simply because he was busy defending against his possible impeachment). So as a consequence, that act was never passed. The reason I mention it to this audience is that in some ways, the proposals that are recommended regarding growth centers in Vermont, which have been around for some time, were anticipated by that act. That is, each state had to have a state-wide plan. And growth centers were part of that plan. (This approach was taken in Florida with her precedent setting, but ineffective planning laws which were swamped by population growth and economic pressures.

Ironically, perhaps Nixon was a bit more of an environmentalist than the proposed Vermont laws because, in the Nixon proposal, (and in the Florida law), districts could also be set aside, which would be fragile areas, deserving blanket protections against economic pressures. Of course, some in Vermont might argue that through our federal and state park and forest areas, such set aside areas are not needed. But choice of these areas was not carefully integrated within local, regional and state plans. And so perhaps one suggested amendment to your planning proposals, is that if you're going to have growth areas as part of the new planning act, you might want to have environmental areas which are also set aside as well.

In thinking about the kind of planning which Vermont, at this stage of her history, two examples from my own career come to mind. I would like to mention them and then I'll move on. One is that in the late 1960s, I joined the Rouse Company. The Rouse Company was a company that developed a new town in Columbia, Maryland, a large-scale land developer. And Rouse believed in planning very much. And as a matter of fact, the new town of Columbia began in a host of social plans by leading sociologists and public policy experts. And the physical plan was only done after the social planning process of the town was laid out. So in effect, the effort was made to marry or put together both social planning and physical planning at the time. The second example that gave a real boost to planning, obviously, was the environmental movement. And I had the good fortune to participate in the development of the law of the coastal management program in Connecticut. And there, it was detailed environmental planning which preceded the adoption of the coastal municipal plans in the coastal towns and cities of Connecticut. The implementation of these plans encountered strong opposition from property interests; that struggle still goes on and, by the way, is reflected in the recent Kelo case that I know some of you

know well, deals with the issues pertaining to eminent domain and its constitutionality.

What's happened, as a result of this history of planning – beginning with economic planning, the advent of social planning and followed by environmental planning and so forth – is that there has been a massive dispersal of different kinds of planning activities all over the landscape. It's been dispersed, obviously, in terms of geographical areas – local, regional, state realms. But it's also in terms of subject matter areas – social, educational, environmental, technological planning, economic, housing, health and what have you. And we now face a myriad of plans all over the place. And you and I know, in fact, that we've probably looked at very few of these plans and seen what their relationship is one to another, let alone thought through what the relationship should be. Thus, the multiplication of technical planning activities may work against achieving coherent communities.

Interestingly enough, there's another dispersal that I want to call to your attention, which I think often is not recognized. And that is that planning itself was divided – the process of planning was broken up into pieces and distributed in different ways. For example, social and environmental indicators, which are part of the planning process, are now developed and employed independent of the planning process. Projections, which are part of the planning process, are now done in centers and institutes of the future rather than as part of the planning process. Cost-benefit and risk evaluation analyses are now an integral part of a lot of the regulatory process in this country; they are conducted apart from planning, even though these analyses fit logically into the planning process, as does risk assessment itself. Finally, project and program evaluation is one of the final steps we learn about in the traditional planning process. And yet, now program evaluation goes on all over the place, but not necessarily as part of the continuous planning process.

In short, it's as if the planning process has been cut up, like a piece of sausage, into a lot of different pieces and distributed around the landscape. Such fragmentation may serve a variety of social, economic and political needs, but it may take away from the comprehensive rationality sought by the traditional planning process. Recognition of the scattering of different kinds and phases of the planning process might make us aware that a lot more planning is going on, but perhaps not necessarily serving the ideals sought by comprehensive planning.

Now, when we confront all these plans and we say, "Well, we want to bring them all together in one way or any other," I'm reminded of the television

ad for alka selzer which has the tag line, "I can't believe I ate the whole thing." In confronting all the plans in modern society, I don't think it's possible "to eat the whole thing", i.e. bring them all together in some coherent package. And there may be a hubris is seeking to unify them all. The effort, to bring all these plans together in some form of convergence is probably not feasible. And I offer support for this pessimism not my personal opinion or some hidden animosity towards planning, but history's lessons and the conclusions of those who have carefully studied planning.

Perhaps one reason that one cannot look to any sustained effort to bring planning efforts together in any coherent way is that planning has not been tremendously successful. One of the things that I think all of us planners have to face – and it's been alluded to here today – is that planning has failed a lot in this country. I have been part of those failures. Perhaps you also have been part of those failures. The big failures include urban renewal, model cities, various land-use plans which were not implemented, manpower planning efforts of the 1960s, the proposed industrial policies of the 1980s, the "New Town" program of the 1970s. The list goes on and on. And I suggest to you that failure, in part, is certainly due to forces in our society, competing forms of thinking about our society's problems, but partly to the hubris or undue ambition of land use planners to try to bring all planning together and all subjects together rather than focus on the specific physical, perhaps, related housing and environmental problems which should be at the center of the traditional planning process. And I think it's important to remain with that and not move too far beyond it.

The other thing that some of you should be aware of and perhaps are not is that there is a vigorous criticism of traditional planning by an awful lot of scholars and extended discussion of the reasons for that failure. I did list, in the handout that I have, some of those criticisms of theorists; I hope that you will take a look at them. In terms of the reasons for planning failures, the cost of information and the difficulty of thinking about all problems within a finite period of time is the prime one. It is not possible to be fully rational at all times, and this has been pointed out the multiple theories of planning which have been generated in its rich history and of which I know that you planners are very much aware.

And finally, I want to just end with a note on the law because I think it is important. I did append to the handout a list of the functions of law in all of this. Law, I think, is a contributor to the fragmentation of planning. So we lawyers have done planners no favors, it seems to me, in the process of mounting a good planning regime in America. Generally, planners identify law as an

implementing tool in planning. I believe that is much too narrow a view of the relation of planning to law. I think plans can be implemented by laws, don't mistake me. But I think that law does much more than that. Statutes and regulations, among other things, mandate the amount of and kinds of projections to be made as part of the law and it frequently mandates the content of the plan itself. It frequently states what the objectives of the planning process must be and dictates the kind of planning process that should be undertaken. And finally, law frequently requires, in one form or another, evaluation of the implemented plans. So the law ends up, perhaps in a heavy handed way, frequently, requiring out how planning should be conducted.

Law also operates to resolve conflicts over planning. Courts get into the act as well, particularly in the last 20 years. There has been more litigation over the planning process in the last 20 years than ever before. Perhaps the best example is the National Environmental Policy act and the litigation surrounding impact planning, environmental impact planning as part of that act. There are many of federal cases on all aspects of planning as part of that process, and I and my colleagues have contributed to that litigation. But court opinions on planning can be found in the contexts of social, housing, economic, environmental, land use and health planning as well.

And so the question that might come up for you would be the question of what should be the proper role of law in relationship with planning? I hope we will address that issue today in our conference. My own view, as you can see, is that on the one hand, the proposal you have before you may be too heavy handed in its effort to guide the planning process instead of letting planners, so to speak, be planners in a variety of different ways. Put another way, the proposal before you is a grand one. It involves bringing together all these plans, part of the state planning office, and coordinating them, as a favorite word of planners, and you can sense in my presentation today some skepticism as to the possibility of doing that.

The alternative I suggest is to limit of the planning scope within land use by focusing upon the planning of settlements, housing, and physical aspects of the planning process. Thus, I suggest land use planners leave to others the tasks of economic planning, environmental planning, social planning. In short, land use planners would leave other kinds of planning to be conducted within other rubrics, not bringing them within the comprehensive land use planning matrix, which we're discussing at this conference. In short, I suggest giving up the dream of comprehensive land use planning and recognizing the "uses of

disorder” - i.e. the uses of the fragmentation of planning phases and processes- in American society.

Since all of this is so abstract, let me just have one example from a letter to the *Times Argus* by Art Woolf, an economic analyst whom many of you know. The title of article that he sent was “Demographic Shift Will Occur in Vermont Economy.” I’m not going to read the entire article, but he points out the following: By 2030, the number of people over 65 will double, and the number of working-age Vermonters will remain unchanged from the current levels. As a consequence, Vermont businesses will find it increasingly difficult to find and attract sufficient numbers of workers to satisfy their needs. With fewer taxpaying workers, state and local governments will see slower growth in tax revenues. At the same time, demands for government services, with a larger number of elderly Vermonters will grow. The population will increase by 90,000 over the next 25 years. The working population between 21 and 64 will rise slightly in ten years and then decline. By 2030, there will be fewer working age Vermonters. The number of young Vermonters, including students in the Vermont elementary and high schools will fall off. And by 2050, there will be 15 percent fewer Vermonters under the age of 20 than there were in 2000. Today, there are 5 working age Vermonters for every one over the age of 65. By 2030, there will be only 2 working age Vermonters for each senior citizen. Given the demographic forecast projections and tax revenue available, all levels of government suggest that if nothing is done in government spending, only two components – K-12 education and human services – will absorb all of the revenues available to government by 2030. There will be no revenues available to support any other government functions. And he goes on to discuss the implications of this, including the fact that there either has to be an increase in economic activity; there has to be increase in taxation; there has to be an expansion of the age of working . Wolf’s analysis, whatever you may think of it, is an example of economic planning. I do not encourage land use planners to engage in such planning.

But many land use consequences ensue if Wolf is correct. One such consequence may be the increased need for privately funded elderly housing. The land use planning for such housing is the task of land use planners. Presently, Hanover, N.H. and many other communities are facing the question as to whether or not a large, continuing care elderly housing project will be located there and under what circumstances it should be located there. So what I would like to urge all of you to consider is what is the best way that we can take a more modest vision of land use planning, the kind of things that land use planners work on every day of the week, and bring it facilitate its efforts without getting

bogged down in an effort to coordinate it with every other planning effort going on in our rich and disordered society.

## APPENDIX V

### **Transcript of Remarks of Governor James Douglas**

Thank you, Jeff, very much for those kind words and for your hospitality here at Vermont Law School. I'm very fond of talking about the 24 institutions of higher learning that grace our state. We have more per capita than any other state of the union. It's an important part of our state's economy, of its commitment to enhancing opportunity and broadening the knowledge of the people who live here and visit here. And I'm very pleased that Vermont Law School is an important part of that commitment and that tradition. So thanks for hosting this important conference. And I know that it will be a very, very productive day. We've heard from some attendees that it has been quite exciting already.

I remember when Paul [Costello] and his colleagues came and presented the *Vermont by Design* report to me some time ago. We had a chance to talk about some of the summary recommendations and ideas that it contains, and I certainly subscribe to the thesis that good coordinated planning is essential to ensuring a successful continuation of our long-standing traditions in Vermont, our patterns of growth and commitment to the natural beauty that sets us apart from other places, but also to ensuring our economic vitality and success. We've had a long tradition of planning at the local, regional and state levels, and we need to continue to do what we can to strengthen those efforts and make them even more successful.

And I noticed in the report a very polite reference to communication gaps, I believe at the state level. And I'm certainly prepared to accept those ideas in a constructive way and see if we can't do better. We have a development cabinet that meets from time to time to try to address interagency challenges, but there's always more than we can do, and I certainly hope we can be more successful.

I was in Franklin County last night, having a meeting with the regional planning commission, and I observed in my comments there that the Franklin and Grand Isle counties, the northwestern part of our state, are the part of Vermont that's growing the fastest. That's where the pressure's the greatest to accommodate that growth, and perhaps more than any other place in Vermont, it symbolizes why it is so important that we have coordinated planning efforts at all levels. I think they're doing a good job, as many others are all across our state, but it certainly points out how critical this is to our future success.

And if you think about it, although individual decisions on a case-by-case basis tend to result in growth that we're all trying to do in a responsible way, planning can guide that in a way that fulfills our goal of maintaining Vermont's traditional settlement patterns and vibrant village centers and downtowns surrounded by the open space that's so important to our natural beauty. I really think that we can continue to make the progress we've been successful in seeing by fulfilling the goals that are outlined in the report that the council has presented.

I feel good about the successes we've had in terms of the downtown program and the incentives offered there to maintain that traditional settlement pattern. So many organizations at the federal, state and non-profit level have joined together to revitalize old buildings to provide commercial space, residential space, performing space. There have been a lot of exciting projects that will fulfill that important goal. In fact, in my budget that's being considered by the Legislature now, I proposed an increase of a half million dollars in tax credits for our downtown program to support that effort.

It's important economically, too. Businesses are more interested in investing in our downtowns if they have a real sense of vitality. So it can further our economic goals as well as our settlement pattern goals. Performers are interested in being in vibrant downtowns, so the creative economy is enhanced by good planning efforts at the local level too. So for so many reasons, we've got to continue to focus on this, especially as the pressure to grow continues all across our state.

One particular type of growth pressure is in the area of housing. And I want to spend just a moment on that because it's so important to our future. We have a real affordability crisis. I talked with the Legislature about that over the last couple of months, and it's quite expensive in Vermont, as I'm sure you know, to get a lot of things that we need: healthcare, higher education, to pay our property taxes, and to afford a place to live. Affordable housing is somewhat of an oxymoron. I think we need to take it seriously and focus on creating more opportunities. In fact, a report that came out last year said that we're going to have a shortfall over the next five years of 30,000 units in Vermont, both of single family homes, apartments, condominiums, places for people to live. And as you know, supply and demand will result in higher, upward movement of prices as the housing stock is less available.

So we need to focus on more affordable housing, and we can do it in a way that preserves our traditional settlement patterns, that pursues our goal of

smart growth. And I hope that you'll all be a part of that very, very important effort. I've offered a few ideas to the legislature in terms of additional tax credit incentives to bring more housing in our state. I proposed a land bank to make land available and less expensive. There's surplus state property that could be used for affordable housing because the price of land, as you know, is a major contributing factor to the cost of homes. Another method is to lighten up the regulatory burden in areas that communities identify as growth centers or new neighborhoods so that we can have more housing available for the people of our state.

Now, I've heard this problem, as I'm sure you have, from so many different people in different stages of their lives, young people just trying to get started and begin their working lives, and their income is quite limited. I've heard it from families that are growing. I've heard it from older Vermonters who are looking to downsize that need an affordable place to live in their later years. In so many respects, we need to make sure that people have a place to call their own.

And that, obviously, ties into our economic success. I remember vividly a conversation with a human resources director – an employer in our state recently said, "Gee, I thought I was going to be able to attract this engineer to work for our company, but he checked out the cost of housing and taxes and living generally in our state, and we lost him to Kentucky or somewhere like that." So it is a real problem, and I hope you'll focus particularly on the need to have enough places for the people of our state to live.

And that relates, I guess, to another important factor that we need to bear in mind as we think about planning for our future, and that is where the good jobs of the 21<sup>st</sup> century are going to come. Vermont Law School has a strong tradition in environmental law and making a commitment to that important sector. And you've heard President Fogel at UVM talk about the environmental technology areas as a strong niche for our state's economic future. You've heard Lieutenant Governor Dubie talk about Green Valley, which is the same basic theme. I think we have a great opportunity in Vermont to capitalize on our strong environmental ethic and develop jobs that are consistent with that ethic and in that area.

So I hope that will be a part of your thinking as well as we plan for the future. We want to be sure that we have jobs that pay a living wage that don't require impairment of our natural beauty with contributions to pollution. And in fact, we could develop some jobs that do exactly the opposite. I've been so

pleased to see the incubators in Burlington, Northfield, and elsewhere around the state, create these opportunities from brownfields reclamation firms to solar wind developers and installers, technology in manure management for our farms. In so many different ways, modern technology, I think, can be a real opportunity for Vermont's future. And speaking of – well, not necessarily a byproduct, but the farms are an important part of our efforts in planning too.

I'm always amazed – I guess because we live here, we take it for granted when we think about the natural beauty of Vermont. I had a friend who was visiting from New York and showing his preschool aged son Middlebury College recently. And the father was kind of looking around the Green Mountains and the Adirondacks in the Champlain Valley, and he said, "It's beautiful here." He just kept repeating, "It's beautiful here." "Yes, it is," he confirmed. And you know, I often say to Vermonters and visitors alike that there are other places on the planet where, you know, you can ski. There are other places where the leaves are moderately attractive in the fall. But there's no place with the natural beauty of Vermont.

An important reason why it is so beautiful indeed is the working landscape, the farms that have defined our countryside for generations, for centuries. But we have to work hard to maintain them. As you know, particularly in the dairy industry, it's not as easy to make a living as it used to be. Congress has helped with some price assistance, but it's not easy with rising costs. So we've done quite a lot over the last couple years in terms of state policy decisions and making it easier for financing operations, some tax reductions, farm viability programs to help farms succeed, working with those who choose to do organic production to diversify their products and crops. But we need to keep that in mind, I think, as we plan for the future, that it's the working landscape and farmscapes of our state that define it in so many ways, and that's important to our future success.

Well, I really want to thank you all for the time and energy you're devoting to this. And I know it's not just a one-day commitment, but many of you are professionals or at least professional volunteers in the field of planning. And I hope that we can look at the recommendations of *Vermont by Design* and implement the ones that help us move toward the goals we're talking about today. I certainly pledge to you my support at the state level to integrate our planning efforts as successfully as we can. I'm pleased that some folks from the administration are here today and can bring back to me more detail of the ideas and suggestions that have been generated and discussed because we're really all in this together. The bottom line is we want to make sure that each Vermonter

can be successful in our state and have a place to live that he or she can call one's own, to get a decent job that pays a living wage so that everyone can support himself or herself and to afford to go to college, to afford to live in comfort and dignity and to maintain the beauty of this state that we all love.

So the quality of life of our state is in your hands. I don't want to put too much pressure on you, but I think it's very, very important that we have opportunities like this to focus on our future. And I really believe it can be very bright indeed. Thank you for what you do. Keep up the good work.

*(Applause)*

I'd be open to a couple of questions.

*Audience Member:* Well, I think everybody here would like to ask you a question regarding state planning, an office of planning in the governor's office. We discussed this morning that Vermont has a checkered history as to whether or not planning should be a formal function within the governor's office somehow? So I think the question is what are your views on this?

*Gov. James Douglas:* Fair question. At least you should consider the idea of an office of state planning here today and perhaps other ideas, but I think that entire history is what leads me to be somewhat skeptical about instating it as a state entity, at least on the basis that was tried in the governor's office two decades ago. Basically, it deteriorated into a political environment with the governor, and there wasn't a lot of planning except for the next campaign, and I don't think it served its purpose. I don't think it was useful. So I don't think that model worked. Maybe there's another way to approach it. I'd like to think that whoever's in the development cabinet or the real cabinet – the development cabinet is for real – can facilitate a better, more successful coordination among the agencies in general ways that moves our agenda forward. But I'm certainly open to suggestions and perhaps out of the discussions today there will be some ideas that we can look at. I also have a general aversion to greater bureaucracy if we can accomplish something without creating another governmental entity. But I'm open to suggestions, so I'll look forward to hearing.

One more question.

*Audience Member:* Under what circumstances would you support growing the money for planning at a rate that is considerably exceeding the present level?

*Gov. James Douglas:* Well, appropriation decisions are obviously difficult, and I did recommend an increase for regional planning commissions in the budget that I presented. I recommended higher increases for some areas and decreases for others, but I certainly want to be responsive in meeting the general needs of all of our efforts as best as I can. It's so difficult. We probably have a hundred meetings over the course of the year with people who want more money, and they're all legit. They're valid. There are a lot of very important programs and needs, and I guess our responsibility in sending a budget to the Legislature is to try to assess them and prioritize them and allocate them with resources in the best way we can. I think it's also important to remember that the economy goes in cycles, and these are the good times. We've been having surpluses of tens of millions of dollars from our general fund over each of the last couple of fiscal years. And I bet that won't continue. Over the next few years, we may see some challenging times in terms of appropriation needs. So we'll do what we can, and it's just a matter of making that case and weighing it against all the others that are made. Perhaps, Jeff may deploy some of his law students to help prepare the case so it will be even more powerful!

Just this one other thought that's not in response directly to a question, Jeff, but something that's being discussed among the group I left today that has some bearing on our conversation, and that's the appropriate roles of the branches. One of the controversial issues we're all dealing with is wind turbines now, as I'm sure you know, and so some legislators have proposed a moratorium on wind turbines, in essence an interference with the jurisdiction of the Public Service Board that weighs the evidence and the impact on the environment and on aesthetics and on a lot of life and other considerations. And I guess I, regardless of how they feel about it, I urge them to desist from legislative determination.

I remember when I was in the House, the Legislature decided it should make the decision as to how much a pay phone call should cost, and I thought, you know, that's not your decision. It shouldn't be made in the legislative chamber. We have regulatory bodies. We have planning commissions at various levels of government. And communities can come together and make decisions, appropriately so. So I think as we work through these issues, it's important to think about, as I'm sure you do, where various decisions are made. And that's an important consideration too.