

Land Use Planning in Vermont

An Overview

Commission on Act 250
October 25, 2017

Presented in Collaboration with:

VT Association of Planning & Development Agencies
VT Dept. of Housing & Community Development
VT League of Cities & Towns
VT Natural Resources Council
VT Planners Association



Three Part Presentation:

- Historical Perspective
- Planning Today
- Planning and Act 250



UVM Landscape Change Program

Part I

HISTORICAL PERSPECTIVE

The Setting: Climate and Geology



Credit: *Walking Distance: Extraordinary Hikes for Ordinary People.*
Robert and Martha Manning (<http://extraordinaryhikes.com/>)

The Law

- **Common Law, Public Trust**—access to resources
 - **Federal, State Constitutions**—protected rights
 - Freedoms of speech, religion, public gathering
 - Property rights (takings)
 - Equal treatment, due process
 - **Federal, State Statutes**
 - Protected classes, uses, restrictions
 - **Delegated Authority (Dillon State)**
 - Municipal charters
- Police power = ability to plan, regulate
- Public interest, good (plan) = basis for regulation



The Layout

Bolton, Vermont

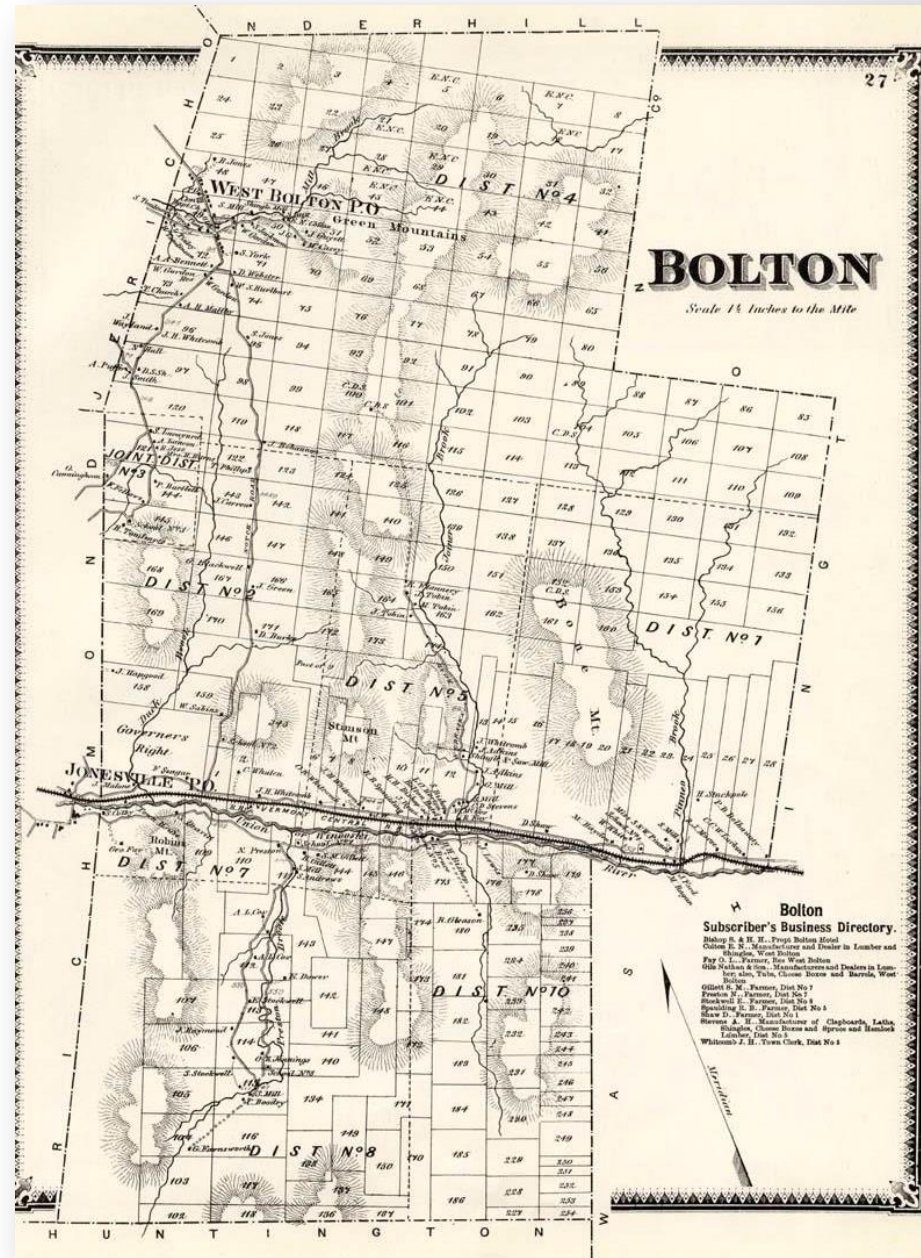
Chartered: 1763

- 6 miles square
- 72 equal shares
- Glebe, school, governor lots
- 1-Acre “town lots” in center
- Allowance for highways
- Cultivate 5 acres w/in 5 years
- Annual meeting— 2nd Tuesday in March

Population 1860: 645

Population 1960: 237

F. W. Beers Map, 1869



The Land: 19th Century Landscape



Photographer: Homer Locke, Jonesville, Vermont, c. 1910

Source: Town of Bolton

1850: Pop. 314,120



FIG. 1. This map shows the approximate distribution of the 314,120 people who lived in Vermont in 1850. Comparison with Fig. 2 shows the shifting of population to town areas and its concentration in the cities and larger villages.

1930: Pop. 359,611



FIG. 2. This map shows the approximate distribution of the 359,611 people who lived in Vermont in 1930. Though total population has decreased materially since 1850, the population of the state as a whole has increased more than 14 percent.

Village Improvement

- Village Incorporations –
water, sewer, lighting
- Village Improvement Societies—
beautification, restoration

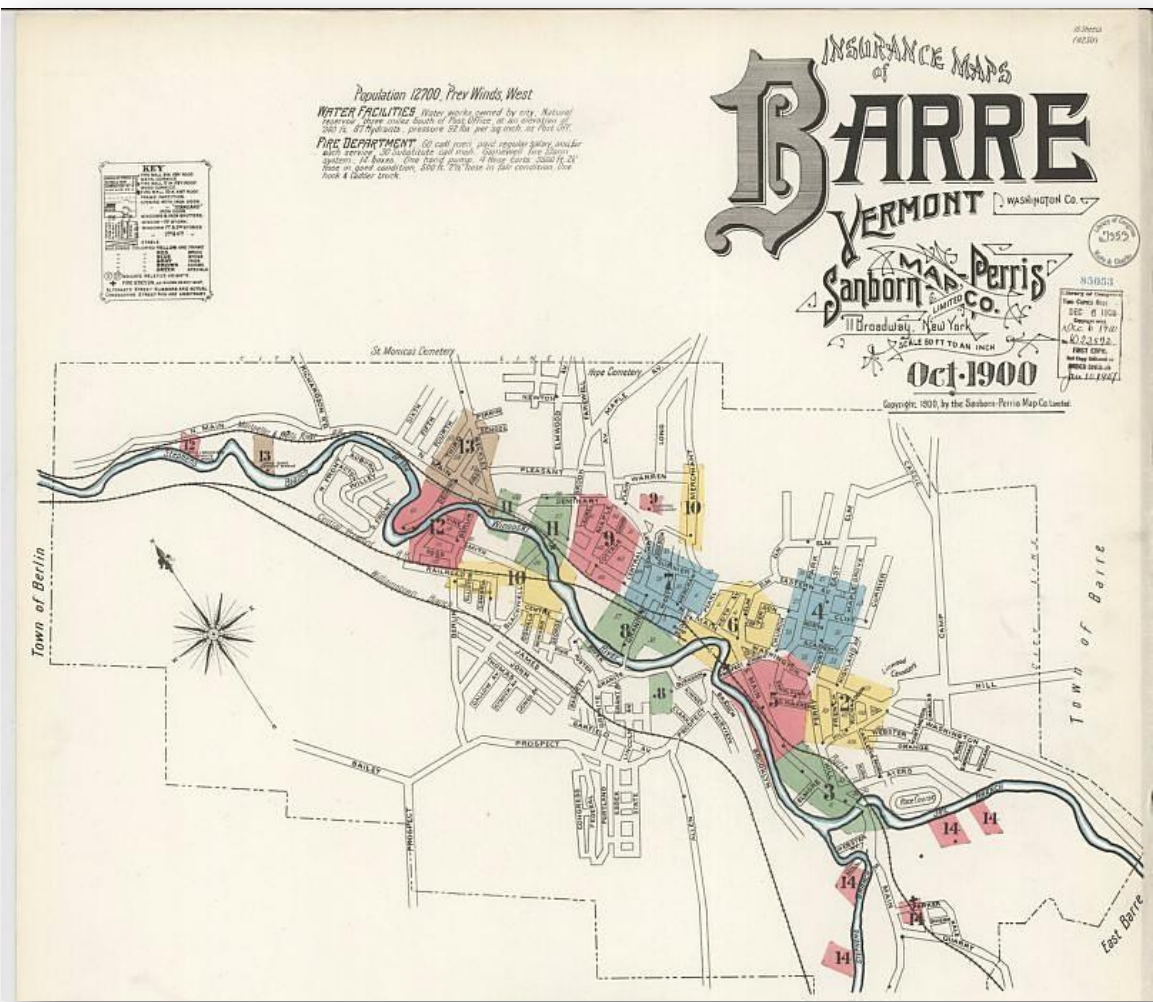


- Call for more **“orderly development”**

Town Planning: A Program for Civic Preparedness for Vermont Communities—K.R.B. Flint (1919)

- **Vermont Planning Act (1921)**

To prepare or acquire a plan for the future development of the city, town or incorporated village which shall be based primarily upon convenience, utility and public welfare.



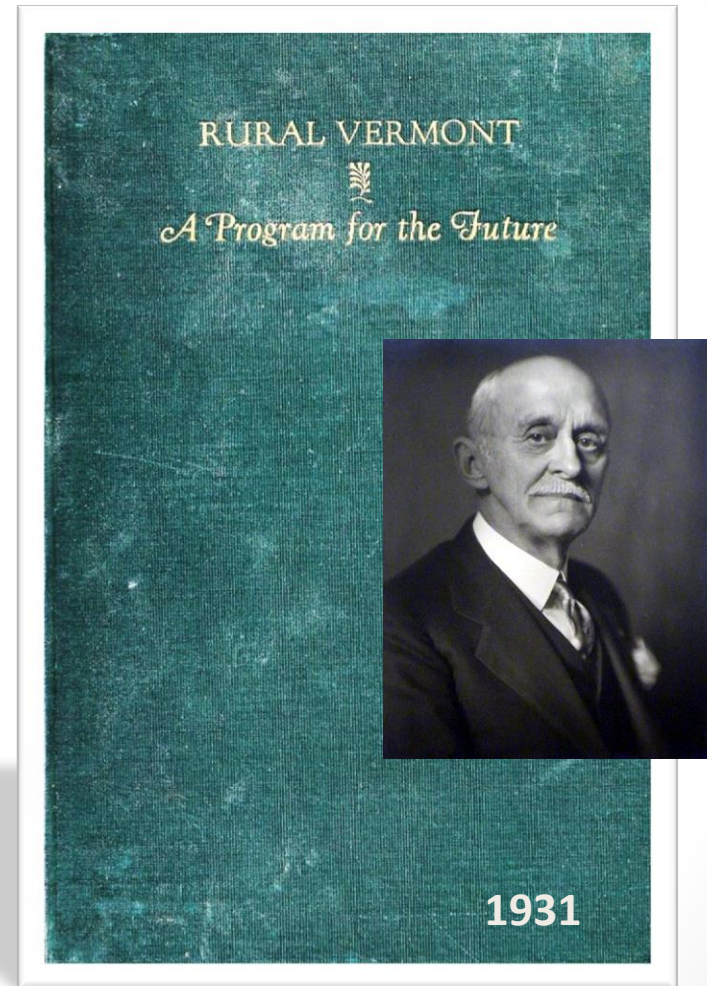
Sanborn Fire Insurance Map

Source: Library of Congress

VT Country Life Commission (1928)

The immediate purpose of the Commission is that of scientific planning for action leading towards higher goals...

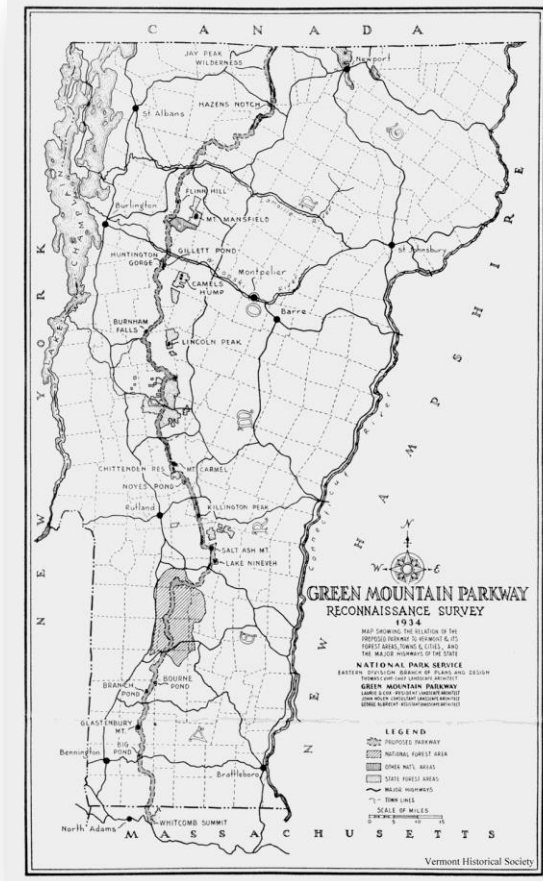
➤ *State Planning Board (1935-45)*



Land Conservation

- Camels Hump State Park (1911)
- Long Trail (1912)
- Mount Mansfield State Forest (1914)
- Town Forest Act (1915)
- Green Mountain National Forest (1932)

Green Mountain Parkway (1933-36)

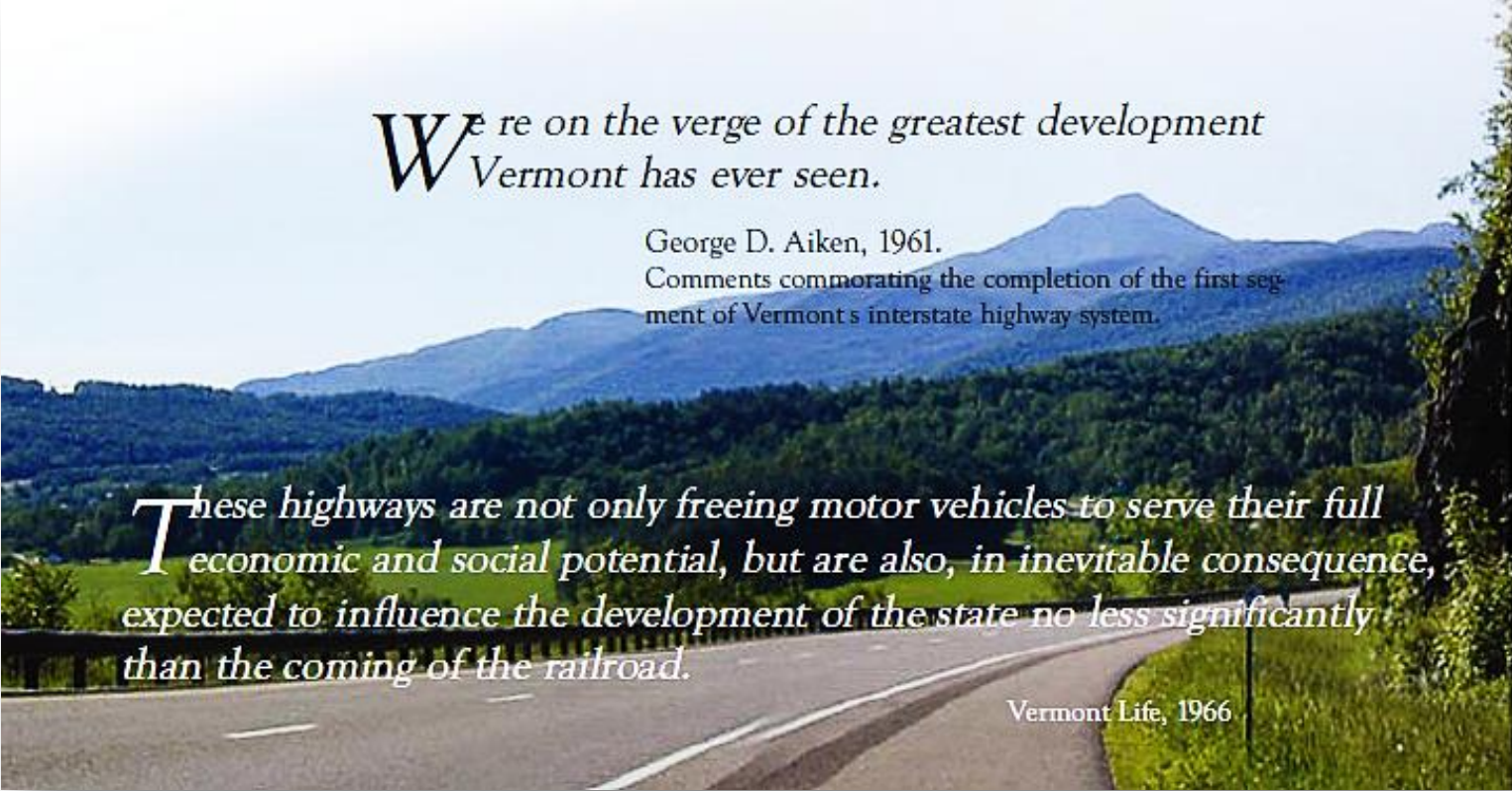


Credit: VT Historical Society

Mid-Century Modern...



Photos: UVM Landscape Change Program, Vermont Historical Society



*We re on the verge of the greatest development
Vermont has ever seen.*

George D. Aiken, 1961.

Comments commemorating the completion of the first segment of Vermont's interstate highway system.

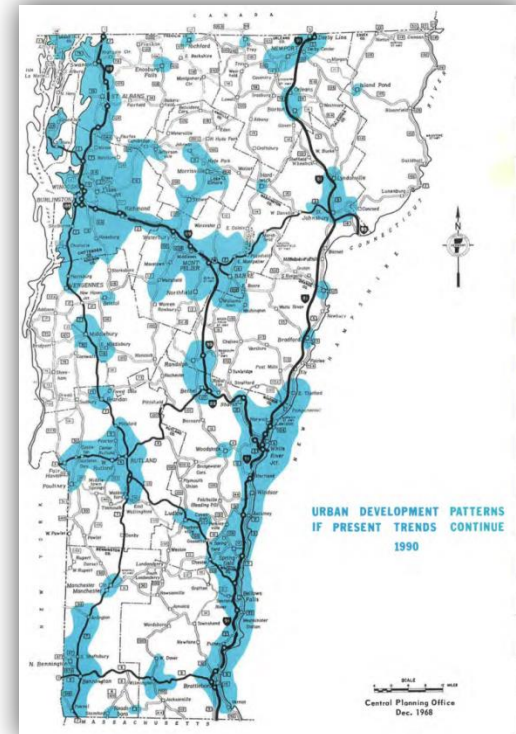
These highways are not only freeing motor vehicles to serve their full economic and social potential, but are also, in inevitable consequence, expected to influence the development of the state no less significantly than the coming of the railroad.

Vermont Life, 1966

Source: *Vermont Interstate Interchange Planning and Development Guidelines*, VT DHCA (2004)

Golden Era

- **HUD 701 Grant Program**—Federal \$ for county, city planning
- **Central Planning Office (1965)**
 - Coordinate state, regional, local growth management
 - Technical assistance, reports, legislation
- ***Vision and Choice* (1968)**
 - State planning goals
 - Development patterns, guidelines
- ***Gibb Commission Report* (1970)**
 - State Development Plan
 - Statewide development, environmental regulations
- **State Planning Office (1970)**
 - Act 250 plans



Planning & Development Act (1968)

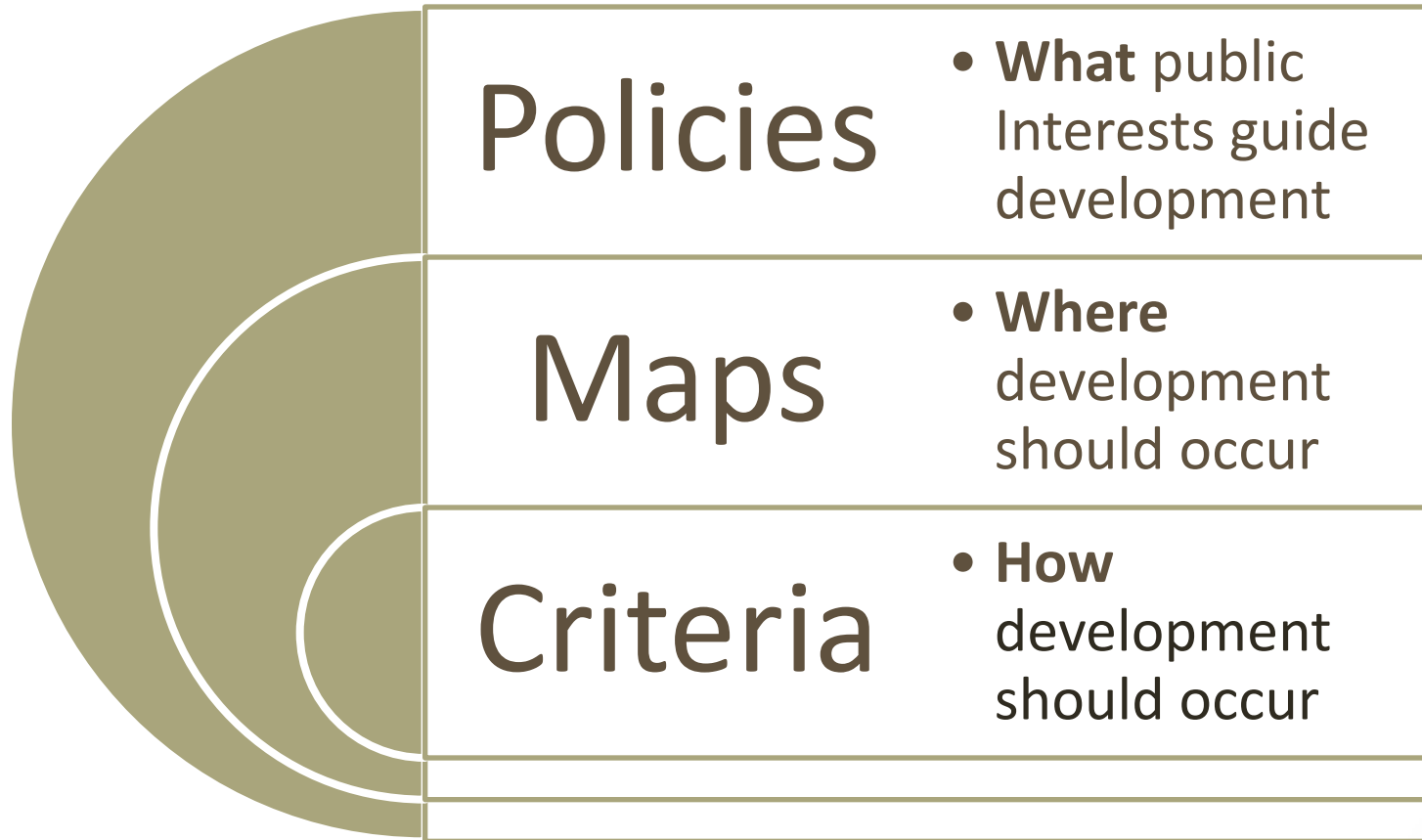
24 V.S.A. Chapter 117 or “**Chapter 117**”

- Purpose – “appropriate development” of all lands
 - Regional planning commissions
 - Regional plans – required
 - Municipal planning commissions – optional
 - Municipal plans – optional, required for bylaws
 - Municipal bylaws – zoning, subdivision, etc.
 - Bylaw administration and enforcement
 - Appeals – to Superior Court
- *Viewed as broadly enabling, with limitations*

Act 250: State Land Use Act (1970)

- **Interim Land Capability Plan** – classify land based on physical suitability for development (1971)
- **Capability and Development Plan** – also consider economic, social factors—planning policies (1973)
- **State Land Use Plan, Map** – designating lands best suited for agriculture, forestry, recreation, urban development (drafted, not adopted—repealed 1984)
- **10 criteria** – including project conformance with local, regional and state plans (criteria 9, 10)

State Land Use Act (Act 250)



Capability & Development Plan (1973)

Statement of Legislative Intent and Findings (1973, No. 85 § 7):

*In order to provide **general and uniform policies on land use and development** to municipal, regional and state governmental agencies... and to provide the basis for the Vermont land use plan ... the general assembly hereby finds and declares as follows...*

19 policy statements:

- Planning for Land Use and Economic Development (8)
- Resource Use and Conservation (6)
- Government Facilities and Public Utilities (5)
- ***Legislative findings shall not be used in consideration of applications (under criterion 9)***

“No” to State Land Use Plan



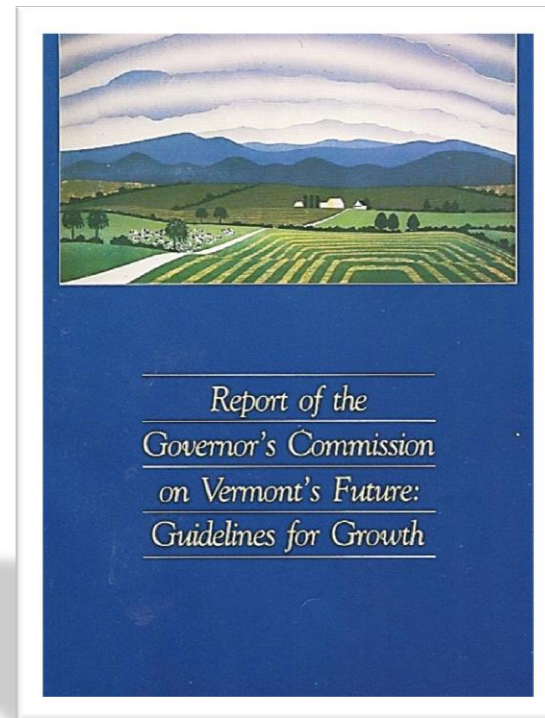
Abandoned 1976, Repealed 1984

Guidelines for Growth (1988)

A Process to Guide Vermont into the Future...

Key Finding:

A coordinated, comprehensive planning process and policy framework must be established to guide decisions by local governments, regional planning commissions and state agencies.



Growth Management Act (Act 200)

Framework for coordinated planning:

- State planning goals (32)
 - State agency “Act 200” plans (17)
 - Regional review/approval of municipal plans (local option)
 - Regional confirmation of municipal planning
 - Council of Regional Commissions—state, regional plans
 - Municipal and Regional Planning Fund
- *State, regional, approved municipal plans must be “consistent” with state planning goals, and “compatible” with other plans.*

State Planning Goals (24 V.S.A. § 4302)

32 Goals, Policy Statements (“reduced” to 12, 2 added)

(1) *To plan development so as to maintain the **historic settlement pattern** of compact village and urban centers separated by rural countryside.*

...

(6) *To maintain and improve the quality of air, water, wildlife, forests, and other land resources.*

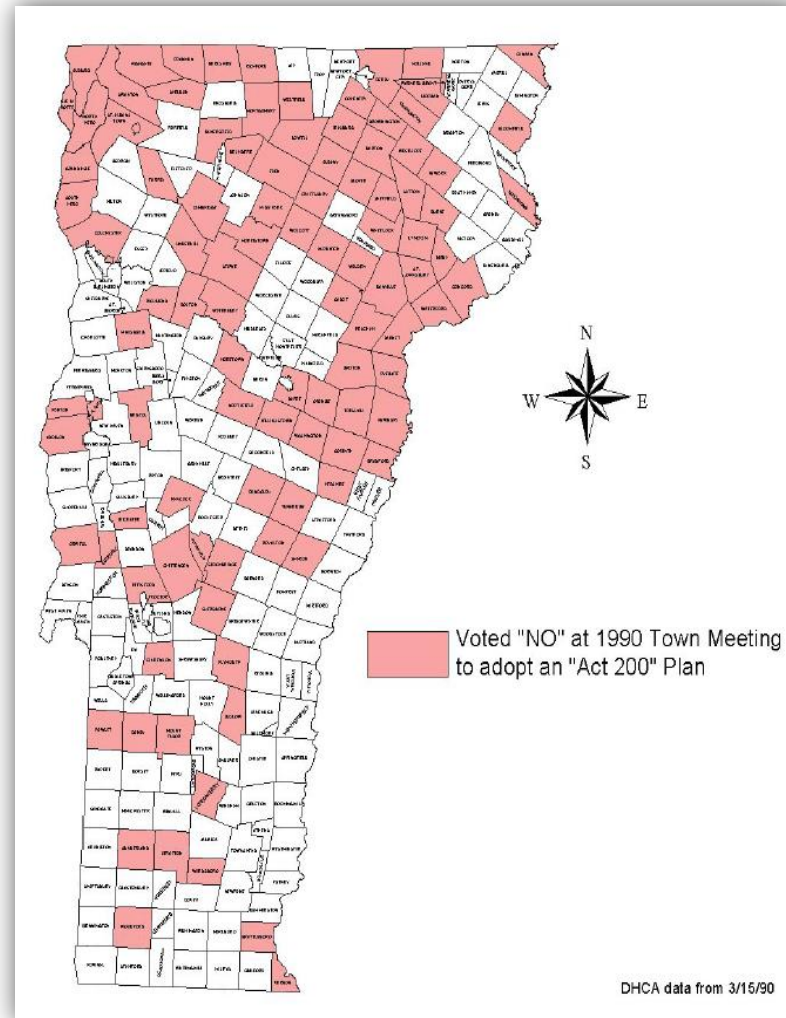
(A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development **according to the principles set forth in 10 V.S.A. § 6086(a).**

Required Plan Elements

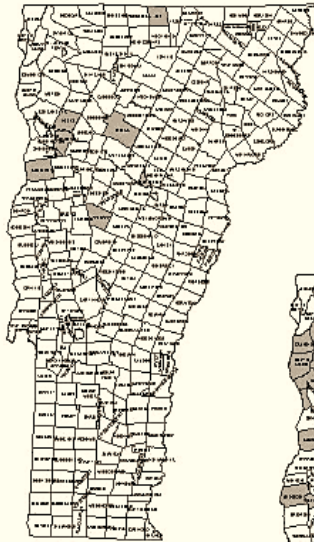
- Policies for growth, development, environmental protection
- **Land Use Plan, Map** (Designations 2013; Forests, Wildlife 2015)
- **Transportation Plan, Map**
- **Utility and Facility Plan, Map**
- Educational Facilities Plan, Map (municipal plans)
- Policies to preserve historic, natural, scenic resources
- Energy Plan (optional “Enhanced” Energy Plan, Map 2016)
- Housing Plan
- Economic Development Plan (2011)
- Flood Resilience Plan (2013)
- Regional Coordination, Relationships
- **Implementation Program**

“No” to Act 200 Plans...

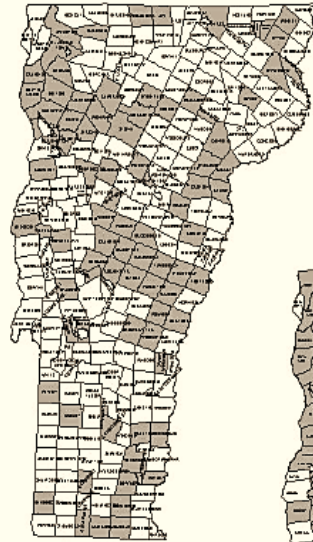
Towns voting “no”
to Act 200 planning
in 1990...



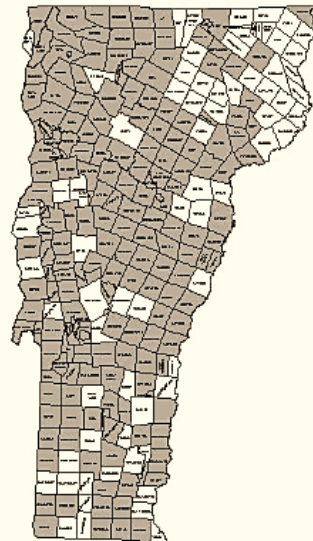
Approved Municipal Plans



1991





1997



2003

Municipal Plans approved by RPCs

-  No plan, or plan not approved by RPC
-  Plan approved by RPC

*Status Report: Land Use
Planning in Vermont 15
Years after Act 200, VT
DHCA (2004)*

Endangered Vermont (1993)

Threats:

- Commercial strip development
- Leapfrog housing development
- Big box development



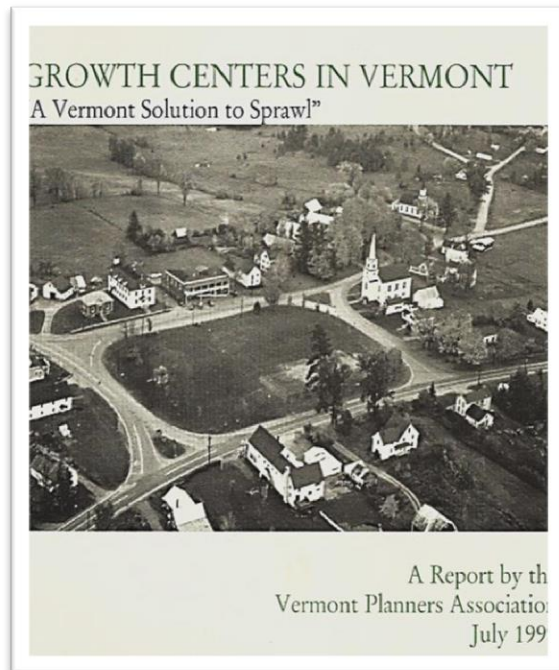
NATIONAL TRUST
for HISTORIC PRESERVATION®



Smart Growth Vermont

Revitalization of our communities and downtowns and dealing effectively with sprawl are among the most urgent and difficult issues facing Vermonters.

-- Gov. Howard Dean, MD



Downtowns, Village Centers

Core Designations



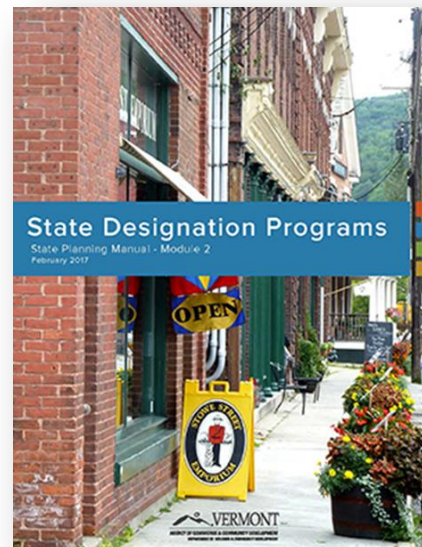
Village Centers (2003)



Downtowns (1998)



New Town Centers (2003)



Add-On Designations (must have a core designation to qualify):



Neighborhood Development Areas (2013)



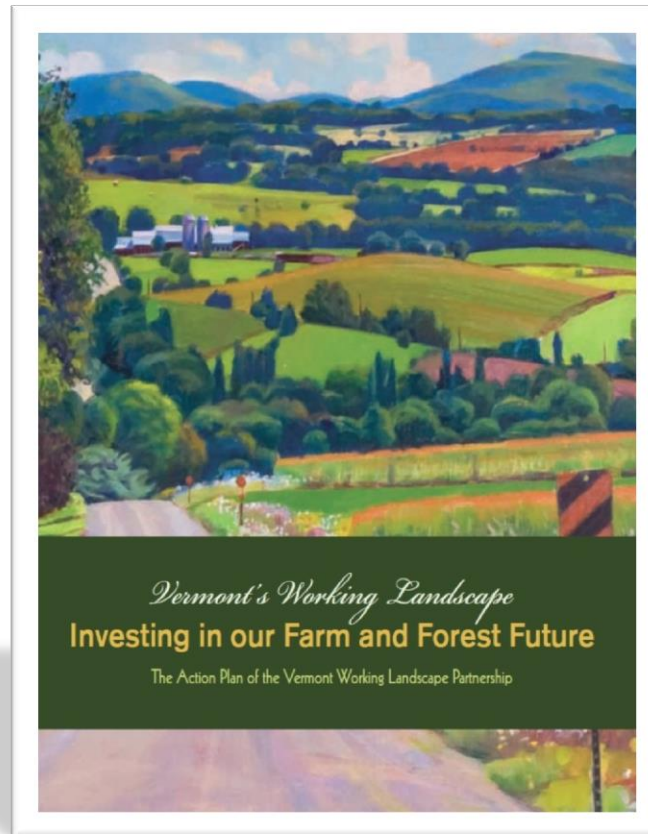
Growth Centers (2006)

Source: VT DHCD

Working Landscape

There is a tremendous opportunity for Vermont to build a farm and forest Renaissance as a foundation for the future of the land, culture, and economy of the state...

VT Working Landscape Partnership (2011)



Permit Reform (2003)

Chapter 117 Update: Plan Implementation

- Regulatory tools
- Nonregulatory tools

Codify “Consistency Doctrine” in statute:

All regulatory and nonregulatory tools adopted to implement a plan “**shall be in conformance with the plan...**” [§ 4401]

➤ *As “conformance with the plan” is defined in statute...*



Chittenden County RPC

Part II

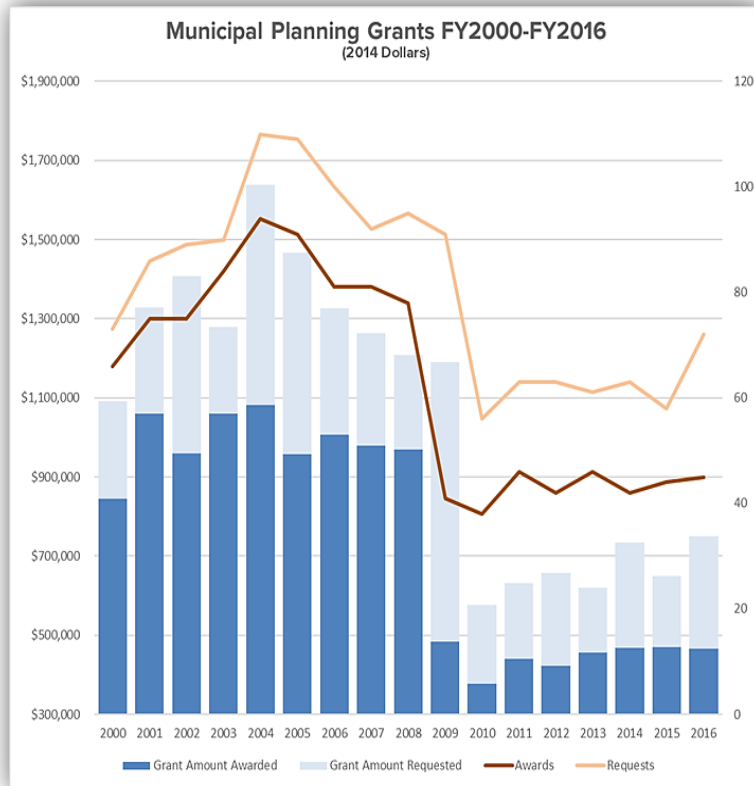
PLANNING TODAY

VT Planning Community

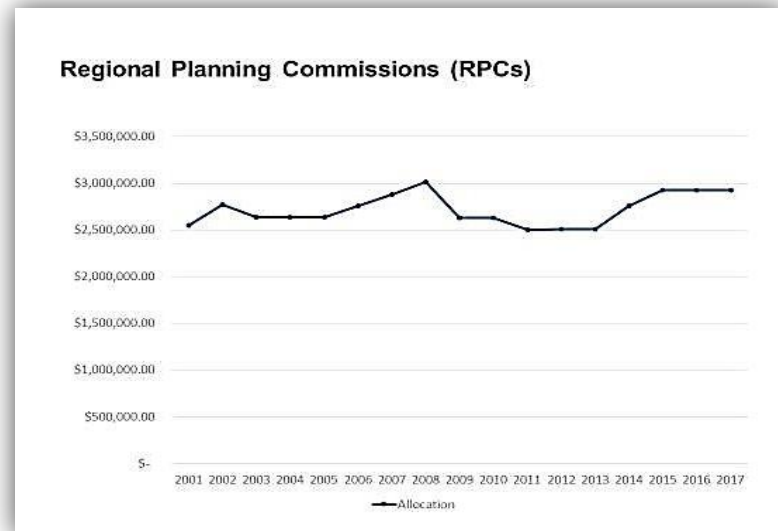
Groups	Members
Volunteers (Local Commissions, Boards)	2,300
Vermont Planners Association	190
American Planning Association	87
Northern New England Chapter (VT, NH, ME)	98
American Institute of Certified Planners (AICP-VT)	67

- VT Dept. of Housing and Community Development
- VT Association of Planning and Development Agencies – Regional Planning Commissions
- VT League of Cities and Towns
- VT Natural Resources Council –Sustainable Communities
- University of Vermont, Center for Rural Studies
- Education and Training Collaborative (ad hoc)-- VT Planning Information Center

Municipal & Regional Planning Fund



Notwithstanding...



Planning Info, Data Sources

- State Data Center, Data Collaborative – UVM Center for Rural Studies
 - Vermont Center for Geographic Information—ACCD
 - Planning manual, guides, program information—DHCD
 - Population data, vital statistics—VDH
 - School Data – Education
 - Housing Data—VHFA
 - Tax, income data—Tax Department
 - Natural Resource Atlas, Biofinder, databases, guides—ANR
 - Transportation system information, maps, data—VTrans
 - Economic data, profiles—VDL, Ag Agency, VT Food Atlas
 - VT Planning Information Center (website)
 - Vermont Insights—Building Bright Futures
 - Community Energy Dashboard—Energy Action Network, VSJF
- ***No central warehouse; no consistent/adopted population, housing, employment projections for use in local, regional state planning***

VT Geographic Information System

The screenshot displays the Vermont Natural Resources Atlas web application. At the top, the header features the Vermont state logo, the text "Natural Resources Atlas", and "Vermont Agency of Natural Resources" with the "vermont.gov" logo. Below the header, the page is divided into a left sidebar and a main map area.

Left Sidebar:

- Title: "Natural Resources Atlas"
- Release Notes: "G54.8.2 - HTML5 v2.9.1 - Updated: 8/23/2017"
- Image: A photograph of a monarch butterfly on a leaf.
- Text: "Welcome to the VT ANR Natural Resources Atlas". Below this, a paragraph states: "The Vermont Agency of Natural Resources has been busy making the Natural Resources Atlas the best online mapping tool for Vermont's Natural Resources. With over 150 map layers available to make your custom map from across all of our departments and other state and municipal agencies, you can use the Atlas to create a robust map for any purpose."
- Alert: "Issues with Unresponsive Script Errors? Are you using Firefox? [Click Here](#)"
- YouTube: "The Natural Resources Atlas Webinar is now online!"
- FAQ: "Please visit the NEW FAQ before contacting ANRGIS!"
- Logos: "VT ANR GIS" logo and "MAP SIMPLY." logo with icons for location, state, and computer.

Main Map Area:

- Search bar: "Search..."
- Map: A satellite-style map of Vermont with a grid overlay. Major roads (Interstates 89, 91, 93, 88, 203, 302) and towns are labeled. The "White Mountain National Forest" is highlighted in purple.
- Tools: A "Tools" button with a wrench icon.
- Navigation: A vertical toolbar on the left with icons for home, zoom in (+), zoom out (-), and a book icon.

State Planning

- **State Planning Office**—still on the books, does not exist (3 V.S.A. § 2104)
- **State Agency Planning** (3 V.S.A. Ch. 67) – plans must be consistent with state planning goals, compatible with regional, approved municipal plans (still on the books, no longer in effect?)
- **Agency, Department Plans** – as required under federal programs, state statutes, or by current administration

State Plans

- HUD Consolidated Plan | Housing Needs Assessment
- Historic Preservation Plan
- Comprehensive Economic Development Strategy
- Farm to Plate Strategic Plan
- Long Range Transportation Plan | Sector Plans
- Comprehensive Energy Plan
- Electric Plan
- Telecommunications Plan
- Healthy Vermonters 2020 | State Health Improvement Plan
- State Hazard Mitigation Plan
- Statewide Comprehensive Outdoor Recreation Plan (SCORP)
- Air Quality Implementation Plans
- Lake Champlain TMDL Implementation Plan
- Tactical Basin Plans
- Wildlife Action Plan
- Forest Action Plan

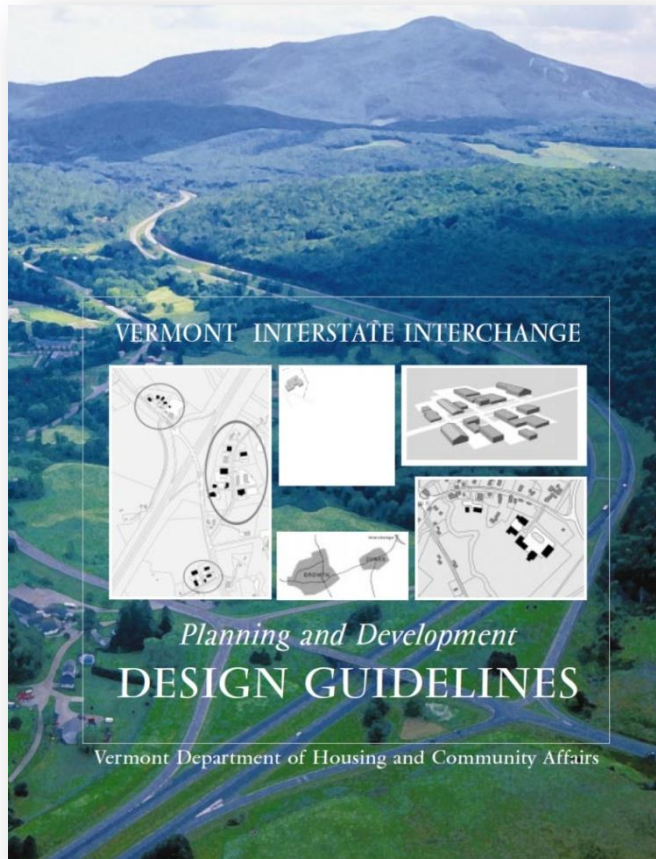
SCORP: I-89 = Scenic Corridor



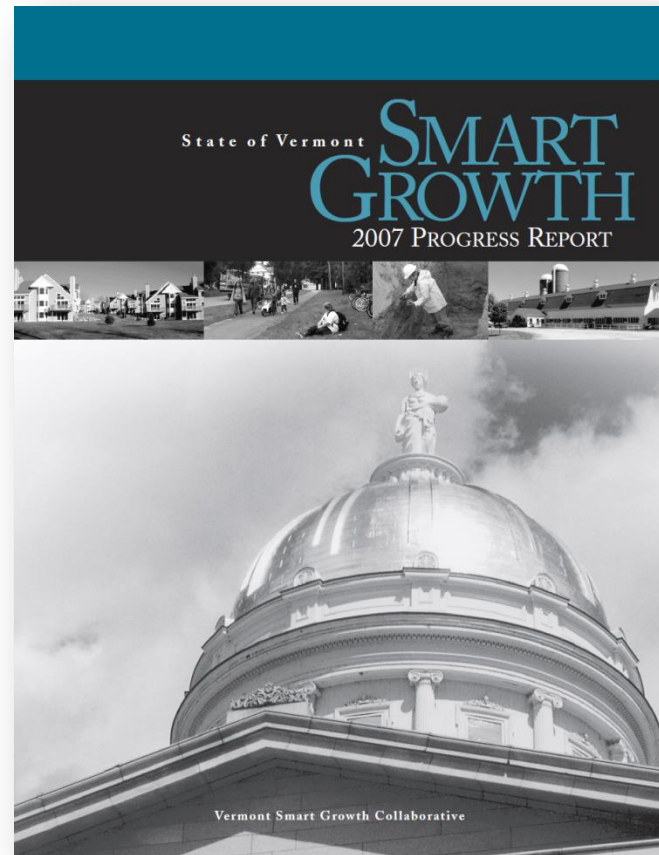
ptvermont.org

**Basis for initial Act 250 denial of a proposed motel at Exit 4,
under Criterion 8 (late 1970s)**

State Policies, Programs

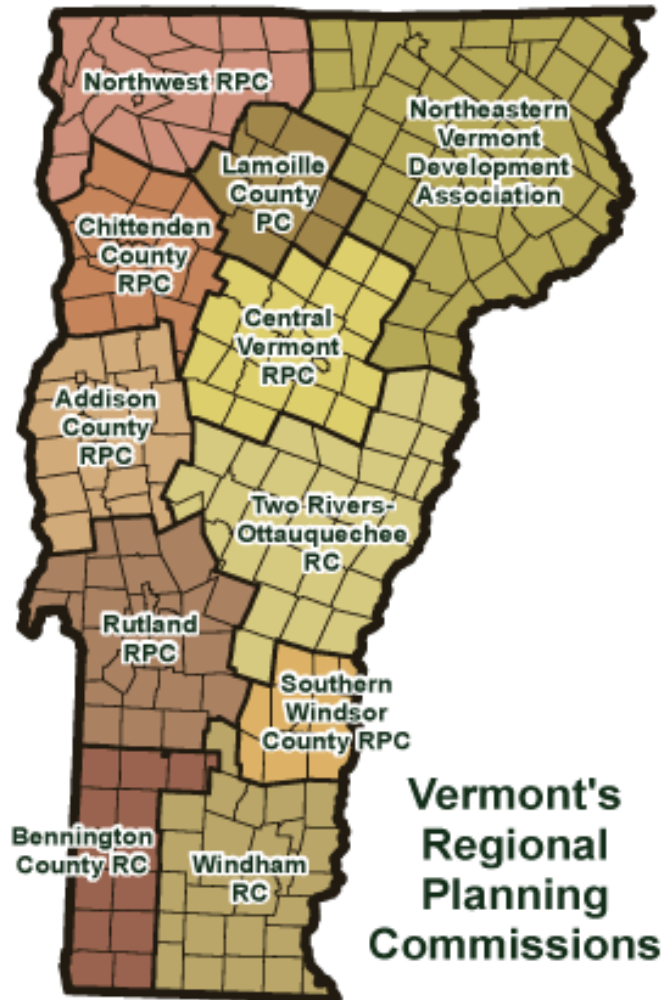


VT DHCA (2004)



VT Smart Growth Collaborative (2007)

Regional Planning



VAPDA

- 11 Commissions
 - Governed by member municipalities
 - No taxing, regulatory authority
 - MRPF, Contracts, Grants, Local \$
 - 8-Year regional plans
 - Plan implementation:
 - Municipal technical assistance
 - Regional programs, projects
 - Collaborations
- ***Participation in Act 250, 248***

Regional Programs

- Municipal Planning, Plan Implementation
- Regional Planning
- Brownfields
- Economic and Community Development
- Transportation Planning
- Emergency Preparedness and Disaster Recovery
- Geographic Information Services
- Energy Planning, Conservation and Development
- Watershed Planning and Project Development
- Special Projects

Municipal Planning

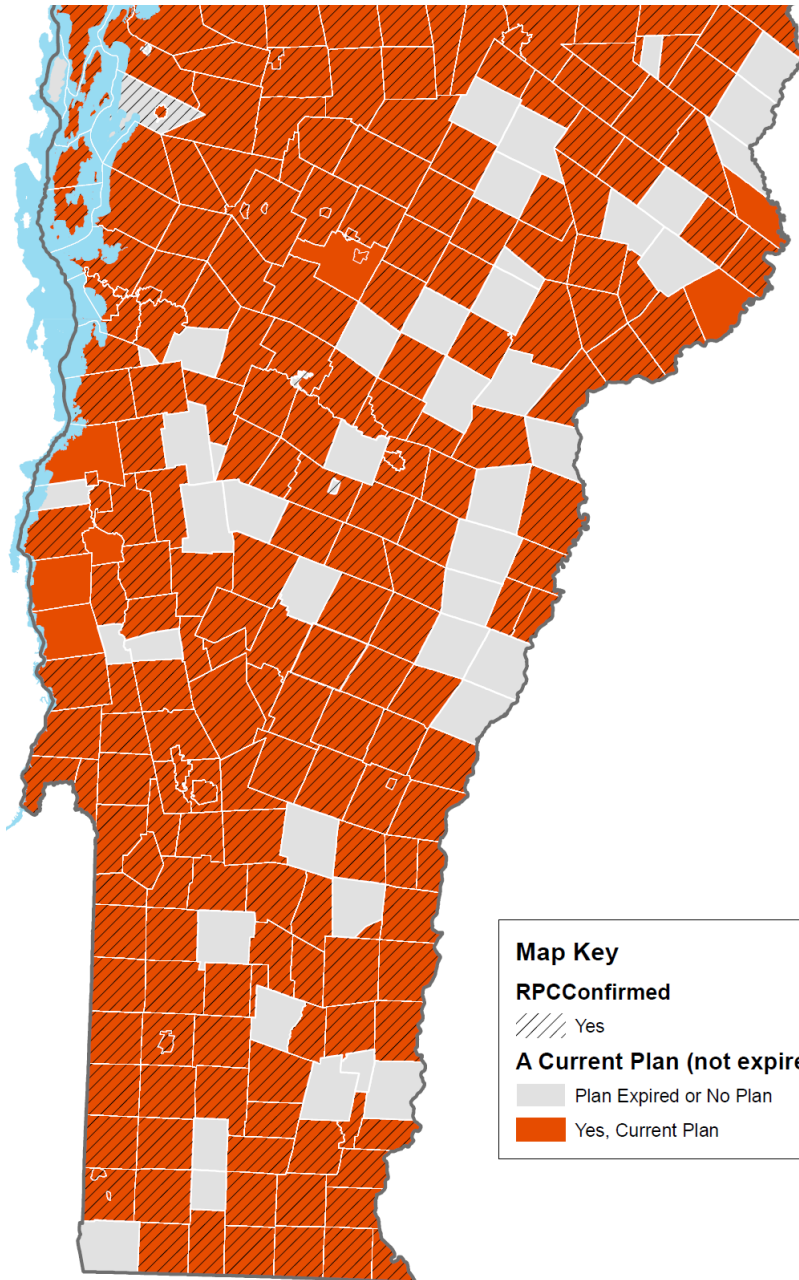
Optional – communities are not required to plan

- Planning commission—appointed or elected volunteers
- Commission – prepares plans, bylaws, improvement programs
- Plan—updated/readopted every 8 years

Must have a plan in effect to:

- Adopt/update zoning, subdivision regulations
- Apply for state designations, planning grants
- Be considered in Act 250 (Criterion 10), Section 248
- Conduct “Local Act 250” reviews

➤ ***Local planning capacity, staff, resources vary greatly***



Municipal Plans

VT DHCD (Oct 2017)

Map Key

RPC Confirmed

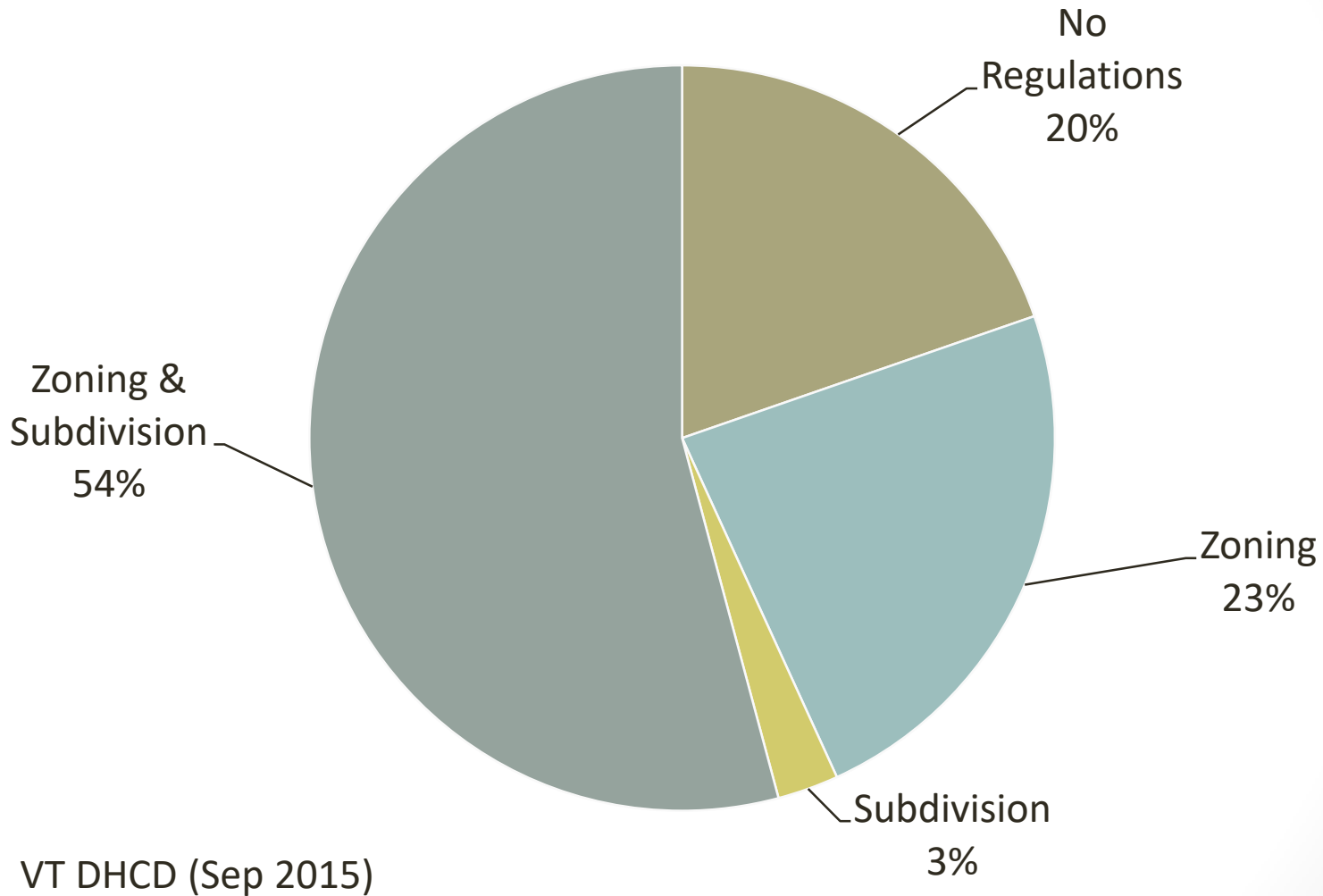
//// Yes

A Current Plan (not expired)

□ Plan Expired or No Plan

■ Yes, Current Plan

Municipal Bylaws



VT DHCD (Sep 2015)

State Designations: 159



Village Centers: 123



Downtowns: 23



New Town Centers: 2

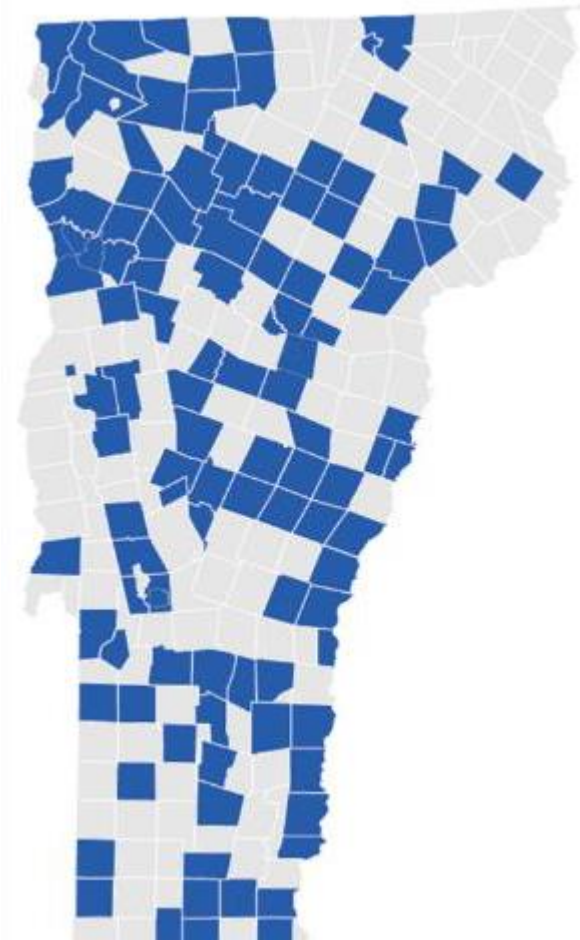


Neighborhoods: 6



Growth Centers: 6

VT DHCD (June 2017)



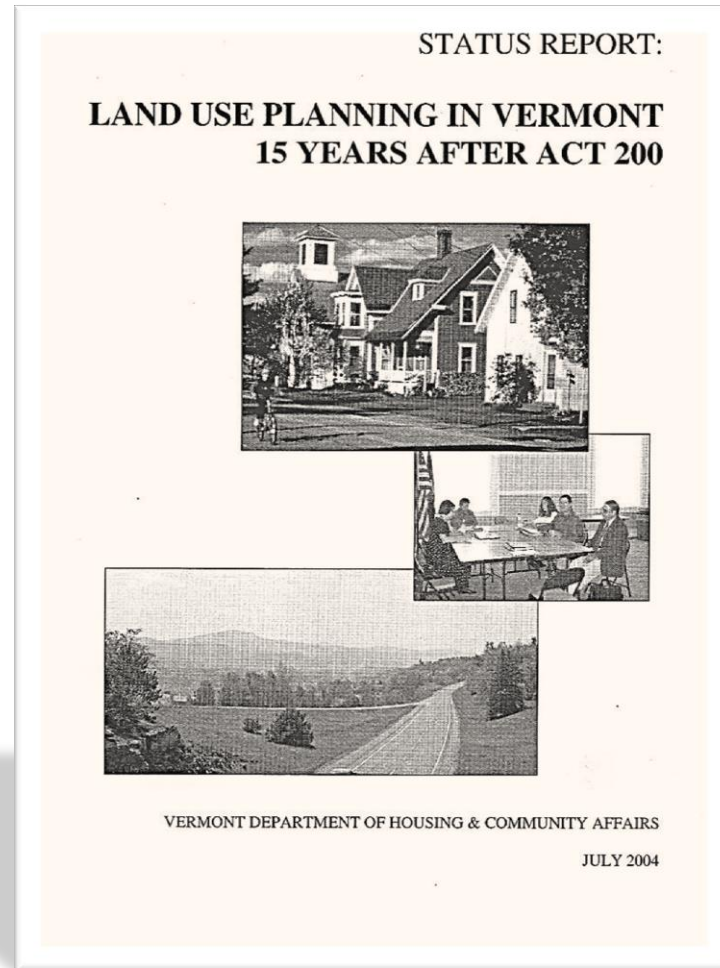
Act 200 Assessment (2004)

Good:

- Goals – framework
- State planning \$
- GIS mapping
- Improved municipal, regional plans

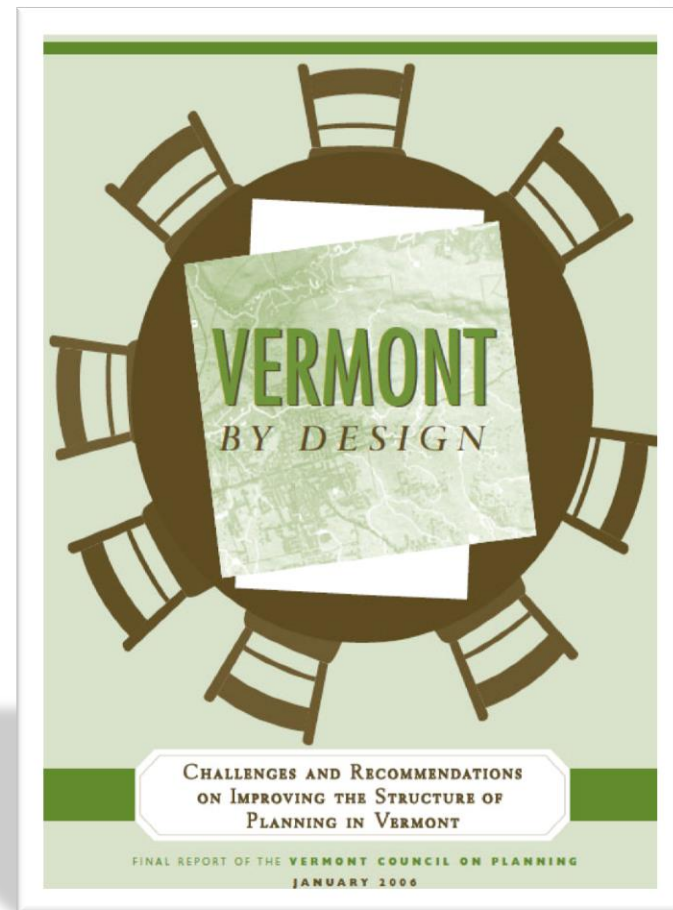
Not so good:

- No coordination
- CORC (repealed 2009)
- State agency plans (consistency w/goals)



Vermont by Design (2006)


- Promise of Act 200 unfulfilled
 - No state commitment to long-term planning
 - Poor vertical, horizontal communication
 - No coordinated state planning
 - RPC plans inconsistent
 - Process unwieldy, inefficient
 - Plans vague, hard to interpret
- **Reinstate Office of Planning Coordination**
- **Update planning statutes**



Regional Planning Assessments

VAPDA

Vermont Association
of Planning and
Development Agencies
2011 Statewide Strategic Assessment



Prepared by the
National Association of Development Organizations
June 2011



**REGIONAL
SERVICES REPORT**
January 15, 2011

Prepared by the
Vermont Association of Planning & Development Agencies
c/o Two Rivers-Ottawaquechee Regional Commission
3117 Rose Hill
Woodstock, VT 05091
802-457-3188

Municipal Planning Surveys



2016 Municipal Planning Grant Survey

Vermont Department of Housing and Community Development
June 1, 2016

 **VERMONT**
AGENCY OF COMMERCE & COMMUNITY DEVELOPMENT
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

In Sum

Median Population, VT Towns: 1,222

Planning today is more...

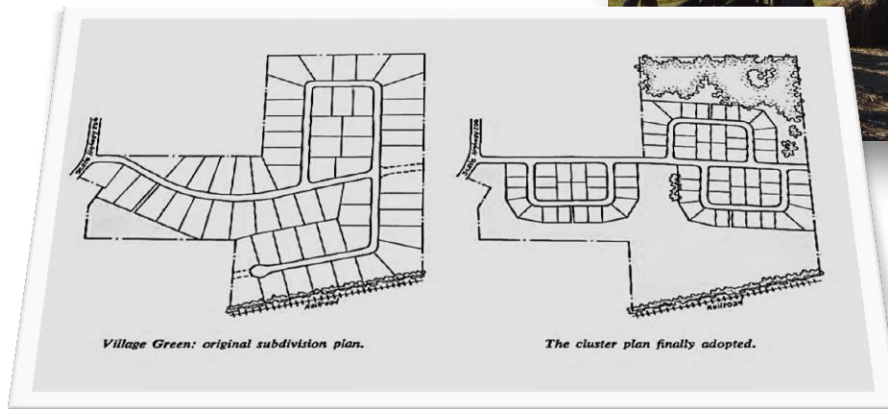
- Comprehensive
- Technical and sophisticated
- Complicated and messy
- Legally driven

Challenges include...

- No state coordination
- Planning capacity—volunteers, staff, resources, training
- Lack of good info, commonly accepted forecasts
- Technology, social media
- Community engagement



VT DHCD



Part III

PLANNING AND ACT 250

117 ➡ Act 250: Party Status

“Parties by Right” under Act 250 include:

- Municipality (legislative body)
 - Municipal planning commission
 - Regional planning commission
 - Affected state agencies
- ***Each may address or appeal any or all of the ten Act 250 criteria***

117 ➡ Act 250: RPC Duties

§ 4345a. Duties of regional planning commissions

A regional planning commission... *shall*:

(13) *Appear before District Environmental Commissions* to aid them in making a determination as to the conformance of developments... *with the criteria of 10 V.S.A. § 6086.*

(17) *As part of its regional plan, define a substantial regional impact, ...* . This definition shall be given due consideration, where relevant, in State regulatory proceedings.

117 ➡ Act 250: Jurisdiction

Act 250 jurisdiction varies for:

- **“10-Acre Towns” – zoning and subdivision (or unified) regulations**
 - Commercial, industrial on > 10 acres
 - Subdivisions creating 10+ lots of any size
- **“1-Acre Towns” – only zoning or subdivision, or no regulations**
 - Commercial, industrial on > than 1 acre
 - Subdivisions creating 6+ lots of any size
- **State Designated Centers**
 - Ex: priority housing projects

117 ➡ Act 250: Criteria

- **Party status under all 10 criteria** – plan policies, maps may inform each
- **Criterion 10:**
 - Conform to local, regional plans, improvement program
 - If municipal plan is ambiguous, shall consider bylaws that implement, are consistent with plan
- **Other criteria often considered in relation to plans:**
 - 5 – Traffic
 - 6 – Educational services
 - 7 – Municipal, governmental services
 - 8 – Aesthetics (Quechee Test), Wildlife
 - 9A (Growth impacts), 9B (ag soils), 9H (scattered development), 9K (public investments), 9L (settlement patterns)

117 ➡ Act 250: Local/State Review

Conditional Use Review (24 V.S.A. § 4414)

One or more review criteria under **10 V.S.A. § 6086** may be adopted as standards for use in conditional use review

Local Act 250 Review (24 V.S.A. § 4420)

- On the record review of municipal impacts caused by “development” or “subdivision” as defined under Act 250 under **criteria 6, 7, 10**
- *Local determinations serve as presumptions under Act 250*

117 ➡ Act 250: Regional v. Municipal

In Act 250 proceedings, when the provisions of a regional or municipal plan are relevant to the determination of any issue:

(1) the provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan;

(2) to the extent that such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration...would have a substantial regional impact.

Quechee Highlands: Exit 1



Source: VT Agency of Natural Resources

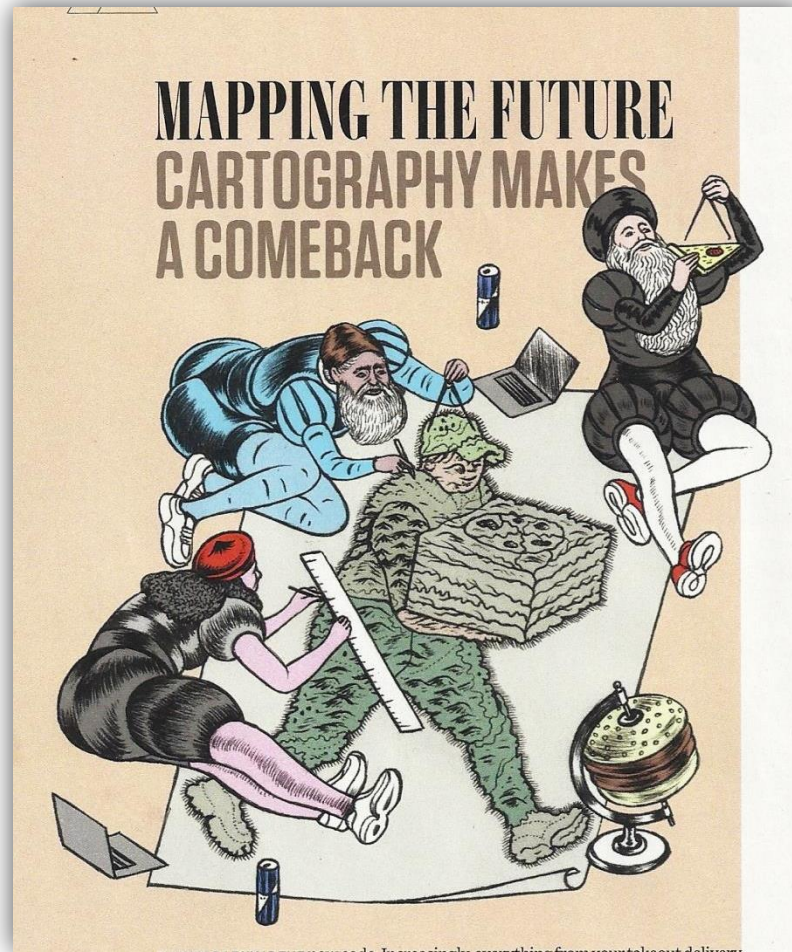
The Exit 1 interchange is not an 'existing or planned settlement center' under the regional plan, and therefore, it is not an appropriate location for major development.

VT Supreme Court , *In re B&M Realty* (2016)

117 ➡ Act 250: Plan Language

- 1979 ...Plans are not written like zoning bylaws...but this does not mean that they are legally meaningless
- 1996... a “specific” plan policy:
 - Pertains to the area
 - Guides or proscribes conduct or land use within the area
 - Is sufficiently clear to guide the conduct of an average person, using common sense and understanding
- 2005... **Despite fact that plans are abstract and advisory, Commissioners are obliged to give them regulatory effect.**
Two questions are asked:
 - Are the plan’s provisions specific or ambiguous?
 - Is the language in the plan “**mandatory**” or merely “guidance”? [Ex: “should” vs. “shall”]

Cartography is the New Code...



Where development occurs is as important as **how** it occurs – *maps matter...*

Wired (Nov 2017)

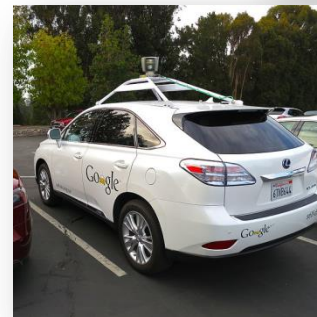
Is Fundamental Change Afoot...?

What we face...

- Climate change
- Effects of the past
- Diminishing, finite resources
- Aging infrastructure
- Demographic, economic, social shifts
- Rapid technological advances
- Increasing complexity
- Decreasing affordability
- Changing values?

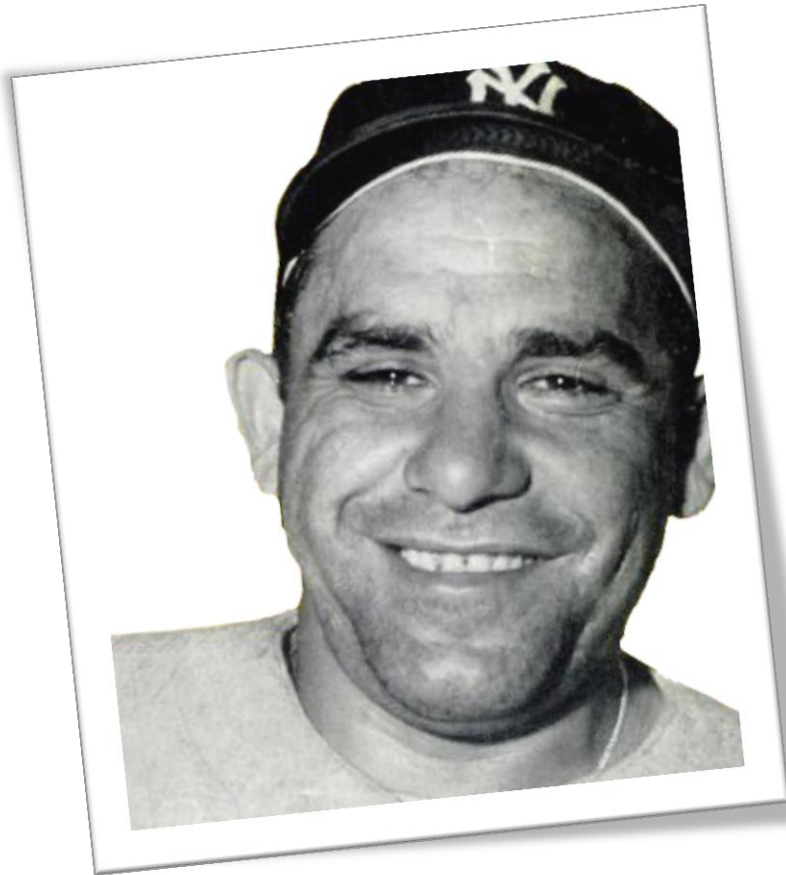


PKSB Architects



Vermont 2075?

- How do we address changing definitions of “community” and “place”?
- How do we manage the increasing complexities and cost of governance?
- How do we adapt our 19th century landscape to meet 21st century realities and needs?



*If you don't know where
you are going, you'll end
up someplace else.*

— Yogi Berra