

VERMONT'S ACT 183: SMART GROWTH TAKES ROOT IN THE GREEN MOUNTAIN STATE

Traditional zoning restrictions typically impose “maximum” density restrictions and serve to promote low-density development patterns. Concern about the problems of low-density urban sprawl has led to a shift in zoning in some communities to promote higher-density “New Urbanist” development. Courts are likely to uphold the validity of zoning and growth management restrictions that reduce sprawl and promote higher density patterns of land development. Such restrictions are likely to be held to promote the general welfare and affordable housing.¹

Since Act 250 was enacted, Vermont has lacked a strategy to identify areas appropriate for growth and target state investments to those areas. [Act 183] does just that.²

INTRODUCTION

Vermont communities face increasing pressure to meet the seemingly incompatible planning objectives of encouraging growth and preserving the state’s rural character. The approval of Public Act 183³ in May of 2006 is the most recent step in Vermont’s response to that challenge. Act 183 codifies detailed guiding principles for local and regional land use decisions and encourages centralized development through economic and regulatory incentives.

The guiding principles codified by Act 183 are examples of what is broadly termed “smart growth.” While there is no single set of smart growth principles, the term generally refers to land use planning that “refocuses a larger share of regional growth within central cities, urbanized areas, inner suburbs, and areas that are already served by infrastructure.”⁴ Act 183’s principles include the subset of smart growth known as “new urbanism,” which promotes “walkable, neighborhood-based development as an alternative to sprawl.”⁵

1. 3 ARDEN H. RATHKOPF & DAREN A. RATHKOPF, RATHKOPF’S THE LAW OF ZONING AND PLANNING § 51:9 (Edward H. Ziegler, Jr., principal author for rev., Thomson/West 2005) (1956) (footnotes omitted).

2. Press Release, Vt. Land Trust, Governor to Sign Key Land Use Bills: Organizations Support Landmark Legislation (May 23, 2006), *available at* <http://www.vlt.org/PR/052306newsrel.html>.

3. Act Relating to Creation of Designated Growth Centers and Downtown Tax Credit Program, No. 183, 2006 Vt. Acts & Resolves 376 (2006) (codified in scattered sections of VT. STAT. ANN. tits. 10, 24, 32).

4. AM. PLANNING ASS’N, POLICY GUIDE ON SMART GROWTH 2 (2002), *available at* <http://www.planning.org/policyguides/pdf/smartgrowth.pdf>.

5. Cong. for the New Urbanism, About CNU - Who We Are, http://www.cnu.org/who_we_are (last visited Jan. 29, 2007).

This Note examines Act 183 in light of the smart growth principles and stakeholder recommendations that led to its adoption. It concludes that although Act 183 provides comprehensive incentives for focusing growth, realizing the Act's full potential will be impossible without a state-level plan to inform decisions about where that focused growth should occur. Finally, it suggests adapting New Jersey's cross-acceptance model as a way to introduce proactive, state-level, land use planning to Vermont's similar regulatory climate.⁶

I. THE STATUTORY FRAMEWORK INTO WHICH ACT 183 FITS

A. *The Components*

Land use regulation in Vermont has two distinct threads: (1) statewide permitting based on Act 250⁷ and (2) local regulation enabled by the Vermont Planning and Development Act.⁸ Although Act 250 compliance is mandatory, adoption of local land use plans and controls, such as zoning, is voluntary.⁹ Thus, projects that do not trigger Act 250 review are not regulated statewide, although they may be regulated locally. This Part introduces the most significant legislative components of the two threads—with the exception of the various available local controls, which are beyond the scope of this Note—and then discusses deficiencies in the components' combined effect. Later Parts discuss the degree to which Act 183 cures the deficiencies and suggest a means of further improvement.

6. Neither Vermont nor New Jersey takes a top-down approach to land use planning. Both states show their deference to local autonomy by leaving municipalities free to decide if, and to a significant extent how, zoning should be implemented. Compare VT. STAT. ANN. tit. 24, § 4414(1) (2007) ("A municipality *may* define . . . zoning districts . . .") (emphasis added), and N.J. STAT. ANN. § 40:55D-62(a) (West Supp. 2007) ("The governing body [of a municipality] *may* adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon.") (emphasis added), with R.I. GEN. LAWS § 45-24-30 (1999) ("Zoning regulations *shall* be developed and maintained in accordance with a comprehensive plan prepared, adopted, and as may be amended, in accordance with chapter 22.2 of this title and *shall* be designed to address the following purposes.") (emphasis added).

7. Act 250, VT. STAT. ANN. tit. 10, §§ 6001–6108 (2006).

8. Vermont Planning and Development Act, No. 334, 1967 Vt. Acts & Resolves 356 (codified as amended in scattered sections of VT. STAT. ANN. tit. 24). This Act delegates police power to the state's municipalities in order to enable local land use regulation. See tit. 24, § 4302(a) ("It is the intent and purpose of this chapter to encourage the appropriate development of all lands in this state by the action of its constituent municipalities and regions . . . in a manner which will promote the public health, safety . . . and general welfare . . .").

9. See tit. 24, § 4401 (providing municipalities with the option of adopting land use controls generally); *supra* note 6 (discussing zoning specifically); *infra* notes 10–18 and accompanying text (discussing Act 250 permitting).

1. Statewide Permitting

The foundation of Vermont's statewide structure for regulating land use is Act 250. Adopted in 1970, Act 250 established an elaborate permitting regime to guide administrative review of subdivisions and large developments. Act 250's overall goals are evident in its call for a statewide development plan which, although never adopted, had the intended purpose of

guiding and accomplishing a coordinated, efficient and economic development of the state, which will, in accordance with present and future needs and resources, best promote the health, safety, order, convenience, prosperity and welfare of the inhabitants, as well as efficiency and economy in the process of development, including but not limited to, such distribution of population and of the uses of the land for urbanization, trade, industry[,] habitation, recreation, agriculture, forestry and other uses as will tend to create conditions favorable to transportation, health, safety, civic activities and educational and cultural opportunities, reduce the wastes of financial and human resources which result from either excessive congestion or excessive scattering of population and tend toward an efficient and economic utilization of drainage, sanitary and other facilities and resources and the conservation and production of the supply of food, water and minerals.¹⁰

Act 250 states, with some exceptions, that “[n]o person shall sell or offer for sale any interest in any subdivision located in this state, or commence construction on a subdivision or development, or commence development without a permit.”¹¹ Under Act 250, permits are generally required for:

1. Construction for a commercial or industrial purpose on more than one acre of land (or on more than 10 acres of land if the municipality has permanent zoning and subdivision by-laws);
2. Construction of more than 10 housing units within a radius of 5 miles;
3. Subdivision of land into 10 or more lots;

10. Tit. 10, § 6042.

11. *Id.* § 6081(a) (Supp. 2007). *But see* Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638, 645 (2d Cir. 2005) (holding that state permitting requirements affecting railroad facilities are preempted by federal law).

4. Construction of a road (incidental to the sale or lease of land) if the road provides access to more than five lots or is longer than 800 feet;
5. Construction by the state or local government if the project involves more than 10 acres;
6. Substantial changes or additions to existing developments;
7. Construction above 2,500 feet in elevation.¹²

Applications for Act 250 permits are submitted to the appropriate one of nine district commissions created by the Act.¹³ The commissioners grant a permit only if the proposed development or subdivision meets the following ten criteria:

1. Will not result in undue water pollution or air pollution.
2. Will have a sufficient water supply.
3. Will not cause an unreasonable burden on an existing water supply.
4. Will not cause unreasonable soil erosion or runoff.
5. Will not cause unreasonable traffic congestion.
6. Will not cause an unreasonable burden on educational services.
7. Will not cause an unreasonable burden on other municipal services (fire, police, water, roads).
8. Will not have an undue adverse effect on scenic beauty, aesthetics, historic sites, or rare and irreplaceable natural areas; and will not destroy necessary wildlife habitat or any endangered species.
9. Will conform to the capability and development plan, including, for instance, limiting development on primary agricultural soils, using the best available technology for energy efficiency, and using cluster planning in rural growth areas.
10. Will conform to local and regional plans or capital programs.¹⁴

Under Act 115, passed in 2004,¹⁵ appeals of the district commissions'

12. CINDY CORLETT ARGENTINE, VERMONT ACT 250 HANDBOOK 3 (1993) (summarizing title 10, section 6001(3)(A) of the Vermont Statutes, which defines "development").

13. Tit. 10, § 6083(a) (requiring applications to be filed); *id.* § 6026 (creating district commissions).

14. ARGENTINE, *supra* note 12, at 6 (summarizing title 10, section 6086(a) of the Vermont Statutes, which sets forth permitting criteria and conditions).

15. Act Relating to Consolidated Environmental Appeals and Revisions of Land Use Development Law, No. 115, 2004 Vt. Acts & Resolves 166 (codified as amended in scattered sections

permitting decisions are made to the Environmental Court.¹⁶ Act 115 also established a Natural Resources Board, appointed by the governor, with a Land Use Panel and a Water Resources Panel.¹⁷ This Board replaced the Environmental Board and Water Resources Board, both established under Act 250, that had previously heard permit appeals. Like its predecessors, the Natural Resources Board's duties include developing rules and standards for issuing Act 250 permits.¹⁸

2. Local Regulation

Local land use regulation is enabled by the Vermont Planning and Development Act and encouraged by Act 200, the Vermont Growth Management Act of 1988.¹⁹ Act 200 sought “[t]o establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions, and state agencies.”²⁰ The Act set up a hierarchy of voluntary review in which municipalities are encouraged to establish planning commissions and manage land use in accordance with a town plan;²¹ town plans are coordinated by regional planning commissions;²² and regional planning commissions are ostensibly overseen by a council.²³ Act 200's development goals foreshadowed Act 183, especially the admonition that “[e]conomic growth should be encouraged in locally designated growth areas, or employed to revitalize existing village and urban centers, or both.”²⁴

The last piece of the statutory framework is the 1998 Downtown Development Act,²⁵ intended “to preserve and encourage the development of downtown areas of municipalities of the state . . . to reflect Vermont's traditional settlement patterns, and to minimize or avoid strip development

of VT. STAT. ANN. tits. 3, 4, 10, 23, 24, 29, 32).

16. Tit. 10, § 6089.

17. *Id.* § 6021 (2006).

18. *Id.* § 6025.

19. Act Relating to Encourage Consistent Local, Regional and State Agency Planning, No. 200, 1988 Vt. Acts & Resolves 167 (codified in scattered sections of VT. STAT. ANN. tits. 24, 32); *see also supra* note 8 and accompanying text (discussing the Vermont Planning and Development Act).

20. VT. STAT. ANN. tit. 24, § 4302(b)(1) (2007).

21. *Id.* § 4401.

22. *Id.* § 4345a.

23. *Id.* § 4305. Although still existing in statute, the Council of Regional Commissions “has not met in several years, due to a rescission of its funding.” VT. COUNCIL ON PLANNING, VERMONT BY DESIGN: CHALLENGES AND RECOMMENDATIONS ON IMPROVING THE STRUCTURE OF PLANNING IN VERMONT 12 (2006).

24. Tit. 24, § 4302(c)(1)(B).

25. Act Relating to Downtown Community Development, No. 120, 1998 Vt. Acts & Resolves 321 (codified as amended in scattered sections of VT. STAT. ANN. tits. 10, 24, 32).

or other unplanned development throughout the countryside on quality farmland or important natural and cultural landscapes.”²⁶ Under this Act, municipalities can apply for financial incentives from the state after successfully applying for designation as a downtown development district.²⁷

B. *The Need for Refinement That Led to Act 183*

Although praised for “the benefits of having laypeople make decisions within a decentralized system,” Vermont’s Act 250-based permitting regime has been criticized for its sluggishness.²⁸ Because time so often equals money, permitting delays can be expensive as well as frustrating for all parties involved. It follows logically that for developers, this expense and frustration can lead to reduced investment in the state. Lack of efficiency in the review process can, therefore, have both direct and indirect economic costs.

In addition to being faulted for lacking speed, the system has been criticized for “lack[ing] a planning component which would allow municipalities the foresight to assess impacts of all potential and proposed developments [rather than] . . . address[ing] only . . . individual developments and their impacts as they arise.”²⁹ Because permit review under Act 250 is project triggered, its focus is, figuratively, on the trees rather than the forest.

Similarly, in the absence of the statewide development plan for which the Act originally called, reviewing boards and courts have created a common-law patchwork of decisions interpreting and applying the Act’s permitting criteria.³⁰ Although the precedent that those decisions provide is

26. VT. STAT. ANN. tit. 24, § 2790(b) (2007).

27. *Id.* § 2794.

28. Doug Costle, *Forward to ARGENTINE*, *supra* note 12, at vi.

29. Jessica E. Jay, Note, *The “Malling” of Vermont: Can the “Growth Center” Designation Save the Traditional Village from Suburban Sprawl?*, 21 VT. L. REV. 929, 950–51 (1997) (emphasis omitted).

30. See, e.g., *In re Wal*Mart Stores, Inc.*, 167 Vt. 75, 78–89, 702 A.2d 397, 400 (1997) (endorsing the Environmental Board’s interpretation of Act 250 permitting criteria as allowing consideration of a retail store’s potential effect on competing businesses in nearby towns and affirming the Board’s denial of a building permit on this and other grounds). In *Wal*Mart*, the Vermont Supreme Court relied on Act 250’s legislative history in concluding “that the Legislature intended the word ‘growth,’ as used in Criterion 9(A), to apply to economic, as well as population, growth.” *Id.* at 85, 702 A.2d at 404. Criterion 9(A), to which the court refers, states in relevant part:

(A) Impact of growth. In considering an application, the district commission shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise

illuminating—making it easier to read between the lines of the permitting criteria—each decision casts light only on the specific issues raised in a case, and each case exists only because a district commission decision was appealed. In contrast, the statewide development plan could have enlightened the full range of Act 250 permitting decisions, providing greater understanding and certainty for all concerned.

There are problems with the municipal planning regime as well. Although the enabling legislation requires that municipalities have comprehensive plans in order to implement land use controls, they can choose to have neither—thereby allowing projects not requiring Act 250 approval to pass entirely under the regulatory radar.³¹ Also, with Act 200's Council of Regional Commissions presently unfunded, there is no statewide coordination among those municipalities that do choose to have plans.³²

Lacking functioning mechanisms for systematic review of either statewide permitting or municipal planning, this piecemeal approach to land use regulation has proven inadequate to guide Vermont's growth. As Richard Brooks, founder of Vermont Law School's Environmental Law Center, wrote, "The detrimental impacts [of growth without comprehensive planning] on Vermont's quality of life, her pristine beauty, traffic and compact village life, are not yet catastrophic, but the trends are ominous."³³ Evidence of these ominous trends toward sprawling development can be seen by anyone traveling around the state. As farm fields are turned into tract housing and strip developments proliferate, Vermont's tourist-drawing identity as the quintessential rural New England state visibly erodes.

Although sprawl is increasingly evident in Vermont, the Green Mountain State has so far been spared the full potential impact of random development by a relatively low overall growth rate—perhaps due in part to the inefficiency of its complex permitting system.³⁴ However, if regulatory inefficiency has bought the state some time to refine its land use planning regime, it has done so at the cost of lost economic opportunities.

Act 183 represents only a partial solution to these problems. As the

expected for the town and region and the total growth and rate of growth which would result from the development if approved.

VT. STAT. ANN. tit. 10, § 6086(a)(9)(A) (2006).

31. See VT. STAT. ANN. tit. 24, § 4401 (2007) ("Any municipality that has adopted and has in effect a plan and has created a planning commission . . . may implement the plan by adopting, amending and enforcing any or all of the regulatory and nonregulatory tools provided for in this chapter.") (emphasis added).

32. See VT. COUNCIL ON PLANNING, *supra* note 23, at 12 (discussing the Council's lack of funding).

33. 2 RICHARD BROOKS, TOWARD COMMUNITY SUSTAINABILITY: VERMONT'S ACT 250 § 11, at 28 (1997).

34. See *id.* (suggesting that Vermont's growth rate may have been slowed by Act 250).

following Parts show, it was recognition of the need to encourage and facilitate coordinated, centralized growth at the *municipal level* that led to Act 183. Act 183 was not intended to provide, and cannot operate to its full potential without, the proactive, *state-level* land use planning that Act 250 originally promised.

II. SMART GROWTH PRINCIPLES AND STAKEHOLDER RECOMMENDATIONS UPON WHICH ACT 183 IS BASED

Act 183 is based largely upon recommendations made by two groups—the Vermont Forum on Sprawl (now called Smart Growth Vermont) and the Vermont Business Roundtable—that began working together in 1999. They published their initial recommendations in 2003 as the *New Models Project*.³⁵ Sharing a common purpose, the two groups represent the unlikely bedfellows of environmental and business interests. Smart Growth Vermont aims to help local communities “plan for the future in a way that maximizes past investments in our downtowns and villages, maintains Vermont’s quality of life and protects our unique landscape.”³⁶ Its board of directors includes the president of the Vermont Land Trust and the executive director of the Preservation Trust of Vermont.³⁷ The Business Roundtable is similarly “committed to ‘promoting the economic vitality of the state without sacrificing its unique environmental qualities,’”³⁸ yet its board is made up entirely of business leaders.³⁹ As hybrids of their stakeholders’ seemingly contrary business and environmental concerns, the *New Models Project* and, by extension, Act 183, are evidence that smart growth is in the best interests of both resource conservation and economic growth.

The then Vermont Forum on Sprawl and the Business Roundtable formulated their legislative recommendations in part because “market forces, local planning requirements, and complex permitting processes [had] driven development to outlying ‘greenfield’ sites.”⁴⁰ The groups

35. VT. FORUM ON SPRAWL & VT. BUS. ROUNDTABLE, *THE NEW MODELS PROJECT: THE REPORT OF A PARTNERSHIP PROJECT FOR ACHIEVING SMART GROWTH IN COMMERCIAL AND INDUSTRIAL DEVELOPMENT*, at i (2003) [hereinafter *NEW MODELS PROJECT*].

36. Smart Growth Vt., *How We Can Help*, <http://www.smartgrowthvermont.org/help> (last visited Mar. 24, 2008).

37. Smart Growth Vt., *Board of Directors*, <http://www.smartgrowthvermont.org/about/staff/board> (last visited Mar. 24, 2008).

38. Vt. Bus. Roundtable, *History*, <http://www.vtroundtable.org/AboutUs/History/tabid/214/Default.aspx> (last visited Jan. 26, 2008).

39. Vt. Bus. Roundtable, *Officers and Directors*, <http://www.vtroundtable.org/AboutUs/OfficersandDirectors/tabid/215/Default.aspx> (last visited Jan. 26, 2008).

40. *NEW MODELS PROJECT*, *supra* note 35, at 1.

anticipated that, unchecked, such development would increase car use, decrease opportunities and services for the poor, “waste land, create or worsen environmental problems, and fragment natural resources.”⁴¹ They feared that it would also “weaken community centers by sapping their economic base and social vitality” and erode Vermont’s “traditional settlement patterns of compact town and village centers among open, rural countryside.”⁴² Accordingly, as an alternative to continuing sprawl, the *New Models Project* advocated “smart growth” as defined by the following nine principles:

1. Uses land efficiently.
2. Through planning and design, meets the needs of the people it will serve, and is economically viable.
3. Uses existing infrastructure to the fullest extent.
4. Is connected with other development, and/or integrated into existing and planned growth centers.
5. Reuses existing structures to the fullest extent, and does so creatively.
6. Promotes mixed uses, including existing or new workforce housing in or near the proposed development.
7. Represents good design that integrates into the community, respecting community desires and fitting in terms of scale, aesthetic qualities, and character of surroundings.
8. Recognizes the importance to Vermont of environmental quality.
9. Enables alternative forms of transportation, minimizes vehicle trips, shares parking with other businesses and uses, and minimizes curb cuts.⁴³

The *New Models Project* identified impediments to smart growth in Vermont, including the lack of any “coordinated, statewide planning process within the state administration that could bring support to bear on smart growth projects”; the project also asserted that “[l]ocal regulations often do not support these types of developments, and fragmented, time-consuming state and local permit processes also pose a major challenge.”⁴⁴ To reduce those impediments, the *New Models Project* recommended changes in permitting, training, funding, and planning. Those changes include developing “regulations that make smart growth principles

41. *Id.*

42. *Id.*

43. *Id.* at 2.

44. *Id.* at 14.

workable and that achieve greater certainty and less delay in permitting for these new models of commercial and industrial development” and “methods for expeditious phasing and permitting of master plans that provide greater predictability, long-term stability, and due weight to master planning, and that reduce appeals.”⁴⁵ The *New Models Project* recommendations were later incorporated, together with the recommendations of other stakeholders, into a legislative proposal entitled *Proposal: Designated Opportunity Zones and Master Plan/Master Permitting Legislation* (Legislative Proposal).⁴⁶

The Legislative Proposal suggested a four-level planning and permitting process:

Level 1: State, Regional and Municipal Planning: Participation in the Designated Opportunity Zone Master Plan/Master Permit Program will begin with coordinated, comprehensive local, Regional and State Plans based on Planning Principles[.]

Level 2: Opportunity Zone Designation: One or more communities that have in place approved Municipal Plans, permanent zoning and subdivision regulations, and a designated Downtown, Village Center, or New Town Center may apply to the Land Use Panel of the Natural Resources Board for Opportunity Zone Designation. . . .

Level 3: Master Plan Approval: In communities that have obtained the Opportunity Zone designation, applicants may apply to the District Environmental Commission for Master Plan Approval for one or more development projects within the Opportunity Zone that satisfy the goals and conditions of the Opportunity Zone approval. . . .

Level 4: Individual Development Permit Approval: After Master Plan Approval, persons or entities that own or control properties within the Master Plan area may apply to the Development Review Board in the municipality in which the area is located for an Individual Development Permit.⁴⁷

45. *Id.*

46. OPPORTUNITY ZONES PLANNING GROUP ET AL., PROPOSAL: DESIGNATED OPPORTUNITY ZONES AND MASTER PLAN/MASTER PERMITTING LEGISLATION, at Executive Summary (2005) [hereinafter LEGISLATIVE PROPOSAL] (on file with author).

47. *Id.* A coordinated planning *process* is not the same as a coordinated *plan*. The “state plans” to which Level 1 refers are merely plans for individual agency “programs and actions.” VT. STAT. ANN. tit. 3, §§ 4020–4021 (2003); *see also* LEGISLATIVE PROPOSAL, *supra* note 46, at 2 (referring to “State Plan Requirements” as those in title 3, chapter 67 of the Vermont Statutes). Thus, Level 1

Stopping short of echoing Act 250's original call for a state land use plan, the Legislative Proposal anticipated that this system would provide developers with "a faster and less costly review process," while simultaneously giving *municipalities* control over growth.⁴⁸ The Legislative Proposal also suggested giving municipalities financial incentives to undertake the master-planning process, including "planning grants, alternative tax structures including pre-approved, flexible tax incremental financing, elevated priority status for discretionary grants such as housing, infrastructure and Brownfield remediation."⁴⁹ The Legislative Proposal's regulatory and financial incentive system, as articulated in a subsequent legislative draft submitted to the chair of the Senate's Natural Resources and Energy Committee in 2005, provided the blueprint for Act 183.⁵⁰

III. ACT 183

As the Legislative Proposal recommended, Act 183 codifies smart growth principles, defines growth centers, and establishes regulatory and financial incentives that flow from growth center designation. This Part examines Act 183 and finds it to be a comprehensive tool for focusing development, but concludes that the Act cannot be used to its full potential without the addition of a state-level planning component to Vermont's land use regime.

A. Definition and Designation of Growth Centers

Act 183 begins by writing detailed and comprehensive smart growth principles into Vermont law. By doing so, the Act avoids being limited in application by more generic interpretations of the smart growth concept and ambiguities regarding legislative intent. Act 183 expands upon the list of nine principles in the *New Models Project* with the exception of number six (reuse of existing structures).⁵¹ The Act's recitation of smart growth

describes a process by which towns, regions, and state agencies coordinate their individual plans—not the creation of an overarching, state-level land use plan to inform the development of those individual plans.

48. LEGISLATIVE PROPOSAL, *supra* note 46, at Executive Summary.

49. *Id.*

50. *See infra* Part III (describing Act 183). Act 183 includes much of the legislative draft's language and structure, with the notable exceptions of neither establishing a pilot program nor providing planning grants to municipalities. *See* DESIGNATION OF OPPORTUNITY ZONES MASTER PLAN PERMITTING PILOT PROJECT: LEGISLATIVE DRAFT NO. 2.2 (2005) (on file with author) (representing working group's suggestions of specific language for the bill that became Act 183).

51. *See* VT. STAT. ANN. tit. 24, § 2791(13) (2007) (listing smart growth principles); *see also*

principles includes state-specific requirements such as “[m]aintain[ing] the historic development pattern of compact village and urban centers separated by rural countryside” and “[s]erv[ing] to strengthen agricultural and forest industries.”⁵² It concludes with a description of what smart growth *is not*; namely,

- (i) scattered development located outside of compact urban and village centers that is excessively land consumptive;
- (ii) development that limits transportation options, especially for pedestrians;
- (iii) the fragmentation of farm and forest land;
- (iv) development that is not serviced by municipal infrastructure or that requires the extension of municipal infrastructure across undeveloped lands in a manner that would extend service to lands located outside compact village and urban centers;
- (v) linear development along well-traveled roads and highways that lacks depth, as measured from the highway.⁵³

The Act also defines a growth center as conforming to the codified smart growth principles and having other related characteristics. Those characteristics include providing “retail, office, services, and other commercial, civic, recreational, industrial, and residential uses, including affordable housing and new residential neighborhoods, within a densely developed, compact area” and being “served by existing or planned infrastructure and . . . separated [from other growth centers] by rural countryside and working landscape.”⁵⁴

In addition to defining smart growth principles and growth centers, Act 183 sets out specific prerequisites for growth center designation. These requirements fit well with level two of the Legislative Proposal, although Act 183 adopts the term “Growth Centers” in place of the Proposal’s “Opportunity Zones.” To be designated a growth center under the Act, an area of land must be located within:

- (i) A designated downtown, village center, or new town center; [or]
- (ii) An area of land that is in or adjacent to a designated downtown, village center, or new town center, with clearly

supra text accompanying note 43.

52. Tit. 24, § 2791(13).

53. *Id.* § 2791(13)(I).

54. *Id.* § 2791(12)(B).

defined boundaries that have been approved by one or more municipalities in their municipal plans to accommodate a majority of growth anticipated by the municipality or municipalities over a 20-year period.⁵⁵

By basing growth center designation on clear prerequisites and detailed definitions, Act 183 provides guidance to its future interpreters as to what, precisely, its drafters intended.

B. Benefits of Growth Center Designation

Act 183 provides communities with both financial and regulatory incentives in an attempt to ensure that “[a] large percentage of future growth should occur within duly designated growth centers that have been planned by municipalities in accordance with smart growth principles and Vermont’s planning and development goals.”⁵⁶ With what specific mechanisms does the Act seek to do this, and how comprehensive are those mechanisms?

According to a University of California Public Law Research Institute survey, most states’ smart growth approaches contain the following elements: “(1) eliminating state subsidies that promote sprawl; (2) promoting infill development; (3) preserving farmland, open space, and areas of environmental and recreational value; and (4) supporting local planning by providing incentives and technical assistance to local governments and encouraging them to enter into regional planning agreements.”⁵⁷ Act 183 is sufficiently comprehensive to satisfy all of these elements, and showing how it does so reveals its structure.

1. State Subsidies

“By limiting state funds to designated growth areas or specified growth projects, states can minimize their costs and decrease sprawl.”⁵⁸ Act 183 satisfies this element with several provisions. Act 183 allows municipalities to “use tax increment financing for infrastructure

55. *Id.* § 2791(12)(A). Here, Act 183 is building on the Downtown Community Development Act by targeting areas previously designated under that Act for preservation and development assistance. *See supra* notes 25–27 and accompanying text.

56. Tit. 24, § 2790(d)(1).

57. ED BOLEN ET AL., PUB. LAW RESEARCH INST., SMART GROWTH: STATE BY STATE 3 (2001), available at <http://w3.uchastings.edu/plri/spring2001.PDF>.

58. *Id.*

improvements in . . . designated growth center[s]”⁵⁹ and requires that priority in distributing state grants and funding for “infrastructure and other investments” be given to downtown centers, village centers, and growth centers.⁶⁰ It requires the state to “[e]xtend priority consideration for transportation enhancement improvements located within or serving designated downtowns, village centers, and growth centers”⁶¹ and “[g]rant to projects located within [downtowns, village centers, and] designated growth centers priority consideration for state housing renovation and affordable housing construction assistance programs.”⁶²

Act 183 bestows its financial benefits upon designated growth centers with deference to the 1988 Downtown Development Act and Act 200. The language describing state assistance and funding is typical, stating that the relevant provisions “are not intended to take precedence over any other provisions of law that provide state assistance and funding for designated downtowns and village centers.”⁶³

2. Infill Development

“An infill strategy is designed to stimulate housing or other development on vacant or under-utilized parcels within urban areas.”⁶⁴ States commonly encourage infill development by (1) “siting state buildings and facilities in existing communities”; (2) “reducing regulatory burdens in designated growth areas”; (3) “facilitating brownfields redevelopment”; (4) “streamlining the permitting process”; (5) “providing tax breaks to businesses that locate within existing communities”; and (6) “improving existing infrastructure.”⁶⁵ As shown below, Act 183 satisfies all parts of this element.

Act 183 encourages siting of state buildings in existing communities by requiring that “thorough investigation and priority” be given to leasing or constructing state buildings in downtowns, village centers, and growth centers.⁶⁶ Act 183 reduces regulatory burdens in designated growth areas by limiting developers’ duties to compensate “for the conversion of primary agricultural soils” in designated growth centers.⁶⁷ Rather than requiring

59. Tit. 24, § 2793c(i)(1)(A).

60. *Id.* § 2793c(i)(3)(A).

61. *Id.* § 2793c(i)(4)(B).

62. *Id.* § 2793c(i)(4)(C).

63. *Id.* § 2793c(i)(2)(A).

64. 2 RATHKOPF & RATHKOPF, *supra* note 1, § 15:68 (footnotes omitted).

65. BOLEN ET AL., *supra* note 57, at 3.

66. Tit. 24, § 2793c(i)(3)(B).

67. VT. STAT. ANN. tit. 10, § 6093(a) (Supp. 2007).

mitigation *on site* to “preserve primary agricultural soils for present and future agricultural use,”⁶⁸ the Act provides that an applicant within a designated growth center shall instead “deposit an offsite mitigation fee into the Vermont housing and conservation trust fund . . . for the purpose of preserving primary agricultural soils of equal or greater value” elsewhere.⁶⁹ It follows logically that by allowing developers to pay fees in lieu of setting aside developable land, off-site mitigation will both promote more complete infill and encourage developers to undertake projects in growth centers. Similarly, in keeping with the Legislative Proposal, Act 183 facilitates brownfields redevelopment by giving designated growth centers high priority in distributing “[t]echnical and financial assistance for brownfields remediation.”⁷⁰

Act 183 streamlines Act 250 permitting for communities that have applied for and received growth center designation. Because Act 250 permitting is the only statewide method of land use regulation in Vermont, facilitating that process is arguably the most significant of Act 183’s substantive contributions.⁷¹ Act 183 provides two related alternatives to traditional, project-triggered review.⁷² First, designated growth centers can request pre-permitting findings of fact regarding Act 250 compliance from the Natural Resources Board that remain in effect for five years.⁷³ Second, as the third level of the Legislative Proposal suggested, there is now the option of applying for a master plan permit covering an entire development scheme:

At any time while designation of a growth center is in effect, any person or persons who exercise ownership or control over an area encompassing all or part of the designated growth center or any municipality within which a growth center has been formally designated may apply for a master plan permit for that area⁷⁴

68. *Id.* § 6093(a)(2).

69. *Id.* § 6093(a)(1).

70. Tit. 24, § 2793c(i)(3)(ii).

71. While Act 183’s codification of smart growth principles is highly significant as well, its value is primarily interpretive. *See supra* Part III.A (discussing how Act 183’s recitation of principles reveals its drafters’ intent); *supra* Part I.A (discussing Vermont’s distinct statewide and local regulatory threads).

72. *See supra* note 29 and accompanying text (discussing the need for Act 250 review of general plans as well as specific developments).

73. Tit. 24, § 2793c(f)(3).

74. *Id.* § 2793c(i)(5)(A); *cf.* 2 BROOKS, *supra* note 33, § 11, at 19 (explaining “master plan review,” which was indirectly authorized by Act 250 and should not be confused with master plan permitting under Act 183). Master plan review was initiated by the developer and only covered specific projects. Act 250 “ma[de] no explicit reference” to such review, which was accomplished under “creative” interpretation of “the law authorizing the Environmental Board and Commission’s review of

A municipality has the option of submitting a master plan permit application on behalf of a private entity, such as a developer, regarding privately held land within that municipality because “[m]unicipalities making an application under this subdivision are not required to exercise ownership of or control over the affected property.”⁷⁵ Regardless of who applies, once a master plan permit is issued, the district commission reviews subsequent applications for individual projects within that permit’s scope “in accordance with the conditions, findings, and conclusions of law” issued by the land use panel regarding the master plan permit, rather than directly against the criteria of Act 250.⁷⁶ By providing information and certainty in advance of individual development proposals, pre-permitting findings and master plan review have the potential to both increase the efficiency of the permitting process and facilitate planning by municipalities and developers.

Act 183 does not provide tax breaks to businesses constructing new buildings in growth centers. It does, however, offer tax credits to the “owner or lessee” of “a building built prior to 1983, located within a designated downtown or village center, which upon completion of the project supported by the tax credit will be an income-producing building not used solely as a single-family residence.”⁷⁷ The tax credits are available for “qualified code improvement, facade improvement, or historic rehabilitation project[s].”⁷⁸ In addition to encouraging investment in existing building stock, these tax breaks may indirectly encourage businesses to locate in growth centers by reducing the renovation costs that landlords must recoup through rents on commercial space. Act 183 satisfies the final part of the infill element by, as mentioned previously, requiring that priority in distributing state grants and funding for “infrastructure and other investments” be given to downtown centers, village centers, and growth centers.⁷⁹

3. Preservation

“States are increasing their efforts to preserve farmland, open space,

subdivisions.” *Id.*

75. Tit. 24, § 2793c(i)(5)(A). While a private entity having “ownership or control” of the land in question could apply directly, it seems likely that the endorsement implicit in a municipal application on that entity’s behalf could influence the likelihood of approval.

76. *Id.* § 2793c(i)(5)(B).

77. VT. STAT. ANN. tit. 32, § 5930aa(1)–(2) (2007).

78. *Id.* § 5930aa(7).

79. Tit. 24, § 2793c(i)(3)(A).

and areas of special interest through acquisition of fee title, conservation easements, and transfer of development rights.”⁸⁰ Although Act 183 does not provide for acquisition of title or rights by the state, it satisfies this element indirectly by providing that “[a]ll primary agricultural soils preserved for commercial or economic agricultural use [in mitigation of development] . . . shall be protected by permanent conservation easements . . . conveyed to a qualified holder . . . with the ability to monitor and enforce easements in perpetuity.”⁸¹

4. Planning

Typically, “states provide financial and technical assistance for local planning efforts” through programs that “range from preparing guidelines and model ordinances to providing planning grants to communities that create or update their comprehensive plans.”⁸² Although Vermont already offers limited planning grants under Act 200,⁸³ Act 183 fails to provide additional grants to help municipalities meet their specific planning requirements. The absence of a grant provision in Act 183 is a departure from the Legislative Proposal, which specifically recommended that Vermont offer municipalities “planning grants” “to encourage the high level of planning required” by the growth center permitting process.⁸⁴ Act 183 does, however, assist local planning efforts in three other ways. First, Act 183 provides that “the regional planning commission shall provide technical assistance in support of [a municipality’s growth center] designation,” such as “preparing population, housing, and employment growth projections,” “GIS mapping,” and “build-out analyses.”⁸⁵ Second, it provides for the creation “of a ‘municipal growth centers planning manual and implementation checklist’ to assist municipalities and regional planning commissions [in planning] for growth center designation.”⁸⁶ Finally, the Act gives municipalities the option of participating in a “preapplication review process” evaluating “the growth center boundary and implementation tools.”⁸⁷

Technically, Vermont already had a regional planning regime prior to

80. BOLEN ET AL., *supra* note 57, at 3.

81. VT. STAT. ANN. tit. 10, § 6093(b) (Supp. 2007).

82. BOLEN ET AL., *supra* note 57, at 4.

83. See VT. STAT. ANN. tit. 24, § 4306(a) (“A municipal and regional planning fund . . . is hereby created in the state treasury.”).

84. LEGISLATIVE PROPOSAL, *supra* note 46, at Executive Summary.

85. Tit. 24, § 2793c(a).

86. *Id.* § 2793c(b)(2)(A).

87. *Id.* § 2793c(b)(2)(B).

Act 183, satisfying the final part of this element in theory if not in practice. As discussed earlier, Act 200 set up a mechanism whereby voluntarily created local plans are ultimately reviewed by a Council of Regional Commissions.⁸⁸ Now, by giving municipalities significant financial and regulatory incentives to create local plans, Act 183 provides an engine to drive the regional-planning mechanism that Act 200 created. Act 183 also establishes a new “planning coordination group” to “ensure consistency between regions and municipalities regarding growth center[] designation and related planning.”⁸⁹ In combination, then, Acts 200 and 183 legitimately satisfy the last element.

Because the elements above represent the components that most states’ smart growth programs include, satisfying the elements implies that Act 183 passes at least a threshold test of comprehensiveness. Although an interstate comparison of smart growth programs is beyond the scope of this Note, the thoroughness with which Act 183—in concert with the prior acts—addresses the subsidy, infill, and planning elements suggests that Vermont may now have relatively comprehensive smart growth tools.

Act 183’s apparent comprehensiveness does not, however, mean that Vermont’s current land use regime is sufficiently proactive to guide, rather than merely respond to, the state’s growth. In fact, by relying on municipalities to initiate all of the planning, Vermont’s entire land use planning mechanism remains, by definition, *reactive*. Absent a proactive, state-level plan to inform their application, the tools and incentives Act 183 provides—comprehensive though they may be—cannot be used to their full potential.

IV. THE NEXT STEP: A TRANSPLANT FROM THE GARDEN STATE?

Although Act 183’s detailed codification of smart growth principles is a step forward, articulation and facilitation of a proactive, statewide land use plan remains an unfulfilled promise of Act 250.⁹⁰ Absent this big-picture perspective, the land use planning regime that Act 183 augments still “leave[s] Vermont without a statewide comprehensive ecological vision and without control of cumulative statewide impacts of growth.”⁹¹ It is likely, however, that the autonomy of individual communities is so

88. See *supra* Part I.A.2 (discussing review of voluntarily produced town plans under Act 200).

89. Tit. 24, § 2793c(b)(1). How the planning coordination group is to interact with the Council of Regional Commissions, or if it replaces the council, is unclear.

90. See 2 BROOKS, *supra* note 33, § 11, at 28 (discussing statewide planning as an “original purpose[] of Act 250” left unachieved by Act 200).

91. *Id.*

deeply woven into Vermont's political fabric that communities will never accept top-down land use regulation by the state. Accordingly, Vermont's future probably lies in a "pluralistic approach accept[ing] the multiplicity of planning efforts, seeking to coordinate such plans through strategic plans and through ad hoc coordination between specific plans."⁹² New Jersey, like Vermont, has a tradition of local autonomy rather than top-down authority. The Garden State offers an example of how to provide land use planning *guidance* at the state level while stopping short of imposing *regulations* that would be disagreeable to constituent municipalities—and unlikely to ever be adopted—in either state.

New Jersey has an award-winning advisory State Development and Redevelopment Plan (SDRP) that, like Act 183, encourages local smart growth planning through an incentive system.⁹³ However, unlike Vermont's reactive planning regime, New Jersey's SDRP proactively divides the state into distinct planning regions.⁹⁴ In delineating the regions, the SDRP "provides a balance between growth and conservation by designating planning areas that share common conditions with regard to

92. *Id.* § 11, at 28–29.

93. See N.J. Dep't of Cmty. Affairs: Office of Smart Growth, New Jersey State Development and Redevelopment Plan, <http://www.nj.gov/dca/osg/plan/index.shtml> (last visited Feb. 29, 2008) (discussing SDRP's financial and regulatory incentives for businesses and municipalities); see also ROBERT A. FISHMAN & KAREN I. GECHTER, SMART GROWTH: OVERVIEW AND ISSUES 14 (2004), available at <http://www.curp.neu.edu/pdfs/smartgrowth.pdf> (discussing financial incentives for smart growth under New Jersey's SDRP).

New Jersey won the Congress for the New Urbanism's Charter Award in 2001 for having "distinguished itself as the creator of the first state model plan promoting policies and practices consistent with the New Urbanism." Cong. for the New Urbanism, Charter Awards, N.J. State Plan and Associated Initiatives, <http://www.cnu.org/awards/more> (last visited Feb. 1, 2007).

The New Jersey courts recognize the SDRP but make clear that the plan's effect is advisory rather than regulatory. See, e.g., *In re Adoption of Amendments to N.J.A.C., 772 A.2d 9, 21* (N.J. Super. Ct. App. Div. 2001) (discussing the SDRP relative to affordable housing). The *Adoption* court held that, in making amendments to affordable housing regulations, the New Jersey Council on Affordable Housing "relies on the SDRP in allocating regional need [to areas with existing sewer systems], but is not required by law, statutory or otherwise, to avoid any one specific planning area in determining where inclusionary sites may be located." *Id.* at 16. In so holding, the court stated that "the SDRP itself has no regulatory effect . . . [and] is merely a guide to state agencies and municipal officials in order to further the goal of planning consistency and to help coordinate planning at all levels of government." *Id.* at 21; see also *Kirby v. Twp. Comm., 775 A.2d 209, 216* (N.J. Super. Ct. App. Div. 2000) (noting in decision upholding local zoning ordinance that while the town did not have to comply with the SDRP, the SDRP's classification of the area in question as environmentally sensitive "apparently was the catalyst for Bedminster's revisiting of the planning issues relating to the . . . zone," and stating that although subsequent review by the State Planning Commission finding the town's zoning consistent with the SDRP "has no binding effect, it is reasonable to consider it as supporting the planning judgment of Bedminster").

94. Vermont's Act 200 encourages the creation of planning regions, but does so without the benefit of a statewide plan and relies on municipalities to initiate the process. See discussion *supra* Part I.A.2.

development and environmental features.”⁹⁵ The planning areas that the SDRP designates are:

1. Areas for Growth: Metropolitan Planning [A]reas (Planning Area 1), Suburban Planning Areas (Planning Area 2) and Designated Centers in any planning area.
2. Areas for Limited Growth: Fringe Planning Areas (Planning Area 3), Rural Planning Areas (Planning Area 4), and Environmentally Sensitive Planning Areas (Planning Area 5). In these planning areas, planning should promote a balance of conservation and limited growth—environmental constraints affect development and preservation is encouraged in large contiguous tracts.
3. Areas for Conservation: Fringe Planning Area (Planning Area 3), Rural Planning Areas (Planning Area 4), and Environmentally Sensitive Planning Areas (Planning Area 5).⁹⁶

Without imposing a regulatory burden upon municipalities, this sort of proactive, state-level identification of regional planning priorities could inform and guide Vermont’s decisions about growth center designation and general development as well.

Transplanting New Jersey’s method of delineating planning regions to Vermont would require at least three steps. The first step would be to establish a group to suggest the regions’ boundaries and planning priorities. New Jersey did this by creating “a State planning commission consisting of representatives from the executive and legislative branches of State government, local government, the general public and the planning community.”⁹⁷ The planning coordination group that Vermont’s Act 183 establishes is already progress in this direction.⁹⁸ The more completely the group represents the interests and expertise of the state’s various agencies

95. N.J. Dep’t of Cmty. Affairs: Office of Smart Growth, *supra* note 93. The Legislature authorized the State Planning Commission to create the SDRP in order to “provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions and . . . identify areas for growth, agriculture, open space conservation and other appropriate designations.” N.J. STAT. ANN. § 52:18A-199(a) (West 2001 & Supp. 2007). In other words, the goal was to “[i]dentify areas for growth, limited growth, agriculture, open space conservation and other appropriate designations that the commission may deem necessary.” *Id.* § 52:18A-200(d).

96. N.J. Dep’t of Cmty. Affairs: Office of Smart Growth, *supra* note 93.

97. § 52:18A-196(i). Creation of the State Planning Commission is statutory; the SDRP that the Commission creates is not.

98. *See* VT. STAT. ANN. tit. 24, § 2793c(b)(1) (2007) (requiring “the chair of the land use panel of the natural resources board and the commissioner of housing and community affairs” to “constitute a planning coordination group which shall develop a coordinated process” for growth center designation).

and stakeholders, however, the greater its chances of creating a meaningful plan. Accordingly, at a minimum, such a group should include representatives of the Agency of Natural Resources, Agency of Commerce and Community Affairs, Vermont Economic Development Authority, Vermont Department of Banking and Insurance, Vermont Economic Progress Council, and Sustainable Jobs Fund.⁹⁹

The second step would be for this group to identify the state's significant resources and needs, both natural and economic; formulate recommendations as to what—and where—various types of growth would be appropriate; and represent its recommendations as overlays on a map of the state. The result would be analogous to New Jersey's State Plan Policy Map (SPPM), which shows the five planning areas mentioned above.¹⁰⁰ Like New Jersey's map, Vermont's could be updated to "incorporate[] new data from state agencies, counties and municipalities on an ongoing basis," making it "a dynamic vision of [the state's] development and conservation patterns."¹⁰¹ Facilitating municipal contribution to, and voluntary acceptance of, the SPPM would be the third step.

Under New Jersey's SDRP, the creation and ongoing modification of the SPPM—and of the district-specific planning priorities it represents—is accomplished through what is termed "cross-acceptance."¹⁰² Cross-acceptance is a voluntary negotiation process involving "comparison of planning policies among governmental levels with the purpose of attaining compatibility between local, county, regional, and State plans."¹⁰³ In this process, "[t]he [state planning] commission . . . negotiate[s] . . . cross-acceptance with each county planning board, which . . . solicit[s] and receive[s] any findings, recommendations and objections concerning the plan from local planning bodies."¹⁰⁴ Thus, through multi-level negotiation, cross-acceptance allows the state to take a proactive role in guiding regional planning without resorting to top-down regulation. This collaborative, yet state-directed, planning method is well-suited to Vermont's similar regulatory climate in which local autonomy is preferred to edicts from the state.

Implementing cross-acceptance in the Green Mountain State would require substituting Vermont entities for New Jersey's county planning

99. See NEW MODELS PROJECT, *supra* note 35, at 16 (recommending that these groups collaborate in finding ways to implement the project's smart growth objectives).

100. N.J. Dep't of Cmty. Affairs: Office of Smart Growth, *supra* note 93.

101. *Id.*

102. § 52:18A-202(b); see also BOLEN ET AL., *supra* note 57, at 73 (referring to statute).

103. § 52:18A-202(b); see also BOLEN ET AL., *supra* note 57, at 73 (referring to statute).

104. § 52:18A-202(b).

boards, which serve as intermediaries between the state and municipalities in cross-acceptance negotiation. The entities in Vermont's planning structure most analogous to the county planning boards are the regional planning commissions authorized by Act 200.¹⁰⁵ Regional planning commissions are created at the behest of, and consist of representatives from, "contiguous municipalities"—if the state determines that the municipalities as a group "constitute a logical geographic and a coherent socio-economic planning area."¹⁰⁶ Because the regional planning commissions are the representative bodies of the municipalities for planning purposes, it would make sense for the state to negotiate acceptance of the SPPM with existing regional planning commissions, and for the commissions to negotiate with the municipalities they represent. The state's negotiating team should include representatives from the district commissions, whose participation would strengthen the regulatory fabric by weaving together the Act 250 (district commission authority) and Vermont Planning and Development Act (municipal authority) threads.¹⁰⁷ When the SPPM becomes acceptable to all, the state could suggest that the municipalities reconfigure the membership of the regional planning commissions to represent the SPPM planning regions.

An optional fourth step in adapting the New Jersey model to Vermont would be adjusting the district commissions' jurisdictions to relate to the regional boundaries on the SPPM.¹⁰⁸ Although this change would not be necessary, it is logical to assume that the efficiency of permit review would be inversely proportional to how many different regions' planning priorities a given district commission would have to consider. While it would probably be impractical to adjust the commissions' jurisdictions with every change in the dynamic SPPM, creating at least a modicum of conformity with the new regional boundaries would be worth considering.

As discussed above, creating a SPPM in Vermont through voluntary cross-acceptance would not be without challenges. However, if the state is able to meet those challenges, the result could be voluntary acceptance of a

105. *See supra* Part I.A.2.

106. VT. STAT. ANN. tit. 24, § 4341(a) (2007).

107. *See supra* Part I.A. Benefits of the interweaving would include allowing municipalities to speak both as regulated entities under Act 250 and as fellow regulators under the Vermont Planning and Development Act. This is important because the municipalities are unlikely to adopt the resulting plan unless it fits their needs in both roles.

108. *See* VT. STAT. ANN. tit. 3, § 4001 (2003) (establishing Vermont's current administrative districts); VT. STAT. ANN. tit. 10, § 6026 (2006) (establishing the directly correlated jurisdictions of the district commissions). The district commissions, which are permitting entities created by Act 250, should not be confused with the regional commissions, which are planning entities authorized by Act 200.

proactive, state-guided, collaboratively created, overarching plan that informs both local and statewide land use decisions—weaving the state's two distinct regulatory threads together and facilitating the coordinated development that Act 250 promised over thirty-five years ago.

CONCLUSION

Act 183 represents the germination of seeds first planted in Vermont's legislative landscape with the adoption of Act 250. The result of collaboration between environmental and business interests, Act 183 goes a long way toward fulfilling Act 250's promise of promoting vibrant growth while preserving the state's rural character and ecological treasures. However, although Act 183 provides detailed codification of smart growth principles and comprehensive financial and regulatory incentives to encourage local adherence to those principles, its overall effectiveness is likely to be limited by the persistent lack of an overarching state growth plan.

At the state level, planning under Act 183 is essentially limited to reactive review of local initiatives. For smart growth planning in Vermont—which is perhaps better termed “new ruralism” than “new urbanism”—to fully blossom and bear fruit, progress toward proactive planning at the state level must continue. The next steps in that process could be (1) the Legislature establishing a state-level planning group; (2) the state-level planning group creating a State Plan Policy Map representing suggested regional planning priorities as overlays; (3) the state-level planning group facilitating municipal contribution to—and voluntary acceptance of—the map through cross-acceptance negotiations with regional planning commissions and municipalities; and, optionally, (4) the Legislature adjusting district commission jurisdictions to fit the map's regions.

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