

SMART GROWTH: STATE BY STATE

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INTRODUCTION

Smart growth is a nebulous term yet it has become a mantra to state policymakers responding to rapid growth, sprawl, and a declining quality of life. There is no single definition of smart growth, nor is there a simplistic smart growth formula. In fact, there are as many approaches to smart growth as there are states seeking it. Each approach is influenced by state planning systems, demographics, political climate, and myriad other issues which may at first seem unrelated. The need to create jobs, for example, or fund education programs, may affect the level of state smart growth efforts. The most successful smart growth initiatives, consequently, are uniquely tailored to serve specific state needs but lessons may nevertheless be drawn from states that have enacted comprehensive smart growth packages and those that have developed innovative “stand-alone” programs that provide fiscal incentives to growing smart.

State smart growth efforts have developed largely as a response to sprawl, “haphazardly planned, low-density residential development interspersed with strip commercial and retail development linked by a vast street and highway system that overemphasizes automobile use and de-emphasizes mass transit.”¹ Driven largely by poor planning in the face of rapid population growth, sprawl has become increasingly prevalent in the American landscape. As state task forces and special commissions complete reports about state growth patterns, states are becoming fully aware that sprawl exacerbates traffic problems, diminishes open space and natural resources, and costs the state money. At the request of the California Governor’s Office of Planning and Research, the Public Law Research Institute examined recent state smart growth initiatives, identifying concrete ways in which states encourage local governments to “grow smart.”

California is one of many states cognizant of the costs of sprawl and unplanned development. California’s population has grown dramatically over the past fifty years and many communities are feeling the strain of rapid growth. California’s land use system provides a strong starting point for addressing these problems: it requires local governments to create comprehensive plans and is one of few states that require consistency between individual elements of local plans as well as between local and state plans.

Numerous studies have explored the extent of sprawl in California and the need to implement changes. In 1995, the Bank of America and the Greenbelt Alliance, together with the California Resources Agency and other organizations, released a report describing California’s growth management needs and calling for an end to urban sprawl.² The report identified a number of negative impacts associated with sprawl, including “increased pollution from longer commutes and heavier auto use; higher costs for taxpayers and businesses to build new infrastructure; and continued erosion of open space and sensitive environmental areas.”³ It recommended the following actions to address future growth in California: build a broad-based constituency to combat sprawl, including environmentalists, community organizations, businesses, farmers, government leaders, and others; provide more certainty in

¹ Eric M. Braun, *Smart Growth in North Carolina: Something Old or Something New?*, 35 Wake Forest L. Rev. 707, 708 (2000).

² See *Beyond Sprawl: New Patterns of Growth to Fit the New California* (1995), available at http://www.greenbelt.org/pubs_merchandise/beyond_sprawl.html (last visited Jan. 15, 2001).

³ See *id.*

determining where new development should or should not occur; make more efficient use of land that has already been developed, including a strong focus on job creation and housing established in urban areas; and establish a legal and procedural framework that will create the desired certainty regarding development and send the right economic signal to investors. To achieve these goals, the report recommended: increasing reinvestment of capital and resources in inner cities and older suburban areas, especially investments that create new jobs; higher-density development on the suburban fringe; requiring new developments at the metropolitan fringe to pay their full cost, including costs associated with new road construction, development of new water supplies, and mitigation of environmental problems; and taking a regional approach to development and identification of areas where growth should occur.⁴ Clearly, these recommendations remain relevant today and parallel recommendations emerging from other states.

A number of similar studies followed and in 1999 the California legislature encouraged the “development of smart growth approaches to land use and development as an effective way to ensure California’s economic prosperity, social equity, and environmental quality”⁵ The legislature encouraged the state to use the following five smart growth principles in devising its policies, programs, infrastructure, and program investments:

1. *Plan for the Future*: Preserve and enhance California’s quality of life, ensure the wise and efficient use of our natural and financial resources, and make government more effective and accountable by reforming our systems of governance, planning, and public finance.
2. *Promote Prosperous and Livable Communities*: Make existing communities vital and healthy places for all residents to live, work, obtain a quality education and raise a family.
3. *Provide Better Housing and Transportation Opportunities*: Provide efficient transportation alternatives and a range of housing choices affordable to all residents, without jeopardizing farmland, open space, wildlife habitat, and natural resources.
4. *Conserve Open Space, Natural Resources and the Environment*: Focus new development in existing communities and areas appropriately planned for growth while protecting air and water quality, conserving wildlife habitat, natural landscapes, floodplains and water recharge areas and providing green space for recreation and other amenities.
5. *Protect California’s Agricultural and Forest Landscapes*: Protect California’s farm, range and forest lands from sprawl and the pressure to convert land for development.⁶

In addition, the legislative “Smart Growth Caucus” has held a series of informational hearings and recently released a report describing California’s land use system and proposing a legislative strategy for growing smart.⁷ The large number of “smart growth” bills currently pending in the California legislature reflects the state’s continuing interest in managing growth wisely.

As this state survey illustrates, other states have pursued different approaches to growing smart than that of California. Some have focused on modifying their land use statutes (which tend to be less stringent than California) while others have developed new comprehensive growth management programs. Still

⁴ *See id.*

⁵ S. R. 12 (Solis, 1999); *see also*, H.R. 23 (Keeley, 1999).

⁶ *Id.*

⁷ *Growth Challenges in the Golden State*, developed by policy staff in the California Senate and Assembly (Feb. 28, 2001).

others, led by Maryland and Pennsylvania, have shifted to incentive based strategies, asserting that true smart growth must go beyond reforming traditional programs.

It is probably best to think of “smart growth” as an evolving set of principles focused on managing growth. While state definitions vary, this state survey revealed the following elements common to most state smart growth approaches: (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. Each is discussed below.

Eliminating State Subsidies that Promote Sprawl

States have become increasingly aware that their policies may unnecessarily subsidize sprawl. Many have begun the process of eliminating these subsidies by creating commissions or task forces to examine the role state programs and policies play in encouraging sprawl. States such as New Hampshire have engaged in this process which provides the groundwork for improved policymaking.

Once these types of inventories are complete, many states have taken a second step in eliminating sprawl subsidies by reducing new infrastructure costs. States recognize that it is fiscally prudent to concentrate growth because it is the state which usually pays for basic infrastructure needs such as sewage systems, roads and power lines. By limiting state funds to designated growth areas or specified growth projects, states can minimize their costs and decrease sprawl. Maryland, for example, generally only provides state funds for developments in existing communities with adequate infrastructure (called priority funding areas). Similarly, Maine limits state growth-related capital investments to either designated growth areas identified in local comprehensive plans or areas that have adequate capacity in their sewer system to provide for new developments. Arizona now allows municipalities to designate areas where services and infrastructure need not be provided at public expense. Ohio prioritizes state funding to infrastructure projects that involve the repair and replacement of existing facilities, rather than the creation of new ones. Local governments must pay 50% of expansion costs, for example, but need only contribute 10% of the costs of repair. These approaches work to reveal the true costs of sprawling development and discourage localities from growing in an unsustainable way.

Promoting Infill Development

For many of the same reasons as above, states are also encouraging compact development in communities where adequate infrastructure is available. Common infill development programs and policies include: siting state buildings and facilities in existing communities (see, for example, New Hampshire and Oregon); reducing regulatory burdens in designated growth areas (see Tennessee and Pennsylvania); facilitating brownfields redevelopment (see Michigan and Wisconsin); revitalizing existing communities by streamlining the permitting process; providing tax breaks to businesses that locate within existing communities; and improving existing infrastructure.

Preserving Farmland, Open Space, and Areas of Environmental and Recreational Value

States are increasing their efforts to preserve farmland, open space, and areas of special interest through acquisition of fee title, conservation easements, and transfer of development rights. Although most states are active in this area, some have created unique programs that seem particularly relevant to California. Florida, for example, has a three billion dollar initiative to acquire open space, funded in

part by the sale of bonds. Georgia is trying to preserve 20% of its land as open space by providing funds to large counties that submit detailed plans preserving 20% of their lands. A local government in South Carolina has implemented a unique program, charging developers for every tree cut down during the construction process. Rates per tree increase as developers move further from urban areas.

Supporting Local Planning by Providing Incentives and Technical Assistance and Encouraging Regional Planning

Many states provide financial and technical assistance for local planning efforts. These programs range from preparing guidelines and model ordinances to providing planning grants to communities that create or update their comprehensive plans. In addition, many states use their state planning websites as a valuable resource tool. Minnesota Planning, for example, provides local governments with information on books, periodicals, Planning Advisory Service reports, video and audio cassettes, model ordinances, and links to specific projects. New Hampshire's Planning Net serves a similar purpose.

Some states have also encouraged regional cooperation, responding to the growing awareness that growth issues cross traditional boundaries. Pennsylvania, for example, allows counties to share revenues if they jointly plan. Similarly, Florida has long had a Development of Regional Impact program, providing a statewide regulatory framework for multi-jurisdictional issues (though the state may be moving away from this top-down approach). Vermont breaks its planning structure into twelve regional districts, whose planning bodies review municipality plans within their jurisdiction for consistency with one another.

A more detailed analysis of each state's smart growth effort follows.

ELIMINATING STATE SUBSIDIES THAT PROMOTE SPRAWL*
<i>Examination of State Policies and/or Implementation Efforts</i>
Arizona (12)
Colorado (16)
Connecticut (19)
Delaware (20)
Florida (22)
Maine (39)
Maryland (43)
Massachusetts (53)
New Hampshire (67)
New Jersey (72)
Ohio (87)
Rhode Island (97)
South Carolina (100)
Washington (117)
West Virginia (119)

Table 1. Eliminating State Subsidies that Promote Sprawl

* This chart and the ones that follow reflect recent state smart growth efforts discussed in the report. Page numbers where the material can be found are in parentheses. It should not be taken as an exhaustive list as the report does not discuss older state policies that may fall into these categories.

PROMOTING INFILL DEVELOPMENT	
<i>Siting State Buildings and Facilities in Existing Communities</i>	<i>Reducing Regulatory Burdens in Designated Areas</i>
Maine (39) New Hampshire (67) New York (79) Oregon (91) Tennessee (104)	Colorado (16) Florida (22) Georgia (25) Maine (39) Maryland (43) New Jersey (72) Pennsylvania (94)
<i>Facilitating Brownfields Redevelopment</i>	<i>Streamlining Permitting</i>
Colorado (16) Connecticut (19) Illinois (29) Maryland (43) Massachusetts (53) Michigan (55) Missouri (61) Ohio (87) Pennsylvania (94) Wisconsin (121)	Maryland (43)
<i>Providing Tax Breaks to Businesses that Locate within Existing Communities</i>	<i>Improving Existing Infrastructure</i>
Colorado (16) Connecticut (19) Illinois (29) Maryland (43) New Jersey (72) Pennsylvania (94)	Arizona (12) Illinois (29) Maryland (43) Massachusetts (53) Ohio (87) Washington (117)
<i>Other</i>	
Kentucky (36) Ohio (87) Oregon (91) Pennsylvania (94) Rhode Island (97) South Carolina (100) Texas (106)	

Table 2. Promoting Infill Development

PRESERVING FARMLAND, OPEN SPACE, AND AREAS OF ENVIRONMENTAL AND RECREATIONAL VALUE	
<i>Farmland</i>	<i>Open Space</i>
Indiana (34) Maine (39) Maryland (43) Michigan (55) New Jersey (72) North Carolina (81) Ohio (87) Pennsylvania (94) Tennessee (104) Washington (117)	Arizona (12) Colorado (16) Connecticut (19) Florida (22) Georgia (25) Illinois (29) Maine (39) Maryland (43) Massachusetts (53) New Jersey (72) New York (79) North Carolina (81) Ohio (87) Pennsylvania (94) Rhode Island (97) Tennessee (104) Utah (108)
<i>Environmentally Significant Areas</i>	<i>Recreational Areas</i>
Maine (39) Maryland (43) New York (79) Pennsylvania (94) South Carolina (100) Texas (106) Utah (108) Virginia (115)	Alabama (10) Florida (22) Maine (39) Maryland (43) New Jersey (72) New York (79)

Table 3. Preserving Farmland, Open Space, and Areas of Environmental and Recreational Value

SUPPORTING LOCAL PLANNING THROUGH INCENTIVES AND TECHNICAL ASSISTANCE AND ENCOURAGING REGIONAL PLANNING	
<i>Incentives</i>	<i>Technical Assistance</i>
Colorado (16) Illinois (29) Maine (39) Massachusetts (53) Minnesota (57) New Jersey (72) Oregon (91) Pennsylvania (94) Wisconsin (121)	Maine (39) Maryland (43) Massachusetts (53) Minnesota (57) Missouri (61) Nebraska (63) New Jersey (72) North Carolina (81) Oregon (91) Utah (108) Washington (117) Wisconsin (121) Wyoming (124)
<i>Encouraging Regional or Joint Planning</i>	
Arizona (12) Maine (39) Massachusetts (53) Minnesota (57) New Hampshire (67) Nevada (65) North Dakota (84) Oklahoma (90) Oregon (91) Pennsylvania (94) South Carolina (100) South Dakota (103) Texas (106) Vermont (111) Virginia (115) Wisconsin (121) Wyoming (124)	

Table 4. Supporting Local Planning through Incentives and Technical Assistance and Encouraging Regional Planning

METHODOLOGY

Each state report begins with a brief description of the state's planning structure as this often shapes the state's approach to smart growth. Generally, states either have a "top down" or "bottom up" approach to growth management, determined by the level of state control over local land use planning. These planning summaries provide only a snapshot of the planning model and are not intended to replace reading each state's land use statutes.

The report next analyzes state smart growth programs and policies, focusing on laws, executive orders, initiatives, commissions, and other indications of smart growth activity within approximately the past four years. If a state agency has primary authority for planning and smart growth issues, that is noted. Because it is not uncommon for states to repackage long-standing policies and laws as "smart growth," we make brief mention of that, but have not scrutinized old policies with new names.

Finally, state policies that implement smart growth principles but are not part of a more comprehensive smart growth package are briefly summarized. Many states do not use the term "smart growth" and some do not emphasize their attempts to control or better direct growth. Yet, some of these states are embracing the concepts behind smart growth and their inclusion helps present a complete picture of nationwide smart growth efforts.

ALABAMA

STATE PLANNING MODEL

Alabama's planning system is based on local control. Cities and municipalities may create comprehensive plans and, if they do so, the plans must be "substantially consistent" with enabling acts. If municipalities pass comprehensive zoning ordinances, they cannot conflict with state or federal law.⁸ State agencies have primary authority over specific land and natural resources planning at the state level.

The main state planning agency is the Alabama Department of Economic and Community Affairs (ADECA), created to consolidate all planning functions of various state agencies.⁹ ADECA promotes comprehensive and coordinated planning and programming of economic and community affairs.

SMART GROWTH EFFORTS

Research did not reveal any state smart growth activity in Alabama. Alabama Governor Don Siegelman (R) does point to securing \$110 million in bonds for park renovations as a major accomplishment.¹⁰ His major initiatives, however, focus on creating jobs through new and expanded industry and funding education programs.¹¹

CONTACT INFORMATION

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(334) 242-5100
<http://www.adeca.state.al.us>

⁸ Ala. Code § 11-52-1 to 14 (2000).

⁹ Ala. Code § 41-23-1 *et seq.*(2000).

¹⁰ *See 1999-2000 Accomplishments, available at* <http://www.governor.state.al.us/news/accomplishments-1999-2000.html> (last visited May 9, 2001).

¹¹ *See id.*

ALASKA

STATE PLANNING MODEL

Alaska's planning system is based on local control. There are no explicit consistency requirements between municipalities – in fact, different “boroughs” have different regulatory and zoning authority.¹² The Department of Community and Regional Affairs assists and encourages local municipalities in a variety of planning functions.¹³ The state coordinates federal, state, and local environmental procedures through the Department of Environmental Resources (DNR).¹⁴ Within DNR, the Resource Assessment & Development Section of the Division of Land has primary responsibility for land use planning.

SMART GROWTH EFFORTS

Research did not reveal any state smart growth activity in Alaska.

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<http://www.dnr.state.ak.us/land/index.htm>
Resource Assessment & Development Section
<http://www.dnr.state.ak.us/land/plan.htm>

Department of Community and Regional Affairs
<http://www.dced.state.ak.us/>

¹² Alaska Stat. § 29.40.010 (Michie 2000).

¹³ Alaska Stat. § 44.47.010 (Michie 2000).

¹⁴ Alaska Stat. § § 46.03.010 and 44.46.010 (Michie 2000).

ARIZONA

STATE PLANNING MODEL

Arizona encourages comprehensive planning at the state and local levels, including cross-jurisdictional collaboration. However, its planning process does not require cross-jurisdictional consistency.¹⁵ Local governments have broad planning and zoning powers, including the discretion to form planning commissions and departments.¹⁶ The Department of State Lands is authorized to develop the comprehensive State Development Plan.¹⁷

SMART GROWTH EFFORTS

In 1998, the legislature passed the Growing Smarter Management Act which included the following major components:

Reformed the community planning and rezoning processes in cities, towns and counties by adding new growth-conscious elements to community plans and requiring proposed changes to those plans;

Required counties, cities and towns to provide greater opportunities for citizens to participate in the development of or comment on plans and established a super-majority vote requirement for the adoption and major amendments of community plans;

Improved the coordination of State Trust Land planning with community planning;

Provided \$220 million over eleven years in matching funds through Proposition 303, primarily for the acquisition of state lands for open space; and

Created the Growing Smarter Commission.¹⁸

In September 1999, the Commission released a report recommending “a new framework for managing Arizona’s growth and new growth management tools to meet the challenges of maintaining Arizona’s quality of life in the 21st Century.”¹⁹ The recommendations would retain local control of the decision making process.²⁰ Its suggested incentives focus primarily on targeting state funds to local jurisdictions with land-use plans that the Arizona Department of Commerce has certified.²¹

The report also addresses the need to preserve Arizona’s landscape through conservation-based land exchanges, incentives to ranchers and farmers to conserve land, and a new development rights program that enables landowners to sell development rights. The report recommends increasing citizen

¹⁵ *GrowingSmart* (A.P.A 1995), Arizona State Summary, at 1, available at <http://www.planning.org/plnginfo/GROWSMAR/summary/arizona.pdf> (last visited May 18, 2001).

¹⁶ *Id.* at 3.

¹⁷ Ariz. Rev. Stat. § 37-102 (2000).

¹⁸ See H.R. Con. Res. 2027 (1998); see also *Growing Smarter: Managing Arizona’s Growth and Preserving Our Heritage*, Final Report of the Growing Smarter Commission at 2 (September 1999), available at <http://www.azplanning.org/commission.html> (last visited May 9, 2001).

¹⁹ See *Growing Smarter: Managing Arizona’s Growth and Preserving Our Heritage*, *supra* note 18.

²⁰ *Id.* at 1.

²¹ *Id.*

participation by voting on general plans, authorizing development fees, and development pay-as-you-go through binding agreements with developers. It also suggests strengthening community plans by limiting infrastructure to predetermined areas, providing incentives to promote infill, and requiring regional coordination. Finally, the report recommends that the state focus its “economic engine” on rural communities through tax incentives and expedited sales of state trust lands for economic development.²²

In 2000, the Governor signed the Growing Smarter Plus package into law.²³ This initiative gives municipalities stronger tools to control urban sprawl by revising the state’s municipal zoning policies. It also increases citizen involvement in community planning by requiring votes on general plans of large and growing communities at least once every ten years. In addition, the law now allows cities to designate areas where services and infrastructure need not be provided at public expense.²⁴ Growing Smarter Plus also encourages urban redevelopment by creating infill incentive districts.²⁵ The Governor also approved the Arizona Conservation Reserve (Reserve) in 2000 which voters subsequently rejected. The Reserve sought to permanently preserve state landmarks and up to 70,000 acres of state land but voters apparently worried that too much state land could be sold for development and that the plan unduly favored ranchers.²⁶

The Governor’s annual state strategic plan lumps most growth related issues into a section on “quality of life.” There, the Governor touts her success in preserving open space (35,769 acres in 1999, after five years of no new acreage) and lists modest targets of five to seven thousand additional acres in future years. She also touts the increased number of contaminated sites that the State Department of Environmental Quality has verified as remediated or needing no further action (though it is not clear what “needing no further action” means). In 2000, two-thirds of all contaminated sites had been checked off. The strategic plan virtually ignores transportation and land use issues; the only measure for transportation is highway miles.²⁷

In her 2001 State-of-the-State address, Governor Hull announced plans to appoint a public/private Growing Smarter Oversight Council to monitor implementation, compliance, and refinement of the act.²⁸ She also asked for an \$800,000 appropriation for small community planning assistance.²⁹

OTHER INITIATIVES RELATED TO SMART GROWTH

The state created the Arizona Telecommuting Program in 1993 by executive order to help reduce traffic congestion, air pollution, and energy consumption. The program encourages state agencies to provide flexible work schedules and opportunities to work from home or remote state offices. Since 1993, 100

²² *Id.*

²³ See S.B. 1001 (2000), available at <http://www.azleg.state.az.us/legtext/44leg/4s/laws/0001.htm> (last visited May 9, 2001).

²⁴ *See id.*

²⁵ *See id.*

²⁶ See Barbara Wells, *Governors’ Smart Growth Initiatives: February 2001* (Northeast-Midwest Institute) at 2, available at http://www.nemw.org/Gov_sgi.pdf (last visited May 9, 2001). The Northeast-Midwest Institute website, <http://www.nemw.org>, provides a variety of helpful smart growth information.

²⁷ See *A Strategic Direction for State Government (2001-2002)*, available at <http://www.governor.state.az.us/stratplan/theme4.pdf> (last visited May 9, 2001).

²⁸ See *Governor Jane Dee Hull State-of-the-State Address, January 2001*, available at

<http://www.governor.state.az.us/sos/index.html>; see also, *Governors’ Smart Growth Initiatives*, *supra* note 26 at 2.

²⁹ *See id.*

state agencies have implemented the program and met the goal of having 15% of the workforce participate.³⁰

CONTACT INFORMATION

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Phoenix, AZ 85007
<http://www.land.state.az.us>

³⁰ See Joel S. Hirschhorn, *Growing Pains: Quality of Life in the New Economy* (National Governor's Association 2000) [hereinafter *Growing Pains*] at 42-43.

ARKANSAS

STATE PLANNING MODEL

Planning in Arkansas occurs primarily at the city and county level.³¹ County planning boards are optional, as are county plans. The state encourages multi-county planning primarily to enhance economic development and coordinate government services.³² It is not clear whether there is a central state agency responsible for planning.

SMART GROWTH EFFORTS

Research did not reveal any state smart growth efforts in Arkansas. Governor Huckabee's legislative agenda promotes economic development.³³

CONTACT INFORMATION

Specific Contact Information Not Available

State of Arkansas website: <http://www.accessarkansas.org>

³¹ See generally, Ark. Code Ann. §14-56-401 *et seq.* (Michie 2000).

³² See generally, Ark. Code Ann. §14-56-501 *et seq.* (Michie 2000).

³³ See generally, *Governor Mike Huckabee's Legislative Agenda (January 9, 2001)*, available at http://www.accessarkansas.org/governor/legislative_agenda.pdf (last visited May 10, 2001).

COLORADO

STATE PLANNING MODEL

Local governments have broad control over planning, but must coordinate their action with state programs and rules.³⁴ The Colorado Land Use Act requires local governments to identify areas that should be classified as areas of state interest.³⁵ Once identified, these areas are protected from development by procedural requirements.³⁶ The Department of Local Affairs is the statewide agency responsible for local planning.³⁷ Within that department is the Office of Smart Growth.³⁸ Local governments in need of critical planning funds can access the State Planning Aid Fund.³⁹

SMART GROWTH EFFORTS

Governor Bill Owens has aggressively promoted smart growth policies during his term. He is currently spearheading a comprehensive initiative, “Smart Growth: Colorado’s Future,” that has four main components:⁴⁰

*Natural Landscapes: Saving Open Space, Ranches and Farms*⁴¹

Under this initiative, the Governor created a Commission on Saving Open Space, Ranches and Farms. Its recently released report indicated that the state would aid farmers and ranchers by increasing the Conservation Easement Purchases and Leases programs. In addition, a Wildlife Habitat Preservation Tax Credit exists for landowners who preserve large parcels of land in its natural state. Colorado also promotes “land recycling” which targets growth in areas with existing infrastructure by providing tax credits to offset the costs of redeveloping former industrial or commercial. Finally, this part of the initiative aims to strengthen existing and create new state parks.

*Strong Neighborhoods: Protecting Our Way of Life*⁴²

This initiative focuses around Colorado Heritage Communities. While 75% of Colorado’s fastest growing counties and 70% of all counties have comprehensive growth plans, the state created the Office of Smart Growth (OSG) to help coordinate the state’s efforts to assist local communities. OSG provides comprehensive planning services in the form of advice and grants. Heritage Planning Grants are available to communities working together to grow responsibly. Local communities must provide matching funds for the grants, which focus on planning for regional issues, with an emphasis on environmental concerns, development patterns, transportation, land use and energy. The OSG also provides local government dispute resolution services to deal with the spillover effect of municipality developments.

This initiative also strengthens the statutory framework in which local governments address growth. For example, the initiative includes a proposal to restrict annexation of areas contiguous to cities, thus

³⁴ See generally, Colo. Rev. Stat. § 29-20-102 et seq. (2000).

³⁵ See Colo. Rev. Stat. § 24-65.1-401 et seq. (2000).

³⁶ See id.

³⁷ See Colo. Rev. Stat. § 24-32-202 et seq. (2000).

³⁸ See Colo. Rev. Stat. § 24-32-3203 et seq. (2000).

³⁹ Colo. Rev. Stat. § 24-66-101 et seq. (2000).

⁴⁰ See <http://www.state.co.us/issues/Smartgrowth.html> (last visited May 4, 2001).

⁴¹ See <http://www.state.co.us/smartgrowth/lscap.html> (last visited May 4, 2001).

⁴² See <http://www.state.co.us/smartgrowth/hoods.html> (last visited May 4, 2001).

preventing the leapfrog and flagpole effects caused by pursuit of tax revenue. In addition, the initiative proposes to allow counties to enforce municipal development standards in unincorporated areas near cities and promotes the ability of local governments to enter into mutually binding agreements for up to twenty years.

*Moving Forward: Creating our Transportation Future*⁴³

The initiative provides investments for upgrades to existing transportation systems (predominantly highlighting highways). Voters recently approved bonds for highway improvements. The initiative does promote transit, such as light rail, where viable and affordable, but doesn't actually include any specific projects.

*Opportunity Colorado: Bringing Prosperity to the Whole State*⁴⁴

This segment of the initiative focuses on job creation and access to education and learning, based on the premise that no Coloradan should be left behind. Job creation strategies focus on redesigning the state's enterprise zone program (which had expanded to include so many areas in the state that it no longer served as an incentive to businesses). Instead, Entrepreneurship Areas, created in 2000, would be limited in number and narrowly focused on creating jobs, providing tax credits for the renovation of existing buildings and incentives to hire local workers. The initiative also promotes affordable housing through an existing home ownership tax credit for lower income workers and a low income housing tax credit. In response to concern that the building permit process is too cumbersome, the initiative also proposes to encourage local governments to reduce or waive the fees involved. The education portion of the initiative focuses on literacy and "opportunity scholarships."

Colorado's smart growth efforts include educating the public about growth issues. The OSG has issued several reports that encourage local innovation by focusing on "best practices" used by some counties that could be used by others.⁴⁵ The Land Use Planning and Growth Management Report (Dec. 1999) covers county efforts in comprehensive plans, annexation, redevelopment/infill, transportation, affordable housing, and several other topics.⁴⁶

In 2000, the state passed several laws related to smart growth.⁴⁷ The OSG, as noted above, was created within the Department of Local Affairs to coordinate planning assistance to local governments and administer the Heritage Grant program. In addition, a state income tax incentive for brownfield/infill redevelopment was created (capped at \$100,000). Numerous state income tax credits were created: one for developers of low income rental housing, and one for developers who make affordable housing available in their developments for fifteen years. The state's enterprise zones were reformed to better target tax incentives, as described above. Finally, the conservation easement incentives that were created in 1999 were sweetened, allowing transfer of the credit and capping it at \$20,000.

The Governor also created the Commission on Saving Open Spaces, Farms and Ranches via executive order. The Commission's responsibilities include:

Cataloguing state and private efforts to preserve open space, farms and ranches;

⁴³ See <http://www.state.co.us/smartgrowth/moving.html> (last visited May 4, 2001).

⁴⁴ See <http://www.state.co.us/smartgrowth/oppty.html> (last visited May 4, 2001).

⁴⁵ See *id.*

⁴⁶ See <http://www.state.co.us/smartgrowth.htm/download.html> (last visited May 7, 2001).

⁴⁷ See <http://www.state.co.us/issues/GrowthBills.PDF> (last visited May 4, 2001).

Examining the procedures by which state and local governments prioritize the use of taxpayer funds for land preservation;

Identifying regulatory barriers to land preservation imposed by the state;

Recommending the best means for providing agricultural landowners with maximum flexibility for using their water rights; and

Reviewing the effectiveness of existing land preservation tools and recommending additional strategies to further encourage land preservation.⁴⁸

The Commission's report, *Colorado's Legacy to its Children*, makes a series of recommendations focusing on additional funding sources for the preservation of land, after acknowledging the excellent record of the state in saving its natural resources.⁴⁹ Among its recommendations are a revolving conservation loan fund to assist local preservation efforts and granting Great Outdoors Colorado (GOCO), a voter approved conservation agency, the ability to issue bonds. Many of the existing funding streams (including that for GOCO) come from lottery proceeds, and are quite significant -- \$241 million for conservation and parks, \$378 million for local government preservation efforts and more.

Additional recommendations include incentives for farmers and ranchers to sign management agreements for valuable parts of their land.

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<http://www.dola.state.co.us>

Office of Smart Growth
<http://www.dola.state.co.us/fs/smartgro.htm>

⁴⁸ See *Owens Signs Anti-Sprawl Legislation*, press release (May 24, 2000), available at <http://www.state.co.us/owenspress/05-24-00a.htm> (last visited May 4, 2001).

⁴⁹ See http://www.state.co.us/issues/open_space8.pdf (last visited May 4, 2001).

CONNECTICUT

STATE PLANNING MODEL

The state encourages and assists municipalities with planning and zoning. Most state agency projects regarding economic growth, preservation and conservation must be consistent with the goals and policies of the Conservation and Development Policies Plan. The Office of Policy and Management, Planning and Energy Policy, reviews state plans and encourages collaboration between state, regional and local bodies.⁵⁰

SMART GROWTH EFFORTS

Governor Rowland touts accomplishments in urban revitalization and environmental protection, but has not backed any comprehensive state smart growth initiatives.⁵¹ He has emphasized brownfield redevelopment as part of the state's urban redevelopment program. Most of his growth-related accomplishments are budget allocations for redevelopment, but they also include increased funds for rail and bus service, affordable housing, and property tax relief.

The state has played an active role in acquiring open space. In 1997, the governor formed a Blue Ribbon Task Force on State Acquisition of Open Space Lands and, in 1998, set a goal of increasing open space to 21% of all land use, with 10% owned by the state, providing \$40 million to achieve this goal in 1998-99.⁵² The state has committed \$16 million for future acquisitions.⁵³

The governor also launched a program to increase transportation options in southwestern Connecticut, with a goal of reducing traffic congestion by 5%⁵⁴ and endorsed a coalition effort to increase alternatives to single-unit car usage.⁵⁵

The state has acknowledged the classic symptoms of sprawl (growth and wealth concentrated in fringe areas, poverty in high density areas, lack of infrastructure) in its 1998-2003 Conservation and Development Policies Plan issued by the Office of Policy and Management.⁵⁶ The report focused on employment patterns, transportation, energy, poverty, and the environment, but failed to provide a blue print or clear set of recommendations.

CONTACT INFORMATION

Office of Policy and Management
John Radacsi, Policy Development and Planning Division
(860) 418-6373
<http://www.opm.state.ct.us>

⁵⁰ Conn. Gen. Stat. §16a-4a (2000).

⁵¹ See <http://www.state.ct.us/governor> (last visited May 4, 2001).

⁵² See 1999 Senate Bill 1231 (Enacted as Public Act 99-235); see also, *Governors' Smart Growth Initiatives*, supra note 26, at 4.

⁵³ See *Governor Rowland Announces Additional Funding for Open Space Acquisition*, press release (Feb. 16, 2001), available at <http://www.state.ct.us/governor/news/021601.htm> (last visited May 7, 2001).

⁵⁴ See *Governors' Smart Growth Initiatives*, supra note 26, at 4.

⁵⁵ See *id.*

⁵⁶ See *Conservation and Development Policies Plan 1998-2003*, available at <http://www.opm.state.ct.us/pdpd3/physical/C&Dplan/C&Dintro.htm>; see also, *Planning for Connecticut's Future*, a subsection of this plan, available at <http://www.opm.state.ct.us/pdpd3/physical/c&dplan-rec/PlanCTF.htm> (last visited May 4, 2001).

DELAWARE

STATE PLANNING MODEL

The Delaware Office of State Planning Coordination is the state planning agency; its mission is “the continuous improvement of the coordination and effectiveness of land use decisions made by state, county, and municipal governments while building and maintaining a high quality of life in the State of Delaware.”⁵⁷ The state’s Land Use Planning Act requires state agencies and local governments to coordinate land use decisions of more than local concern.⁵⁸ The Office of State Planning Coordination coordinates the state agency review and comment process.⁵⁹

SMART GROWTH EFFORTS

On March 22, 2001, Governor Minner unveiled a smart growth initiative: “Livable Delaware.” Governor Minner's Livable Delaware agenda starts with an Executive Order that “directs the state to put its own house in order and begin implementing the 1999 Strategies for State Policies and Spending.”⁶⁰ By the Fiscal Year 2003 budget cycle, agencies will have developed implementation plans that outline what program, policy, budgetary and legislative changes are required to make Livable Delaware a reality.⁶¹ The initiative also proposes to create an Advisory Council on Planning Coordination (Council), to be comprised of representatives of county and local governments and others with a stake in growth and land-use issues.⁶² The Council would develop a graduated impact fee structure, annexation standards, create indicators to monitor progress in curbing sprawl, and facilitate dispute resolution between different levels of government.⁶³

In addition, the initiative includes legislative proposals to strengthen the Land Use Planning Act and fund and extend the acquisition period for open space lands.⁶⁴ The governor also seeks to streamline the state’s brownfields and redevelopment programs, promote the transfer of development rights, target housing funds to homes purchased in designated growth zones, and create incentives to build on existing sewer systems instead of new greenfields.⁶⁵ Delaware claims to have the highest percentage of permanently protected farmland of any state – 3% of the state’s land.

OTHER INITIATIVES RELATED TO SMART GROWTH

The governor’s initiative builds on past smart growth efforts in Delaware. In 1999, the Cabinet Committee on State Planning Issues (Cabinet), created under a former administration, designed strategies to guide the state in planning for new growth. The strategies are a set of guidelines for how and where the state will focus its financial resources for new and expanded infrastructure (roads, schools, sewers) and how state agencies will carry out their legal requirements for managing the state's

⁵⁷ See Office of State Planning Coordination website, <http://www.state.de.us/planning/about.htm> (last visited May 10, 2001).

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See <http://www.state.de.us/planning/livedel/index.htm> (last visited May 10, 2001).

⁶¹ See *id.*

⁶² See *id.*

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ See *id.*

natural resources, protecting the overall quality of life, and ensuring wise economic growth.⁶⁶ In brief, the strategies promote redevelopment and reinvestment in areas of high density, new economic development in “employment centers,” and encourage orderly growth in developing areas. In environmentally sensitive developing areas, the strategies recommend a balance between resource protection and sustainable growth.⁶⁷

These strategies were, in turn, based on findings from the Office of State Planning Coordination as part of the “Shaping Delaware’s Future” Act of 1994 (Act), which created the cabinet-level committee and revised the state’s planning process to require counties to submit comprehensive plans. The Act spawned its own report from the Office of State Planning Coordination in 1995, entitled *Shaping Delaware’s Future*.⁶⁸ This document reflected extensive citizen input which formed guiding principles (for example: more housing in growth identified areas only, protecting natural resources, live near work, etc.) upon which the Cabinet based its goals. The 1994 Act also created an open space program and a “21st Century Fund” that has been responsible for permanently preserving 54,000 acres of farmland.

CONTACT INFORMATION

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Thomas Collins Bldg.
540 S. DuPont Hwy.
Dover, DE 19901
(302) 739-3090; Fax: (302) 739-6958
<http://www.state.de.us/planning/index.htm>

Liveable Delaware Initiative
<http://www.state.de.us/planning/livedel/index.htm>

⁶⁶ See *Managing Growth in 21st Century Delaware: Strategies for State Policies and Spending, Frequently Asked Questions*, available at <http://www.state.de.us/planning/shape/strategy/faq.htm#q1> (last visited May 10, 2001).

⁶⁷ See *Shaping Delaware’s Future: Managing Growth in 21st Century Delaware: Strategies for State Policies and Spending* (1999), available at <http://www.state.de.us/planning/shape/strategy/strategy.pdf> (last visited May 10, 2001).

⁶⁸ See *Shaping Delaware’s Future Report* (1995), available at <http://www.state.de.us/planning/shape/sdf.pdf> (last visited May 10, 2001).

FLORIDA

STATE PLANNING MODEL

Florida, one of the fastest growing states in the nation, has an integrated, comprehensive approach to growth management.⁶⁹ The State Comprehensive Plan (SCP) sets long-range policy for twenty six areas, broadly covering the social, economic, and physical growth of the state.⁷⁰ Local governments are required, through the Local Government Comprehensive Planning and Land Development Regulation Act (Act), to prepare and adopt plans that are consistent with the goals and policies of the state plan.⁷¹ The Act also requires local regulations and development to be consistent with local plans. Guidance for regions in identifying resources and facilities was added as a Growth Management portion of the plan in 1995.

Florida is one of few states with an active state role in regulatory review. The Department of Community Affairs reviews local comprehensive plans for consistency with state law.⁷² Counties and large cities must update their plans every seven years, small jurisdictions every fourteen years.⁷³ Current law requires adequate facilities and infrastructure to accommodate growth. A lack of sufficient infrastructure will not meet concurrency requirements and the development project will be denied.⁷⁴ The infrastructure necessary for development includes potable water, adequate sewers and drainage, parks, solid waste, and transportation; concurrency with school facilities is an option.

Florida has long had a regulatory framework for managing development that impacts more than one local jurisdiction, called the Development of Regional Impact (DRI).⁷⁵ Observers claim the requirement of concurrency and review required by the regional impact legislation resulted in better urban development patterns and environmental protection than would have otherwise occurred. DRI has no public participation requirement.

SMART GROWTH EFFORTS

Governor Bush launched two growth-related initiatives soon after being elected in 1999. First, he created "Front Porch Florida," which provides twenty communities with the opportunity to develop revitalization plans, with \$5.2 million for the revitalization of commercial districts, utilization of brownfields and tax credits for developers creating low-income housing. Second, Governor Bush increased open space preservation through "Florida Forever," a ten-year \$3 billion investment to acquire and protect open space and recreation land, funded in part by the sale of bonds financed by documentary stamp taxes. The program encourages community participation by allocating the funds to local governments rather than statewide. It also utilizes incentives such as the transfer of development rights and conservation easements to limit transaction costs. A citizen council, the Florida Forever Council, is responsible for goal setting and monitoring.

⁶⁹ See generally, *Growth Management Programs: A Comparison of Selected States* (Fla. Dept. of Community Affairs, July 31, 2000) [hereinafter *Growth Management Programs*] at 7-19.

⁷⁰ See *id.*

⁷¹ See Fla. Stat. Ann. § 163.3180 (West 2000).

⁷² See Fla. Stat. Ann. § 163.03 (West 2000).

⁷³ See Fla. Stat. Ann. § 163.3161 (West 2000).

⁷⁴ See generally, *Growth Management Programs*, *supra* note 69, at 7-19.

⁷⁵ See Fla. Stat. Ann. § 189.401 *et seq.* (West 2000); see also, *Growth Management Programs*, *supra* note 69, at 11-13.

In July 2000, the Florida Department of Community Affairs released a helpful report detailing Florida's growth management programs and those of six other states (Georgia, Maryland, New Jersey, Oregon, Tennessee and Washington).⁷⁶

OTHER INITIATIVES RELATED TO SMART GROWTH

Recently, Governor Bush appointed a Growth Management Study Commission which released its final report in February 2001.⁷⁷ The Commission report, *A Livable Florida for Today and Tomorrow*, begins by acknowledging that the state's long-standing planning system has led to poor quality growth, unintended consequences and strains on infrastructure, and is too complicated and costly to justify the minimal benefits.⁷⁸ The report advocates a more incentive-based approach to planning and a limited (described as "effective") regulatory role for the state. The report cites failures in controlling traffic and linking infrastructure to school planning. It then discusses the need for a statewide transportation system based on increased highway access, to effectively distribute the international goods that are the fastest growing segment of the state's economy.

The report recommends a complete revision of the State Comprehensive Plan and Florida's current growth management system.⁷⁹ In addition to completely revising the growth management system, the report's recommendations cover a wide variety of growth management issues. The Commission believes the state should develop a uniform model for evaluating the true costs of new developments and provide incentives to Infrastructure Development Encouragement Areas (IDEAS). The Commission identified the following incentives: creating fast track permitting for development projects; providing benefits to localities using certain best practices; increasing "flexibility in standards" to assist development; removing the referendum and super-majority requirements required for local option taxes; and exempting certain projects from the DRI process (and eventually eliminating DRI). The report also recommends that the state provide financial incentives for infrastructure development, such as waivers or reduced development fees, licenses, permits, and inspections.

Additional recommendations include increased citizen involvement in the setting of state priorities, to be accomplished through technology. Included in the recommended improvements to citizen involvement are proposals to create a more equitable process of judicial review, including quick dismissal of SLAPPs and non-meritorious suits against developers, provision of earlier notices of development to potentially affected parties, and uniform statewide proceedings to challenge consistency of a development plan.

In general, the report and Governor Bush's support of it, indicate a movement away from top-down growth management to a "partner and co-worker" relationship between the state and local jurisdictions. The state's role would be limited to a few compelling state interests, clearly identified through the political process by the legislature. To correct the perceived problem of an overly broad regulatory oversight role by the state, the Commission recommends limiting the state's role to oversight of these compelling state interests but only when they are directly implicated by a land use decision not adequately protected by other regulatory regimes and not better addressed by other levels of government. Under such a revision, the report suggests that state review would be limited to issues affecting natural resources of statewide significance, transportation facilities, and natural disaster preparedness.

⁷⁶ See *Growth Management Programs*, *supra* note 69.

⁷⁷ See *A Livable Florida for Today and Tomorrow* (Growth Management Study Commission Final Report, Feb. 15, 2001), available at <http://www.dca.state.fl.us/growth> (last visited May 10, 2001).

⁷⁸ See *id.*

⁷⁹ See *id.* This entire section is based on the report and related documents which can be found at this website.

In an attempt to revise the state's ability to address issues that affect more than one local jurisdiction at the regional level, the commission recommends eliminating the DRI process and replacing it with regional cooperation agreements, but only when such regional issues implicate a compelling state interest. Regional Planning Councils serve as mediators to resolve disputes over local comprehensive plans.

Finally, the report recommends integrating schools into community planning by eliminating minimum acreage requirements for school lots, thus allowing for smaller schools in urban revitalization areas. Under current laws, urban areas are served by large, often distant schools, or aging, small neighborhood schools that are unable to relocate. The report recommends that designated urban infill areas be exempt from all concurrency requirements, except those that concern public safety.

CONTACT INFORMATION

Florida Department of Community Affairs
<http://www.dca.state.fl.us>

Florida Growth Management Commission
<http://www.floridagrowth.org>

Florida Forever: Preservation 2000
<http://p2000.dep.state.fl.us>

Florida Front Porch Program
<http://www.myflorida.com/myflorida/government/learn/frontporch/index.html>

GEORGIA

STATE PLANNING MODEL

Georgia follows a “bottom-up” approach to planning. Local governmental entities are encouraged to plan and the state’s Planning Act requires a statewide plan to be assembled after local and regional entities have planned. There is no current statewide plan. The Department of Community Affairs monitors and assists counties and local jurisdictions in creating and updating plans. Amazingly, as of June 1997, 99% of Georgia communities had prepared comprehensive plans although implementation seems to lag behind.⁸⁰

SMART GROWTH EFFORTS

Governor Barnes created the Georgia Regional Transportation Authority (GRTA) to address metropolitan Atlanta’s traffic congestion. GRTA has unprecedented authority to create, operate, and coordinate transportation systems and air quality control installations and activities among all levels of government.⁸¹ In addition, GRTA reviews and negotiates revisions to regional plans, and reviews developments of regional impact as a condition of using state transportation funds.⁸² GRTA has a \$2 billion bonding authority to provide grants to local governments and can acquire property through eminent domain.⁸³ The Governor stated that in creating GRTA, “the message we’re sending is that Georgia is ready to grow. . . We’ll do whatever is necessary to accommodate growth, even if it means re-examining some long-held views.”⁸⁴

In 2000, Governor Barnes signed legislation, recommended by the Community Green Space Advisory Committee, establishing a state policy of protecting 20% of the state’s land as green space.⁸⁵ Under the law, large counties (those meeting a threshold population level and growth rate) may develop programs to permanently protect agricultural, forest, and natural lands constituting at least 20% of the county’s land.⁸⁶ If the Georgia Green Space Commission (created by this legislation) approves the programs as complying with state law, the county is eligible for grants from the \$30 million Green Space Trust Fund.⁸⁷

Georgia has also negotiated a unique relationship with the Environmental Protection Agency (EPA) to deal with urban development issues. When federal Clean Air Act regulations would have prevented brownfield redevelopment (because the pollution generated during construction would have resulted in temporary non-attainment for ozone standards, even though the completed development would have resulted in less permanent pollution), EPA agreed that the mixed-use development, with transit components, could be considered a transportation control measure with measurable air quality improvements. Because of this, EPA approved the project even though the construction resulted in a temporary lapse into non-attainment. Critical to the success of this agreement were demonstrations that

⁸⁰ See *Status of Comprehensive Planning, June 1997*, available at <http://www.dca.state.ga.us/planning/status.html> (last visited May 7, 2001).

⁸¹ See *Governors’ Smart Growth Initiatives*, *supra* note 26, at 6.

⁸² See *id.*

⁸³ See *id.*

⁸⁴ Alan Ehrenhalt, *The Czar of Gridlock*, *Governing Magazine* (May 1999) (cited in *Growing Pains*, *supra* note 30, at 66).

⁸⁵ See *Governors’ Smart Growth Initiatives*, *supra* note 26, at 6.

⁸⁶ *Id.*

⁸⁷ *Id.*

similar development in low density urban sites would have resulted in significantly more pollution, even if those projects managed to avoid non-attainment during construction.⁸⁸

OTHER INITIATIVES RELATED TO SMART GROWTH

The Georgia Growth Strategies Reassessment Task Force issued a report on growth management challenges and evaluated the effectiveness of the Georgia Planning Act of 1989.⁸⁹ The Task Force's recommendations were specifically designed to be "realistic" (meaning they wouldn't require amendment of the state constitution). Interestingly, one of the "Guiding Principles" of the report was that the Governor needed to move beyond growth strategies and provide leadership for growth management. The report recommended developing a clear state vision, with which all local and regional planning would have to be consistent. It also focused on the need to provide adequate funding, promote regional approaches to planning, and limit sprawl. Further, the Task Force recommended that local plans in high growth areas should be subject to stricter requirements than those of low growth areas and that an implementation monitoring mechanism should be developed. Other recommendations included: involving key entities affected by planning in the process and including environmental protection as an official planning criteria.⁹⁰

CONTACT INFORMATION

Department of Community Affairs
<http://www.dca.state.ga.us/planning>

Georgia Regional Transportation Authority
<http://www.ganet.org/grta>

⁸⁸ *Id.*

⁸⁹ See *Georgia's Future: Beyond Growth Strategies* (December 1998), available at <http://www.dca.state.ga.us/planning/georgiasfuture.pdf> (last visited May 7, 2001).

⁹⁰ See *Growing Pains*, *supra* note 30, at 62-63.

HAWAII

STATE PLANNING MODEL

Hawaii's planning structure differs significantly from most mainland systems because the state government assumes responsibility for education, zoning, and planning.⁹¹ Another unique feature is that Hawaii's general state plan has been converted into law. The Land Use Commission is responsible for state zoning, which consists of four land uses: urban, rural, agricultural and conservation.⁹² The Office of State Planning (OSP) within the Department of Business, Economic Development and Tourism, provides an overall development framework, coordinates planning, and identifies state goals and priorities.⁹³ OSP must also develop a quality growth plan for the state which balances adverse environmental impacts with economic development.⁹⁴ Any state agency that allocates funds must ensure that its expenditures are in line with the Hawaii State Plan.⁹⁵ Counties designate an existing agency as their planning agency.⁹⁶ Zoning must conform with long-range comprehensive plans for county development.⁹⁷

SMART GROWTH EFFORTS

Because of Hawaii's unique geographical and planning environments, the authors did not conduct detailed research into smart growth measures in the state. In his 2001 state-of-the-state address, Governor Ben Cayetano called for renewed planning efforts and proposed a long-range analysis of Hawaii's carrying capacity to help evaluate whether certain types of development can survive certain types of growth without being damaged.⁹⁸ The governor plans to use the data collected to create a strategic plan "to make sure we balance our economic interests in maintaining tourism with our duty to protect our natural environment."⁹⁹

During the 2001 legislative session, the legislature passed a "smart growth" bill which has been sent to the governor (at the time of this report, there is no indication whether it will be signed). The bill would establish a special advisor and smart growth advisory council to implement growth and development strategies to reduce the public costs of growth and preserve the character, livability, and economic productivity of established communities and rural areas.¹⁰⁰

CONTACT INFORMATION

Office of State Planning
<http://www.hawaii.gov/dbedt/op.html>

⁹¹ See Haw. Rev. Stat. § 279E-1 (2000).

⁹² See Haw. Rev. Stat. § 205-2 (2000).

⁹³ See Haw. Rev. Stat. §§ 225M-1,2 (2000).

⁹⁴ See Haw. Rev. Stat. § 223-2 (2000).

⁹⁵ See Haw. Rev. Stat. § 225M-4 (2000).

⁹⁶ See Haw. Rev. Stat. § 46-18 (2000).

⁹⁷ See Haw. Rev. Stat. § 46-4 (2000).

⁹⁸ See *Governors' Smart Growth Initiatives*, *supra* note 26, at 6.

⁹⁹ *Id.*

¹⁰⁰ See S.B. 1473 (2001).

IDAHO

STATE PLANNING MODEL

The Local Land Use Planning Act mandates local responsibility for zoning and planning.¹⁰¹ Every city and county has the power to plan and zone.¹⁰² Such power resides with the governing board of either the city council or the county board of commissioners, unless they chose to create by ordinance a planning and zoning commission.¹⁰³ The appropriate agency must create a comprehensive plan. Whenever two jurisdictions' plans overlap, they must negotiate an agreement. If such an effort fails, voters within the affected area hold a special election.¹⁰⁴

SMART GROWTH EFFORTS

Research did not reveal any state smart growth efforts.

OTHER INITIATIVES RELATED TO SMART GROWTH

A group called Idaho Smart Growth, “a broad-based coalition of citizens, public officials, planners, developers and others” concerned about land use, transportation and growth management¹⁰⁵ provides information about local land use and transportation issues (most notably opportunities for funding through the federal TEA-21) around the state.

Recent legislation amended the Land Use Planning Act to allow local governments to create development rights and to voluntarily transfer these rights.¹⁰⁶

CONTACT INFORMATION

No specific contact information available.

Idaho Smart Growth
<http://www.webpak.net/~smartgro/about%20ISG.htm>
(208) 333-8066
smartgro@micron.net

¹⁰¹ Idaho Code § 67-6501 *et seq.* (Michie 2000).

¹⁰² Idaho Code § 67-6503 (Michie 2000).

¹⁰³ Idaho Code § 67-6504 (Michie 2000).

¹⁰⁴ Idaho Code § 67-6526(c) (Michie 2000).

¹⁰⁵ See <http://www.webpak.net/~smartgro/about%20ISG.htm> (last visited May 4, 2001).

¹⁰⁶ See Idaho Code § 67-6515A (Michie 2000).

ILLINOIS

STATE PLANNING MODEL

The Department of Commerce and Community Affairs is the statewide planning body, but it has limited involvement in land use and smart growth issues. The Local Land Resource Management Planning Act grants planning authority to counties and municipalities. Land uses must conform to local comprehensive plans, but there is no statewide concurrency requirement.¹⁰⁷

SMART GROWTH EFFORTS

In 1999, Governor George H. Ryan created Illinois FIRST (Fund for Infrastructure, Roads, School and Transit) program which provides \$12 billion over five years to build and repair the state's infrastructure. The top priority is improving roads and highways, though transit gets \$4.1 billion. Close to \$1.6 billion is devoted to brownfields, redevelopment, resource preservation, and similar projects. In addition, the Governor created a \$160 million Illinois Open Lands Trust to preserve open space, expanded the \$100 million Conservation 2000 program, and earmarked \$57 million for pedestrian and bike trails.¹⁰⁸

In April 2000, the Governor consolidated his growth management initiatives into *Illinois Tomorrow*.¹⁰⁹ This voluntary, incentive based approach is premised on five "balanced growth" principles: reduction of traffic congestion, preservation of open space, urban reinvestment and redevelopment, quality of life, and building a partnership between the state and local governments. A major component is the coordination of existing state programs. It also involves three new statewide programs. First is the Department of Commerce and Community Affairs Prime Sites program which is analogous to enterprise zones. In 2000, the Governor touted his success in increasing funding for infrastructure through the Prime Sites Program that channels \$32 million into distressed areas for the purposes of bringing new businesses into these distressed areas and funding appropriate infrastructure upgrades.¹¹⁰ The second new program is a Linked Development program, which "leverages a community's existing transportation, housing or labor surplus resources to attract new job-creating businesses." Presenting the other side of "growth management," the program includes subsidies for the state's coal industry, a doubling of road construction, and a proposal to eliminate tollway reorganization. The third new program is the Department of Transportation's Corridor Planning Grant Program which funds local planning integrating land use, transportation and infrastructure improvements in major transportation corridors.¹¹¹

Perhaps more promising have been the Governor's efforts to continue the Open Lands Trust, a four-year \$160 million bond program, and to provide a set of incentives to local government, businesses and private developers to redevelop urban brownfields.¹¹² Other major infrastructure funding includes a revolving loan program for local governments to repair and improve drinking water and sewer facilities. The Governor also created a state commission to review the state's environmental regulatory

¹⁰⁷ 50 Ill. Comp. Stat. 805/1 *et seq.* (2000).

¹⁰⁸ See *Governors' Smart Growth Initiatives*, *supra* note 26, at 7.

¹⁰⁹ See generally, *RYAN UNVEILS NEW BALANCED GROWTH INITIATIVE, "ILLINOIS TOMORROW,"* press release (April 28, 2000), available at <http://www.state.il.us:80/gov/press/00/Apr/iltom.htm> (last visited May 11, 2001).

¹¹⁰ See *Illinois First*, <http://www.state.il.us/state/ilfirst> (last visited May 18, 2001).

¹¹¹ See *GOVERNOR RYAN'S CORRIDOR PLANNING GRANT PROGRAM*, available at <http://www.dot.state.il.us/corridorplanning/corridor.html> (last visited May 11, 2001).

¹¹² See *GOVERNOR'S OPEN LAND TRUST PROPOSAL APPROVED BY SENATE*, press release (March 25, 1999), available at <http://www.state.il.us/gov/press/99/Mar/dnropen.htm> (last visited May 11, 2001).

commission and hosted a Clean Air and Coal Summit to find ways to “balance clear air and economic development.”

The Governor also created a Balanced Growth Cabinet, consisting of the Secretary of Transportation and the directors of the Natural Resources, Environmental Protection, Agriculture, Commerce and Community Affairs, Housing Development, and Financing agencies. The Cabinet’s responsibility is to coordinate state growth-related decisions and recommend program improvements (though a search of the state’s web sites failed to unearth any activities or presence of the Cabinet).¹¹³

Most recently, the Governor provided \$3.7 million in grants to help local governments plan for future growth and he encouraged region-wide partnerships involving the private sector and community interest groups.¹¹⁴ The state also funds the Main Street program to encourage communities to develop their own visions without using a top-down state regulatory approach. Since 1995, 600 new businesses, 1100 full time jobs, \$22 million in public improvements, and \$73 in private investments have reportedly been created.¹¹⁵

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Department of Commerce and Community Affairs
620 East Adams
Springfield, Illinois 62701
(217) 782-7500
<http://www.commerce.state.il.us>

¹¹³ *Growing Pains*, *supra* note 30, at 44.

¹¹⁴ See, *GOVERNOR ANNOUNCES \$3.7 MILLION IN GRANTS TO ASSIST COMMUNITY LAND DEVELOPMENT AND GROWTH PROJECTS*, press release (Jan. 16, 2001), available at <http://www.state.il.us:80/gov/press/01/jan/0116tomorrow.htm> (last visited May 11, 2001).

¹¹⁵ *Growing Pains*, *supra* note 30, at 36-37.

INDIANA

STATE PLANNING MODEL

Planning is done almost exclusively at the county and municipal level through an Advisory Plan Commission, an Area Planning Department, or, in two counties, a Metropolitan Plan Commission.¹¹⁶ Area Planning Commissions have exclusive power over planning and zoning, including creating a comprehensive plan. Comprehensive plans must contain objectives for land use, future development, and public services and uses.¹¹⁷ Additional elements are optional. Zoning ordinances cannot be adopted until a comprehensive plan exists. Zoning must be certified to legislative bodies that are part of the area covered by the plan.¹¹⁸

SMART GROWTH EFFORTS

In 1997, the governor commissioned the Hoosier Farmland Preservation Task Force to study farmland preservation issues. The group identified Indiana land use trends, causes of farmland loss, and consequences of farmland conversion. They also made the following recommendations to the governor and legislature in 1999:

1. Establish an Indiana Land Resources Council.
2. Require Farmland Impact Assessments from IDOC and INDOT.
3. Adopt Local Ordinances which Encourage Greater Housing Density.
4. Enact Enabling Legislation Allowing Local Areas to Voluntarily Adopt the Following Programs: Agricultural Protection Zoning, Agricultural District Programs, Purchase of Development Rights and Transfer of Development Rights.
5. Foster and Enhance Urban Revitalization Programs.
6. Protect the Right to Farm and Private Property Rights.
7. Develop Incentives to Encourage Development where Infrastructure is in Place.
8. Update Land Classification Using Geographical Information Systems (GIS).
9. Encourage Development along Existing Sewer Lines.¹¹⁹

In 1999, pursuant to one of the task force recommendations, the legislature created the Indiana Land Resources Council (ILRC) and the governor appointed nine ILRC members in January 2000.¹²⁰ The ILRC began its work by reiterating the task force's goals: encouraging well-planned growth, preserving

¹¹⁶ See Ind. Code § 36-7-4-202(a-c) (2000).

¹¹⁷ See Ind. Code § 36-7-4-502 (2000).

¹¹⁸ See Ind. Code § 36-7-4-605(a) (2000).

¹¹⁹ See Indiana Land Resources Council overview, *available at* <http://www.state.in.us/oca/land.html> (last visited May 7, 2001).

¹²⁰ See Ind. Code § 15-7-9-1 *et seq.* (2000); *see also* Indiana Land Resources Council website, <http://www.state.in.us/oca/land.html> (last visited May 8, 2001).

farms and protecting private property rights.¹²¹ The group is charged with providing technical assistance and resources to local communities on land use tools and strategies¹²² and may do the following:

- (1) Provide technical assistance and information about land use strategies.
- (2) Facilitate collaboration among commonly affected state, county, and local government units.
- (3) Compile and maintain a land planning information library, both hard copy and electronic, that includes current data on land resources in Indiana.
- (4) Establish or coordinate educational programs for governmental units, non-governmental units, and the public with special consideration for local planning commission members and county commissioners.
- (5) Provide counties and local communities conducting land use planning with access to technical and legal assistance through a referral service.
- (6) Provide information to local authorities on model ordinances for programs and techniques on land use.
- (7) Obtain grants and assist counties and local communities in locating additional funding sources for planning projects.
- (8) Make recommendations to the general assembly and other governmental bodies concerning land resources.
- (9) When requested, advise the general assembly on proposals relating to land resources.¹²³

The ILRC emphasizes communication as the key to smart development practices; it “exists to promote interaction between the state and our communities.”¹²⁴ ILRC uses the following guidelines:

Local Communities Know Best
Planning is a Must
State Must Provide Tools
Consensus and Partnerships are Key¹²⁵

In 2000, the ILRC worked to create partnerships between local, county and state government units in addressing land use issues. The ILRC 2000 Annual Report provides an excellent overview of its work thus far.¹²⁶ The council devoted 2000 to information gathering, holding seven public meetings and studying growth management efforts in other states.¹²⁷ They have also been examining land use tools

¹²¹ *See id.*

¹²² *See* Ind. Code § 15-7-9-6 (2000).

¹²³ Ind. Code § 15-7-9-7 (2000).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ ILRC 2000 Annual Report, *available at* <http://www.state.in.us/oca/land.html> (last visited May 7, 2001).

¹²⁷ *Id.* at 4.

and strategies that have worked in other parts of the United States. In April 2000, for example, four ILRC members participated in the Ultimate Farmland Preservation Tour to Delaware, Maryland, and Pennsylvania. The members observed “how other regions are successfully utilizing brownfield and urban redevelopment, forest development and comprehensive planning tools in land use practices”¹²⁸ According to ILRC, Indiana uses the following land use tools to control growth: agricultural zoning, conservation easements, property tax relief, “right-to-farm” laws, and state policies.¹²⁹ The ILRC continues to hold public meetings and develop strategies to help Indiana grow wisely.

In addition to creating the ILRC, the governor also sponsored a smart growth conference in 1999, entitled “Indiana’s Future: Turning Urban Sprawl into Smart Growth.” Nothing from that conference is available on the state’s website, however, as of April 16, 2001.

CONTACT INFORMATION

Indiana Land Resources Council
Joe Tutterrow, Director
ISTA Center, Suite 414
150 W. Market St.
Indianapolis, IN 46204
(317) 234-5262
<http://www.state.in.us/oca/land.html>

¹²⁸ Indiana Land Resources Council overview, *supra* note 119.

¹²⁹ *Id.* “Right-to-Farm” means a state law or local ordinance that protects farmers and farm operations from public and private nuisance lawsuits; “state policies” includes impact statements, Executive Orders, exemptions and limits. *Id.*

IOWA

STATE PLANNING MODEL

Cities and counties have the authority to zone.¹³⁰ Zoning plans must follow local comprehensive plans and describe certain enumerated factors.¹³¹ There is no statewide comprehensive plan for zoning or land use, but there is a statewide Water Allocation and Use Plan.¹³²

SMART GROWTH EFFORTS

In 1997, the state legislature created the Commission on Urban Planning, Growth Management of Cities, and Protection of Farmland.¹³³ The Commission released a report in 1999 that recommended, among other things: a statewide land-use inventory; providing assistance for local governments to maintain their inventories; appointing a council composed of representatives from state agencies to establish, maintain and revise a state strategic development plan; requiring cities and counties to prepare plans and, in some cases joint plans; and stipulating that developments within counties that do not comply with the plans would not be eligible for government incentives.¹³⁴ Research did not reveal any more recent smart growth efforts.

CONTACT INFORMATION

No specific contact information available.
State of Iowa website: <http://www.state.ia.us>

¹³⁰ Iowa Code § 414.1 (2000).

¹³¹ Iowa Code § 414.3 (2000).

¹³² Iowa Code § 455B.261 *et seq.* (2000).

¹³³ See *Planning Communities for the 21st Century, A Special Report of the American Planning Association's Growing Smart Project* (December 1999) at 2 [hereinafter *Planning Communities for the 21st Century*]. The authors were unable to locate a copy of the Commission's report.

¹³⁴ *Id.* at 93.

KANSAS

STATE PLANNING MODEL

Most planning decisions are made at the local level. Comprehensive local plans are encouraged, not required, and can be created by city or county planning commissions.¹³⁵

SMART GROWTH EFFORTS

Research did not reveal any recent state smart growth activity. Kansas did initiate a series of largely procedural changes to its planning statutes in 1991.¹³⁶ The measures established new procedures for many planning and zoning actions, including requiring city council or county council approval of comprehensive plans, as opposed to planning commission approval.¹³⁷ The new law authorized the use of various planning and zoning techniques, including planned unit developments.¹³⁸ The legislation also established when development rights vest.¹³⁹ It did not, however, mandate comprehensive plan preparation and there is no state role in growth management.¹⁴⁰

CONTACT INFORMATION

No specific contact information available.

State of Kansas website: <http://www.accesskansas.org>

¹³⁵ Kan. Stat. Ann. § 12-747(a) (2000).

¹³⁶ *Planning Communities for the 21st Century*, *supra* note 133, at 93.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

KENTUCKY

STATE PLANNING MODEL

The State Planning Committee (SPC) is Kentucky's state planning agency. It prepares and adopts plans for the development of the state; advises state agencies, local authorities, and private individuals; coordinates all physical development plans that are related to state activities; surveys rural lands; drafts regulations for the use and development of state property and submits them to the General Assembly.¹⁴¹ The SPC also prepares and updates a long-term development program of major state improvement projects and coordinates state agency plans and proposals with the plans and proposals of all state agencies and with the plans of the Governor's cabinet.¹⁴² The SPC, however, has no functional or regulatory role in local planning.

Cities and counties must form a planning unit, which may consist of the city or county acting independently, or acting jointly, or as groups regionally.¹⁴³ The planning statutes encourage joint planning units by requiring that the city or county first "interrogate" the other entity about forming a joint planning unit.¹⁴⁴ Each planning unit must appoint a planning commission¹⁴⁵ that must prepare a comprehensive plan.¹⁴⁶ There does not appear to be any requirement that the comprehensive plan be internally consistent.¹⁴⁷ Moreover, there is no statutory requirement that zoning regulations be consistent with or in accordance with the comprehensive plan.¹⁴⁸

SMART GROWTH EFFORTS

Although Governor Patton declared in his State of the State speech that "[m]any . . . [Kentucky] communities are seeing the high cost of unplanned growth [which] is an issue that [the state] must begin to address," research did not reveal any recent smart growth efforts in Kentucky, aside from the two bills discussed below.

In 1996, Governor Patton created Renaissance Kentucky which incorporates many smart growth principles.¹⁴⁹ The program assists communities with downtown revitalization efforts. To achieve this goal, Renaissance Kentucky forms an alliance between the Department for Local Government, the Kentucky Heritage Council, the Kentucky Housing Corporation, the Kentucky League of Cities, and the Kentucky Transportation Cabinet. In addition to these state government representatives, seven other private and federal entities appoint Renaissance Kentucky liaisons that provide technical assistance and funding resources when available.

¹⁴¹ See Ky. Rev. Stat. Ann. § 147.070 (Michie 2000); Opinion of the Office of Atty. Gen. 70-460 (stating that the Kentucky Program Development Office has authority to conduct comprehensive statewide planning).

¹⁴² See Ky. Rev. Stat. Ann. § 147.090 (Michie 2000).

¹⁴³ See Ky. Rev. Stat. Ann. § 100.113 (Michie 2000).

¹⁴⁴ See Ky. Rev. Stat. Ann. § 100.117 (Michie 2000).

¹⁴⁵ See Ky. Rev. Stat. Ann. § 100.133 (Michie 2000).

¹⁴⁶ See Ky. Rev. Stat. Ann. § 100.183 (Michie 2000).

¹⁴⁷ See Ky. Rev. Stat. Ann. §§ 100.187 (Michie 2000) (contents of comprehensive plan); 100.197 (Michie 2000) (adoption of plan elements).

¹⁴⁸ See Ky. Rev. Stat. Ann. § 100.203 (2000) (content of zoning regulations).

¹⁴⁹ All information on Renaissance Kentucky obtained from Kentucky Housing Corporation, *Renaissance Kentucky* and from RENAISSANCE KENTUCKY: 2000 PROGRAM GUIDE, both available at <http://www.kyhousing.org/programs/renaissance> (last visited March 20, 2001). For more information, contact Penny Young, Director of Renaissance Kentucky, (502) 564-7630 (ext. 305).

The program uses the state's expertise and resources to focus and direct state funding to selected cities, to create and reassess methods for accessing local, state, and federal sources of funding, to assist communities in locating funding sources and other information for revitalization, and to encourage the restoration and preservation of unique downtown historic buildings to promote infill development. However, the purpose is not to replace existing programs that address downtown revitalization but rather to supplement those programs.

Communities may apply for Renaissance Kentucky every two years. The alliance reviews all applications and ranks them into three groups known as phases. The alliance ranks the cities based upon the following criteria: (1) defined downtown, (2) occupancy, (3) vision, goals and objectives, (4) community organization and management, (5) historic integrity and preservation, (6) appearance, (7) financial support, (8) safety, (9) leadership initiatives, (10) market study/implementation plan, (11) development barriers/impediments, and (12) growth measures. The communities selected will receive incentives based upon their level of eligibility, meaning based upon their phase. The incentives are mostly priority standing for funds but also include a planning team, a resource development team, and a "Recognition/Award."

During fiscal years 1998-2000, \$33,698,041 was allocated for Renaissance Kentucky assistance, ranging from \$2,000,000 for façade improvements and \$3,853,000 for infrastructure funds to \$147,000 for planning grants and \$10,788 for law enforcement block grants.

The Kentucky Legislature is currently considering a bill that would establish the Statewide Smart Growth Task Force, consisting of four Senators, four Representatives, and seventeen other members, directed by the Governor's office, to study growth in the State.¹⁵⁰ The legislature is also considering a brownfields cleanup bill which would establish a formal voluntary environmental cleanup program including standards for cleaning sites, liability protection, and a project timetable.¹⁵¹

CONTACT INFORMATION

Renaissance Kentucky
(502) 564-7630 (ext. 305)
<http://www.kyhousing.org/programs/renaissance>

¹⁵⁰ See 2001 KY H.J.R. 107.

¹⁵¹ See 2001 KY H.B. 104.

LOUISIANA

STATE PLANNING MODEL

Louisiana does not have a centralized state planning agency, but rather delegates the authority to plan and zone state activities to a number of state agencies. However, the Division of Administration in the Governor's Office administers and supervises state lands.¹⁵² Moreover, the Division of Administration conducts surveys and studies that address the development of state resources and facilities, reviews current and future planning of all state agencies and local governments, and coordinates planning among the various state agencies.

All parishes and municipalities may plan and zone and may create a planning commission.¹⁵³ Planning commissions must prepare and adopt a master plan for their jurisdictions.¹⁵⁴ There is no requirement for internal consistency.¹⁵⁵ However, all municipal and parish zoning regulations must be "made in accordance with a comprehensive plan and designed to lessen congestion in the public streets," promote safety, avoid excessive population densities, and facilitate adequate transportation, schools, parks, and other public needs.¹⁵⁶

SMART GROWTH EFFORTS

Research did not reveal any recent state smart growth efforts in Louisiana.

CONTACT INFORMATION

Division of Administration, Governor's Office
<http://www.state.la.us/doa/doa.htm>

¹⁵² See La. Rev. Stat. Ann. § 39:11 (West 2000).

¹⁵³ See La. Rev. Stat. Ann. §§ 33:102 (West 2000) (grant of power to plan and create commissions); 33:4721-4729 (West 2000) (municipal zoning); 33: 119, 140.30 (West 2000).

¹⁵⁴ See La. Rev. Stat. Ann. § 33:106 (West 2000).

¹⁵⁵ *Id.*

¹⁵⁶ La. Rev. Stat. Ann. §§ 33:4723 (West 2000) (municipalities); 33:4780.42 (West 2000) (parishes). The authors did not research the level of consistency required.

STATE PLANNING MODEL

The State retains considerable land use planning power. For example, the State plans and zones all unincorporated areas,¹⁵⁷ which is quite distinct from California where the counties retain such jurisdiction. The Maine Land Use Regulation Commission plans, zones, and approves all developments in the unorganized and deorganized areas of the State.¹⁵⁸

Under the Growth Management Act, which codifies the Growth Management Program,¹⁵⁹ the Legislature established a list of state goals to guide State and municipal planning and regulatory action, including: encouraging orderly growth and development in appropriate areas, while protecting the State's rural character and preventing sprawl; planning for adequate infrastructure; preserving agricultural and forest land; and preserving natural resources and the environment.¹⁶⁰ Local governments may adopt plans for future development and growth, adopt and amend local growth management programs, including comprehensive plans and implementation programs, and do all things necessary to carry out these powers.¹⁶¹

If a local government chooses to prepare a local growth management program, it must designate a planning committee which develops and maintains a comprehensive plan and zoning ordinances.¹⁶² The comprehensive plan must identify and designate growth areas - areas suitable for orderly development, and rural areas, where protection should be provided for agricultural, forest, open space and scenic lands. The comprehensive plan must also ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A regional program, which must be consistent with the comprehensive plans of neighboring municipalities, must be incorporated to manage shared resources. The Growth Management Act also requires that the comprehensive plan contain an implementation program that is consistent with the other provisions of the comprehensive plan,¹⁶³ and that zoning regulations be consistent with the comprehensive plan as well.¹⁶⁴ Interestingly, Maine had adopted a law in the early 1990s that *required* local governments to prepare comprehensive plans; however, because of the 1991 recession, the Legislature repealed the mandatory language.

Local governments may request financial and technical assistance to plan and implement the local growth management program.¹⁶⁵ However, to receive this assistance, the local government must submit its comprehensive plan and proposed zoning ordinances to the State Planning Office for review and the growth management program must be consistent with the Act.¹⁶⁶ To help implement the growth management program, the State Planning Office develops and administers a technical and financial assistance program for municipalities, which must include direct financial assistance for planning and implementation of local growth management programs, standards governing the review of local growth

¹⁵⁷ Me. Rev. Stat. Ann. tit. 12, § 683 (West 2000).

¹⁵⁸ Me. Rev. Stat. Ann. tit. 12, § 685 (West 2000).

¹⁵⁹ Me. Rev. Stat. Ann. tit. 30-A, § 4312 *et seq.* (West 2000).

¹⁶⁰ Me. Rev. Stat. Ann. tit. 30-A, § 4321 (West 2000).

¹⁶¹ Me. Rev. Stat. Ann. tit. 30-A, § 4323 *et seq.* (West 2000).

¹⁶² Me. Rev. Stat. Ann. tit. 30-A, § 4326 (West 2000).

¹⁶³ Me. Rev. Stat. Ann. tit. 30-A, § 4326 (West 2000).

¹⁶⁴ Me. Rev. Stat. Ann. tit. 30-A, § 4352 (West 2000).

¹⁶⁵ Me. Rev. Stat. Ann. tit. 30-A, § 4345 (West 2000); *see also* Me. Rev. Stat. Ann. tit. 5, § 3505 (West 2000) (describing the duties of the State Planning Office).

¹⁶⁶ Me. Rev. Stat. Ann. tit. 30-A, § 4347 (West 2000).

management programs by the office, technical assistance to municipalities and a voluntary certification program for local growth management programs. In addition, the local governments may request certification of consistency from the State Planning Office, which will provide the local government with priority in state funding.¹⁶⁷ Finally, the State Planning Office evaluates the Growth Management Program.¹⁶⁸

SMART GROWTH EFFORTS

The State has relied heavily on its Growth Management Program, described above, to control sprawl. In addition, the state is actively trying to implement other smart growth initiatives to complement this program. First, the State is trying to eliminate hidden state subsidies that cause sprawl.¹⁶⁹ One example is the creation of the Revolving Renovation Fund,¹⁷⁰ which uses state funds to improve existing school facilities rather than constructing new ones. The State Planning Office explained that this program reversed the trend of building schools outside of existing cities due to a requirement that a certain amount of land per pupil is required to receive state funds. Formerly, state funds were only available for new construction. Moreover, the reform allows reimbursements from the sending community to the receiving community, including capital cost as a factor. Thus, communities are able to share the costs of expansion.¹⁷¹

Second, the State is aware that it must serve as an example in the siting and construction of its buildings and facilities. To accomplish this goal, the Legislature mandated that the State Planning Office consult with the Bureau of General Services to develop site selection criteria that give preference to designated growth areas and “service centers,” communities that serve the surrounding region, drawing workers, shoppers and others into the community for jobs and services.¹⁷² The Department of Administrative and Financial Services must develop site selection criteria for state office buildings to encourage their construction in “service centers” and in designated growth areas.¹⁷³ Maine similarly directs state aid to “service centers” and communities that have adopted local growth management programs consistent with state goals and guidelines.¹⁷⁴ State funds for state growth-related capital investments are limited to designated growth areas located in a local government’s comprehensive plan or areas served by a public sewer that can provide adequate service to the new project, with eight exceptions.¹⁷⁵ Moreover, state agencies must provide preference to those local governments that have received a certificate of consistency under section 4348 or have adopted a comprehensive plan and implementation strategies consistent with the state planning goals.¹⁷⁶

The state targets investments in service centers and rural areas. For instance, the State Planning Office has slated a portion of its Growth Management and Coastal Zone Management funds to infrastructure

¹⁶⁷ Me. Rev. Stat. Ann. tit. 30-A, § 4348 (West 2000).

¹⁶⁸ Me. Rev. Stat. Ann. tit. 30-A, § 4331 (West 2000).

¹⁶⁹ *National Governor’s Association Conference Center for Best Practices, Conference on Smart Growth*, July 6-7, 1998 [hereinafter *NGA Smart Growth Conference*], available at <http://janus.state.me.us/spo/cpip/planning/msgact.htm> (last visited March 22, 2001).

¹⁷⁰ Me. Rev. Stat. Ann. tit. 30-A, § 6006-F (West 2000).

¹⁷¹ *NGA Smart Growth Conference*, *supra* note 169.

¹⁷² Me. Rev. Stat. Ann. tit. 30-A, § 4349-A (West 2000).

¹⁷³ Me. Rev. Stat. Ann. tit. 30-A, § 4349-A(2) (West 2000).

¹⁷⁴ *An Act To Implement the Land Use Recommendations of the Task Force on State Office Building Location, Other State Growth-Related Capital Investments and Patterns of Development*, Me. L.D. 2600, P.L. 776 (enacted May 10, 2000).

¹⁷⁵ Me. Rev. Stat. Ann. tit. 30-A, § 4349-A(1)(C). “Growth-Related Capital Investments” is defined at Me. Rev. Stat. Ann. tit. 30-A, § 4301(5-B) (West 2000).

¹⁷⁶ Me. Rev. Stat. Ann. tit. 30-A, § 4349-A(3).

grants for municipal and regional entities to enhance economic and community growth in those communities that support the State's Growth Management Program. The State is also attempting to reduce the regulatory burdens of development in "service centers." Although the State Planning Office concedes that movement in this area is slow, the Office stated that the standards for required transportation service have been reduced in areas that are located within designated growth areas in the local comprehensive plan.¹⁷⁷

To promote smart growth goals, the State undertakes joint development projects with local governments and supports efforts to improve coordination among state, regional, and local governments.¹⁷⁸ Direct technical assistance is provided to local governments on land use planning, transportation, community and economic development, and environmental issues.

Moreover, the Department of Economic and Community Development has dedicated two programs to support downtown revitalization. And, the Maine State Housing Authority has created a New Neighbors Program, which attempts to improve neighborhoods by assisting homebuyers in purchasing one to four unit buildings in designated areas. The buyer is required to live in the building, mortgage qualifications are relaxed, interest rates and down payments reduced, and additional money for rehabilitation is made available. The State Planning Office also plans to use Growth Management Funds to strengthen rural industry such as farming, forestry, and eco-tourism; this is part of the State's Rural Initiative.

Notwithstanding these efforts, the State Planning Office recommends that the state enact a statute establishing state goals and requiring a coordinated state response to growth. Moreover, the State Planning Office asserts that there needs to be more direction and support from the Governor through executive orders and cabinet-level oversight.¹⁷⁹

In addition to the Smart Growth initiatives recognized by the State Planning Office, the legislature has implemented other smart growth initiatives as well. The Act To Implement the Land Use Recommendations of the Task Force on State Office Building Location, Other State Growth-Related Capital Investments and Patterns of Development, referenced above,¹⁸⁰ established the Municipal Investment Trust Fund to provide loans to local governments attempting to revitalize areas¹⁸¹; note, however, that the Fund has not yet been funded.¹⁸² The Act also establishes the Maine Downtown Center, which advocates downtown revitalization, promotes awareness of revitalization, serves as a clearinghouse for information, and provides training and technical assistance to communities.¹⁸³

The Act also charged several state agencies with certain duties: (a) the Department of Economic and Community Development must develop an investment policy to assist local governments and private property owners in redevelopment of downtown areas; (b) the Land and Water Resources Council must submit a report on productive farming, fishing, and forestry; (c) the Executive Department, State Planning Office, and the Department of Environmental Protection must undertake an initiative to promote brownfields development, (d) the Maine State Housing Authority must submit a report on the status of the New Neighbors Program; (e) the State Planning Office must work with local governments

¹⁷⁷ Note that this might not be considered smart growth as the state relaxed the adequate infrastructure requirement which may cause congestion.

¹⁷⁸ See *NGA Smart Growth Conference*, *supra* note 169.

¹⁷⁹ *Id.*

¹⁸⁰ Me. L.D. 2600, P.L. 776 (enacted May 10, 2000).

¹⁸¹ Me. Rev. Stat. Ann. tit. 30-A, § 6006-D (West 2000).

¹⁸² *NGA Smart Growth Conference*, *supra* note 169.

¹⁸³ Me. Rev. Stat. Ann. tit. 5, § 3307-F (West 2000).

and regional planning commissions to develop model land use ordinances that accommodate smart growth design standards and emphasize compact-development and revitalization; and, (f) the State Board of Education must adopt rules to encourage the siting of new schools in designated growth areas in local comprehensive plans.

Finally, the Maine Legislature, by enacting L.D. 2550,¹⁸⁴ instructed the Department of Transportation and the Bureau of Planning, Research and Community Services to work with the State Planning Office and regional councils to provide training, technical assistance, and information to local governments on road planning and construction. The Legislature intended to assist local governments in addressing “‘smart growth’ by preserving traditional downtowns, walkable communities and compact neighborhoods.”¹⁸⁵ The Department of Transportation must also develop model subdivision and road ordinances that provide several options for construction.

OTHER INITIATIVES RELATED TO SMART GROWTH

Maine has many programs to keep land in productive forestry, farming, and fishing use.¹⁸⁶ Maine recently implemented an innovative strategy that it modeled after a Massachusetts law called the Farms for the Future Program. Under this program, farmers are provided with low interest loans for writing a business plan and receiving classroom instruction on the economics and business of agriculture. To participate in the program the farmer must enter into a farmland protection agreement with the Department assuring the Department that the farmer will not convert the agricultural land until he repays the loans.¹⁸⁷ Finally, the State Planning Office has initiated a pilot program aimed at helping municipalities redevelop brownfields.¹⁸⁸ The stated purpose of the program is to minimize the uncertainties surrounding the actual or perceived contamination associated with a site.

CONTACT INFORMATION

State Planning Office
<http://www.state.me.us/spo>

¹⁸⁴ Me. L.D. 2550, P.L. 676 (enacted April 12, 2000).

¹⁸⁵ *Id.*

¹⁸⁶ See Land and Water Resources Council, *Report on the Use of Incentives To Keep Land in Productive Farming, Fishing and Forest Use* (February 15, 2001) available at <http://janus.state.me.us/spo/lwrc/pdf/Rural%20Land%20Incentives%20Report.pdf> (last visited March 20, 2001).

¹⁸⁷ *Id.*

¹⁸⁸ See http://janus.state.me.us/spo/brownfields/Brownfields_Grant.htm (last visited March 20, 2001).

MARYLAND

STATE PLANNING MODEL

The Department of Planning¹⁸⁹ (Department) is responsible for planning at the state level, which includes preparing a balanced integrated program for the development of the State's natural resources.¹⁹⁰ The Department prepares and revises the State Development Plan for the development of the state.¹⁹¹ In preparing the plan, similar to the cross-acceptance program in New Jersey, the Department must seek comments and consult with all local governments affected by the Plan.¹⁹² Each year, the Department of Planning submits a report to the Governor that includes a description of the Development Plan, a summary of studies undertaken, and a summary of the work of the Department and of the Economic Growth, Resource Protection, and Planning Commission. The Department must also harmonize its planning activities with those of other units of State government and local governments; coordinate the plans and programs of all units of State government; coordinate State programs with those of the federal government; and cooperate with and assist other units of State government, local government, and the federal government in the execution of their planning functions in order to harmonize their planning activities with the State Development Plan.¹⁹³ Finally, the Department must provide local governments with both technical and financial assistance in their planning efforts.¹⁹⁴

Maryland requires that all plans in the state, including local plans, be submitted to the Department,¹⁹⁵ which serves as the central repository for all plans, state and local.¹⁹⁶ In addition, the Department maintains an inventory of natural resources, the real property owned in the state, and the major public works and private facilities, and studies the resources and emerging problems of the state.¹⁹⁷

The State Economic Growth, Resource Protection, and Planning Commission¹⁹⁸ (Commission) also serves a significant role in State and local planning. The Commission must establish a number of subcommittees, including the Subcommittee on Interjurisdictional Coordination to promote planning coordination and interjurisdictional cooperation consistent with the State Economic Growth, Resource Protection, and Planning Policy, the Subcommittee on Planning to promote education and outreach activities, and the Subcommittee on Planning Techniques to develop and promote the use of planning guidelines, models, examples, and other planning tools needed to implement the State Economic Growth, Resource Protections, and Planning Policy and local plans.¹⁹⁹ The Commission advises and reports to the Governor, General Assembly, and local governments on many topics, including the State Development Plan; the progress of the State, regional, and local planning to achieve the planning policies provided in the Economic Growth, Resource Protections, and Planning Policy, the "visions" and elements required in comprehensive plans; the achievement of consistency in local planning; the progress of the State in providing affordable housing; the progress of local governments in directing growth and protecting natural resources; and population projections.

¹⁸⁹ Md. Code Ann., State Fin. & Proc., § 5-201 (2000).

¹⁹⁰ Md. Code Ann., State Fin. & Proc., § 5-303 (2000).

¹⁹¹ Md. Code Ann., State Fin. & Proc., § 5-602 (2000).

¹⁹² Md. Code Ann., State Fin. & Proc., § 5-603 (2000).

¹⁹³ Md. Code Ann., State Fin. & Proc., § 5-402 (2000).

¹⁹⁴ Md. Code Ann., State Fin. & Proc., § 5-403 (2000).

¹⁹⁵ Md. Code Ann., State Fin. & Proc., § 5-502 (2000).

¹⁹⁶ Md. Code Ann., State Fin. & Proc., § 5-501 (2000).

¹⁹⁷ Md. Code Ann., State Fin. & Proc., §§ 5-504, 5-505, 5-506 (2000).

¹⁹⁸ Md. Code Ann., State Fin. & Proc., § 5-701 (2000).

¹⁹⁹ Md. Code Ann., State Fin. & Proc., § 5-707 (2000).

Maryland is one of a handful of states that has a statutorily based state growth policy. The State Economic Growth, Resource Protection, and Planning Policy lists the following eight growth policy statements which explain how the state believes growth should be promoted in Maryland:²⁰⁰

- (1) development shall be concentrated in suitable areas;
- (2) sensitive areas shall be protected;
- (3) in rural areas, growth shall be directed to existing population centers and resource areas shall be protected;
- (4) stewardship of the Chesapeake Bay and the land shall be a universal ethic;
- (5) conservation of resources, including a reduction in resource consumption, shall be practiced;
- (6) to encourage the achievement of paragraphs (1) through (5) of this subsection, economic growth shall be encouraged and regulatory mechanisms shall be streamlined;
- (7) adequate public facilities and infrastructure are available or planned in areas where growth is to occur; and
- (8) funding mechanisms shall be addressed to achieve this policy.²⁰¹

Unlike the growth policy statements in other states, such as New Jersey, Maryland's Policy has substantive effect, or more precisely, coercive effect. Under the Maryland Economic Growth, Resource Protection, and Planning Act of 1992, the state may not fund a public works, transportation, or major capital improvements project if it is not consistent with the state Policy.²⁰²

Local governments may plan and zone in their jurisdictions and may create a planning commission.²⁰³ The 1992 Maryland Economic Growth, Resource Protection, and Planning Act requires counties and cities to adopt comprehensive plans with certain elements²⁰⁴ and "visions,"²⁰⁵ goals or policy statements that serve as a guide to growth.

The Act has several consistency requirements. First, the elements of the comprehensive plan must be interrelated and each must state how it relates to the other elements and to the visions of the plan.²⁰⁶ Moreover, all local regulations and development must be consistent with the comprehensive plan.²⁰⁷ More important for smart growth purposes, a local jurisdiction may not approve or construct a local project involving the use of state funds, grants, loans, loan guaranties, or insurance unless the project is consistent with the comprehensive plan, except in extraordinary circumstances.²⁰⁸ Moreover, the state may not fund a public works, transportation or major capital improvement project unless the project is consistent with the local comprehensive plan.²⁰⁹

²⁰⁰ Md. Code Ann., State Fin. & Proc., § 5-7A-01 (2000).

²⁰¹ *Id.*

²⁰² Md. Code Ann., State Fin. & Proc., § 5-7A-02 (2000). Note that this statute was passed in 1992, five years before Maryland's Smart Growth initiatives of 1997 and the creation of Priority Funding Areas.

²⁰³ Md. Code Ann., Art. 66B, § 3.01 (2000).

²⁰⁴ Md. Code Ann., Art. 66B, § 3.05 (2000).

²⁰⁵ Md. Code Ann., Art. 66B, § 1.01 (2000).

²⁰⁶ Md. Code Ann., Art. 66B, § 3.05 (2000).

²⁰⁷ Md. Code Ann., Art. 66B, § 4.03 (2000); § 3.08 (2000).

²⁰⁸ Md. Code Ann., State Fin. & Proc., § 5-7A-02 (2000).

²⁰⁹ *Id.*

The Act, however, does not require state approval or certification of local comprehensive plans. Despite this, cities and counties, in order to adopt a comprehensive plan, must hold public hearings and distribute copies to adjoining planning jurisdictions and to all state and local jurisdictions that have responsibility for financing or constructing public improvements necessary to implement the plan.²¹⁰ All comments must be included in the planning commission's report. Thus, the State has an opportunity to review comprehensive plans and to provide feedback to local jurisdictions.

SMART GROWTH EFFORTS

Maryland has attracted significant national attention for its comprehensive smart growth initiatives promulgated by Governor Parris Glendening in 1997. Maryland's Smart Growth Program has three specific goals:

- (1) to save the state's most valuable remaining natural resources before they are forever lost,
- (2) to support existing communities and neighborhoods by targeting state resources to support development in areas where the infrastructure is already in place or planned to support it, and
- (3) to save taxpayers millions of dollars in the unnecessary cost of building the infrastructure required to support sprawl.²¹¹

To achieve these objectives, Maryland uses a package of financial incentives, neighborhood and infrastructure improvements, and agricultural land and open space preservation. Moreover, Maryland uses policies and programs that were established decades ago,²¹² unifying them with more recent efforts under the umbrella of the Smart Growth and Neighborhood Conservation Program.²¹³

The 1997 General Assembly, urged by Governor Glendening, adopted a legislative package to direct state resources and development to developed areas, to preserve Maryland's natural resources, environmental values, farmland, and open space lands, and to discourage sprawl from growing into undeveloped and rural areas. The 1997 Smart Growth initiatives include five specific programs: (1) the Smart Growth Areas Act; (2) the Rural Legacy Grant Program; (3) the Brownfields Cleanup Program; (4) the Job Creation Tax Credit²¹⁴; and (5) the Live Near Your Work Program.

The centerpiece of the 1997 Smart Growth initiatives is the Smart Growth Areas Act that directs new "growth related" projects to "Priority Funding Areas" (PFAs) by limiting State funds.²¹⁵ PFAs include existing communities—municipalities and areas inside the Washington Beltway and the Baltimore Beltway—neighborhood revitalization areas, enterprise zones, heritage areas, and planned growth areas

²¹⁰ Md. Code Ann., Art. 66B, § 3.07 (2000).

²¹¹ Maryland Department of Planning, *What Is Maryland's Smart Growth Program?*, available at <http://www.op.state.md.us/smartgrowth/smartwhat.htm> (last visited Feb. 27, 2001).

²¹² See e.g., The Agricultural Land Preservation Foundation, established in 1974, which can be found at Md. Code Ann., Agric. § 2-502 (reenacted without change in 1997).

²¹³ See Maryland Department of Planning, *Smart Growth and Neighborhood Conservation: "A Legacy for Our Children"* (2000) [hereinafter *Smart Growth and Neighborhood Conservation*].

²¹⁴ Although the authorizing bill for the Job Creation Tax Credit was actually passed in 1996, much of the smart growth literature considers the program part of the 1997 Smart Growth initiatives.

²¹⁵ Md. Code Ann., State Fin. & Proc., § 5-7B-01 *et seq.* (2000).

designated by counties.²¹⁶ Counties may also designate PFAs if they meet guidelines for intended use pursuant to the statutory criteria, availability of sewer and water, and permitted residential density.²¹⁷ Like the statutorily defined PFAs, county-designated PFAs include existing communities and areas of industrial use. By contrast, counties may designate communities within “locally designated growth areas,” areas determined by the county to be suitable for development in compliance with its comprehensive plan,²¹⁸ so long as the areas will be served by adequate water and sewer systems and meet density standards.

Recognizing that State funding is a significant contributing factor to sprawl and unmanaged growth throughout the State, the Smart Growth Areas Act prohibits the State from funding “growth related”²¹⁹ projects outside of the “Priority Funding Areas,”²²⁰ with few exceptions.²²¹ Thus, Maryland’s \$19 billion annual budget is used as a fiscal incentive to concentrate development in Maryland’s municipalities, other existing communities, industrial areas, and planned growth areas designated by the county. The Act also addresses the problem of school construction. Under the Act, the state may not fund a growth-related project in a municipality exercising zoning authority unless the municipality has adopted residential development standards relating to the capacity of the public schools.²²² Moreover, the Act includes a State policy statement that funding for public school construction should target rehabilitation of existing schools.²²³ Despite the limits on state funding, there is no limit on the local government’s ability to develop outside of the PFA’s.

To implement the Smart Growth Areas Act and the State Economic Growth, and Resource Protection, and Planning Policy of 1992, Governor Glendening promulgated Executive Order 01.01.1998.04, “Smart Growth and Neighborhood Conservation Policy.” The Order directs state agencies, when making funding decisions, to give priority to central business districts, downtown core areas, empowerment zones, and revitalization areas. Moreover, state agencies must coordinate programs, services, and activities in PFAs to revitalize communities, work with local jurisdictions to ensure that the programs and activities in rural areas will maintain the rural character, encourage locating workshops, conferences, and other meetings in PFAs, and encourage federal agencies to adopt flexible regulations and standards which are more responsive to State and local policies. The Order also created the Smart Growth and Neighborhood Conservation Sub-Cabinet to assist in the implementation of the Smart Growth Policy and make recommendations to the Governor, to provide a forum for discussion on issues relating to growth and development, and to establish a monitoring system to monitor state funding decisions in PFAs. Finally, the Governor directed individual agencies to carry out the Smart Growth Policy.

The Smart Growth initiatives of 1997 also include the Rural Legacy Program,²²⁴ which seeks to protect up to 200,000 acres of land and create a green infrastructure adjoining networks of ecologically important land by redirecting state funds into a focused and dedicated land preservation program. One of the stated purposes of the program is to limit the adverse impacts of sprawl on agricultural lands and

²¹⁶ Md. Code Ann., State Fin. & Proc., § 5-7B-02 (2000). *See* Md. Code Ann., State Fin. & Proc., § 5-7B-03 (2000) for the criteria that a county must use in designating a PFA.

²¹⁷ Md. Code Ann., State Fin. & Proc., § 5-7B-03 (2000).

²¹⁸ Md. Code Ann., State Fin. & Proc., § 5-7B-01 (2000).

²¹⁹ *See* Md. Code Ann., State Fin. & Proc., § 5-7B-01 (2000) for the definition of “Growth-related project.”

²²⁰ Md. Code Ann., State Fin. & Proc., § 5-7B-04 (2000).

²²¹ Md. Code Ann., State Fin. & Proc., § 5-7B-05 (2000).

²²² Md. Code Ann., State Fin. & Proc., § 5-7B-04 (2000).

²²³ Md. Code Ann., State Fin. & Proc., § 5-7B-07 (2000). However, this is only a policy and thus does not prohibit funding for the construction of new schools.

²²⁴ Md. S.B. 388 (1997); Md. Code Ann., Nat. Res., § 5-9A-01 *et seq.* (2000).

natural resources.²²⁵ The program establishes a grant program, funded by tax proceeds and the sale of general obligation bonds, that funds local governments and land trusts to purchase interests in real property, including easements, transferable development rights, and fee estates in Rural Legacy Areas.²²⁶ A Rural Legacy Area is a region designated by the Rural Legacy Board as rich in agricultural, forestry, natural, and cultural resources.²²⁷ The Rural Legacy Board in the Department of Natural Resources administers the program.²²⁸ Maryland has appropriated \$71.3 million in funding for this program for years 1998-2002.²²⁹ Maryland is the 42nd largest state and is the 18th most populous state in the union; yet, because of its programs such as this, it has 2.2 million acres of farmland, the 16th largest amount of agricultural land in the country.

Also part of Governor Glendening's 1997 Smart Growth initiatives, the Voluntary Cleanup Program²³⁰ (VCP) was created within Maryland Department of the Environment and the Brownfields Revitalization Incentive Program²³¹ within the Department of Business and Economic Development.²³² Maryland recognized that liability and the Byzantine requirements attached to the development of contaminated property caused developers and businesses to locate their projects on "greenfields." Consequently, farms and open space were being developed at an alarming rate. To provide an incentive to redirect development to brownfields, where there is likely to be adequate infrastructure, the Voluntary Cleanup Program attempts to streamline the cleanup of brownfields sites. Both developers and lenders are provided with limitations on liability and are provided with certainty as to what will be expected. The 1997 law also establishes the Brownfields Revitalization Incentive Program which provides economic incentives to develop brownfields, such as loans, grants, and property tax credits to clean up and develop brownfields.²³³

The Job Creation Tax Credit²³⁴ encourages mid-sized and smaller businesses to invest in Priority Funding Areas and Revitalization Areas. The program attempts to promote job creation by providing income tax credits to business owners who create at least sixty jobs. The jobs must be full-time, permanent, and pay at least 150 percent of the minimum wage. According to the Department of Planning, the Tax Credit contains two smart growth components: (1) the tax credit rate is doubled in Revitalization Areas, and (2) the minimum threshold for new job creation is reduced from 60 to twenty-five full-time jobs.²³⁵

²²⁵ See Md. Code Ann., Nat. Res., § 5-9A-01 (2000); see also, *Smart Growth and Neighborhood Conservation*, *supra* note 213 at 3.

²²⁶ Md. Code Ann., Nat. Res., § 5-9A-01 (2000). The 2000 Maryland Legislature modified the Program, authorizing the Rural Legacy Board to transfer certain development rights from Rural Legacy Areas under certain conditions. Md. Laws Ch. 648 (H.B. 888) (2000). Prior to this amendment, the Board could only acquire easements and fee estates.

²²⁷ *Id.*

²²⁸ Department of Natural Resources, (410) 260-8720, <http://www.dnr.state.md.us>.

²²⁹ See <http://www.op.state.md.us/smartgrowth/legacy.htm> (last visited Feb. 22, 2001) ("Governor Parris N. Glendening and the General Assembly have authorized the funding of the Rural Legacy Program with \$23 million in General Obligation Bonds, \$18.3 million from a scheduled 10% increase in the existing real estate transfer tax revenue for open space available to Program Open Space, and \$30 million from the Stateside land acquisition budget of Program Open Space, for a total of \$71.3 million. Of that total, \$2 million may leverage an additional \$18.2 to \$70 million in Zero coupon U.S. Treasury notes to purchase easements, depending on the demand for these funds.")

²³⁰ Md. Code Ann., Envir., § 7-501 *et seq.* (2000).

²³¹ Md. Code Ann., Art. 83A, § 5-1408 (2000).

²³² Md. S.B. 340 (1997).

²³³ See Maryland Department of the Environment web site, <http://www.mde.state.md.us/environment/was/brownfields/index.html>.

²³⁴ Md. Code Ann., Art. 83A, § 5-1101 (2000).

²³⁵ *Smart Growth and Neighborhood Conservation*, *supra* note 213, at 5.

Finally, the Maryland Department of Housing and Community Development (DHCD),²³⁶ under its authorizing statutes,²³⁷ created the pilot Live Near Your Work Program, which encourages employees to buy homes near their places of employment. The program provides grants up to \$3,000 to aid individuals in purchasing a home near their place of employment. The state contributes \$1,000, which is matched by the employer and the local jurisdiction. The goals of the program are to stimulate home ownership in designated neighborhoods, promote public/private partnerships, support state transportation policy by reducing commuting times, and support employer compliance with the federal Clean Air Act.²³⁸ According to the Maryland Department of Planning, the benefits are clear: The program strengthens neighborhoods through increased homeownership, reduces commuting time and costs, and forges new relationships between employers and their surrounding communities.²³⁹

RECENT SMART GROWTH EFFORTS

Governor Glendening has remained committed to promoting Smart Growth initiatives by investing in existing communities across the State and by introducing new legislative proposals to the Maryland Legislature. For instance, through his Neighborhood Conservation Program, the state earmarks transportation funds for road improvements, streetscapes, pedestrian safety improvements, curbs, gutters, repaving, and lighting along state highways or near state transit centers in existing communities.²⁴⁰ Further, under this program, Governor Glendening has allocated \$206 million in transportation funds to enhance shelters, streetscapes, and bus stations.²⁴¹ Transportation and mass transit are clearly major focus areas for the Glendening administration.²⁴² Just this year, the Governor announced that he was adding \$54 million to the 2001-2006 transportation budget to construct two new bridges to carry railroad tracks in order to reduce major traffic backups along a major arterial.²⁴³ Further, the Mass Transit Administration has instituted the *Smart Growth Transit Program* which focuses funding to private development in transit oriented development, which is characterized by high-density, pedestrian-friendly commercial and residential projects in close proximity to transit stations, shops, restaurants, offices, and apartments.²⁴⁴ The Mass Transit Administration also created TransitPlus 2000, which provides employees up to \$65 a month in discounted transit fares to encourage employees to use mass transit and thus reduce congestion and commuting times.²⁴⁵

²³⁶ Maryland Department of Housing and Community Development, (410) 209-5807 or (800) 756-0119, <http://www.dhcd.state.md.us>.

²³⁷ Md. Code Ann., Art. 83B, § 2-208 (2000).

²³⁸ Md. Code Ann., Art. 83B § 2-208 (2000).

²³⁹ *Smart Growth and Neighborhood Conservation*, *supra* note 213, at 6.

²⁴⁰ Contact Yolanda Takesian, Maryland Department of Transportation, (410) 865-1287, <http://www.mdot.state.md.us>. The program is the successor to the Urban Reconstruction program. See Maryland Department of Transportation, State Highway Administration: *Discovering Smart Growth Opportunities: A Guide to Local Participation*, available at <http://www.sha.state.md.us/oppe/smartgrowth.pdf> (last visited April 10, 2001).

²⁴¹ See *2001-2006 Capital Transportation Program: Neighborhood Revitalization Program*, available at <http://www.mdot.state.md.us/news/CapitalTransProgram/CapTransNeighborhood.pdf> (last visited April 10, 2001).

²⁴² Parris Glendening, *Smart Transportation: Bringing Maryland Together* (Nov. 6, 1998), available at <http://www.mdot.state.md.us/news/1998/11-06-98.html> (last visited April 12, 2001).

²⁴³ Press Release, Maryland Department of Transportation (Jan. 18, 2001), available at http://www.mdot.state.md.us/cgi-bin/mdotnews/news_display_choice.pl?item=16 (last visited Feb. 12, 2001).

²⁴⁴ Contact Jim Peiffer, Mass Transit Administration, (410) 767-3906, jpeiffer@mta.state.md.us.

²⁴⁵ Contact Buddy Alves, Mass Transit Administration, (410) 767-8750, Balves@mta.state.md.us.

Finally, the General Assembly recently passed and funded Glendening's entire package of Smart Growth bills²⁴⁶: (1) GreenPrint,²⁴⁷ which protects the State's most endangered forests, greenways, wetlands, and other environmentally-sensitive lands; (2) Neighborhood Parks and Playgrounds,²⁴⁸ which allows existing communities to establish or renovate parks and playgrounds; (3) Community Legacy,²⁴⁹ which supports neighborhood revitalization efforts by providing funds to existing programs and assisting communities in developing revitalization strategies; and (4) Office of Smart Growth and Special Secretary for Smart Growth,²⁵⁰ which creates a small cabinet-level office to provide a resource for communities, developers, and citizens seeking to use the state's Smart Growth tools.

The Maryland Legislature has also remained active in the Smart Growth movement by modifying existing programs and adding others. For example, in 1999, the Legislature created the Smart Growth Economic Development Infrastructure Fund, which provides financial assistance for development in qualified distressed counties,²⁵¹ to revitalize qualified distressed areas. Moreover, the 2000 Legislature amended the Rural Legacy Program to authorize the Rural Legacy Board to transfer certain development rights from Rural Legacy Areas under certain conditions.²⁵² Prior to this amendment, the Board could only acquire easements and fee estates.

The 2000 Legislature also enacted the Smart Codes²⁵³ legislation that created the Maryland Building Rehabilitation Program. The Smart Codes—Rehabilitation Code—was modeled after the model rehabilitation code developed by the U.S. Department of Housing and Urban Development and the National Builders Association and after New Jersey's rehabilitation code, which was adopted in 1997.²⁵⁴ Like other rehabilitation laws, the purpose of the Program is to promote reinvestment in existing buildings by consolidating existing rehabilitation codes into one document, separating rehabilitation code requirements from the requirements for new construction, and providing a rehabilitation framework in which requirements increase as the size of the rehabilitation projects increases, thus streamlining the process for smaller developers. Although the Smart Codes are a part of the state building code, the Program allows for local amendments. However, using fiscal carrots, the State encourages uniformity by providing funding for the Neighborhood Conservation Program, the Rural Legacy Program, and the Live Near Where You Work Program to those localities who adopt the Code without amendment.²⁵⁵

Finally, the Legislature enacted legislation that requires the Maryland Department of Planning to draft certain model land-use codes and guidelines for infill development.²⁵⁶ The Department of Planning must distribute the models and guidelines to other state agencies as well as to local governments. The

²⁴⁶ *Governor Glendening's Statements on the 2001 Legislative Session, A Solid Record of Success; A Solid Foundation for Maryland's Future*, available at <http://www.gov.state.md.us/gov/legagenda/2001/html/legisaccom2001.html> (last visited April 12, 2001).

²⁴⁷ 2001 Md. H.B. 1379 (SN).

²⁴⁸ The authors were unable to find the bill referenced by Governor Glendening.

²⁴⁹ 2001 Md. H.B. 301 (SN).

²⁵⁰ 2001 Md. S.B. 204 (SN).

²⁵¹ Md. Code Ann., Art. 83A, § 5-701 (2000).

²⁵² Md. Laws Ch. 648 (H.B. 888) (2000).

²⁵³ 2000 Md. S.B. 207 (SN).

²⁵⁴ Maryland Department of Planning, *Maryland Building Rehabilitation Code*, available at http://www.op.state.md.us/smartgrowth/smartcode/rehab_overview.htm (last visited Feb. 27, 2001).

²⁵⁵ *Id.* Governor Glendening stated in his 2000 state-of-the-state address: "We envision these "Smart Codes" being adopted statewide. Local jurisdictions may amend them. But, jurisdictions that accept them without amendment will be eligible for priority funding for initiatives such as our \$150 million Neighborhood Conservation Program, which is revitalizing our downtowns from Cumberland to Cambridge. . . ."

²⁵⁶ *Smart Codes, Model and Guidelines, Infill Development and Smart Neighborhoods*, 2000 Md. H.B. 285 (SN).

purposes of the model and guidelines are to promote infill in existing communities and to promote the development of compact, high-density projects. This program furthers the objectives of the 1997 Smart Growth initiatives by providing local governments with the necessary tools for managing growth.

COMPLIMENTARY PROGRAMS

Decades before Smart Growth became in vogue, Maryland developed policies and programs embodying smart growth principles. Although many of these were developed with different goals in mind, Maryland recognizes the utility of these programs and has brought them under the broader umbrella of their Smart Growth Program. The following list is not exhaustive, but rather provides a glimpse of the policies and programs that Maryland believes complement the goals of its Smart Growth Program.²⁵⁷

Preservation of farmland, open space, and other lands

As of 1999, Maryland has been able to set aside 13% of its land base as open space or farmland through the purchase of conservation easements or fee interests. According to the 1997 U.S. Department of Agriculture figures, Maryland has 2.2 million acres of farmland, or the 16th largest amount of farmland in the nation. In addition to the Rural Legacy Program, the following programs have attributed to Maryland's success.²⁵⁸

Program Open Space,²⁵⁹ established in 1969, uses state funds to purchase parks, wildlife management areas, scenic rivers, greenways, Chesapeake Bay access, and other natural and recreational areas. This program has protected more than 158,000 acres.²⁶⁰ In 1974, the Agricultural Land Preservation Program²⁶¹ was created to protect farmland through the purchase of conservation easements. Under Maryland Department of Planning's State Certification Program, counties can retain a greater portion of their agricultural transfer tax if they demonstrate that they have a program that effectively preserves agricultural land.²⁶² The Forest Legacy Program, Conservation Resource Enhancement Program, and the Farmland Preservation Atlas, survey and map the lands of the State, identify environmentally important areas and threatened forest lands, and provide more than \$200 million in funding. The goals of these programs are to encourage farmers by 2002 to leave 10,000 acres fallow, plant 5,000 acres of buffer strips, and restore 25,000 acres of wetlands.²⁶³

Maryland also prioritizes the protection of historic properties. Using the Maryland Historical Trust Grant Fund, the Historic Preservation Revolving Loan Fund, and the Heritage Preservation Tax Credits, the State rehabilitates and restores historic properties with a combination of easements, acquisitions, and tax credits.²⁶⁴

²⁵⁷ All information obtained from *Smart Growth and Neighborhood Conservation*, *supra* note 213.

²⁵⁸ Note that this is not an exhaustive list of all of Maryland's preservation programs.

²⁵⁹ Md. Code Ann., Nat. Res., § 5-901 *et seq.* (2000).

²⁶⁰ *Planning Communities for the 21st Century*, *supra* note 133, at 29.

²⁶¹ Md. Code Ann., Agric., § 2-501 *et seq.* (2000).

²⁶² *Planning Communities for the 21st Century*, *supra* note 133, at 30.

²⁶³ *Id.*

²⁶⁴ Contact the Maryland Department of Housing and Community Development, <http://www.dhcd.state.md.us>.

Neighborhoods²⁶⁵

Maryland has a laundry list of programs focused on maintaining quality communities: The Neighborhood Partnership Program provides a corporate tax credit to direct private investment into the state's neighborhood revitalization activities;²⁶⁶ *Maryland Mortgage Program* provides low interest home mortgages for working families;²⁶⁷ *Main Street Maryland* is a community revitalization program where communities are selected to receive technical assistance for three years to improve their local economy and appearance of their downtown business districts;²⁶⁸ *Neighborhood Business Development Program* provides designated revitalization areas with financing for small business start-ups or expansions;²⁶⁹ *Neighborhood Stabilization Preservation Act of 1996* is a five-year pilot program that provides participating home buyers in a specified county and one specified city with a forty percent property tax credit matched by a State income tax credit;²⁷⁰ and the *Retrofit Sidewalk Program* provides 100 percent of the funds to build sidewalks along state highways in revitalization areas at the request of local governments.²⁷¹

Job Creation and Economic Development

Maryland has a number of programs that focus on creating jobs and supporting new businesses. Like many states, Maryland has created enterprise zones, which direct business development to certain areas through tax incentives.²⁷² Moreover, the Maryland Heritage Preservation and Tourism Areas program provides matching grants and State tax credits to public/private partnerships that develop cultural tourism areas.²⁷³ The Business Assistance and Permit Coordination program attempts to streamline the environmental permitting process and assists compliance with environmental laws.²⁷⁴ Finally, the Maryland Economic Development Assistance Authority and Fund is a revolving loan fund that provides low-cost loans to businesses in targeted growth industries located in PFAs.²⁷⁵

²⁶⁵ For a list of at least eleven programs to revitalize existing urban, suburban, and rural neighborhoods, *see* the Maryland Department of Housing and Community Development web page at <http://www.dhcd.state.md.us/revit/index.htm> (last visited Feb. 27, 2001).

²⁶⁶ Contact Glenda Keel, Department of Housing and Community Development, (410) 514-7241, <http://www.dhcd.state.md.us/revit/index.htm> (last visited Feb. 27, 2001).

²⁶⁷ Contact Fran Makle, Department of Housing and Community Development, (410) 514-7530, <http://www.dhcd.state.md.us/revit/index.htm> (last visited Feb. 27, 2001).

²⁶⁸ Contact Cindy Stone, Department of Housing and Community Development, (410) 514-7256, <http://www.dhcd.state.md.us/revit/index.htm> (last visited Feb. 27, 2001).

²⁶⁹ Contact Dottie Myers, Department of Housing and Community Development, (410) 514-7209, <http://www.dhcd.state.md.us/revit/index.htm> (last visited Feb. 27, 2001).

²⁷⁰ Contact Cynthia Clark, Baltimore County Neighborhood Housing Services, (410) 769-8820.

²⁷¹ Contact Dennis German, State Highway Administration, (410) 545-8900, <http://www.sha.state.md.us> (last visited Feb. 27, 2001).

²⁷² Contact Jerry Wade, Maryland Department of Business and Economic Development, (410) 767-6490, <http://mdbusiness.state.md.us> (last visited Feb. 27, 2001).

²⁷³ Contact Bill Pencsek, Maryland Department of Housing and Community Development, (410) 514-7604, <http://www.dhcd.state.md.us> (last visited Feb. 27, 2001).

²⁷⁴ Contact Sue Battle, Maryland Department of the Environment, (410) 631-3772, <http://www.mde.state.md.us> (last visited Feb. 27, 2001).

²⁷⁵ Contact Robert Brennan, Maryland Department of Business and Economic Development, (410) 767-3213, <http://www.mdbusiness.state.md.us>.

Transportation²⁷⁶

The Transportation Enhancement Program allows local governments to apply for funding to cover up to fifty percent of the cost of improvements, such as bicycle and pedestrian facilities, landscaping, and preservation of historic structures.²⁷⁷ Under the Adopt a Shelter Program, groups and local residents can “adopt a shelter,” which is intended to encourage the maintenance and enhancement of bus and train-station shelters.²⁷⁸

Environmental

In addition to the brownfield cleanup laws, Maryland relies upon the Port Land Use Development Advisory Council, a state, local, and maritime industry partnership, to redevelop the underutilized land surrounding the Port of Baltimore.²⁷⁹ Moreover, the Water and Sewage Infrastructure Financing redirects water quality capital financing to community revitalization as well as to more rural and less affluent areas of the State.²⁸⁰

Public Safety

Finally, Maryland points to a number of programs that enhance public safety and thus make existing communities more attractive for development.²⁸¹

CONTACT INFORMATION

Maryland Department of Planning
<http://www.op.state.md.us>

Department of Natural Resources
(410) 260-8720
<http://www.dnr.state.md.us>

²⁷⁶ For a list of ten programs that complement the Smart Growth Program *see* Maryland Department of Transportation, *State Highway Administration: Discovering Smart Growth Opportunities: A Guide to Local Participation*, available at <http://www.sha.state.md.us/oppe/smartgrowth.pdf> (last visited April 10, 2001).

²⁷⁷ Contact Dennis Simpson, State Highway Administration, (410) 545-5675, <http://www.sha.state.md.us>.

²⁷⁸ Contact Tamarra Makell, Maryland Department of Transportation, (410) 767-8357, <http://www.mdot.state.md.us>.

²⁷⁹ *Smart Growth and Neighborhood Conservation*, *supra* note 213, at 19. Contact the Maryland Port/Land Use Development Office, (410) 865-1071, <http://www.mdot.state.md.us>.

²⁸⁰ *Smart Growth and Neighborhood Conservation*, *supra* note 213, at 19. Contact Maryland Department of the Environment, (410) 631-3574, <http://www.mde.state.md.us>.

²⁸¹ Contact the Governor’s Office of Crime Control and Prevention, (410) 321-3521, for information on The HotSpot Communities Initiatives, Community Policing Program, and Gun Control.

MASSACHUSETTS

STATE PLANNING MODEL

The Commonwealth of Massachusetts delegates primary planning authority to municipalities. Cities and towns may establish a planning board; however, any town of ten thousand or more must establish a planning board.²⁸² Planning boards must prepare a master plan, designed to provide a basis for decision-making regarding the long-term physical development of the city or town.²⁸³ The statute also requires that the “comprehensive plan be internally consistent in its policies, forecasts and standards”²⁸⁴ and include nine elements. Moreover, regulations must be consistent with the comprehensive plan, but need not be in strict accordance.²⁸⁵ Finally, any two or more municipalities may establish a growth and development policy committee to conduct intergovernmental planning of balanced growth and development issues, which includes mutual planning.²⁸⁶

SMART GROWTH EFFORTS

In 1996, Governor Cellucci issued Executive Order No. 385, “Planning for Growth,”²⁸⁷ to manage state-sponsored growth. Admittedly, the Executive Order addresses sustainable development; however, the governor employed many of the same tools used to implement smart growth principles. Executive Order 385 provides that the State shall promote “sustainable economic development in the form of: a) economic activity and growth which is supported by adequate infrastructure and which does not result in, or contribute to, avoidable loss of environmental quality and resources, and b) infrastructure development designed to minimize the adverse environmental impact of economic activity.”²⁸⁸ Moreover, “resource protection and sustainable development shall be pursued as much as possible through means other than new rules and regulations.”²⁸⁹ Thus, the Governor promoted planning, interagency coordination, incentives and assistance to interested private parties and local and regional governments and organizations, and the streamlining of the regulatory process.

To achieve these lofty goals, the Executive Order mandated that all governmental entities evaluate the impacts of their current regulations, policies, plans, and practices and adopt changes to the extent necessary to effectively contribute to the attainment of sustainable economic development and preservation of environmental quality and resources. The Executive Order primarily addresses decisions involving infrastructure projects. For example, agencies must “promote, assist and pursue the rehabilitation and revitalization of infrastructure, structures, sites, and areas previously developed and still suitable for economic (re)use.” The Executive Order explains that such rehabilitation and revitalization is preferable to construction of new facilities or development of areas with significant environmental value. Further, agencies responsible for the development of infrastructure facilities, including planning, funding, construction, or permitting, must develop regional infrastructure plans in coordination with other agencies and local and regional planning agencies. Finally, each agency must

²⁸² Mass. Gen. Laws ch. 41, § 81A (2000).

²⁸³ Mass. Gen. Laws ch. 41, § 81D (2000).

²⁸⁴ The statute appears to use master plan and comprehensive plan interchangeably.

²⁸⁵ See *Town of North Attleborough*, 692 N.E.2d 544 (Mass. 1988).

²⁸⁶ Mass. Gen. Laws ch. 40, § 41 (2000).

²⁸⁷ Exec. Order No. 385, “Planning for Growth,” available at <http://www.state.ma.us/mepa/ex385.htm> (last visited April 5, 2001).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

file an annual report with the Executive Office of Environmental Affairs (EOEA), reporting their compliance with this order.

Governor Cellucci supplemented his “Planning for Growth” strategy with Executive Order 418,²⁹⁰ which creates the Community Development Program, a voluntary program of community planning. The Order creates an alliance of the EOEA, the Department of Housing and Community Development (DHCD), and the Executive Office of Transportation and Construction (EOTC) to provide financial and technical planning assistance to communities in developing a Community Development Plan (CD Plan).²⁹¹ A CD Plan is a “comprehensive, strategic plan, for the future development of a city or town,”²⁹² which includes the following plans: future housing, open space and resource protection, and economic and transportation development. The program is administered locally by thirteen planning agencies.²⁹³ Finally, the alliance also published a guidebook, *Building Vibrant Communities: Linking Economic Development, Transportation and the Environment*.²⁹⁴

To complement the Community Development Program, the governor signed the Community Preservation Act²⁹⁵ on September 14, 2000. The Act allows communities to create local Community Preservation Funds, funded by a three percent surcharge on real property, to be used for conservation of open space, preservation of historic sites, and low and moderate income housing. In addition, the Act creates a matching fund by the Commonwealth of more than \$25 million annually, to serve as a financial incentive to communities to use the program. However, the program must be adopted by ballot referendum.

In addition to these programs, Governor Cellucci has actively promoted brownfield redevelopment and open space preservation. With the signing of the Commonwealth’s Brownfields Act in 1998,²⁹⁶ which provides financial incentives and reduces potential liability for redevelopment, the Governor also created the Governor’s Office for Brownfields Revitalization to assist developers in using the new programs. As for open space, Governor Cellucci, after stating that the EOEA has protected 100,000 acres of land since 1991, announced that he was committed to protecting 200,000 acres by 2010. Since that statement, the EOEA has protected 37,000 acres of open space.²⁹⁷

CONTACT INFORMATION

Executive Office of Environmental Affairs
<http://www.state.ma.us/envir/eoea.htm>

Governor’s Office for Brownfields Revitalization
J. Todd Fernandez, Director
(617) 973-8989, todd.fernandez@state.ma.us
<http://www.state.ma.us/massbrownfields>

²⁹⁰ Exec. Order No. 418 (Jan. 2000).

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ See <http://www.state.ma.us/envir/cdp.html> (last visited March 12, 2001).

²⁹⁴ See *id.*

²⁹⁵ Mass. Gen. Laws ch. 44B (2000).

²⁹⁶ Mass. Gen. Laws. ch. 21E (2000).

²⁹⁷ See <http://www.state.ma.us/envir/openspaceprotection.htm> (last visited April 5, 2001).

MICHIGAN

STATE PLANNING MODEL

Municipalities and counties are empowered to plan and zone, and to create a planning commission.²⁹⁸ The commission must adopt a master plan for the physical development of the municipality²⁹⁹; likewise, the county commission must adopt a county plan for the physical development of the county.³⁰⁰ Neither plan requires much detail. In addition, the statute does not require internal consistency nor consistency between local regulations and developments and the master or county plan.

SMART GROWTH EFFORTS

Michigan does not have a comprehensive Smart Growth package. However, Governor Engler has been active in combating sprawl by making Michigan a leader in brownfields redevelopment. In fact, a 1999 study that evaluated the states' brownfields programs on liability protection, cleanup standards, financial incentives, and government support ranked Michigan first in the nation.³⁰¹ Governor Engler launched Michigan into the spotlight with his 1998 Clean Michigan Initiative (CMI),³⁰² a \$675-million investment in brownfields redevelopment to reduce sprawl, revitalize abandoned communities and toxic wastelands, and to preserve open space.³⁰³ The CMI will provide \$335 million to restore contaminated property, \$50 million to revitalize local waterfronts, \$90 million to protect and improve statewide water quality by creating comprehensive water protection plans, \$50 million for nonpoint source pollution control grants, \$25 million to clean up contaminated river and lake sediment, \$50 million to improve recreational facilities in the state's parks, and \$50 million to improve health, safety, and the environment in the parks.³⁰⁴ Early in 2000, Governor Engler signed a bill allocating \$85 million of the CMI bond for various cleanup projects.³⁰⁵ In June 2000, the Michigan Legislature enacted several of Governor Engler's brownfields proposals. Under these new laws, developers may redevelop blighted areas even if the areas lack contamination, and the maximum single business tax credit for developers has been increased from \$1 million to \$30 million. Moreover, the law expands the type of projects that are eligible for brownfields credits, including improvements to infrastructure. The CMI, however, is not an independent program; rather, it supplements a more comprehensive brownfields redevelopment program started in 1995.³⁰⁶ Since 1995, developers have invested more than \$1 billion in brownfields redevelopment projects in Michigan.³⁰⁷ For detailed information on the Michigan Brownfields programs, visit the Michigan Brownfields homepage.³⁰⁸

In addition to his brownfields initiatives, Governor Engler has proposed several initiatives to preserve farmland.³⁰⁹ He signed a comprehensive farmland preservation package into law in 2000.³¹⁰ One bill

²⁹⁸ Mich. Comp. Laws § 125.32 (2000) (municipalities); § 125.101 (2000) (counties).

²⁹⁹ Mich. Comp. Laws § 125.36 (2000).

³⁰⁰ Mich. Comp. Laws § 125.104 (2000).

³⁰¹ Consumers Renaissance Development Corporation, *National Comparative Analysis of Brownfields Redevelopment Programs*, 1999 (cited in, *Planning Communities for the 21st Century*, *supra* note 133, at 54).

³⁰² Mich. Comp. Laws § 324.95101 *et seq.* (2000).

³⁰³ See *Growing Pains*, *supra* note 30; see also, *Governors' Smart Growth Initiatives*, *supra* note 26, at 7-8.

³⁰⁴ *Growing Pains*, *supra* note 30.

³⁰⁵ *Governors' Smart Growth Initiatives*, *supra* note 26 at 8.

³⁰⁶ See Mich. Comp. Laws § 324.20101 *et seq.* (2000).

³⁰⁷ *Michigan's Brownfields Program: An Overview*, available at http://www.nga.org/center/divisions/1,1188,C_ISSUE_BRIEF^D_1156,00.html (last visited April 10, 2001).

³⁰⁸ See <http://www.deq.state.mi.us/erd/brownfields> (last visited April 10, 2001).

³⁰⁹ *Governors' Smart Growth Initiatives*, *supra* note 26, at 8.

amended the General Property Tax Act, which required that all property taxes be capped at five percent or the rate of inflation³¹¹ but when the property changed hands, the tax “popped up” to market value. SB 709 eliminated the “pop up” tax on farmland so long as the agricultural property remained in agricultural use. If the property is converted to nonagricultural use as a result of the exchange, the property is subject to a recapture tax, which is the difference between the capped and uncapped values for the property.³¹² The proceeds from the recapture tax are deposited into the Agricultural Preservation Fund.³¹³ The fund, administered by the Michigan Department of Agriculture, is available to local governments to buy agricultural easements. In addition to the tax program, the package amended the Michigan Renaissance Act³¹⁴ to include Agricultural Renaissance Zones.³¹⁵ Under this program, qualified zones are exempt from all state and local taxes up to fifteen years.

CONTACT INFORMATION

Department of Environmental Quality
Brownfields Information
<http://www.deq.state.mi.us/erd/brownfields>

³¹⁰ Michigan Governor’s Office Press Release, *Governor Signs Farmland Preservation Bills* (June 29, 2000), available at http://info.migov.state.mi.us/gov/PressReleases/200006/29_FarmlandPreservationBills.shtml (last visited April 12, 2001).

³¹¹ Mich. S.B. 709 (2000).

³¹² Mich. S.B. 1240 (2000).

³¹³ Mich. H.B. 5780 (2000).

³¹⁴ See Mich. Comp. Laws § 125.2681 *et seq.* (2000).

³¹⁵ See Mich. S.B. 1251 (2000).

MINNESOTA

STATE PLANNING MODEL

Counties and municipalities may establish comprehensive plans.³¹⁶ Once a plan has been adopted, all future decisions and ordinances must be consistent with that plan.³¹⁷ There is no state review in this process.

The 1997 Community-Based Planning Act encourages counties and municipalities to prepare “community-based comprehensive plans,” which are comprehensive plans that are consistent with eleven goals identified in section 4A.08 of the Act.³¹⁸ The goals include: citizen participation; cooperation among communities; economic development strategies; environmental conservation; livable community design; affordable housing; efficient use of transportation infrastructure; a framework for land use planning; thoughtful public investment; public education on growth impacts; and sustainable development.³¹⁹ Under the Act, counties and cities must coordinate their plans with those of neighboring jurisdictions to “prevent the plan from having an adverse impact on other jurisdictions and to complement the plans of other jurisdictions.”³²⁰ Moreover, both counties and cities are authorized to establish joint planning districts with other geographically contiguous jurisdictions to adopt a single community-based comprehensive plan.

The requirements for counties and cities are slightly different. Counties or joint planning districts, not cities, submit their plans to the Office of Strategic and Long-range Planning, otherwise known as Minnesota Planning,³²¹ for review and comment.³²² The review covers the extent to which the plans demonstrate consideration of the eleven goals, promote cooperation among neighboring communities, and promote local public involvement in creating the plan.³²³ Minnesota Planning must approve the plans if they promote citizen participation and cooperation among communities, and demonstrate consideration of the eleven planning goals.³²⁴ There is a dispute resolution process provided by statute.³²⁵ Counties that choose not to participate in this process are ineligible for future planning grants.

Cities, on the other hand, must address urban growth areas identified in a county plan and may establish their own urban growth areas. The city must also submit their plans for review by the county and incorporation into the county plan. Municipalities then must adopt and implement the plan once Minnesota Planning has approved the county’s plan.³²⁶

Minnesota Planning administers the Act and creates a planning guide and model ordinances for local units of government (cities, counties, towns, and watershed districts) to plan for sustainable

³¹⁶ See Minn. Stat. § 394.23 (2000) for counties and Minn. Stat. § 462.355 (2000) for municipalities.

³¹⁷ Minn. Stat. § 394.24 (2000) (counties); § 462.356 (2000) (municipalities).

³¹⁸ Minn. Stat. § 394.232 (2000) (counties); § 462.3535 (2000) (municipalities). Community-based comprehensive plans are distinct from comprehensive plans described above.

³¹⁹ Minn. Stat. § 4A.08 (2000).

³²⁰ Minn. Stat. §§ 394.232, 462.3535 (2000).

³²¹ Minn. Stat. § 394.232(5) (2000) (requiring county to submit plan for review and comment for consistency).

³²² Minn. Stat. § 4A.10 (2000) (mandating that the office review and comment on the plans).

³²³ Minnesota Planning, *Community-Based Planning in Minnesota*, available at <http://www.mnplan.state.mn.us/commplan/cbpinmn.html> (last visited April 1, 2001).

³²⁴ Minn. Stat. § 394.232 (2000).

³²⁵ Minn. Stat. § 394.232 (2000). See Minn. Stat. § 572A.03 (2000) for the arbitration process.

³²⁶ Minn. Stat. § 462.3535 (2000).

development.³²⁷ It has completed model ordinances that address such areas as citizen participation, growth management, managing community resources, neighborhood design, infrastructure planning, resource efficient buildings, and economic development;³²⁸ and is in the process of developing the planning guide. Finally, Minnesota Planning must provide local governments with technical and financial assistance in preparing their comprehensive plans to meet community-based planning goals.³²⁹ As a result of these statutory mandates, Minnesota Planning has created the Local Planning Assistance team that assists communities with their comprehensive planning efforts, including web site assistance³³⁰

SMART GROWTH EFFORTS

Governor Ventura readily endorses Smart Growth and started the Ventura Smart Growth Initiative. The goals of his initiative are to: (1) maximize economic opportunity while protecting and enhancing valued assets such as healthy communities and the environment; (2) manage natural resources and agricultural land so that they are sustained for future generations; and (3) “be fiscally prudent by building on existing public investments and avoiding further costs down the road.”³³¹ In order to achieve these goals, the Smart Growth Initiative has the following three strategies: (1) engage citizens in the planning and decision-making process; (2) position and align state government for smart growth; and (3) provide communities with effective tools for smart growth.³³² However, it appears as though the Governor and his cabinet are merely recharacterizing Minnesota’s sustainable development programs as smart growth. In fact, according to Minnesota Planning, smart growth in Minnesota “describes the application of the sustainable development concept to land use issues. Smart growth means smart management of resources in both growing and declining communities.”³³³

The most notable accomplishment in the sustainable development movement was the enactment of the 1997 Community-Based Planning Act described above.³³⁴ The Act established a new framework for state planning intended to incorporate principles of sustainable development into the planning process. Moreover, the Act stresses the necessity of local comprehensive planning and public participation. Financial and technical assistance is also made available for local planning, which is administered by Minnesota Planning. Finally, Minnesota Planning reviews and comments on plans prepared by counties for consistency with the eleven statewide goals.

Minnesota Planning’s Local Planning Assistance Center provides comprehensive information on its web site, including books, periodicals, Planning Advisory Service reports, video and audio cassettes, and model ordinances, including links to projects.³³⁵ Minnesota Planning has also created Smart Growth Criteria for Evaluating Capital Bonding Requests, and, according to the agency’s web site, the governor used these criteria as one important screen in determining bonding priorities.³³⁶ In addition, Minnesota

³²⁷ Minn. Stat. § 4A.07 (2000).

³²⁸ Minnesota Planning, *From Policy to Reality: Model Ordinances for Sustainable Development*, available at <http://www.mnplan.state.mn.us/SDI/ordinancestoc.html> (last visited Feb. 27, 2001).

³²⁹ Minn. Stat. § 4A.09 (2000).

³³⁰ See <http://www.cbp.state.mn.us> (last visited Feb. 27, 2001).

³³¹ Office of Governor Jesse Ventura, *Growing Smart in Minnesota*, available at <http://www.mnplan.state.mn.us/SDI/smart.html> (last visited Feb. 27, 2001).

³³² *Id.*

³³³ Minnesota Planning, *Smart Growth*, available at <http://www.mnplan.state.mn.us/SDI/smart.html> (last visited Feb. 27, 2001).

³³⁴ Minn. Stat. § 462.3535 (2000).

³³⁵ See <http://www.mnplan.state.mn.us/commplan/assistancecenter.html> (last visited April 1, 2001).

³³⁶ See <http://www.mnplan.state.mn.us/SDI/smart.html> (last visited Feb. 27, 2001).

Planning is a member of the Smart Buildings Partnership, which consists of Minnesota Planning, the Pollution Control Agency, the Office of Environmental Assistance and the departments of Administration, Commerce and Finance. The Partnership explores innovative and cost-effective building design, construction, and operations and attempts to incorporate these designs in state buildings.³³⁷

Finally, the 1999 legislature mandated that Minnesota Planning establish a twenty-year state development strategy in coordination with the Metropolitan Council and the commissioners of Transportation, Trade and Economic Development, and Natural Resources to identify major development and transportation corridors in the state. It will also provide recommendations for coordinated state infrastructure investments and will outline ways to coordinate local government decisions with community-based planning goals.³³⁸

CONTACT INFORMATION

Minnesota Planning
(651) 296-3985
<http://www.mnplan.state.mn.us>

³³⁷ *See id.*

³³⁸ *Id.*

MISSISSIPPI

STATE PLANNING MODEL

Municipalities and counties are empowered to plan³³⁹ and zone within their respective jurisdictions.³⁴⁰ Although zoning regulations must be made “in accordance with a comprehensive plan,”³⁴¹ the statute appears only to require that the jurisdiction adopt a comprehensive zoning ordinance rather than a separate comprehensive planning document as in California.³⁴² Municipalities and counties may adopt comprehensive plans and may form planning commissions,³⁴³ but they are not required to do so. If a jurisdiction decides to adopt a comprehensive plan, it must have at a minimum four elements but need not be internally consistent.³⁴⁴ Moreover, there is no explicit statutory requirement that land use regulations and development be consistent with comprehensive plans.

SMART GROWTH EFFORTS

Research did not reveal any recent state smart growth efforts in Mississippi. However, there is a bill pending in the 2001 Legislature that would create the Smart Growth Economic Development Infrastructure Act which would provide financial assistance in the form of loans or loans convertible to grants for certain infrastructure needs.³⁴⁵

CONTACT INFORMATION

Mississippi Department of Environmental Quality
<http://www.deq.state.ms.us/newweb/homepages.nsf>

³³⁹ Miss. Code Ann. § 17-1-3 (2000).

³⁴⁰ Miss. Code Ann. § 17-1-7 (2000).

³⁴¹ Miss. Code Ann. § 17-1-9 (2000).

³⁴² See Op. Atty. Gen. No. 96-0530 (Aug. 16, 1996) (stating that a comprehensive zoning ordinance is required in order for the county to adopt an ordinance regulating certain kinds of businesses).

³⁴³ Miss. Code Ann. § 17-1-11 (2000).

³⁴⁴ Miss. Code Ann. § 17-1-1 (2000).

³⁴⁵ 2001 Miss. S.B. 2917.

MISSOURI

STATE PLANNING MODEL

The State and Regional Planning and Community Development Act designates the Office of Administration (OA) as the official state planning agency for the purpose of providing planning assistance to counties, municipalities, metropolitan planning areas, and regional planning commissions when requested by such local governmental units or planning commissions.³⁴⁶ In addition, the Department of Community Affairs (DCA) provides assistance to all governmental entities in the state.³⁴⁷ This includes gathering and disseminating information that would be useful for the improvement of political subdivisions, including information on the availability of state and federal financial assistance; providing consultative and technical assistance; and studying and making recommendations to the governor on coordinating state actions that impact community development.

All cities, towns, and villages are authorized to plan³⁴⁸ and adopt zoning regulations,³⁴⁹ which must be “in accordance with a comprehensive plan.”³⁵⁰ However, the statute does not require that the city, town, or village adopt a comprehensive plan. But, all municipalities may adopt a city plan and may appoint a planning commission.³⁵¹ If the municipality appoints a planning commission, the commission must adopt a city plan for the physical development of the municipality.³⁵² Missouri does not require internal consistency; moreover, the authors did not find a requirement that land use regulations be consistent with the city plan.

SMART GROWTH EFFORTS

Missouri does not have a comprehensive Smart Growth initiative; however, the state has recently shown some interest in managing growth. In 1999, then-Governor Carnahan signed legislation to provide tax credits to encourage rehabilitation of older homes and construction of new ones in urban centers and established suburbs.³⁵³ The location of the project determines the eligibility for the program. Moreover, the Department of Economic Development has established several programs to enhance and revitalize existing facilities to curb sprawl. One such program is Missouri’s Brownfields program which offers tax credits to companies that renovate buildings. Another is the Historic Preservation Credit which provides tax credits to developers that renovate qualifying buildings.³⁵⁴

CONTACT INFORMATION

Office of Administration
<http://www.oa.state.mo.us>

Department of Economic Development
<http://www.ecodev.state.mo.us>

³⁴⁶ Mo. Rev. Stat. § 251.170 (2000).

³⁴⁷ Mo. Rev. Stat. § 251.030 (2000).

³⁴⁸ Mo. Rev. Stat. § 89.020 (2000).

³⁴⁹ Mo. Rev. Stat. § 89.030 (2000).

³⁵⁰ Mo. Rev. Stat. § 89.040 (2000).

³⁵¹ Mo. Rev. Stat. § 89.310 (2000).

³⁵² Mo. Rev. Stat. § 89.340 (2000).

³⁵³ *Growing Pains*, *supra* note 30, at 50-51.

³⁵⁴ Joseph Driskill, Director, Department of Economic Development, *Developing Smarter in Missouri*, available at <http://www.ecodev.state.mo.us/mediastorage/column/sprawl1.htm> (last visited Feb. 27, 2001).

MONTANA

STATE PLANNING MODEL

Counties may plan and zone once they have adopted a “growth policy,” which is “synonymous with a comprehensive development plan, master plan, or comprehensive plan that meets the requirements of 76-1-601.”³⁵⁵ The language authorizing planning and zoning for cities, however, is wholly different from the statute applicable to counties: the language does not require the adoption of a growth policy (comprehensive plan) before planning and zoning,³⁵⁶ but rather requires the appointment of a zoning commission.³⁵⁷ Once a local government has adopted a growth policy, all future actions, including zoning ordinances, must be consistent with the growth policy.³⁵⁸ However, there is no internal consistency requirement.³⁵⁹ Both counties and municipalities are authorized to establish planning boards.³⁶⁰ If a local jurisdiction appoints a planning board, the board must prepare a growth policy.

SMART GROWTH EFFORTS

Research did not reveal any relevant information on recent state smart growth efforts in Montana. However, the American Planning Association Research Department recently published a report (APA Report) analyzing Montana’s land use laws and provided recommendations to improve planning and land use control.³⁶¹ The Montana Smart Growth Coalition, composed of twenty-seven non-profit public interest organizations, requested the study to assess the need for statutory reform. The Coalition intended the report to build on an earlier study on land use planning (released in 1999) by the Montana State Environmental Quality Council Growth Study Subcommittee.

The APA report provides a brief summary of the statewide plans, the enabling legislation for local planning and land use control, Montana Supreme Court and Attorney General decisions, and the results of six focus groups and responses to surveys. Moreover, the report reviews the recommendations provided by previous studies conducted by the Montana State Environmental Quality Council. In the final section of the report, which may be helpful to OPR, the APA sets out twenty-nine recommendations, divided into five categories: (1) planning for growth; (2) managing growth; (3) paying for growth and planning; (4) planning administration and development review; and (5) providing for an enhanced state role.

CONTACT INFORMATION

Department of Natural Resources and Conservation, <http://www.dnrc.state.mt.us/>
Department of Environmental Quality, <http://www.deq.state.mt.us/>

³⁵⁵ Mont. Code Ann. § 76-1-106 (2000); *Allen v. Flathead County*, 601 P.2d 399 (Mont. 1979) (holding that the adoption of a comprehensive development plan is a necessary prerequisite under section 76-2-201, MCA, for the adoption of county zoning regulations).

³⁵⁶ Mont. Code Ann. § 76-2-301 (2000).

³⁵⁷ Mont. Code Ann. § 76-2-307 (2000).

³⁵⁸ Mont. Code Ann. § 76-1-605 (2000).

³⁵⁹ Mont. Code Ann. § 76-1-601 (2000).

³⁶⁰ Mont. Code Ann. § 76-1-101 (2000).

³⁶¹ American Planning Association, *A Critical Analysis of Planning and Land-Use Laws in Montana: A Report of the American Planning Association Research department Prepared for the Montana Smart Growth Coalition* (January 2001), available at <http://www.planning.org/plnginfo/plnginfo.html> (last visited May 15, 2001).

NEBRASKA

STATE PLANNING MODEL

Land use planning in Nebraska is primarily local. The Policy Research Office (Office) is the “principal state agency to coordinate policy development relating to the state’s social, economic, and physical resources and to coordinate programs administered by the state and its political subdivisions.”³⁶² Although the Office is authorized to advise local planning agencies, such advice must be requested. Moreover, the Office is not permitted to contract with or provide assistance to any local government to prepare comprehensive plans or land-use proposals unless such assistance has been requested.³⁶³ At the direction of the Governor, the Office may prepare state development policy alternatives, which take into consideration the physical, economic, and social development of the state.³⁶⁴ Moreover, the Office, in consultation with appropriate state and local government, may prepare development plans on a specific subject (known as functional plans).³⁶⁵ The Office must approve all functional plans by state agencies before implementation.³⁶⁶

Cities of the first and second class and villages have the authority to adopt and carry out municipal plans.³⁶⁷ However, in order to adopt zoning regulations, the municipality must establish a planning commission and adopt a comprehensive plan,³⁶⁸ which must consist of graphic and textual material, population and economic projections, and several other elements.³⁶⁹ All land zoning regulations must be made “in accordance with a comprehensive development plan.”³⁷⁰

Cities of the primary class must create a planning department,³⁷¹ which is responsible for preparing a comprehensive plan³⁷² that is statutorily defined.³⁷³ All zoning ordinances must be “in accordance with a comprehensive plan”;³⁷⁴ however, it is not clear whether this language is referring to the comprehensive plan defined in section 15-1102.

If a county creates a planning commission, the planning commission must adopt a comprehensive plan.³⁷⁵ Parallel to the requirements for cities of the first and second class and villages, counties must establish a commission and adopt a comprehensive plan in order to zone.³⁷⁶ Finally, counties which include cities of the primary class must establish a planning commission and adopt a comprehensive plan for all areas of the county not covered by the municipal plan of the city of the primary class.³⁷⁷

³⁶² Neb. Rev. Stat. § 84-135 (2000).

³⁶³ Neb. Rev. Stat. § 84-161 (2000).

³⁶⁴ Neb. Rev. Stat. § 84-136 (2000).

³⁶⁵ Neb. Rev. Stat. § 84-137 (2000).

³⁶⁶ Neb. Rev. Stat. §§ 84-137, 84-139 (2000).

³⁶⁷ Neb. Rev. Stat. § 19-925 (2000).

³⁶⁸ Neb. Rev. Stat. § 19-901 (2000).

³⁶⁹ Neb. Rev. Stat. § 19-903 (2000).

³⁷⁰ *Id.*

³⁷¹ Neb. Rev. Stat. § 15-1101 (2000).

³⁷² Neb. Rev. Stat. § 15-1103 (2000).

³⁷³ Neb. Rev. Stat. § 15-1102 (2000).

³⁷⁴ Neb. Rev. Stat. § 15-902 (2000).

³⁷⁵ Neb. Rev. Stat. §§ 23-114.01, 23-114.03 (2000).

³⁷⁶ Neb. Rev. Stat. § 23-114.03 (2000).

³⁷⁷ Neb. Rev. Stat. §§ 23-174.04, 23-174.06 (2000).

SMART GROWTH EFFORTS

Research did not reveal any state smart growth efforts in Nebraska. However, Governor Johanns is attempting to invest \$37 million from cigarette tax revenue over the next fifteen years into downtown revitalization. This is part of the Antelope Valley Project, a partnership among the federal government, state, city, University of Nebraska-Lincoln, Lower Platte South Natural Resources District, and private sector to redevelop the area.³⁷⁸

CONTACT INFORMATION

No specific contact information available.

State of Nebraska website: <http://www.state.ne.us>

³⁷⁸ *Smart Growth: State By State* (Jan. 2001), available at Smart Growth Network website, http://www.smartgrowth.org/information/news/news_trends01-01.html (last visited Feb. 15, 2001).

NEVADA

STATE PLANNING MODEL

Local governments have primary authority over land use management. State participation in land use management is limited to “coordination of information and data, the acquisition and use of federal lands within the state, providing land use planning assistance in areas of critical environmental concern when directed by the governor or requested by local governments, and providing assistance in resolving inconsistencies between the land use plans of local governmental entities when requested to do so by one of the entities.”³⁷⁹ The State Department of Conservation and Natural Resources is the state land use planning agency³⁸⁰ and provides local governments land planning information. The Planning Advisory Council³⁸¹ resolves the inconsistencies in local plans.

Nevada emphasizes regional planning. Nevada creates a regional planning commission in counties with populations greater than 100,000 but less than 400,000.³⁸² The regional planning commission must develop a comprehensive regional plan covering a twenty year period.³⁸³ Before adoption, the commission must hold public hearings with each of the cities located in the region.³⁸⁴ Finally, the regional planning commission reviews all municipal plans within its jurisdiction, and has the authority to reject any local plan that does not comport with the regional plan.³⁸⁵

Cities and counties with populations greater than 25,000 must create a planning commission.³⁸⁶ Each planning commission must adopt a master plan which must include various elements.³⁸⁷ The master plan must conform to the regional plan³⁸⁸ and is subject to review by the regional planning commission.

SMART GROWTH EFFORTS

Research did not reveal any recent state smart growth efforts in Nevada. However, in 1997 the Nevada Legislature established the Southern Nevada Strategic Planning Authority to study and report on growth related issues in and around the Las Vegas region.³⁸⁹ Additionally, the 1999 Legislature created the Southern Nevada Regional Planning Coalition³⁹⁰ to facilitate regional planning in Clark County, the City of Las Vegas, the City of North Las Vegas, the City of Henderson, Boulder City, and the Clark County School District.³⁹¹

³⁷⁹ Nev. Rev. Stat. § 321.640 (2000); *see also* Nev. Rev. Stat. § 321.763 (2000) (describing the process to resolve inconsistencies in local plans).

³⁸⁰ Nev. Rev. Stat. § 321.700 (2000).

³⁸¹ Nev. Rev. Stat. § 321.755 (2000).

³⁸² Nev. Rev. Stat. § 278.0262 (2000).

³⁸³ Nev. Rev. Stat. § 278.0272 (2000).

³⁸⁴ Nev. Rev. Stat. § 278.0272 (2000).

³⁸⁵ Nev. Rev. Stat. § 278.028; 278.0282 (2000).

³⁸⁶ Nev. Rev. Stat. § 278.030 (2000).

³⁸⁷ Nev. Rev. Stat. § 278.150 (2000).

³⁸⁸ Nev. Rev. Stat. § 278.028; 278.0282 (2000).

³⁸⁹ *Planning Communities for the 21st Century*, *supra* note 133, at 95 (citing S.B. 383 (1997)).

³⁹⁰ *Id.* (citing Nev. S.B. 436, § 7 (signed June 8, 1999)).

³⁹¹ 1999 Nev. Laws Ch. 489 (S.B. 436, 1999). The Board of the Coalition may develop policies for Clark County that promote orderly development, coordinated land use planning, and the efficient provision of services to urban areas; protect the environment; promote affordable housing; and others. The Board may also carry out and manage the strategic plan for financing infrastructure recommended by the Southern Nevada Strategic Planning Authority. Moreover, the Board may prepare a number of land use plans. In addition, the Act provides the Board with the power to review master plans of both

CONTACT INFORMATION

State Department of Conservation and Natural Resources
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<http://www.state.nv.us/cnr/>

the county and cities located within the county, the capital improvement plans adopted by the local governments, the Regional Transportation Commission of Clark County and a number of other agencies. *Id.*

NEW HAMPSHIRE

STATE PLANNING MODEL

New Hampshire law requires a state comprehensive plan and consistency at the state level (state agency plans must be consistent with the state plan). There is no legal requirement for local planning.

SMART GROWTH EFFORTS

New Hampshire has been very active recently in promoting statewide “smart growth.” With a population growth rate approaching 15,000 people each year, New Hampshire is struggling to maintain its rural character and protect its unique way of life.³⁹² Leadership in this area has come from the executive level in the form of a statewide policy of “growing smart,” as well as from the legislature with efforts to incorporate smart growth concepts into land use planning.

Building on past growth management studies in the late 1970’s and early 1980’s, New Hampshire officials began their most recent “smart growth” efforts in 1998 with the establishment of a Land Use Management and Farmland Preservation Study Committee. The committee studied “. . . ways to keep what is left of New Hampshire’s typical rural landscape with its farmland, forests and wildlife habitat, its country villages and its town centers, [while] at the same time [providing] for inevitable growth by carefully planning its location and character.”³⁹³ The Committee made a series of recommendations for improving New Hampshire’s ability to manage growth and development including: informing communities about the costs and causes of sprawl, encouraging careful planning with an emphasis on open space, revitalized downtowns, and denser development, directing state agencies to consider sprawl in their daily business, providing state incentives for this planning by directing state aid or tax abatements to those towns with appropriate growth control plans, and revising agency rules and regulations to implement these goals.³⁹⁴

In February 1999, Governor Jeanne Shaheen directed the state’s Council on Resources and Development (CORD)³⁹⁵ to examine how agency actions “promote the retention of our traditional communities and landscape,” as well as “ways in which their current programs, rules, regulations and granting programs might be improved upon” to ensure retention of New Hampshire’s traditional landscape.³⁹⁶ At the same time, the legislature directed the Office of State Planning (OSP) to study how growth management trends affect state land development patterns.³⁹⁷ More specifically, the legislature instructed OSP to “examine the effects of sprawl on the economy, taxes, loss of open space, air quality, water quality,

³⁹² See New Hampshire Office of State Planning, *Report to Governor Shaheen on Sprawl, Executive Summary* (December 1999), available at <http://www.state.nh.us/governor/sprawl.html> (last visited March 2, 2001).

³⁹³ New Hampshire Office of State Planning in conjunction with the Growth Management Advisory Committee, *Managing Growth in New Hampshire: Changes and Challenges*, (December 2000) at 6 [hereinafter *Managing Growth in New Hampshire*], available at <http://www.state.nh.us/osp/planning/announcements.html> (last visited March 2, 2001).

³⁹⁴ *Id.* at 8.

³⁹⁵ CORD is composed of the heads of various state agencies, including the director of the office of state planning who serves as chairman. See generally, N.H. Rev. Stat. Ann. § 162-C:1 *et seq.* (2000). With respect to smart growth, CORD is responsible for completing the annual smart growth report as well as resolving any inter-agency conflicts that might arise in developing policies to encourage smart growth. See N.H. Rev. Stat. Ann. § 162-C:2, V, IX (2000).

³⁹⁶ Exec. Order 99-2, *An Order Pertaining to the Council on Resources and Development and the Preservation of New Hampshire’s Traditional Communities and Landscapes*, (February 1999), available at <http://www.state.nh.us/governor/growsmart.html> (last visited March 3, 2001).

³⁹⁷ See *Managing Growth in New Hampshire*, *supra* note 393, at 1 (quoting House Bill 207, Chapter 19, Laws of 1999).

wildlife habitat, community identity and quality of life.”³⁹⁸ In order to conduct this study, OSP formed a twenty-seven member Growth Management Committee, composed of various members of the community.³⁹⁹

While OSP gathered information for its report, the New Hampshire legislature passed several pieces of smart growth legislation. First, legislators incorporated the smart growth concept into several existing statutes, primarily those affecting the operation of OSP.⁴⁰⁰ For example, OSP must now “[t]ake a leadership role in encouraging smart growth and preserving farmland, open space land and traditional village centers,”⁴⁰¹ as well as consider “smart growth impacts” in evaluating state economic development grants.⁴⁰²

The legislature also passed a more comprehensive “State Economic Growth, Resource Protection and Planning Policy,” which sets out legislative findings on the importance of smart growth and declares the “policy of the state of New Hampshire [to be] that state agencies act in ways that encourage smart growth.”⁴⁰³ The legislature defines smart growth as:

The control of haphazard and unplanned development and the use of land which results, over time, in the inflation of the amount of land used per unit of human development, and of the degree of dispersal between such land areas. “Smart growth” also means the development and use of land in such a manner that its physical, visual, or audible consequences are appropriate to the traditional and historic New Hampshire landscape. Smart growth may include denser development of existing communities, encouragement of mixed uses in such communities, the protection of villages and planning so as to create ease of movement within and among communities. Smart growth preserves the integrity of open space, agricultural, forested and undeveloped areas.⁴⁰⁴

The legislature made a number of findings, recognizing the importance of land as “one of the state’s most valuable assets,” and making clear that “[t]he state can encourage development in accordance with this chapter by regularly reviewing its operating procedures, granting policies, and regulatory framework.”⁴⁰⁵ The legislature stressed that “[a] coordinated and comprehensive planning effort by state agencies on future development of the state is needed, which will not only improve our economy, but also encourages smart growth by locating development in appropriate growth areas and thus retaining as

³⁹⁸ *See id.*

³⁹⁹ *See id.*

⁴⁰⁰ *See, e.g.*, N.H. Rev. Stat. Ann. § 4-C:1, II (c) (2000) (directing OSP to “encourage and assist planning, growth management and development activities of cities and towns and groups of cities and towns with the purpose of encouraging smart growth”); N.H. Rev. Stat. Ann. § 4-C:1, II (j) (2000) (directing OSP to “[t]ake a leadership role in encouraging smart growth and preserving farmland, open space land, and traditional village centers”); N.H. Rev. Stat. Ann. § 4-C:6, I (j) (2000) (directing OSP to formulate polices and plans for consideration by the governor which serve to integrate and coordinate resource and development activities, including smart growth, affecting more than one state agency, level of government, or governmental function); N.H. Rev. Stat. Ann. § 4-C:6-a, I (c) (2000) (directing OSP to annually report “[t]he environmental impact and smart growth impact” of each economic development program for which state grants and loans have been awarded).

⁴⁰¹ N.H. Rev. Stat. Ann. § 4-C:1, II (j) (2000).

⁴⁰² N.H. Rev. Stat. Ann. § 4-C:6-a, I (c) (2000).

⁴⁰³ *See* N.H. Rev. Stat. Ann. § 9-B:2 (2000).

⁴⁰⁴ N.H. Rev. Stat. Ann. § 9-B:3 (2000).

⁴⁰⁵ N.H. Rev. Stat. Ann. § 9-B:1 (2000).

much open space land as possible for the long-term.”⁴⁰⁶ The statute also requires CORD to report annually to the legislature and Governor on smart growth activities and progress.⁴⁰⁷

In December 2000, the OSP, in conjunction with the Growth Management Advisory Committee, released its report entitled “Managing Growth in New Hampshire: Changes and Challenges.” In making recommendations to improve the state’s ability to meet growth challenges, the Committee recognized that “[c]hanging land development patterns require increasing regional collaboration to manage growth” and posited that the “State government can do better coordinating efforts to guide development and assist communities in coping with the challenges of managing growth.”⁴⁰⁸

OSP identified the following principles as key elements of smart growth:⁴⁰⁹ effective use of land resources; full use of urban services; mix of uses; transportation options; detailed, human-scale design; and implementation.⁴¹⁰

After discussing numerous case studies, the Committee made the following recommendations for improving growth management policies in New Hampshire:

Update and Revise New Hampshire Planning Statutes

Establish and Coordinate State Development Goals and Policies

Coordinate Regional Land Use Planning with State Transportation Programs

Improve Support and Strengthen Role of Regional Planning Agencies

Improve Efforts to Protect Significant Farm Land, Forest Land, Natural Habitats, and Historic and Cultural Resources

Plan for Future Development

Strengthen Efforts to Revitalize and Redevelop Urban and Small Town Centers

Address the Growing Need for Affordable Housing

⁴⁰⁶ *Id.*

⁴⁰⁷ N.H. Rev. Stat. Ann. § 9-B:5 (2000).

⁴⁰⁸ *Managing Growth in New Hampshire, supra* note 393, at 2. More specifically, the report recommended the following ways to improve New Hampshire’s ability to meet growth challenges:

1. Communities need expanded capabilities to plan for growth.

2. Changing land development patterns require increasing regional collaboration to manage growth.

3. The enactment and funding of the Land and Community Heritage Investment Program is an important first step in protecting the natural and historic character of the state, but maintaining the unique character of New Hampshire requires additional actions by local governments, nonprofit organizations, and private land owners.

4. State government can do better in coordinating efforts to guide development and assist communities in coping with the challenges of managing growth.

Id.

⁴⁰⁹ For the purposes of its report, OSP proposed the following definitions: “*sustainable development* is defined as a development process that promotes economic prosperity while enhancing social equity and protecting ecological integrity. *Smart growth* represents a means to achieve sustainable development, and is often defined as an interconnecting system of principles used to describe specific land development activities.” *Id.* at 6

⁴¹⁰ These elements are drawn from a report by the American Planning Association entitled *The Principles of Smart Development*, Planning Advisory Service Report Number 479, American Planning Association, September 1998.

Recognize the Impact of State and Local Government Investment Policies

Encourage Creative Local Partnerships

Improve the Management of Information Related to Growth and Development; and

Consider the Effects of Transportation Policy for Employees

Each recommendation is followed by a detailed description of possible implementation efforts.⁴¹¹

In February 2001, Governor Shaheen established “GrowSmart NH,” a “comprehensive initiative aimed at helping New Hampshire combat sprawl and effectively manage growth.”⁴¹² Recognizing that “smart growth” requires action by state, local, and regional authorities, GrowSmart NH attempts to set an example and help communities plan for growth. According to the governor, GrowSmart NH will be implemented in a number of ways (drawing largely on the legislative efforts described above):

When distributing state grants, building new roads or constructing state buildings, the State of New Hampshire is now considering whether projects will contribute to sprawl, and is supporting projects that manage growth effectively.

The state will support the redevelopment of brownfields. This program has already leveraged over \$30 million in private investment in formerly contaminated sites, and has helped protect open spaces.

The state will continue to provide grants to communities to help protect their water supply lands from development and possible contamination.

The Department of Transportation's corridor management studies for proposed transportation projects, involving all affected communities, will help citizens, businesses and local officials weigh how new and/or improved roadways may affect their communities and take steps to manage those impacts appropriately.

The state will provide innovative planning grants that will strengthen regional planning agencies and allow them to work with communities on such projects as developing new in-town and village zoning districts to revitalize downtowns and discourage sprawling development, or adopting traffic-calming techniques on existing commercial strips.

The state will improve GRANIT, its computer-based mapping system, which is a critical tool for helping communities understand and plan for the impacts of growth.

New legislation will strengthen master planning requirements for communities, which will encourage smart growth and better integration of local land use planning and zoning processes.

⁴¹¹ See *Managing Growth in New Hampshire*, *supra* note 393, at 39-53.

⁴¹² See *GrowSmart NH*, available at <http://www.state.nh.us/governor/growsmart.html> (last visited March 21, 2001).

New legislation will expand state agency participation on the Council on Resources and Development, and give it the specific authority to review and advise on state programs and projects that affect land use in New Hampshire.⁴¹³

As discussed above, both the Governor and the New Hampshire legislature have played a large role in promoting smart growth. In addition to commissioning a study on sprawl, the governor has been vocal in advocating the need for growth management planning as illustrated above. An analysis of pending legislation, below, further illustrates New Hampshire's commitment to growing smart.

There are at least six smart growth related bills currently pending in the New Hampshire legislature.⁴¹⁴ Of particular relevance are H.B. 650, which emphasizes a regional approach to growth management and mandates internally consistent local plans and H.B. 712, which aims to “establish a more coordinated process to create statewide and regional land use plans that promote smart growth, based upon local plans and citizen participation, by providing a forum where regional and inter-municipal concerns can be voiced within the local planning process, and requiring the state to provide smart growth direction to regional planning goals.” Finally, H.B. 585 would amend the “structure and charge of [CORD] to better facilitate a coordinated and comprehensive effort by state agencies to encourage smart growth.”

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⁴¹³ *Id.*

⁴¹⁴ *See, e.g.*, H.B. 285 (regarding the establishment of a state building code); H.B. 401 (regarding the receipt of information from regional planning commissions by local land use boards); H.B. 585 (regarding the membership and duties of the council on resources and development); H.B. 650 (regarding master plans); S.B. 21 (establishing a commission to develop recommendations for legislation to reduce regulatory barriers to the creation of affordable housing).

STATE PLANNING MODEL

The 1986 State Planning Act⁴¹⁶ created the State Planning Commission (SPC) and the Office of State Planning (OSP).⁴¹⁷ The legislature mandated that the SPC prepare and adopt the State Development and Redevelopment Plan (SDRP), which establishes statewide planning objectives for growth and development in the state.⁴¹⁸ Moreover, SPC must include a “long-term Infrastructure Needs Assessment,” as part of the SDRP, which provides information on the present and future conditions of state and local infrastructure needs. The SPC must also develop and promote procedures to facilitate cooperation and coordination among state agencies and local governments in their land use planning, and provide technical assistance to local governments to encourage the use of the most effective planning and development tools and procedures. Finally, the SPC reviews state and local planning procedures and recommends to the Governor and the Legislature policies and programs that will promote more efficient planning processes.⁴¹⁹

The SDRP provides a coordinated, integrated, and comprehensive approach to growth and development, directing public and private development to compact forms of development and redevelopment, thus making the most efficient use of existing and planned infrastructure and of other systems necessary to support growth. The SDRP is intended to serve as a guide for all levels of government, including local governments, in their planning and development decisions.⁴²⁰ However, it is neither a functional plan, as the Policy in Maryland, nor a regulatory one. Nonetheless, the Commission has stated that the SDRP will be used to make infrastructure investment decisions.⁴²¹ Mollifying any fears that the SDRP is regulatory, OSP emphasizes that it should be used only to guide local master planning and state agency infrastructure decisions: “[I]t is not appropriate to use the State Plan directly to formulate codes, ordinances, administrative rules or other ‘regulations,’ [which] should be formulated to carry out the master and functional plans of the responsible agencies.”⁴²²

The SDRP must do six things: (1) protect natural resources; (2) promote development and redevelopment in a manner based upon sound planning policy and, more importantly, where infrastructure can be provided at private expense, or with reasonable use of public funds⁴²³; (3) consider other plans of the state and of local governments; (4) identify areas for growth, limited growth, agriculture, open space conservation, and other designations; (5) incorporate by reference a guide of technical planning standards and guidelines used to prepare the Plan; (6) coordinate planning activities

⁴¹⁵ See generally, *Planning Communities for the 21st Century*, *supra* note 133, at 25-77 (providing a comprehensive profile on New Jersey and six other states).

⁴¹⁶ N.J. Stat. Ann. § 52:18A-196 *et seq.* (2000).

⁴¹⁷ The OSP is the administrative arm of the SPC and the Brownfields Redevelopment Taskforce. OSP assists SPC in the performance of its duties; publishes an annual report, which describes the progress toward achieving the goals of the SDRP; the degree of consistency between the SDRP and local and State plans; provides planning service to other agencies and reviews their plans; and provides advice and assistance to local planning units. See N.J. Stat. Ann. § 52:18A-201 (2000).

⁴¹⁸ N.J. Stat. Ann. § 52:18A-199 (2000).

⁴¹⁹ *Id.*

⁴²⁰ New Jersey Office of State Planning, *The New Jersey State Development and Redevelopment Plan*, available at <http://www.state.nj.us/osp/ospplan2.htm> (last visited Feb. 22, 2001).

⁴²¹ *Id.*

⁴²² New Jersey Office of State Planning, *How the State Development and Redevelopment Plan is Implemented*, available at <http://www.state.nj.us/osp/osphome.htm> (last visited April 20, 2001).

⁴²³ Note that the statute states that this statement “should not be construed to give preferential treatment to new construction.” N.J. Stat. Ann. § 52:18A-200 (2000).

and establish statewide planning objectives in land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination.⁴²⁴

Prior to the state's final approval of the SDRP, local governments, state agencies, and other local and regional entities are provided an opportunity to review and comment on the plan, which the Commission must give due consideration.⁴²⁵ Moreover, the Commission must solicit and give consideration to the plans of State agencies, local governments, and other local regional entities. This process is known as "cross-acceptance,"⁴²⁶ and aims to ensure that local governments have a voice in the state policy that will guide their land use decisions.⁴²⁷ The statute defines cross-acceptance as the "comparison of planning policies among governmental levels with the purpose of attaining compatibility between local, county and State plans."⁴²⁸ During the cross-acceptance process, the commission negotiates with county planning boards, which have solicited comments from local planning boards, over the elements of the plan. Finally, after the cross-acceptance process, the SPC must assess the economic, environmental, infrastructure, community life, and intergovernmental coordination impacts of the Plan.⁴²⁹

The SPC adopted a new SDRP on March 1, 2001.⁴³⁰ The Plan is divided into two parts: the Statewide Policy Structure and the Resource Planning and Management Structure.⁴³¹ The Statewide Policy Structure identifies the goals and strategies of statewide planning, which include revitalizing the state's urban centers and areas, conserving natural resources, promoting beneficial economic growth, protecting the environment, providing adequate public services and housing, and preserving historic and cultural lands as well as open space for recreational activities. The Resource Planning and Management Structure, by contrast, divides the state into five planning areas of various levels of development intensity and infrastructure service: metropolitan, suburban, fringe, rural, and environmentally sensitive areas. The Plan also identifies Centers, which are compact forms of development, either existing or planned, where future residential, commercial, and service development will be focused.⁴³² The SDRP defines five types of centers: urban, towns, regional, villages, and hamlets, and identifies more than 600 centers.⁴³³

Under the Municipal Land Use Law,⁴³⁴ municipalities may create a planning board⁴³⁵ which, once established, has exclusive authority to plan and zone.⁴³⁶ The planning board may prepare and adopt a master plan, which must include a number of elements, to guide the county or municipality land use decisions.⁴³⁷ Only the land use element must be internally consistent with the other elements of the plan. The plan must also contain a specific policy statement indicating the relationship of the planned

⁴²⁴ N.J. Stat. Ann. § 52:18A-200 (2000).

⁴²⁵ N.J. Stat. Ann. § 52:18A-202.1 (2000).

⁴²⁶ *Id.*

⁴²⁷ N.J. Stat. Ann. § 52:18A-202.1(d) (2000).

⁴²⁸ N.J. Stat. Ann. § 52:18A-202 (2000).

⁴²⁹ N.J. Stat. Ann. § 52:18A-202.1 (2000).

⁴³⁰ See *The New Jersey State Development and Redevelopment Plan*, *supra* note 420.

⁴³¹ *Id.*

⁴³² See *id.* for a description of Centers.

⁴³³ *Id.*

⁴³⁴ N.J. Stat. Ann. § 40:55D-1 *et seq.* (2000).

⁴³⁵ N.J. Stat. Ann. § 40:55D-23 (2000).

⁴³⁶ N.J. Stat. Ann. § 40:55D-20 (2000).

⁴³⁷ N.J. Stat. Ann. § 40:55D-28 (2000).

development in the master plan to the master plans of neighboring municipalities, the master plan of the county in which the municipality is located, the SDRP, and the district solid waste management plan.

SMART GROWTH EFFORTS

Although New Jersey's Smart Growth efforts are not as comprehensive as Maryland's, the State has expended significant capital in addressing sprawl. In fact, former-Governor Whitman recently received an American Planning Association award for initiating a state funding mechanism to assist local governments in implementing smart growth principles in their planning and for implementing a state ballot initiative amending the state constitution to preserve land.⁴³⁸ Moreover, in a 1999 report on Smart Growth,⁴³⁹ the American Planning Association highlighted New Jersey, among five other states, as having among the most comprehensive approaches to managing growth through the regulatory framework. This section will not recap that report, but rather will focus on the areas that New Jersey considers its Smart Growth package: (1) using the State Plan to guide growth; (2) providing technical and financial assistance to local governments; (3) preserving open space, farmland, and historic sites; and (4) redeveloping brownfields.⁴⁴⁰

The State Development and Redevelopment Plan

Although the SDRP showed little impact in curbing sprawl and encouraging infill development in its first decade of existence,⁴⁴¹ the new SDRP, described above, has become the cornerstone of smart growth activity for the Governor's office and, in particular, the OSP. In her second inaugural address in January 1998, then-Governor Whitman described the adverse impacts that sprawl has on quality of life. She explained that New Jersey's strategy to address those impacts and the root problem is the State Plan, which she described as "a blueprint for redeveloping cities, relieving congestion, and containing sprawl."⁴⁴² Similarly, OSP explained that the SDRP provides the framework to achieve three smart growth goals: (1) "invest money and effort first in our existing cities and towns"; (2) "create compact, mixed-use centers and new, real communities where people have more choices and where people want to live, work and raise a family"; and (3) "grow in ways that conserve precious farmland, open space and natural and historic resources."⁴⁴³

⁴³⁸ New Jersey Office of State Planning, *State Planning Year in Review: New Jersey Is a Leader in Smart Growth Efforts* (August 2000) at 1, available at <http://www.state.nj.us/osp> (last visited April 16, 2001).

⁴³⁹ *Planning Communities for the 21st Century*, *supra* note 133, at 37-46. The profile describes New Jersey's state planning laws, local and regional planning law, environmental protection efforts, farmland and open space preservation, heritage and cultural areas preservation, economic development programs, transportation programs, and affordable housing.

⁴⁴⁰ Although New Jersey has not touted transportation reform as part of its smart growth initiatives, the state has several innovative programs that embody smart growth concepts. First, beginning in 1997, each county established an interagency transportation steering committee to develop a Community Transportation Plan, which identifies local oriented strategies for low income workers and other transit-dependent persons. All New Jersey counties completed their plans and submitted them to N.J. Transit and the New Jersey Departments of Human Services and Transportation. This process created a local mechanism for coordinating local transportation services. Moreover, the steering committees and the completion of the Community Transportation Plans are prerequisites to receiving certain federal and state aid. The Department of Transportation has also increased funding for bicycle and pedestrian projects. The state spends a great amount of resources creating bike paths throughout the state as an alternative form of transportation. For more information on these and other programs, *see id.*; *see also*, New Jersey Department of Transportation web site at <http://www.state.nj.us/transportation.htm>.

⁴⁴¹ *Growing Pains*, *supra* note 30, at 33 (*citing* Barbara L. Lawrence, *State Plan Update: 1999*, New Jersey Future; www.njfuture.org).

⁴⁴² *See id.*; *see also*, *State Planning Year in Review*, *supra* note 438.

⁴⁴³ *See State Planning Year in Review*, *supra* note 438.

Technical and Financial Assistance

As noted above, the SDRP has no regulatory impact on State or local planning. However, the Governor's office and OSP have used fiscal incentives to encourage local governments to plan and develop consistent with the State Plan. OSP has stated that "[t]o provide strong incentives to communities to participate in the state planning process, municipalities and counties that have their plans endorsed by the State Planning Commission are entitled to greater priority to receive funding, permit review, and technical assistance from state agencies."⁴⁴⁴ Specifically, eighteen State and regional aid programs give priority assistance to communities with plans that are consistent with the State Plan.⁴⁴⁵ In addition, former-Governor Whitman stated that the State will reduce regulatory burdens on local governments that decide to redevelop consistent with the State Plan.⁴⁴⁶ For instance, in a pilot program in Long Beach, the State is reducing the State coastal regulatory oversight for a major redevelopment plan.⁴⁴⁷ Moreover, a local community, like the Long Beach community, that uses the State Plan to plan and develop also receives, according to OSP, the benefit of creating an open dialogue with State agencies that results in streamlining the permitting and development process.

The Governor's office and OSP also provide other incentives to encourage smart growth at the local level. In 2000, then-Governor Whitman announced the awarding of smart growth planning grants, administered by the Department of Community Affairs and the OSP, to ninety-two municipalities and seven counties, as a way to encourage those local governments to plan in ways that curb sprawl.⁴⁴⁸ OSP has been active in the process, working with a number of counties to develop proposals for smart growth planning grants that would lead to regional plans.⁴⁴⁹ In addition, pursuant to the State Planning Act requirement that OSP provide technical assistance to local governments in their planning efforts, OSP is in the process of creating a "planning toolbox," called "New Jersey Planning Plus." Further, recognizing that physical design is a powerful influence on human behavior, OSP includes in its growth-management tool kit for local governments, "Designing New Jersey," a set of community design policies for the physical design of communities. OSP has also provided local governments with a "how to" manual that includes planning tools and techniques found in the State Plan.⁴⁵⁰

As apparent from the above discussion, New Jersey's approach to Smart Growth is quite different from Maryland's. New Jersey stresses local control over development and planning. However, like Maryland, New Jersey recognizes the advantage of using state financial and technical assistance to encourage local governments to adopt smart growth measures. Moreover, the state emphasizes opening channels of communication between the local governments and the State as a means of achieving uniformity. Thus, the State is able to participate in local planning and development without usurping, or appearing to usurp, local authority over land use decisions.

In addition to guiding growth through the SDRP, former-Governor Whitman created the Smart Growth Infrastructure Tax Credit Program.⁴⁵¹ The \$10 million program provides tax incentives to developers who invest in neighborhoods with existing or planned infrastructure. The developments must be in Municipal Aid municipalities or municipalities with designated centers or plans endorsed by the SPC.

⁴⁴⁴ *Id.* at 3.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.* at 4.

⁴⁴⁸ *Id.* at 6.

⁴⁴⁹ *Id.* at 10.

⁴⁵⁰ *Id.* at 9.

⁴⁵¹ Governor Christine Todd Whitman, *Budget Message: Initiatives 2002: Smart Growth Infrastructure Tax Credits*, available at <http://www.state.nj.us/budget02/smarttax.html> (last visited April 14, 2001).

The New Jersey Housing and Mortgage Finance Agency, in conjunction with the State Planning Commission, administers the program.

Preservation

New Jersey actively preserves open space, farmland, and historic sites. Although the state has had a long history of protecting such lands, voters heightened those efforts through a recent ballot initiative amending the constitution to allocate money from existing sales tax revenues to preserving open space, farmland, and historic sites.⁴⁵² The law provides up to \$98 million annually for ten years and authorizes the issuance of up to \$1 billion in revenue bonds. In 1999, New Jersey established the Garden State Preservation Trust⁴⁵³ to administer and distribute these preservation funds. The Act guides allocation of resources by implementing the Million Acre Initiative, a plan to preserve 500,000 acres of open space and 500,000 acres of farmland within the next ten years using the newly created funds. Funds for preservation are also available from the Green Acres Program of 1961, the Farmland Preservation Bond Act of 1981, the Open Space Preservation Bond Act of 1989, and the Green Acres, Clean Water, Farmland, and Historic Preservation Bond Act of 1992.⁴⁵⁴

Because of their unique character, two preservation programs are worth mentioning. First, the State Agriculture Development Committee, which coordinates New Jersey's Farmland Preservation Program, established the Farm Link program.⁴⁵⁵ The program attempts to keep farmland in agricultural production by matching sellers with potential buyers who will work the land. Second, the Green Trust Planning Incentive awards 50% grant and 50% loan funding to local governments that acquire lands for recreation and conservation purposes identified in their Open Space and Recreation Plans (OSRP).⁴⁵⁶ To qualify, the local government must be collecting an open space tax authorized by state law.⁴⁵⁷ The program aims to encourage local governments to adopt an open space tax and to prepare an OSRP. As of December 2000, nineteen counties and 146 municipalities have passed an open space tax or an open space funding mechanism by voter referendum.

Brownfields Redevelopment

Finally, the state views its Brownfields redevelopment laws as a major component of its Smart Growth program.⁴⁵⁸ In 1997, the State legislature passed the Brownfields and Contaminated Site Remediation Act.⁴⁵⁹ The Act, in addition to providing grants and loans for redevelopment, created the Brownfields Redevelopment Task Force within OSP. To assist developers and local communities in developing brownfields sites, OSP: drafted the Brownfields Resource Guide, which explains how the brownfields

⁴⁵² See N.J. Const. art. VIII, § II, para. 7 (2000).

⁴⁵³ Garden State Preservation Trust Act, N.J. Stat. Ann. § 13:8C-1 *et seq.* (2000). Visit their web site at <http://www.state.nj.us/gspt/index/html>.

⁴⁵⁴ For a list of preservation programs, see <http://www.state.nj.us/gspt/index/html> (last visited April 14, 2001).

⁴⁵⁵ See <http://www.state.nj.us/agriculture/sadc.htm> (last visited April 14, 2001).

⁴⁵⁶ Department of the Environment, *Open Space and Recreation Plan Guidelines*, available at <http://www.state.nj.us/dep/greenacres/osrpg.htm> (last visited April 14, 2001). An OSRP is a local plan for the preservation of open space and recreation opportunities which allows the local community to participate in the Green Acres program. The requirements for the plan are outlined at *id.*

⁴⁵⁷ *Id.* Under this law, local governments may assess a tax, approved by voter referendum, for acquisition, development, maintenance of land for recreation and conservation purposes, acquisition of farmland for preservation, and preservation of historic properties.

⁴⁵⁸ New Jersey Office of State Planning, *Brownfields Redevelopment as a Tool for Smart Growth: Analysis of Nine New Jersey Municipalities*, available at <http://www.state.nj.us/osp/brownfld/bfmain.htm> (last visited April 14, 2001).

⁴⁵⁹ N.J. Stat. Ann. § 58:10B-1.1 *et seq.* (2000).

redevelopment process works and describes federal and state incentives;⁴⁶⁰ posted an online list of sites receiving grants from the Brownfields fund; and commissioned a study and preliminary analysis of the overall redevelopment potential in the State.⁴⁶¹

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⁴⁶⁰ Contact JoAnn Petrizzo, Program Director, at (609) 633-7536.

⁴⁶¹ New Jersey Office of Planning, *New Jersey Brownfields Redevelopment Program*, available at <http://www.state.nj.us/osp/brownfld/bfmain.htm> (last visited April 14, 2001).

NEW MEXICO

STATE PLANNING MODEL

Most planning and zoning power is vested in local governments. Counties and municipalities have the authority to create planning commissions.⁴⁶² If a municipality forms a planning commission, the commission must develop a master plan and hold public hearings before adopting it.⁴⁶³ Public buildings and utilities must conform to the master plan.⁴⁶⁴ Both counties and municipalities have the power to zone.⁴⁶⁵ All zoning regulation must be “in accordance with a comprehensive plan.”⁴⁶⁶

SMART GROWTH EFFORTS

Research did not reveal any recent state smart growth efforts in New Mexico.

CONTACT INFORMATION

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Harold S. Runnels Building
1190 St. Francis Dr.
Santa Fe NM 87502-0110
(505) 827-2855 or (800) 219-6157
<http://www.nmenv.state.nm.us>

⁴⁶² N.M. Stat. Ann. § 4-57-1 (2000) (counties); § 3-19-1 (2000) (municipalities).

⁴⁶³ N.M. Stat. Ann. § § 3-19-9, 3-19-10 (2000).

⁴⁶⁴ N.M. Stat. Ann. § 3-19-11 (2000).

⁴⁶⁵ N.M. Stat. Ann. § 3-21-1 (2000).

⁴⁶⁶ N.M. Stat. Ann. § 3-19-9.

NEW YORK

STATE PLANNING MODEL

There is no central planning agency in the State of New York; however, there are a number of state agencies that plan in specific areas.⁴⁶⁷

Cities, villages, and towns are authorized to plan and zone within their jurisdictions,⁴⁶⁸ and may establish an official map of the city⁴⁶⁹ and a planning board.⁴⁷⁰ Although not required, the planning board may adopt a comprehensive master plan for the development of the city.⁴⁷¹ The planning board has the authority to amend the comprehensive plan, but only the legislative body of the city may amend the official map. New York does not require internal consistency nor does it appear that regulations have to be consistent with or in accordance with the comprehensive plan. Despite this, zoning regulations must be “in accord with a well considered plan.”⁴⁷²

SMART GROWTH EFFORTS

Although New York does not have a smart growth program, the legislature and the governor are addressing the issue. In response to failed legislative smart growth initiatives, Governor George Pataki signed Executive Order 102 on January 1, 2000 establishing the Quality Communities Interagency Task Force (Task Force).⁴⁷³ The governor recognized that state programs, statutes, and regulations “may inhibit revitalization and encourage sprawl”⁴⁷⁴ and created the Task Force to inventory local, state and federal programs that affect development, preservation and revitalization and to provide recommendations for improving those programs. The Task Force was further instructed to recommend changes to state regulations that would aid local governments in planning. In February 2001, the Task Force released its report which makes forty-one recommendations to curb sprawl.⁴⁷⁵ Among the proposals is providing state grants to local governments that adopt a regional approach to planning and giving tax credits to farmers who don’t convert their farmland to other uses.

What worries many smart growth advocates in the state is that nothing will be done, notwithstanding Pataki’s pledge that the report will “sit on the shelf.”⁴⁷⁶ Moreover, according to one source, one of the biggest barriers to adoption of smart growth initiatives is that New York, like California, is a home rule state, and thus local governments are quite resistant to commands from the state, especially on land use issues.⁴⁷⁷

⁴⁶⁷ See, e.g., The Department of Economic Development, N.Y. Econ. Dev. Law § 100 *et seq.* (1995), Office of Urban Revitalization, N.Y. Exec. Law § 896 *et seq.* (1995), and the State Board for Historic Preservation, N.Y. Parks, Rec. & Hist. Preserv. Law § 14.05 (1995).

⁴⁶⁸ N.Y. Gen. City Law § § 19, 20 (McKinney 2000).

⁴⁶⁹ N.Y. Gen. City Law § 26 (McKinney 2000).

⁴⁷⁰ N.Y. Gen. City Law § 27 (McKinney 2000).

⁴⁷¹ N.Y. Gen. City Law § 28-a (McKinney 2000).

⁴⁷² N.Y. Gen. City Law § 28-a *et seq.* (McKinney 2000).

⁴⁷³ See New York Exec. Order No. 102, N.Y. Comp. Codes R. & Regs. Tit. 9, § 5.102 (McKinney 2000).

⁴⁷⁴ *Id.*

⁴⁷⁵ See *State and Local Governments Partnering for a Better New York*, Quality Communities Interagency Task Force Report (Jan. 2001), available at <http://www.state.ny.us/tgovdoc/cover.html> (last visited May 15, 2001).

⁴⁷⁶ Elizabeth Benjamin, “*Smart Growth*” Sets Limits, TIMES UNION ALBANY, March 11, 2001, available at 2001 WL 6295581.

⁴⁷⁷ *Id.*

Since 1995 the state has acquired fee title or conservation easements to 250,000 acres of natural and recreational resource lands and has permanently conserved 139,000 acres in Adirondack Park.⁴⁷⁸ In fact, Governor Pataki's 2000 budget included \$63 million to acquire open space.⁴⁷⁹ In addition, Governor Pataki established the New York Main Street Program which encourages locating state facilities and offices in urban centers.⁴⁸⁰

There are three smart growth bills pending in the 2001 legislature. Assembly Bill A00423 provides for community-based smart growth land use planning through various forms of state assistance to local governments; provides for smart growth commissions to be formed by local governments; declares the policies of the state regarding planning; provides for the development of plans by local governments subject to the approval of the state; provides for technical and financial assistance to local governments from the state; creates a task force of state agencies on smart growth; and includes a sunset provision of April 1, 2006. Assembly Bill A01710 adopts the New York State Smart Growth Compact Act to facilitate coordinated urban and regional planning and public investment by creating a Smart Growth Compact Council with the authority to prepare and implement compact regional plans. Finally, Assembly Bill A06807 would establish a Smart Growth Economic Competitiveness Task Force and a local assistance office to develop the smart growth strategy.

CONTACT INFORMATION

Quality Communities Task Force
Lieutenant Governor Mary O. Donohue, Chair
<http://www.state.ny.us/governor/lsgov>

⁴⁷⁸ New York Exec. Order No. 102, N.Y. Comp. Codes R. & Regs. Tit. 9, § 5.102 (2000).

⁴⁷⁹ *Governors' Smart Growth Initiatives*, *supra* note 26, at 12.

⁴⁸⁰ *Growing Pains*, *supra* note 30, at 48-49.

NORTH CAROLINA

STATE PLANNING MODEL

The Land Policy Act⁴⁸¹ mandates that the Land Policy Council enact and update a state comprehensive policy plan.⁴⁸² The Land Policy Council has the authority to consult with other state agencies, provide advice and technical assistance to state agencies and local governments, and coordinate the land use policies of the state and local government with the State Land Policy.⁴⁸³ The Policy aims to “serve as a guide for decision-making in State and federally assisted programs which affect land use, and shall provide a framework for the development of land-use policies and programs by local governments”; and to promote patterns of land use which are in accord with a State land-use policy.⁴⁸⁴ However, the Council is provided with no enforcement powers.

The State must also develop a Balanced Growth Policy⁴⁸⁵ which primarily addresses job creation and the development of human and natural resources. Under the Act, the governor is to designate growth centers and state agencies are “encouraged” to incorporate the Policy in their activities. Again, there is no enforcement mechanism.

The State authorizes local governments to establish planning agencies to create and update a plan.⁴⁸⁶ All zoning must be “made in accordance with a comprehensive plan.”⁴⁸⁷ However, courts have not required a separate comprehensive plan from a comprehensive zoning ordinance.⁴⁸⁸

SMART GROWTH EFFORTS

North Carolina has attempted to hop on the Smart Growth bandwagon; however, the state has not had much success in tangible reform. The 1999 General Assembly created the Commission to Address Smart Growth, Growth Management, and Development Issues⁴⁸⁹ to study growth, growth management, and development and “to recommend initiatives to promote comprehensive and coordinated local, regional, and State planning, and growth management.”⁴⁹⁰ Among other things, the legislature mandated that the Commission study (1) other states’ smart growth efforts, including Maryland’s Smart Growth and Neighborhood Conservation Act of 1997, Tennessee’s Public Law 1101 of 1998, and legislation in New Jersey and Washington; (2) the population growth rate and infrastructure needs of the State including the impacts that growth will have on infrastructure and the environment; (3) long-term, strategic planning guidelines options for development in urban, rural, retirement, and resort areas, including land-use management practices and transfer of development rights; (4) incentives to encourage local governments to develop land use management practices and the funding needs of the local governments to implement comprehensive planning; and (5) the relationship and consistency between local and regional land use, infrastructure, preservation of farmland, and natural resources and open

⁴⁸¹ N.C. Gen. Stat. § 113A-150 *et seq.* (2000).

⁴⁸² N.C. Gen. Stat. § 113A-153 (2000).

⁴⁸³ *Id.*

⁴⁸⁴ N.C. Gen. Stat. § 113A-151(b) (2000).

⁴⁸⁵ The Balanced Growth Policy Act, N.C. Gen. Stat. § 143-506.6 (2000).

⁴⁸⁶ N.C. Gen. Stat. § 153A-321 (2000) (counties); § 160A-361 (2000) (cities).

⁴⁸⁷ N.C. Gen. Stat. § 160A-383 (2000).

⁴⁸⁸ *See, e.g., Allred v. City of Raleigh*, 173 S.E. 2d 533, 536 (1970), *rev’d on other grounds*, 178 S.E.2d 432 (1971).

⁴⁸⁹ N.C. H.B. 168 (1999).

⁴⁹⁰ *Id.*

space. The Commission is located in the North Carolina General Assembly and should be publishing a report of its findings soon.

Former Governor Hunt also created the 21st Century Communities Task Force in 1999 to study growth issues, hold public hearings, and deliver policy recommendations for the state to promote managed growth. The panel reported to the North Carolina's General Assembly's smart growth commission which produced findings and legislative proposals in January 2001.⁴⁹¹ In January 2000, former Governor Hunt enlisted his cabinet secretaries to advance smart growth initiatives, directing them to devise plans for setting aside one million acres of open space during the next decade; promoting transportation planning to relieve congestion and boost mass transit; and accelerating downtown revitalization.⁴⁹² However, Governor Hunt is no longer in office; he has been replaced by Governor Easley who has not as yet shown a penchant for Smart Growth.

Finally, four agencies, the Environment and Natural Resources, Transportation, Commerce, and Crime Control and Public Safety, established a Quality Growth Task Force to investigate how state programs and investments influence quality of growth and influence urban growth. Their report summarizes state programs that influence growth, identifies programs with the strongest influence, examines the nature of the influence, and highlights areas where agencies can work together to promote smart growth.⁴⁹³ The Department of Environment and Natural Resources has since adopted "Working Principles to Encourage Smart Growth, To Avoid, Minimize, and Mitigate Direct, Secondary, and Cumulative Impacts, and to Protect Air, Water, and Natural Resources."⁴⁹⁴

In addition to these studies, on January 31, 2000, six months after New Jersey implemented the similar Million Acre Initiative, Governor Hunt challenged North Carolina to add one million acres of open space and farmland by 2009 and created the One Million Acres Initiative to acquire open space and farmland through conservation easements and other farmland preservation programs.⁴⁹⁵ The 2000 Legislature codified this initiative through S.B. 1328 which sets as a state goal the permanent protection of an additional one million acres of farmland, open space, and conservation lands by 2009.⁴⁹⁶ The bill mandates that the Secretary of Environment and Natural Resources will administer the initiative. Prior to this initiative, the 1998 Legislature first funded the North Carolina Farmland Preservation Trust Fund with \$250,000 in non-recurring funds.⁴⁹⁷ The North Carolina Department of Agriculture and Consumer Services (NCDA) administers the Farmland Preservation Trust Fund. The CTNC acquired 1,200 acres of agricultural easements with these funds. Again in 1999, the CTNC used \$500,000 in funds to acquire 1,500 conservation easements.

Observers should keep their eye on H.B. 617 which is pending in the 2001 Legislature. That bill would reappropriate funds intended for construction of outer loops and redirect them to highway maintenance and public transportation. The bill explains that the reallocation is more consistent with the studies on smart growth and thus more consistent with curbing sprawl.

⁴⁹¹ See *Governors' Smart Growth Initiatives*, *supra* note 26, at 17.

⁴⁹² *Id.* at 17-18.

⁴⁹³ See *Inventory of State Government Programs that Influence Growth in North Carolina*, available at <http://www.enr.state.nc.us/million.htm> (last visited May 15, 2001).

⁴⁹⁴ Memorandum to DENR Division Directors (January 5, 2001), available at <http://www.enr.state.nc.us/denrsmart.pdf> (last visited May 15, 2001).

⁴⁹⁵ See *N.C. Million Acre Plan*, available at <http://www.enr.state.nc.us/millionsummary.pdf> (last visited April 6, 2001).

⁴⁹⁶ See N.C. Gen. Stat. § 113A-241 (2000).

⁴⁹⁷ See *North Carolina's Farmland Preservation Program: To Keep Agriculture a Viable Component of Our Economy and to Preserve Our Rural Lands Heritage*, available at <http://www.enr.state.nc.us/DSWC/files/ncfpp.htm> (last visited April 6, 2001).

CONTACT INFORMATION

Department of Environment and Natural Resources
<http://www.enr.state.nc.us>

NORTH DAKOTA

STATE PLANNING MODEL

There is no state plan. Townships, cities, and counties have planning and zoning power. However, cities with populations greater than 25,000 people have exclusive control over land located within two miles of their borders (city limits), even if that intrudes on the right of a smaller government to determine its planning.

The Division of Community Services provides technical assistance to local governments, state agencies, and the executive branch in the areas of community and rural planning & development, policy research & development, and grant program implementation.

SMART GROWTH EFFORTS

Research did not reveal any recent state smart growth efforts.

OTHER INITIATIVES RELATED TO SMART GROWTH

The North Dakota legislature recently made it possible for North Dakota cities to apply to the Division of Community Services to create a Renaissance Zone within their jurisdiction.⁴⁹⁸ A Renaissance Zone may be a defined geographical area of up to twenty contiguous blocks within a continual boundary. Such an area is typically one in the central city that requires revitalization and redevelopment to attract and retain residents and businesses. The Act provides for certain types of tax exemptions and credits to encourage investment. A city may apply for the designation of one Renaissance Zone with a duration of up to fifteen years, and may request to establish a Renaissance Fund Corporation.

According to the Division of Community Services, “[a] Renaissance Zone can be a very important and beneficial tool for community redevelopment and economic reinvestment if properly developed, implemented, and managed.”⁴⁹⁹ The agency cautions that “[i]t is crucial that a request to designate a Renaissance Zone is not looked upon simply as a method to provide tax exemptions and credits. The community as a whole needs to be involved in creating a zone and the projects that are approved for the zone need to clearly relate to the long term redevelopment plans of the city.”⁵⁰⁰ To assure this, local planning and a well thought-out and designed Development Plan are keys to whether the Division of Community Services will approve the designation of a Renaissance Zone, and if requested, the establishment of a Renaissance Fund Corporation.

To apply for a Renaissance Zone, a city must first create a sound Development Plan. This plan must be developed with a focus on the state goals of renewal, investment, and redevelopment. These goals reflect the state's vision that the approved tax exemptions and credits will bring about a revitalization of properties within the zone for current and future uses. The Development Plan itself will be a very detailed plan that thoroughly describes the area proposed to be designated as the Renaissance Zone; that identifies the jurisdiction's vision, goals and objectives for the Zone and describes how they relate to the state's goals and the overall plan for the jurisdiction; that identifies proposed projects and the process

⁴⁹⁸ See Division of Community Services Renaissance Zone Program, information available at <http://www.state.nd.us/dcs/comdev/renzone.html> (last visited May 11, 2001).

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

and selection criteria to be used to approve individual projects; that describes how the Zone will be managed; that describes local commitments to and for the zone; and that, if applicable, describes the creation or designation of a local Renaissance Fund Corporation.

The implementation of this Act is the responsibility of the North Dakota Division of Community Services and the Office of the State Tax Commissioner.

North Dakota also has created a Leadership Initiative for Community Strategic Planning.⁵⁰¹ In November 1998, a group of federal, state, and nonprofit agencies met to discuss how to assist North Dakota communities to identify and meet their needs, while also satisfying the planning and program requirements of various agencies. The group members agreed that in order to assist communities, a single strategic planning should be created. This single strategic planning process will reduce the need for communities to complete a strategic plan for every agency requiring a plan for funding purposes.

To address the issue of a single strategic planning model for communities, the group realized that a cooperative effort would need to be conducted by agencies wishing to use the results of a completed community strategic plan. The group organized formally and calls itself the Leadership Initiative for Community Strategic Planning (LICSP). The planning process will also be able to serve those communities that have already started a strategic planning process.

The Strategic Planning Process is outlined in a Basic Steps manual (see below). The process starts with community leaders determining that they would like assistance to design their community's future. A leader from that community will contact the Division of Community Services, which is the Point of Contact (POC), or any one of the other participating agencies or entities, to be put in contact with the POC. The Division of Community Services will explain the process to the community. The community will then select a facilitator for the process. The community and facilitator will put together a core group of community residents and assign a coordinator to the process. The meeting portion of the process begins and is estimated to take approximately 4 - 6 months to complete. When necessary during this process, the facilitator will assemble a resource team to come out to the community and assist in the action planning phase. Once the action plans are completed and the community adopts the plan, selected persons will be in charge of assuring that specific actions are completed. The POC will contact the community every year for five years to find out what actions have been completed and if any additional assistance is needed. If a community chooses to do this process on its own, it can download the Strategic Planning Manual for Community Leaders; the Strategic Planning Manual for Facilitators; and the Basic Steps Manual.

Additionally, North Dakota planning law:

- 1) Provides technical assistance to local governments who wish to undertake planning activities through the Division of Community Services.⁵⁰²
- 2) Authorizes regional planning and zoning commissions⁵⁰³ and joint planning commissions across county lines.⁵⁰⁴

⁵⁰¹ See North Dakota Leadership Initiative for Community Strategic Planning, information *available at* <http://www.state.nd.us/dcs/comdev/planning.html> (last visited May 11, 2001).

⁵⁰² See N.D. Cent. Code § 54-44.5-02 (2000).

⁵⁰³ See N.D. Cent. Code § 11-35-01 (2000).

⁵⁰⁴ See N.D. Cent. Code § 11-33-19 (2000).

The Yellowstone River Compact is a compact between the states of Montana, North Dakota and Wyoming, covering water use in the Yellowstone River and its tributaries, but excluding the lands lying within Yellowstone National Park.⁵⁰⁵ The compact regulates the rights to water use in the river system. To become effective, the compact must be approved by the legislature of the three states and the U.S. Congress. North Dakota has ratified the compact.⁵⁰⁶

CONTACT INFORMATION

Division of Community Services
<http://www.state.nd.us/dcs>

⁵⁰⁵ See N.D. Cent. Code § 61-23-01 (2000).

⁵⁰⁶ See N.D. Cent. Code § 61-23-02 (2000).

OHIO

STATE PLANNING MODEL

No statewide plan exists. While the state enables local governments to create plans, it does not mandate them.

Ohio was a pioneer in planning, being among the first states to enact a municipal planning statute (in 1915) and enabling legislation for municipal zoning (in 1920).⁵⁰⁷ An ardent local-control state, Ohio citizens were also pioneers in challenging a planning regime. It was an Ohio case, for example, that tested the constitutionality of zoning. Fortunately, for the planning profession, the Euclid v. Ambler Realty court upheld zoning.⁵⁰⁸

Ohio's constitution includes a "home rule" amendment, giving nearly all police and self-government powers to municipalities. Townships and counties do not even have much control over these municipalities. The state government also has very little say in the daily operations of municipalities.

The Ohio Department of Development has the authority to prepare comprehensive plans and make land-use planning recommendations.⁵⁰⁹ However, the Department does not regulate local land use or oversee local planning.

SMART GROWTH EFFORTS

Ohio has experienced an explosion of suburban growth in recent years. In Ohio's seven largest cities, jobs increased by only 19,510 from 1994 to 1997. Meanwhile, 186,000 jobs appeared in the suburbs.⁵¹⁰ Facing many of the problems caused/exacerbated by sprawl (for example, traffic congestion; destruction of farmland and open space; and rising infrastructure costs), Ohio is now attempting to influence its very independent municipalities to help curb sprawl.

The attempt to steer municipalities away from sprawl has not been presented as a "smart growth" package, however. Rather, the state has used special funds to underwrite certain land use activities and has enacted implementing legislation to protect open space and farmland. This patchwork of funding sources and enabling laws have met with mixed success.

Nonetheless, the terminology and strategies of smart growth are finding their way into this Iron Belt state. The Cincinnati Post ran an editorial in January 2001, expressing satisfaction that its efforts to put "smart growth into the regional vocabulary" had succeeded and that "slowly, erratically, the notion is taking hold that we need better planning and land use decisions that reflect the public interest more than the profit motive."⁵¹¹ The editorial ended by projecting that in the not too distant future, Ohio, Kentucky, and Indiana would build a light rail linking the three states.⁵¹²

⁵⁰⁷ See *Smart Growth Agenda for Ohio*, available at <http://www.ecocleveland.org/smartgrowth/index.html> (last visited May 11, 2001).

⁵⁰⁸ See 272 U.S. 365 (1926).

⁵⁰⁹ See Ohio Rev. Code Ann. § 122.06(B) (West 2000).

⁵¹⁰ See *Growing Pains*, *supra* note 30, at 8.

⁵¹¹ See *Smart Growth: State-by-State* (Jan. 2001), *supra* note 378.

⁵¹² See *id.*

OTHER INITIATIVES RELATED TO SMART GROWTH

Ohio law has not yet suggested even voluntary comprehensive plans. Following an Ohio Farmland Preservation Task Force's 1997 recommendation to encourage local governments to prepare plans, the Ohio legislature has attempted to pass such legislation but it has been consistently defeated.

Thus, the Ohio state government influences local planning decisions by:

- 1) Assisting local farmland preservation programs. In 1997, an Office of Farmland Preservation was created in the Department of Agriculture.⁵¹³ The office coordinates local programs and distributes funds to them. The office also works with agencies to identify current programs or pending state actions that may threaten farmland and take steps to avoid or minimize farmland conversion as part of their routine funding and permitting decisions.⁵¹⁴ Finally, the Director of Agriculture reviews all eminent domain plans in agricultural districts to weigh the need for the land and its value as farmland.⁵¹⁵
- 2) Offering tax breaks for farmland (Ohio taxes the property at its use, rather than at its true market value). Properties located in "agricultural districts" are eligible for these breaks. So too are properties whose owners have applied to the county auditor for the agricultural use tax.⁵¹⁶ If the land is converted to a non-agricultural use, the county levies a charge on the land equal to the tax saved over the three prior years.
- 3) Providing \$400 million for brownfields redevelopment and open space, farmland, and watershed acquisition. Governor Taft proposed this as a bond program and the legislature approved its placement on the November 2000 ballot.⁵¹⁷ Ohio voters approved the bond measure.⁵¹⁸
- 4) Offering low-interest loans to first-time homeowners buying houses on lots smaller than two acres.⁵¹⁹
- 5) Requiring the Department of Natural Resources to compel counties and municipalities in a coastal flood zone hazard area to act consistently with coastal zone management plans or adopt zoning ordinances and resolutions.⁵²⁰ The Department may provide funds to assist in these efforts. Should the local government refuse to cooperate, the Department is authorized to regulate the construction of all new buildings in the area.⁵²¹ This is one of the rare examples of state-regulated land use planning in Ohio.
- 6) Prioritizing state funding to infrastructure projects that involve the repair and replacement of existing facilities, rather than the creation of new facilities. For example, a local government

⁵¹³ See Ohio Rev. Code Ann. § 901.54 (West 2000); see also, *Smart Growth Agenda for Ohio*, supra note 507.

⁵¹⁴ See Ohio Rev. Code Ann. § 929.05 (West 2000); see also, *Smart Growth Agenda for Ohio*, supra note 507.

⁵¹⁵ See Ohio Rev. Code Ann. § 929.01 et seq. (West 2000).

⁵¹⁶ See Ohio Rev. Code Ann. § 5713.31 et seq. (West 2000).

⁵¹⁷ See 2000 H.J.R. 15 (enacted).

⁵¹⁸ See *Governors' Smart Growth Initiatives*, supra note 26, at 13.

⁵¹⁹ See First-Time Homebuyer Program, information available at <http://www.odod.ohio.gov/ohfa> (last visited May 11, 2001); see also, *Smart Growth Agenda for Ohio*, supra note 507.

⁵²⁰ See Ohio Rev. Code Ann. § 1506.04 (West 2000).

⁵²¹ See Ohio Rev. Code Ann. § 1506.07 (West 2000).

must pay 10% of repair costs, and 50% of expansion costs.⁵²² Furthermore, the Public Works Commission may be able to stop expansion projects outright if they will cut across productive farmland.⁵²³

- 7) Providing technical assistance for GIS (geographic information systems) mapping of local jurisdictions to facilitate wise land use decision making. (Note: Wisconsin, another very localized planning state, also has state-wide GIS resources for local governments.)
- 8) Operating a fund (Clean Ohio Fund) to support the purchase of development rights by local governments and non-profits. This fund was established in November 2000. To qualify, a project needs local government and public support and 25% in matching funds.⁵²⁴
- 9) Holding, as judicial precedent, that the Department of Natural Resources' Division of Mines and Reclamation may withhold mining permits to operations that will conflict with a county's comprehensive plan.⁵²⁵

CONTACT INFORMATION

Ohio Department of Development
<http://www.odod.state.oh.us>

For GIS mapping study, contact:
Center for Public Management and Regional Affairs
2 Harrison Hall
Miami University
Oxford, Ohio 45056
(513) 529-6959
<http://data.cpmra.muohio.edu/gislanduse.htm>

For assistance in creating and/or implementing comprehensive plans:
Ohio Planning Conference
129 South Third Street, Suite 510
Columbus, OH 43215-7100
(614) 221-4349

Ohio State University Extension, Community Development
700 Ackerman Road Suite 235
Columbus, OH 43202-1578
(614)292-8436
<http://www-comdev.ag.ohio-state.edu/>

⁵²² See Ohio Rev. Code Ann. Chapter 164, following 1987, 1995 constitutional amendments; see also, *Smart Growth Agenda for Ohio*, supra note 507.

⁵²³ See Ohio Public Works Commission "Farmland Preservation Review," Advisory XII (May 1998); see also, *Smart Growth Agenda for Ohio*, supra note 507.

⁵²⁴ See *Clean Ohio Fund – Implementation White Paper* (Jan. 12, 2001), available at <http://www.odod.state.oh.us/cleanohio> (last visited May 11, 2001).

⁵²⁵ See *Bd. of County Comm'rs of Clinton County v. Div. of Mines and Reclamation*, Nos. RC-97-006 to RC-97-008 (Reclamation Commission, 12-18-97), interpreting RC 1514.02 (A)(9)(b); see also, *Smart Growth Agenda for Ohio*, supra note 507.

OKLAHOMA

STATE PLANNING MODEL

No statewide plan exists. The state enables local governments to adopt capital improvements and city plans but these plans are not mandatory. The Long Range Capital Planning Commission, the Oklahoma Department of Commerce, and the State Bond Advisor provide technical assistance, comments on capital improvement plans, and potential financing suggestions for local governments.⁵²⁶

SMART GROWTH EFFORTS

Research did not reveal any recent state smart growth efforts.

OTHER INITIATIVES RELATED TO SMART GROWTH

Oklahoma planning law:

- 1) Encourages local governments to plan for future development, growth, and improvement.⁵²⁷ If a local government adopts a capital improvement plan, it must ensure the plan's consistency with the Local and Regional Capital Improvement Planning Process Act. Each local government is to establish a committee to conduct public hearings and, keeping the public's input in mind, adopt and implement a plan. Alternatively, several local governments may agree to form a committee and adopt a joint planning program.⁵²⁸ The plans must include: (1) issues of local and regional significance (demographics, transportation, land use, age and capacity of capital facilities); (2) ten-year projections of local and regional growth in population and industry; (3) potential impacts on natural resources; and, (4) a Policy Development plan (identifying growth areas and rural areas; identifying capital investment priorities). The plans must be reviewed and updated every three years.
- 2) Authorizes the creation of a conservation easement program to retain or protect natural, scenic, agricultural, cultural or open space values of real property.⁵²⁹ The legislation empowers government agencies, charitable corporations, and land trusts to hold such easements.
- 3) Authorizes municipalities with populations over 200,000 to create a city planning commission.⁵³⁰ The commission may adopt and implement a growth plan to guide and accomplish a "coordinated, adjusted, and harmonious development" of the municipality.⁵³¹ The plan should consider and promote adequate services for traffic and fire and good civic design.

CONTACT INFORMATION

Department of Commerce
P.O. Box 26980
Oklahoma City, OK 73126-0980
(800) 588-5959
<http://www.odoc.state.ok.us/index.html>

⁵²⁶ See Okla. Stat. tit. 62, § 912 (2000).

⁵²⁷ See *id.*

⁵²⁸ See Okla. Stat. tit. 19, § 1104 (2000).

⁵²⁹ See 1999 Senate Bill 266, enacted as Chapter 384.

⁵³⁰ See Okla. Stat. tit. 11, § 47-102 (2000).

⁵³¹ See Okla. Stat. tit. 11, § 47-107 (2000).

OREGON

STATE PLANNING MODEL

Oregon is the archetypal centralized planning state. The state mandates comprehensive plans for local governments. Every comprehensive plan must address nineteen particular land use elements. Once enacted, a comprehensive plan demands consistency from other local land use ordinances, regulations, and proceedings.

The Department of Land Conservation and Development (DLCD) prepares the statewide planning guidelines. DLCD periodically reviews comprehensive plans, certifying those in compliance with the guidelines. It also reviews and certifies state agency programs for consistency with comprehensive plans. DLCD provides funding and technical assistance to help local governments meet their planning obligations. On the other hand, DLCD can block distribution of state tax revenues or suspend local authority to issue building permits if a local government fails to adopt, amend, or respect its plan.

Oregon's seven-member Land Conservation and Development Commission (LCDC), assisted by DLCD, adopts state land use goals, assures local plan compliance with the goals, coordinates state and local planning, and manages the coastal zone program.

SMART GROWTH EFFORTS

Smart growth has developed in Oregon under the guise of "quality development." For example, in 1997, Governor Kitzhaber signed the "Use of State Resources to Encourage the Development of Quality Communities" executive order. The order attempted to streamline Oregon's bureaucratic planning system, integrating state planning laws, goals, and rules to meet the following "quality development" objectives:

- (1) Promote compact development within urban growth boundaries;
- (2) Prioritize mixed-use development;
- (3) Encourage energy-efficient development that may rely on a range of transportation alternatives;
- (4) Support development that is compatible with the community's ability to provide public services;
- (5) Facilitate development that is compatible with natural resource constraints; and,
- (6) Support development of mixed-income housing and employment, to shorten commute times.

Oregon's state agencies have provided funding and loans for these efforts. The agencies have also set an example for local governments to follow. For example, Oregon's Department of Transportation relocated its headquarters from a suburban site to Portland so that employees may now access work via mass transit.

Another "smart growth-ish" program in Oregon is the Smart Development collaboration between the Transportation and Growth Management program, and the non-profit organization Livable Oregon, Inc. This public-private partnership funds the development of mixed-use, high-density communities.

OTHER INITIATIVES RELATED TO SMART GROWTH

Oregon's Land Use Planning Act of 1973 is the nation's oldest comprehensive planning statute. In response to the "shameless threat to our environment and to the whole quality of life," and "an unfettered despoiling of the land," the act created a top-down, command-and-control regulatory framework for planning at the state and local levels.⁵³² A transportation planning rule passed by the DLCD in 1991 strengthened this area of the act. Currently, Oregon planning law:

(1) Requires local governments to adopt comprehensive plans. The state then reviews the plans, and certifies them, or sends them back to the local government with orders to change particular provisions found not to be in compliance with the state guidelines. The plans must implement nineteen state planning goals, including:

a. Urban Growth Boundaries. Once designated by the local governments (with thought given to growth over the next twenty years), the urban area may not expand beyond these boundaries. Two of the state's twenty-eight million acres lie inside urban growth boundaries.

b. Agricultural Zones. All prime farmland (as determined by the Soil Conservation Service) located outside of urban growth boundaries must be zoned exclusively for agriculture.

c. Transportation. Plans to develop a variety of transportation options, including highways, public transit, and bicycle and walking paths.

d. Utilities and Public Facilities. Plans to develop these services.

e. Natural Resources. For example, specific planning goals apply to the Willamette Greenway, estuarine resources, and forest lands.

(2) Requires consistency between comprehensive plans and all local land use actions and procedures, including zoning ordinances, impact fee ordinances, agricultural preservation plans, and plat reviews. Cities must also make their plans match the plans of the county in which they are located.

(3) Establishes minimum density requirements for cities. For example, the LCDC requires ten dwelling units per net acre in Portland.

(4) Promotes cooperative regional efforts between state agencies, local governments, and citizens. Not only does the law provide funding for such cooperative efforts, it also allows some deviance from state land-use planning rules for solutions amenable to all participants (as long as those solutions still match the state's planning goals).

⁵³² See Governor McCall's opening address to the 1973 Legislative Assembly, excerpts *available at* <http://www.lcd.state.or.us/history.html> (last visited May 14, 2001).

(5) Providing incentives for downtown mixed-use development. The 21st Century Community Fund, composed of existing revenues, funds infrastructure investments, leverages federal funds for low-income housing, and funds the development of a state-wide transit system.

(6) Coordinates the land use activities of state agencies. The LCDC reviews and certifies all state-agency programs that are consistent with local comprehensive plans (130 programs in twenty-seven agencies have been certified). In 1995, Governor Kitzhaber established a Community Solutions Team (CST) for permanent coordination among certified state-agency programs and between these programs and local governments, business, and citizens. CST consists of the directors of the Departments of Transportation, Economic Development, Environmental Quality, and Land Conservation and Development. In December 1997, the CST broke up their field staff into Regional Field Teams.

(7) Provides a statewide dispute resolution program. Established in 1990, the Public Policy Dispute Resolution Program encourages agencies to use mediation and collaborative approaches to resolve land use issues.⁵³³ The 1999 Legislature provided the DLCD with \$200,000 in dispute resolution funds, to be distributed in a competitive grants process to local governments, citizens, and state interest groups. In addition, the Natural Resource Coordinator provides training and services to facilitate resolution of land use disputes. Finally, the Land Use Board of Appeals is available to review all land use decisions and reverse those it finds to be inconsistent with the applicable comprehensive plan.

INITIATIVES TO KEEP AN EYE ON

There has been a backlash to Oregon's command-and-control approach to land use planning. In 1995 alone, legislators considered seventy bills to overturn or weaken the state's land use planning system; most were defeated but a number of the measures made it to Governor Kitzhaber's desk, only to be vetoed. This past November, Oregon citizens passed a takings-style ballot initiative. It will be interesting to see if this is just a minor, temporary setback for planning advocates in Oregon, or whether the state will have to adapt its program to meet a shifting political tide.

PUBLIC PARTICIPATION

The Citizen Involvement Advisory Committee advises the DLCD and provides a regular forum for citizen information-sharing and networking.⁵³⁴ Its Communications Program educates citizens on the planning process and empowers them to participate in planning decisions. In addition, every city and county also has a citizen participation component to its comprehensive plan.

CONTACT INFORMATION

Department of Land Conservation and Development
1175 Court Street, NE
Salem, OR 97310
(503) 373-0050
<http://www.lcd.state.or.us>

⁵³³ See Or. Rev. Stat. § 183.502(7) (2000).

⁵³⁴ See Or. Rev. Stat. § 197.160 (2000).

PENNSYLVANIA

STATE PLANNING MODEL

No statewide plan exists nor does the state mandate comprehensive plans for local governments.

Pennsylvania is a fairly conservative state with highly independent local jurisdictions and a traditional mistrust of government intrusion. Therefore, planning is localized. Governor Ridge's 1999 executive order (see below) established the Governor's Center for Local Government Services as the principal state entity responsible for land use assistance and monitoring.

SMART GROWTH EFFORTS

Governor Ridge and the State Assembly's recent land-use planning efforts began with a focus on farmland and open space acquisition, brownfields redevelopment, and tax breaks in poor communities. In 1997, he formed the 21st Century Environmental Commission, which went on to make land use planning recommendations in a September 1998 report.⁵³⁵ In 1998, the state launched a "Growing Greener" program to preserve open space. Governor Ridge said in his February 2001 State of the State address that the two year-old program has helped reclaim over 5,000 acres of strip mines, protected 4,000 acres of wetlands, cleaned up almost 400 miles of streams and preserved more than 36,000 acres of farmland. The governor announced that his budget proposal for 2001 contains an additional \$140 million for "Growing Greener."⁵³⁶ And in 1999, Governor Ridge set forth a policy to guide Commonwealth agencies through land-use planning decisions and programs.⁵³⁷

In 2000, Governor Ridge began discussing the need for Pennsylvania to "Grow Smarter." In June 2000, he signed a legislative smart growth package, which revised the Municipalities Planning Code to allow for locally designated growth areas; protects municipalities against legal challenges to their local growth plans; and, promotes greater consistency among local, county, and regional comprehensive plans.⁵³⁸

OTHER INITIATIVES RELATED TO SMART GROWTH

Early land-use efforts by the Ridge administration also addressed the revitalization of poor communities (to keep people from moving to new suburbs). In October 1998, the Governor signed legislation to create Keystone Opportunity Zones. In each of the twelve zones, selected in February 1999, personal income, corporate, and franchise taxes are waived for twelve years. Furthermore, local governments in these zones also agree to waive property taxes. These waivers are supposed to stimulate new development within, and halt flight from, Pennsylvania's poor areas (rural and urban).

Pennsylvania state planning law, following the signing of these executive orders and the 2000 Growing Smarter Act:

⁵³⁵ See Pa. Exec. Order No. 1997-4 (1997).

⁵³⁶ See *Smart Growth: State by State* (Feb. 2001), *supra* note 378.

⁵³⁷ See Pa. Exec. Order No. 1999-1 (1999).

⁵³⁸ See Acts 67 and 68 of 2000, §1103(a)(1) of Act 67 of 2000, §§916.1 and 1006-A of Act 67 of 2000, Art. XI, Act 67 of 2000.

- 1) Establishes goals and objectives for Commonwealth land use planning.⁵³⁹ The goals include encouraging growth that is consistent with existing infrastructure⁵⁴⁰ and establishing consistent and coordinated land use practices statewide.⁵⁴¹
- 2) Directs Commonwealth agencies to “consider and aspire to” the land use goals and objectives when developing and implementing policies and programs.⁵⁴²
- 3) Establishes a Green Government Council to act as the Environmental Performance Manager of government operations.⁵⁴³ The Council works to ensure that agencies comply with state land use objectives.
- 4) Creates a supplemental Agricultural Conservation Easement Purchase Program to allocate funds and technical assistance to counties and to reimburse private land trusts for conservation easement purchase programs.⁵⁴⁴ This legislation provides an additional \$43 million to Pennsylvania's 1989 farmland preservation program. Together, these programs have preserved 1,524 farms and 186,145 acres since their inception in 1989. American Farmland Trust honored Pennsylvania in March 2001 for preserving more farms than any other state in the nation.
- 5) Authorizes municipalities to enter into cooperative agreements to develop and implement county or multi-municipal comprehensive plans.⁵⁴⁵ The plans may designate growth areas, potential future growth areas and rural resource areas. Each municipality need not include all categories of land uses, provided uses are planned for within a reasonable geographic area. Municipalities participating in cooperative agreements can share tax revenue, impact fees, and adopt development rights transfer programs. Finally, Commonwealth agencies may prioritize funding to applicants whose projects are consistent with their comprehensive plans.

The governor signed the “Growing Smarter” bills on a recently protected farm. Pointing to the beautiful farmland setting, he noted that by using transferable development rights, the town had redirected the farm’s planned development to another area “where kids can walk across the street to school and where public sewer and water systems already existed,” preserving Pennsylvania’s natural beauty in the process.⁵⁴⁶

- 6) Runs an extensive brownfields revitalization program. This program started Governor Ridge down the smart growth path in 1995. The state provides grants and technical assistance to communities seeking to cleanup brownfields property. Governor Ridge’s Green Opportunities for Brownfields program was supplemented by a 1999 executive order. The program now lays out the following four-step community planning process to meet brownfields planning goals:
 - a. Bring stakeholders together to come to consensus on their vision for the property.
 - b. Think regionally, identify the property’s physical, social, and historical attributes.
 - c. Identify the type of contamination and the resources available for cleanup.

⁵³⁹ See 4 Pa. Code § 7.610 *et seq.* (2000); *see also*, 4 Pa. Code § 7.771 *et seq.* (2000).

⁵⁴⁰ See 4 Pa. Code § 7.612 (2000); *see also* 4 Pa. Code §.7.771.

⁵⁴¹ 4 Pa. Code § 7.614 (2000).

⁵⁴² See 4 Pa. Code § 7.611 (2000).

⁵⁴³ See 4 Pa. Code § 5.951 *et seq.* (2000).

⁵⁴⁴ See Senate Bill 970, enacted as Act 15.

⁵⁴⁵ See 1999 House Bill 14, enacted as Act 67; and, Senate Bill 300, enacted as Act 68.

⁵⁴⁶ See *Smart Growth: State by State* (June 2000), *supra* note 378.

- d. Apply conservation design principles to mixed-use and open-space projects.
- 7) States that agencies “shall consult” with one another and with the State Planning Board when their land use planning programs or policies conflict.

INITIATIVES TO KEEP AN EYE ON

Governor Ridge has proposed an additional \$70 million to buy up farms and preserve farmland for this year (\$650 million over five years). This will be the largest investment that Pennsylvania has ever made in its farmland preservation efforts.

During March 18–21, 2001, Governor Ridge hosted a “Growing Smarter: Land Use in Pennsylvania” conference to discuss how government officials and agencies, businesses, non-profits, and concerned citizens can work together to promote sound land use policies.⁵⁴⁷

CONTACT INFORMATION

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(888) 223-6837
E-mail: ra-dcedclgs@state.pa.us

⁵⁴⁷ See http://www.landuseinpa.com/default.asp?content=news_PastEvents (last visited May 14, 2001).

RHODE ISLAND

STATE PLANNING MODEL

Rhode Island is a highly centralized planning state. There is a state comprehensive plan and mandatory comprehensive planning at the local level. Consistency with the state and local plans is also required in almost every aspect of land use planning. Furthermore, Rhode Island encourages cooperation between municipalities in the design and implementation of their respective plans.

The State Planning Council (Council), with help from the Division of Planning, supervises the comprehensive planning process. It creates and periodically updates a state strategic plan. The planning goals and model programs articulated in the state strategic plan provide a starting point for the drafting of the state plan guide. The Council also coordinates the different land use policies and programs of state agencies, adopts planning regulations, and reviews local comprehensive plans for effectiveness.

SMART GROWTH EFFORTS

In February 1999, Rhode Island participated in the EPA's "Smart Growth Strategies for New England" conference in Boston, Massachusetts. Since that time, several small "smart growth" programs have taken hold in the state. Furthermore, there is an apparently active non-governmental organization advocating smart growth strategies, logically named "Grow Smart Rhode Island." However, most growth management policies in Rhode Island are examples of state-level micro-planning and have existed for some time in Rhode Island's planning statutes and regulations.

One shining example of "smart growth" in Rhode Island, although it has not been called this, is the style of redevelopment and renewal that has taken place in Providence. U.S. News and World Report journalist Frank McCoy wrote in July 2000, "[Rhode Island's] capital, Providence, is well worth watching."⁵⁴⁸ The writer went on to applaud the efforts to revitalize this industrial city, including a newly proposed 538-acre mixed-use project downtown, comprised of offices, hotels, apartments, marinas, and parks. Providence's leaders have struck out on new, exciting ground, after deciding not to employ "the usual urban fixes – new malls, convention centers, stadiums."⁵⁴⁹

OTHER INITIATIVES RELATED TO SMART GROWTH

On February 17, 2000, Governor Lincoln Almond signed an executive order to establish a Growth Planning Council (Council). He charged the new Council, comprised of state agency heads, with four responsibilities:

- 1) Examine the economic, environmental, and social impact of Rhode Island's current development patterns;
- 2) Inventory all existing state programs, policies, and expenditures to evaluate their effect on sustainable development and the preservation and enhancement of environmental quality and natural resources;

⁵⁴⁸ *Smart Growth: State by State* (July 2000), *supra* note 378 (quoting Frank McCoy, U.S. News & World Report, July 2000).

⁵⁴⁹ *Id.*

- 3) Recommend ways of encouraging growth where it makes sense, economically and environmentally; and,
- 4) Foster partnerships among agencies, communities, and the private sector to build local capital for planning and implementing sustainable development.

This Council and its directives may mark a desire to create a more comprehensive smart growth movement in Rhode Island. It will be very interesting to see if this can be done or if Rhode Island will continue to add little “pockets of money” programs onto its top-down planning structure.

In addition to the above, Rhode Island planning law:

- 1) Establishes a State Planning Council, which is required to write and update a state strategic plan and a state guide plan to address all the land use issues in the state.⁵⁵⁰ The guide plan has four required elements: physical development, environmental, economic development, and human services.
- 2) Mandates comprehensive plans for all cities and towns for submission to the Director of State Administration.⁵⁵¹ Each plan must include the following elements: goals and policy statements; land use; housing; economic development; natural and cultural resources; services and facilities; open space and recreational; and, circulation and implementation strategies. The state approves the plans when all required elements are present and when the municipality has established a planning board to implement the plan.⁵⁵²
- 3) Requires the Department of Environment to submit a statewide environmental management plan.⁵⁵³ The plan must include: a status report on Rhode Island’s air, water, land, and natural resources; use projections; evaluations of current programs; and recommendations for improving those programs.
- 4) Requires cities to establish subdivision controls.⁵⁵⁴ One of the primary goals of these controls is to facilitate the efficient and economic provision of mass transit systems and public utilities.
- 5) Operates an aggressive open space and recreational area acquisition program. In 1995, with the governor’s backing, a State Greenspace and Greenway Plan was launched to protect an additional 35,000 acres by 2020. The governor’s Greenways Council now preserves about 900 acres of open space each year with funding raised through bond measures (\$15 million in 1998; \$50 million in 2000).⁵⁵⁵

⁵⁵⁰ See R.I. Gen. Laws § 42-11-10 (2000).

⁵⁵¹ See R.I. Gen. Laws § 45-22.2-2 (2000).

⁵⁵² See R.I. Gen. Laws § 45-22-1 (2000).

⁵⁵³ See R.I. Gen. Laws § 42.17.1-2 *et seq.* (2000).

⁵⁵⁴ See R.I. Gen. Laws § 45-23-29(b)(6) (2000).

⁵⁵⁵ See *Governors’ Smart Growth Initiatives*, *supra* note 26, at 15.

INITIATIVES TO KEEP AN EYE ON

Governor Almond is working to get a \$50 million bond passed to preserve 35,000 acres of parks, beaches, and open space over the next ten years. Furthermore, he has proposed a “bay bond” to help the Narragansett Bay Commission address combined sewer overflow problems and tackle the issue of drinking water quality in Rhode Island’s cities and towns.⁵⁵⁶

CONTACT INFORMATION

Department of Administration, Statewide Planning Program
<http://www.planning.state.ri.us/>

State Planning Council
<http://www.state.ri.us/municipl/rispc/spchome.htm>

Governor’s Growth Planning Council
<http://www.state.ri.us/dem/programs/bpoladm/suswshed/gpc.htm>

Grow Smart Rhode Island
345 South Main Street
Providence, RI 02903
(401) 273-5711

⁵⁵⁶ See *Smart Growth: State by State* (Feb. 2001), *supra* note 378.

SOUTH CAROLINA

STATE PLANNING MODEL

No statewide plan exists. The state began to mandate local comprehensive plans as of December 31, 1999.

SMART GROWTH EFFORTS

South Carolina has been experiencing rapid population growth – an increase of 15% in less than twenty years – as well as rapid urbanization.⁵⁵⁷ In response, Governor Hodges sponsored a “Governor’s Summit on Growth” in March 2000. According to the governor, the “number one goal” of the conference was to “foster a dialogue. It will help us explore ways in which we can continue record economic development without sacrificing quality of life.”⁵⁵⁸ The governor’s interagency task force on the environment is expected to produce a land use plan in 2001.⁵⁵⁹ In the governor’s 2001 state-of-the-state address, he called for a \$15 million investment to preserve historic assets, enhance wildlife habitats, and promote green space in an effort to “plan for the next decade of explosive growth.”⁵⁶⁰

OTHER INITIATIVES RELATED TO SMART GROWTH

In 1994, the South Carolina legislature established comprehensive planning guidelines for all local governments.⁵⁶¹ Although initially voluntary, the act was amended in 1999 to mandate conformity with the state-established guidelines by December 31, 1999.⁵⁶²

Elements of the comprehensive plan include:⁵⁶³

- 1) Population and demographics;
- 2) Economic development;
- 3) Natural resources;
- 4) Cultural resources;
- 5) Community facilities (transportation, water supply, sewage, fire and emergency medical, schools, libraries, etc.);
- 6) Housing (location, types, age of stock, affordability); and
- 7) Land use.

State law requires that the local planning commissions review their comprehensive plans (or elements thereof) as often as necessary, but not less than once every five years. They must update all elements of the comprehensive plan at least once every ten years.

⁵⁵⁷ See *Governors’ Smart Growth Initiatives*, *supra* note 26, at 15.

⁵⁵⁸ *Id.*

⁵⁵⁹ See *id.*

⁵⁶⁰ *Id.*

⁵⁶¹ See the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, Act No. 355 § 2, enacted as S.C. Code Ann. § 6-29-500 *et seq.* (Law. Co-op. 1999).

⁵⁶² See 1994 Act No. 355, § 2, *as amended by* 1999 Act No. 15, § 1, effective April 30, 1999.

⁵⁶³ See S.C. Code Ann. § 6-29-510 (Law. Co-op. 1999).

South Carolina planning law also:

- 1) Enables local governments to assess developer impact fees once they have adopted comprehensive plans.⁵⁶⁴ The state has very specific requirements that a local government must meet before it can assess these impact fees, however. Local governments must prepare a report estimating the effect that imposing impact fees will have on the availability of affordable housing in the area.⁵⁶⁵ They must also conduct engineering studies to determine the amount of the impact fee.⁵⁶⁶ Then, local legislative bodies must pass an ordinance approving the impact fee.⁵⁶⁷ Finally, local governments must prepare annual reports describing the amount and application of impact fees assessed in the previous year.⁵⁶⁸
- 2) Authorizes the creation of conservation easements to protect natural, archaeological, agricultural, scenic or open space values of real property.⁵⁶⁹ These easements are limitless in duration unless otherwise designated at the time of creation. As in Washington, South Carolina empowers state and local agencies, not-for-profit organizations, and charitable land trusts to hold conservation easements in perpetuity. On the other end, to entice landowners to participate in the conservation easement program, the state provides a personal income tax deduction equal to the fair market value of the easement.⁵⁷⁰
- 3) Directs the State Forestry Council to create comprehensive water and related land use plans for the state's three classes of scenic rivers.⁵⁷¹ In areas designated "natural rivers areas," no roads, logging, mining, or construction may take place.
- 4) Mandates (effective July 1, 1991) all local governments to prepare comprehensive beach management plans, to be submitted for approval to the state.⁵⁷² Elements of the plans include: inventory of public beach access and goals for preserving public access; historic erosion rates and control alternatives; beach structures; and turtle nesting and other important habitats. The plans had to be implemented by July 1, 1992. When these deadlines were not met, the state government established, and enforced, a local coastal beach management plan.
- 5) Supports participation in the Southern Growth Policies Agreement and Board.⁵⁷³ The Southern Growth Policies Board, established in 1962, consists of five members of each state: the Governor, two members of the State Legislature, and two Governor appointees. Its mission is to encourage regional studies and cooperation in growth management strategies.
- 6) Directs the South Carolina Advisory Commission on Intergovernmental Relations (Commission) to study state and local government issues. By its legislative mandate, the Commission acts as a neutral forum for the discussion and study of intergovernmental problems. Most recently, the Commission completed a state infrastructure study, commissioned in 1996.⁵⁷⁴ The request for such a study was a reaction to state's exponential growth over the past decade.

⁵⁶⁴ See S.C. Code Ann. § 6-1-930 (Law. Co-op. 2000).

⁵⁶⁵ See S.C. Code Ann. § 6-1-930(A)(2) (Law. Co-op. 2000).

⁵⁶⁶ See S.C. Code Ann. § 6-1-930(B)(2) (Law. Co-op. 2000).

⁵⁶⁷ See S.C. Code Ann. § 6-1-930(B)(1) (Law. Co-op. 2000).

⁵⁶⁸ See S.C. Code Ann. § 6-1-930(C) (Law. Co-op. 2000).

⁵⁶⁹ See S.C. Code Ann. § 27-8-10 *et seq.* (Law. Co-op. 2000).

⁵⁷⁰ See S.C. Code Ann. § 49-29-100 (Law. Co-op. 2000).

⁵⁷¹ See South Carolina Scenic Rivers Act, S.C. Code Ann. § 49-29-160 (Law. Co-op 1999).

⁵⁷² See 1988 Act No. 634, S.C. Code Ann. § 48-39-350 (Law. Co-op 1999).

⁵⁷³ See S.C. Code Ann. § 13-13-10 (Law. Co-op 2000).

⁵⁷⁴ See *South Carolina Infrastructure Study*, available at <http://www.state.sc.us/board/drd/acir/> (last visited May 14, 2001).

Finally, local efforts to control sprawl have begun. Taking Charlotte, North Carolina's lead, the city council of nearby (although over the border) Rock Hill City recently approved a tree-preservation measure. It requires developers to replace trees or pay for them, at rates that increase as the developers reach further into undeveloped land. Bad faith cutting results in criminal fines and injunctions against occupancy in the new developments.⁵⁷⁵

INITIATIVES TO KEEP AN EYE ON

This legislative session, both the South Carolina House and Senate have introduced bills to establish a Priority Agricultural Trust Fund to allocate monies to eligible counties for the purchase of agricultural conservation easements.⁵⁷⁶ To be eligible, a county would have to create a county priority agricultural land board to adopt program rules, propose priority agricultural lands, and execute agreements to purchase development rights. S.B. 156 has reported out of Committee; H.B. 3111 remains in Committee.

CONTACT INFORMATION

The Budget and Control Board
Division of Regional Development <http://www.state.sc.us/board/drd/index.html>

Advisory Commission on Intergovernmental Relations
<http://www.state.sc.us/board/drd/acir/>

⁵⁷⁵ See *Smart Growth: State by State* (Dec. 2000), *supra* note 378.

⁵⁷⁶ See 2001 Senate Bill 156 and House Bill 3111.

SOUTH DAKOTA

STATE PLANNING MODEL

There is a state comprehensive development plan. Counties and local governments are authorized, but not required, to adopt comprehensive plans.

The Bureau of Intergovernmental Relations creates the state plan (after consulting other state agencies) and provides assistance and funding for local governments undertaking planning activities.

SMART GROWTH EFFORTS

Research did not reveal any state smart growth activity.

OTHER INITIATIVES RELATED TO SMART GROWTH

South Dakota planning law:

- 1) Mandates the development of a state-wide comprehensive development plan.⁵⁷⁷
- 2) Provides planning assistance to any local government which requests it⁵⁷⁸ and may make “grants and other aids ... in [its] planning assistance function.”⁵⁷⁹
- 3) Discourages the development of historic properties by granting moratoria on property tax increases once the owner agrees to enter into a covenant to maintain the property in its historic state.⁵⁸⁰ Alternatively, the state Office of History may acquire the property.⁵⁸¹
- 4) Encourages joint planning by local governments.⁵⁸²
- 5) Requires counties to create a planning and zoning commission (of at least three members).⁵⁸³ The commission may adopt a comprehensive plan.⁵⁸⁴

CONTACT INFORMATION

No specific contact information available.
State of South Dakota website, <http://www.state.sd.us>

⁵⁷⁷ See S.D. Codified Laws §11-1-2 (Michie 2000).

⁵⁷⁸ See S.D. Codified Laws §11-1-11 (Michie 2000).

⁵⁷⁹ See S.D. Codified Laws §11-1-13 (Michie 2000).

⁵⁸⁰ See S.D. Codified Laws § 1-19A-20, 21 (Michie 2000).

⁵⁸¹ See S.D. Codified Laws §1-19A-11 (Michie 2000).

⁵⁸² See S.D. Codified Laws §11-6-4.2 (Michie 2000).

⁵⁸³ See S.D. Codified Laws §11-2-4 (Michie 2000).

⁵⁸⁴ See S.D. Codified Laws §11-2-11 (Michie 2000).

TENNESSEE

STATE PLANNING MODEL

Tennessee is a hybrid planning state. There is no state plan. Its growth management program is largely voluntary - the state's role is to encourage, rather than require, local jurisdictions to adopt comprehensive plans. However following some heated annexation disputes, Tennessee began mandating urban growth boundaries and service area planning.

Tennessee's growth development program stresses economic development. The state provides broad planning goals for the local governments, modeled after the Florida Principles. However, the state mandates pro-growth plans.

The state's role is primarily that of technical assistance provider. The Tennessee Department of Economic and Community Development offers assistance, contracts with local governments to undertake planning activities for them, and takes an active role in siting and filling major industrial parks (see below). In addition, the Tennessee Advisory Commission on Intergovernmental Relations monitors implementation of the mandated portions of state planning law.⁵⁸⁵

SMART GROWTH EFFORTS

Research did not reveal any state smart growth activity.

OTHER INITIATIVES RELATED TO SMART GROWTH

Historically, Tennessee planning law emphasized local control and regional consensus. Local jurisdictions have broad authority over their planning activities, but they are not required to adopt a comprehensive plan. The state only intervenes to settle local conflicts or at a local government's request for assistance.⁵⁸⁶

Chapter 1101 mandates certain planning practices, even for those local jurisdictions that have never undertaken an optional comprehensive plan. The key features of this act include: the enactment of countywide growth plans, with urban growth boundaries; Planned Growth Areas (locations outside the urban growth boundaries which are expected to grow over the next twenty years); and service area plans (requiring the same levels of services for outlying regions as for city residents and businesses).

Additionally, Tennessee law:

- 1) Provides tax benefits for agricultural land and prohibits the "zoning-out" of agricultural land in municipal plans.
- 2) Forges partnerships with private organizations for open space acquisition. In 1997, for example, the Department of Environment and Conservation expanded Tims Ford State Park from 400 acres to more than 2,000 acres. The Tennessee Conservation League developed the project as a

⁵⁸⁵ See Tenn. Code Ann. Chapter 1101 (2000).

⁵⁸⁶ See *Growth Management Programs*, *supra* note 69, at 41-44.

pilot plan, explaining that “[t]his innovative interagency partnership will allow the expansion to take place using only nominal state dollars.”⁵⁸⁷

- 3) Provides financial incentives for local governments to timely ratify a mandatory growth plan. Those completing their plans before June 2000 have been awarded additional percentage points in funding programs.
- 4) Seeks private investments in state-owned industrial parks.⁵⁸⁸ The Department of Economic and Community Development builds the parks in locations served by adequate transportation and infrastructure and then convinces companies to move there.

INITIATIVES TO KEEP AN EYE ON

In 1999 and 2000, a bill was introduced to amend the state planning laws.⁵⁸⁹ The bill appears to want to move the state towards an even more staunchly pro-growth stance. It calls on local governments to identify rural “growth areas” where, absent an emergency, local governments cannot deny building permits, cannot allow a conservation easement program, and cannot say the public facilities are insufficient to support new development.

CONTACT INFORMATION

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⁵⁸⁷ See *Department of Environment and Conservation, News and Public Affairs*, press release (Jan. 3, 1997), available at <http://www.state.tn.us/environment/news/release/news97/jan97> (last visited May 14, 2001).

⁵⁸⁸ See <http://www.state.tn.us/e.cd/realestate.htm> (last visited May 14, 2001) for the services provided to businesses to attract them to Tennessee.

⁵⁸⁹ See SB 1627, bill to amend Title 6, Chapter 58, re: comprehensive plans.

TEXAS

STATE PLANNING MODEL

No statewide plan exists, except one that the Department of Transportation creates and updates for highways and roads.⁵⁹⁰ The state enables local jurisdictions to adopt comprehensive plan and suggests elements to include, but comprehensive plans are not mandatory. However, if several municipalities choose to create a Joint Planning Commission, the Commission must adopt a master plan for the region.⁵⁹¹

There does not appear to be a state agency that oversees land use planning or growth management for Texas.

SMART GROWTH EFFORTS

Research did not reveal any recent state smart growth activity.

OTHER INITIATIVES RELATED TO SMART GROWTH

Despite the absence of state smart growth efforts, there are some very exciting things going on at the local level. Austin, for example, has launched a Smart Growth Initiative which promotes the following goals:

1. Determine how and where we grow. Austin has identified Desired Development Zones, based on traditional (mixed-use) and transit-based neighborhood development patterns, and Drinking Water Protection Zones, where development is prohibited or kept to a minimum.
2. Improve our quality of life. Austin's development plans stress neighborhood preservation, environmental protection, accessibility, mobility, and economic development.
3. Enhance our tax base. Austin seeks to make strategic investments (including repair of existing infrastructure) and foster regional partnerships.

Although Austin failed, by a slight margin, to pass a light rail measure on the November 2000 ballot, city residents are starting to realize the need for thoughtful growth in this booming town. One interesting project underway is the 252-acre mixed-use "Traditional Neighborhood District" project at Morse Tract in North Austin. The project will include 600 single-family homes, 700 apartments, sixty acres of open space, and up to 350,000 square feet of retail, office and light industrial space. Austin put \$5 million towards the project, which will cost over \$200 million.⁵⁹²

Meanwhile, the Tarrant County Regional Water District (Fort Worth and environs) is conducting a \$1.9 million study to make the upper Trinity River a study in regional development. The Water District hopes that urban revitalization efforts can be unified with a green space preservation program and the expansion of recreational trails to extend along eighty-eight miles of riverbank. One goal is to connect area trails with Arlington's River Legacy Park and with Dallas. Planners are soliciting public input

⁵⁹⁰ See Tex. Transp. Code Ann. § 201.103 (Vernon 2000).

⁵⁹¹ See Tex. Loc. Gov't Code Ann. § 371.043 (Vernon 2000).

⁵⁹² See *Smart Growth: State by State* (March 2001), *supra* note 378.

during a series of neighborhood meetings this April and May. Key projects are likely to begin next year.⁵⁹³

In addition, Texas planning law:

1) Enables local governments to adopt comprehensive plans.⁵⁹⁴ A municipality may define the content and design of its comprehensive plan but the state suggests including the following elements:

- land use;
- transportation; and,
- public facilities.

The municipality may then, should it choose to do so, enact development regulations that are consistent with the plan. Consistency is defined by the local jurisdiction.

2) Allows neighboring jurisdictions to enter into joint planning agreements.⁵⁹⁵ Each municipality that agrees to participate is entitled to equal representation on a Joint Planning Commission that meets to discuss planning issues in the region and to map all the municipalities under its jurisdiction. Once established, the Commission must adopt a master plan.⁵⁹⁶ The master plan, subject to review and approval by each municipality in the joint planning region, must include:

- highway design;
- street and park layout; and,
- land use.

3) Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic, agricultural, historical, or open space values of real property.⁵⁹⁷ If the conservation easement is not unlimited in duration, as soon as it ends, an additional tax is imposed on the land equal to the tax break received for the five prior years plus 7% annual interest.

4) Permits counties, pursuant to a majority vote by the people, to appropriate monies from the general fund (not to exceed five cents on every \$100 in the fund) to advertise and promote the growth of the county.⁵⁹⁸ The county should create a board of development to oversee the advertising campaign and to promote growth and development.

5) Permits any county with a population of 2.2 million or more, or any county bordering on such a populous county, that is authorized to provide storm water, drainage and flood control facilities, to impose impact fees to provide these services to new developments.⁵⁹⁹

CONTACT INFORMATION

No specific contact information available.

State of Texas website, <http://www.state.tx.us>

⁵⁹³ See *Smart Growth: State by State* (Feb. 2001), *supra* note 378.

⁵⁹⁴ See Tex. Loc. Gov't Code Ann. § 219.002 (Vernon 2000).

⁵⁹⁵ See Tex. Loc. Gov't Code Ann. § 371.042 (Vernon 2000).

⁵⁹⁶ See Tex. Loc. Gov't Code Ann. § 371.043 (Vernon 2000).

⁵⁹⁷ See Tex. Nat. Res. Code Ann. § 183.001 *et seq.* (Vernon 2000).

⁵⁹⁸ See Tex. Loc. Gov't Code Ann. § 381.002 (Vernon 2000).

⁵⁹⁹ See Tex. Loc. Gov't Code Ann. § 395.079 (Vernon 2000).

STATE PLANNING MODEL

There is no state comprehensive plan and local comprehensive plans are not required. Local governments are authorized to adopt and implement plans, if they choose.

The state provides some technical assistance through the State Planning Coordinator. The Coordinator may receive and review local plans for comment and may intervene to help settle local planning disputes. The Coordinator also advises the Governor on planning and growth management issues. Representatives of several state agencies also come together to discuss growth management on the State Advisory Planning Committee.

SMART GROWTH EFFORTS

In 1999, the Utah Legislature passed the Utah Quality Growth Act. Among its provisions, the Act established the Utah Quality Growth Commission to distribute funds for critical lands acquisition, fund local planning, and advise the state on quality growth issues.⁶⁰⁰ Quality Growth is defined in the Commission's vision statement as "creating a responsible balance between the protection of natural resources - land, air, and water - and the requisite development of residential, commercial, and industrial land to accommodate our expanding economy and population."⁶⁰¹

However, Utah is very conservative and, outside of Salt Lake City and Provo, not densely populated. Therefore, a strong pro-growth stance permeates all of Utah's planning and development. Further, there is a strong "takings" movement in the state. In 1993, the legislature enacted the Private Property Protection Act to help the state identify actions that have "constitutional takings implications."⁶⁰² The Act requires an assessment to be made prior to any regulation or occupation describing "how the taking affects the use or value of private property" and "alternatives to the proposed action"⁶⁰³ The Act specifically pertains to regulatory takings as eminent domain is exempted from the law.

OTHER INITIATIVES RELATED TO SMART GROWTH

In this year's State of the State address, Governor Leavitt committed his support and state resources to the preservation of Utah's open space and water quality. Among his priorities are "a major drive to spruce up, clean up and keep up" state parks and monuments and the creation of a Heritage Waters program to preserve waterways and revitalize the communities at their banks.⁶⁰⁴

In addition, Utah law:

1) Runs a fairly extensive conservation easement program, with a focus on forging partnerships with private groups and foundations. In March 2001, for example, the Bluff City Historic Preservation Association bought a conservation easement on a 145-acre farm in Southeast Utah. The easement was purchased with funds from foundations, private donations, and the state. The state Department of

⁶⁰⁰ See <http://yeehaw.state.ut.us> (last visited April 20, 2001).

⁶⁰¹ *Id.*

⁶⁰² Utah Code Ann. §63-90-1 *et seq.* (2000).

⁶⁰³ Utah Code Ann. §63-90-4 (2000).

⁶⁰⁴ See *Smart Growth: State by State* (Feb. 2001), *supra* note 378.

Agriculture and Quality Growth Commission have facilitated the purchase of conservation easements on 9,000 acres in the past several years.⁶⁰⁵

2) Authorizes the Department of Natural Resources to make comprehensive plans for the development and conservation of Utah's natural resources⁶⁰⁶ and for the enhancement of Utah's recreational resources.⁶⁰⁷

3) Directs the State Building Board to prepare two master plans (long-term, and five year) of all structures built or to be built, after consulting with all state departments and agencies.⁶⁰⁸

4) Enables counties to zone for all unincorporated areas in their jurisdictions.⁶⁰⁹ Counties may also appoint a seven-member planning commission to recommend zoning ordinances, advise the county council, and create a general plan.⁶¹⁰ Elements of a plan may include transportation, environmental, economic, and public services.⁶¹¹ The plan is stated to be advisory⁶¹² but no public facility or property, including roads and parks, may vary from the plan unless approved by the legislative upon advice of the commission.⁶¹³

At the local level, Salt Lake City Mayor Rocky Anderson successfully defeated a proposed mega-mall discount center in the airport area. He opposed the project fearing it would hurt downtown retailers and exacerbate sprawl. At a news conference, the Mayor cited an October 1999 Price-Waterhouse-Coopers report to support his view that sustainable urban economies stick to "urban planning policies that promote walkable neighborhoods, including retail outlets in neighborhoods and a commitment to a vibrant core downtown."⁶¹⁴

PUBLIC PARTICIPATION

Last month, Wasatch Front voters passed a quarter-cent sales tax increase, which will provide the Utah Transit Authority with an additional \$43 million each year for its planned Salt Lake City-Ogden commuter rail and for light-rail expansion in the Salt Lake Valley.⁶¹⁵

The successes Utah has enjoyed in its relatively recent foray into smart growth may be linked to the participatory nature of its programs. As *Washington Post* columnist Neal Pierce notes, "Instead of starting with government-imposed, top-down controls, the Quality Growth Partnership (through Envision Utah) is trying to leap to a new strategy – to inform citizens so they're the ones demanding traffic restraint, protection for open space, pedestrian-oriented development."⁶¹⁶

⁶⁰⁵ See *Smart Growth: State by State* (March 2001), *supra* note 378.

⁶⁰⁶ See Natural Resources Act, Utah Code Ann. § 63-34-6 (2000).

⁶⁰⁷ See Utah Code Ann. § 63-28-10 (2000).

⁶⁰⁸ See Utah Code Ann. § 63A-5-103 (2000).

⁶⁰⁹ See County Land Use Development and Management Act, Utah Code Ann. § 17-27-101 *et seq.* (2000).

⁶¹⁰ See Utah Code Ann. § 17-27-201 (2000).

⁶¹¹ See Utah Code Ann. § 17-27-302 (2000).

⁶¹² See Utah Code Ann. § 17-27-303 (2000).

⁶¹³ See Utah Code Ann. § 17-27-305 (2000).

⁶¹⁴ See *Smart Growth: State by State* (July 2000), *supra* note 378.

⁶¹⁵ See *Smart Growth: State by State* (Dec. 2000), *supra* note 378.

⁶¹⁶ Neal R. Peirce, *Development Democratized: Utah's New Promised Land?*, Washington Post Writers Group, 1997 (*cited in Growing Pains*, *supra* note 30, at 41). Additional information about Envision Utah is available in *Growing Pains*, *supra* note 30, at 40-42.

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VERMONT

STATE PLANNING MODEL

Vermont's land use system, discussed below, defies easy categorization. Despite the lack of mandatory local planning, the state Land Use and Development Law (Act 250) requires permits for certain types of development activity which serves to control growth and help the state develop in a "smart" way. The State Environmental Review Board issues Act 250 permits and possesses most of the state's planning powers. Although there is no "state plan," all state agencies must develop plans that are internally consistent and comply with the goals of the Growth Management Act of 1988 (Act 200).

SMART GROWTH EFFORTS

Act 250

While Vermont has not recently enacted a comprehensive state "smart growth" program, their land use management system clearly serves "smart growth" goals. In response to rapid growth in the late 1960's, Vermont enacted "Act 250," a comprehensive land use strategy that requires permits for certain categories of development, including subdivisions of ten lots or more, commercial projects on more than one acre or ten acres (depending on whether the town has permanent zoning and subdivision regulations), and any development above the elevation of 2500 feet.⁶¹⁷

The State Environmental Review Board (Board) is the state's primary planning body.⁶¹⁸ The Board develops a "capability and development" plan to guide and establish a "coordinated, efficient and economic development of the state."⁶¹⁹ Additionally, it is responsible for issuing Act 250 permits and ensuring, through a hearing process, that permit applicants meet the strict requirements of the statute. All Act 250 permits must also be consistent with the Board's capability and development plan.⁶²⁰

⁶¹⁷ See Vt. Stat. Ann. tit. 10, Chapter 151 (2000) and the Environmental Board Rules. More specifically, Act 250 permits are required for:

- (1) any construction of improvements for any purpose above the elevation of 2500 feet;
- (2) the construction of improvements for any commercial or industrial purpose (including not-for-profit development but excepting farming, logging, or forestry) on more than ten acres of land; or on more than one acre of land if the municipality does not have both permanent zoning and subdivision bylaws;
- (3) the construction of ten or more housing units within a radius of five miles, or the construction or maintenance of mobile homes or trailer parks with ten or more units;
- (4) the subdivision of land into ten or more lots of any size within a five mile radius or within the jurisdictional limits of a District Commission within a continuous period of five years;
- (5) the construction of improvements for a road incidental to the sale or lease of land if the road is to provide access to more than five lots or is more than 800 feet in length;
- (6) the construction of improvements for a governmental purpose if the project involves more than ten acres or is part of a larger project that will involve more than ten acres of land;
- (7) any construction of improvements for a commercial, industrial or governmental purpose which will be a substantial change or addition to or expansion of an existing pre-1970 development of the type that would require a permit if built today;
- (8) the exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material;
- (9) the drilling of an oil or gas well.

For additional information, see the Environmental Board website, <http://www.state.vt.us/envboard>.

⁶¹⁸ See Vt. Stat. Ann. tit. 10, § 6001 *et seq.* (2000). Among other responsibilities, the Board develops rules which may provide alternatives to the otherwise complex procedures required for permitting by the State Land Use Act.

⁶¹⁹ Vt. Stat. Ann. tit. 10, § 6042 (2000). This plan must be submitted to the governor for approval as well as adopted by the General Assembly.

⁶²⁰ See Act 250, Requirement 9.

The Board delegates its Act 250 permitting authority to three-member District Environmental Commissions (DECs) located throughout the state. Before issuing any permit, a DEC must ensure that any proposed development or subdivision:

- (1) Will not result in undue water pollution.
- (2) Has sufficient water available for the needs of the subdivision or development.
- (3) Will not unreasonably burden any existing water supply.
- (4) Will not cause unreasonable soil erosion or affect the capacity of the land to hold water.
- (5) Will not cause unreasonably dangerous or congested conditions with respect to highways or other means of transportation.
- (6) Will not create an unreasonable burden on the educational facilities of the municipality.
- (7) Will not create an unreasonable burden on the municipality in providing governmental services.
- (8) Will not have an undue adverse effect on aesthetics, scenic beauty, historic sites or natural areas, and 8(a) will not imperil necessary wildlife habitat or endangered species in the immediate area.
- (9) Conforms with the Capability and Development Plan which includes the following considerations: (A) The impact the project will have on the growth of the town or region; (B) Primary agricultural soils; (C) Forest and secondary agricultural soils; (D) Earth resources; (E) Extraction of earth resources; (F) Energy conservation; (G) Private utility services; (H) Costs of scattered developments; (J) Public utility services; (K) Development affecting public investments; (L) Rural growth areas.
- (10) Is in conformance with any local or regional plan or capital facilities program.⁶²¹

As is evident, all of these requirements fit into components of “smart growth,” particularly consideration of existing infrastructure, including educational capacity, as well as transportation impacts and the costs of additional governmental services. Act 250 permits are required in addition to the requirements of other local or state permits.

Act 200

In response to the Governor’s Commission on Vermont’s Future, the legislature passed the Growth Management Act of 1988 (“Act 200”) which sets forth a system for coordinated land-use planning at the municipal, regional, and state levels.⁶²² At the state level, all state agencies that have programs or take

⁶²¹ See *State of Vermont, Environmental Board – District Commissions, Act 250 – Hearing Information and the 10 Criteria*, available at http://www.state.vt.us/envboard/publications/hearing_information.htm (last visited April 18, 2001). District Environmental Commission decisions may be appealed to the State Environmental Board and the Vermont Supreme Court.

⁶²² For an analysis of the effectiveness of these provisions, see research materials compiled by the Vermont Forum on Sprawl, available at <http://www.vtsprawl.org> (last visited April 18, 2001).

actions affecting land use are required to develop plans that are compatible with regional and approved municipal plans and comply with the goals of Act 200.⁶²³ Agencies are required to re-adopt their plans biennially to ensure that they remain compatible with regional plans and approved municipal plans and consistent with Act 200's goals.⁶²⁴ The goals of Act 200 are set out statutorily and include, among other things:

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

(A) Intensive residential development should be encouraged primarily in areas related to community centers, and strip development along highways should be discouraged.

(B) Economic growth should be encouraged in locally designated growth areas, or employed to revitalize existing village and urban centers, or both.

(C) Public investment, including the construction or expansion of infrastructure, should reinforce the general character and planned growth patterns of the area.⁶²⁵

Emphasis on Regionalism

Vermont, through Act 200 and other statutory provisions, emphasizes a regional approach to growth management. The state is divided into twelve regional planning districts and regional planning agencies are given substantial responsibilities to ensure consistency among municipal plans.⁶²⁶ Among the duties of a regional planning commission are: developing a regional plan; assisting municipal planning efforts; reviewing the compatibility of municipal plans at least every five years; defining and developing strategies relating to the development of regional impacts; reviewing proposed state capital expenditures for compatibility with regional plans; and assisting municipalities in their review.⁶²⁷ The elements of regional plans are very similar to those of municipal plans.

Vermont also has a Council of Regional Commissions, which includes representatives from each regional planning commission.⁶²⁸ Among other responsibilities, the council reviews proposed regional plans or amendments and determines whether the plan contains the required elements, is compatible with the plans of adjoining regions, and is consistent with the goals of the state. The council may also assess the compatibility of a proposed regional plan at the request of an adjoining municipality. Vermont participates in interstate and multi-state regional planning agencies as well.

While there is no state requirement that municipalities create local plans, they are encouraged to do so. In fact, the state has a Municipal Planning Grant Program that provides grants on a competitive basis to municipalities to implement or prepare plans. As of fiscal year 1999, grants awarded under this program must meet a second criterion – they must foster compact development patterns – including downtown development. If municipalities do create local plans, one of the required elements is a statement

⁶²³ See Vt. Stat. Ann. tit. 3, § 4021 (2000); see also Vt. Stat. Ann. tit. 24, § 4302 (2000) (setting out goals).

⁶²⁴ See Vt. Stat. Ann. tit. 3, § 4021. These plans are reviewed by the council of regional commissions pursuant to the procedures set out in Vt. Stat. Ann. tit. 24, § 4350 (2000).

⁶²⁵ Vt. Stat. Ann. tit. 24, § 4302 (c)(1) (2000).

⁶²⁶ See Vt. Stat. Ann. tit. 24, § 4341 *et seq.* (providing for the formation of Regional Planning Commissions).

⁶²⁷ See Vt. Stat. Ann. tit. 24, § § 4347 (setting out purposes of regional plan), 4348a (setting out elements of regional plans), 4350 (review and consultation regarding municipal planning efforts) (2000).

⁶²⁸ See Vt. Stat. Ann. tit. 24, § 4305 (2000).

detailing how the plan relates to development trends and plans for adjacent municipalities, area, and the region.⁶²⁹ Additionally, having an approved municipal plan entitles municipalities to a number of benefits, including requiring state agency plans and Act 250 permits to be consistent with the municipality plan, being able to levy impact fees on new development within its borders, and becoming eligible to receive additional funds from the municipal and regional planning fund.⁶³⁰

OTHER INITIATIVES RELATED TO SMART GROWTH

In its strategic plan, the Vermont Agency of Commerce and Community Development sets out a number of smart growth goals and implementation strategies.⁶³¹ Most relevant is their goal to “[p]romote, coordinate and provide leadership for healthy communities through support for Vermont’s traditional land use patterns and protection of its historic resources.”⁶³² To accomplish this goal, the agency plans to: (1) strengthen downtown and village centers; (2) enhance communities’ ability to plan for and implement growth to support Vermont’s traditional land use pattern; (3) integrate historic resources as important assets for economic and community development; (4) strengthen working and natural landscapes; (5) include affordable housing as part of Healthy Communities strategy; (6) develop and implement a public information plan; (7) support improvement of regulatory and permitting procedures to make them less costly, more predictable, more defensible and less time-consuming; and (8) coordinate planning and implementation of a Smart Growth agenda with our state, regional, local and private partners.⁶³³

Recent census findings indicate that Vermont is growing at a slower rate than many states (8.2% over the last decade compared to the national average of 13.2%) and while census figures show “a slight migration from town to country,” overall, Vermont is seen as “a remarkably stable state.”⁶³⁴

CONTACT INFORMATION

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<http://www.state.vt.us/envboard>

Vermont Agency of Commerce and Community Development
<http://www.state.vt.us/dca>

⁶²⁹ See Vt. Stat. Ann. tit. 24, § 4382 (2000).

⁶³⁰ See Vt. Stat. Ann. tit. 24, § 4350 (2000).

⁶³¹ See *Summary of Strategic Plan*, available at <http://www.state.vt.us/dca> (last visited April 18, 2001).

⁶³² See *id.*

⁶³³ *Id.* These strategies are further broken down into specific implementation steps. *Id.*

⁶³⁴ Fred Bayles, *Burlington’s suburbs expand Statewide, little change though*, USA Today, March 13, 2001, at A-5, 2001 WL 5457407.

VIRGINIA

STATE PLANNING MODEL

Virginia does not have a statewide plan. It does, however, mandate local comprehensive plans but provides no oversight agency or technical assistance to facilitate the implementation of these plans.

The Office of the Secretary of Natural Resources oversees several departments who affect/create state land use policy. These Departments include the Chesapeake Bay Local Assistance Department, the Department of Conservation and Development, and the Department of Environmental Quality.

SMART GROWTH EFFORTS

Research does not reveal any recent state smart growth efforts.

OTHER INITIATIVES RELATED TO SMART GROWTH

Virginia planning law:

- 1) Requires that each local planning commission adopt a comprehensive plan⁶³⁵ with specified elements, including:
 - land use;
 - transportation;
 - community service facilities;
 - historical areas and urban renewal;
 - natural resources; and
 - recycling centers.

The plans are to be reviewed every five years.⁶³⁶ However, the plans are not subject to state review, and, as noted above, there is no oversight agency to provide technical assistance or encouragement to the local jurisdictions.

- 2) Pursuant to the 1987 Cooperative Chesapeake Bay Agreement, requires that local governments in the tidewater region designate Chesapeake Bay Preservation areas within their jurisdiction.⁶³⁷ Furthermore, these local governments must include measures to protect the state's water quality in their comprehensive plans.⁶³⁸
- 3) Supports state participation in the Southern Growth Policies Agreement and Board.
- 4) Authorizes the creation of a conservation easement program to protect natural, scenic, agricultural, recreational, or open space use.⁶³⁹ This legislation may have been proposed through the Southern

⁶³⁵ See Va. Code Ann. § 15.2-2223 (Michie 2000).

⁶³⁶ See Va. Code Ann. § 15.2-2230 (Michie 2000).

⁶³⁷ See Va. Code § 10.1-2109.A (Michie 2000); Chesapeake Bay Local Assistance Board Regulations, 9 Va. Admin. Code §§ 10-20-30, 10-20-60A, and 10-20-210.A (West 2000).

⁶³⁸ See Va. Code Ann. § 10.1-2109.B; Chesapeake Bay Local Assistance Board Regulations, 9 Va. Admin. Code §§ 10-20-30, 10-20-60A, and 10-20-210A.

⁶³⁹ See Va. Code Ann. § 10.1-1009 *et seq.* (Michie 2000).

Growth Policies Board because the language is nearly identical to that of South Carolina's. As in South Carolina and Washington, Virginia empowers state and local agencies, not-for-profit organizations, and charitable land trusts to hold conservation easements in perpetuity. Also, as in South Carolina, Virginia entices its landowners to participate in the conservation easement program with a tax deduction equal to the fair market value of the easement.⁶⁴⁰

- 5) Matches grants (through the Virginia Land Conservation Fund) to local governments, public bodies, and not-for-profit organizations, that wish to purchase title or development rights in land for the protection of ecological, cultural, recreational or historical purposes, or to protect a threatened or endangered species.⁶⁴¹

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Relevant departments include:

Chesapeake Bay Local Assistance Department
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Richmond, VA 23219
(804) 225-3440

Department of Conservation and Recreation
203 Governor Street, Suite 213
Richmond, VA 23219-2094
(804) 786-1712

⁶⁴⁰ See 1999 House Bill 1752, enacted as Chapter 983.

⁶⁴¹ See 1999 House Bill 1747, enacted as Chapter 906.

WASHINGTON

STATE PLANNING MODEL

State law requires comprehensive plans from counties and cities meeting a threshold population size and those experiencing rapid population growth. Comprehensive plans are voluntary for the rest of the local governments. If a county is required to participate or chooses to opt into the comprehensive plan program, then it must make all of its development plans consistent.⁶⁴² The planning requirements are modeled after Florida's program.

In addition, very detailed state planning laws exist. They dictate the siting of essential facilities (airports, regional transportation facilities, landfills, etc.), open space corridors, and natural resource designations.⁶⁴³

The Washington State Office of Community Development spearheads state planning. The state agency provides grants and technical assistance to local governments for growth management planning, including workshops and short courses for planners, elected officials and citizens.

SMART GROWTH EFFORTS

The Growth Management Act of 1990 ushered in the era of Washington state-level planning.⁶⁴⁴ This act established the comprehensive planning scheme in existence today and enacted very specific planning requirements and standards.

OTHER INITIATIVES RELATED TO SMART GROWTH

Washington state planning law:

- (1) Establishes goals and objectives for land use planning, including:
 - a. Identifying commercially significant agricultural lands and policies to protect those lands;
 - b. Reducing uncertainty about land use development with clear density, intensity, and character of development goals;
 - c. Avoiding environmental degradation (rather than allowing it and attempting to repair the damage);
 - d. Requiring new development to pay for infrastructure or to be consciously subsidized (and, committing to using existing infrastructure to its fullest potential before developing further); and
 - e. Increasing coordination in growth planning.

- (2) Authorizes any state or federal agency, county, municipality, or nonprofit land conservation entity, to hold a development right or easement to protect, preserve, maintain, improve, restore, limit the future use of, or conserve land for open space purposes.⁶⁴⁵

⁶⁴² See *Growth Management Programs*, *supra* note 69, at 45-50.

⁶⁴³ See *id.*

⁶⁴⁴ See Wash. Rev. Code § 36.70A and portions of § 43.63 (2000).

⁶⁴⁵ See Wash. Rev. Code § 64.04.130 *et seq.* (2000).

(3) Authorizes a county, city, or town with a comprehensive plan to impose an impact fee on a development activity, to partially finance public facilities.⁶⁴⁶ An impact fee must be reasonably related and proportionate to the proposed development. An impact fee may be assessed only for public facilities (roads, parks, fire protection, schools) that are identified in the capital facilities plan of the comprehensive plan and in a local government ordinance.

(4) Provides dispute resolution services to the state and local governments. State law establishes three regional growth management hearing boards, each consisting of three members (no more than two from a political party, no more than one from a county). The boards are authorized to hear petitions alleging that a state county/city agency is not in compliance or alleging that urban growth boundaries should be adjusted.⁶⁴⁷

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⁶⁴⁶ See Wash. Rev. Code § 82.02.050 *et seq.* (2000).

⁶⁴⁷ See *Growth Management Programs*, *supra* note 69, at 47-48.

WEST VIRGINIA

STATE PLANNING MODEL

West Virginia is a regional-level planning state. The governor creates Regional Planning Councils and, once created, these bodies wield most of the planning and zoning power in the state. They begin by adopting comprehensive plans for the state to approve. The governor is responsible for statewide development plans, but these are in essence the compilation of the regional plans. The governor must consider the regional comprehensive plans when establishing statewide planning goals, and he consults with the regional planning councils throughout the process. Local governments are encouraged, but not required, to create their own plans.

The Regional Planning Councils oversee most of the planning process. The state agency most directly involved in planning is the West Virginia Development Office but its focus is attracting new and diverse industries to the state.

SMART GROWTH EFFORTS

West Virginia is far more focused on attracting new business than curbing sprawl. Its relatively small population also keeps sprawl off the political radar screen. However, in recent years, rising prices in the Washington, D.C. metropolitan area have pushed those who work in the D.C. area further north into Maryland, and further west, into West Virginia. The eastern-most communities in West Virginia, then, may be hit with sprawl soon enough. Until then, it appears no one is thinking about this issue.

OTHER INITIATIVES RELATED TO SMART GROWTH

West Virginia planning law:

- 1) Enables the governor to establish regional planning councils, which in turn create regional comprehensive plans.⁶⁴⁸ The plans may consist of the following elements: population and economic analyses; natural resource inventories; transportation; health services; employment; education; environmental protection; public facility needs; and the promotion of intergovernmental relations.⁶⁴⁹
- 2) Encourages the creation of interstate regional planning commissions for counties and municipalities near West Virginia's borders.⁶⁵⁰ These commissions may review proposals for projects having interstate effects, and conduct studies on the region's traffic, housing, population and socio-economic trends.
- 3) Empowers local governments to create local planning commissions, which in turn may adopt comprehensive plans.⁶⁵¹ These plans must be approved by the county and coordinated with the state highway plan. Elements of a local plan might include: general character; bridges; airports; playgrounds; waterways and waterfront development; open space; and public facilities.

⁶⁴⁸ See W. Va. Code §§ 8-25-4, 5 (2000).

⁶⁴⁹ See W. Va. Code § 8-25-8 (2000).

⁶⁵⁰ See W. Va. Code § 8-26-1 *et seq.* (2000).

⁶⁵¹ See W. Va. Code § 8-24-1, 16 (2000).

- 4) Requires master county land use plans with the following elements, before a county may levy impact fees on developers:⁶⁵²
- a. Evidence that the county's population has grown at least 5% in the past five years;
 - b. Proof of a comprehensive county plan, a zoning ordinance, a subdivision control ordinance, a formal building permit and review system, and a commitment to renew the county plan every five years;
 - c. An urban improvement plan; and,
 - d. A list of proposed capital projects.

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<http://www.wvdo.org>

⁶⁵² See W. Va. Code § 7-20-4, 6 (2000).

STATE PLANNING MODEL

No statewide plan exists, although state agencies pledge to consider legislated land use goals in their policies and operations. The state does not mandate comprehensive plans for local governments. If a local government chooses to adopt a plan, however, the plan must address nine particular land use elements. Once enacted, a comprehensive plan demands consistency from other local land use ordinances, regulations, and proceedings.

Planning is localized. The Department of Administration provides information, grant programs, technical assistance, and training to local governments and regional planning councils, through its Office of Land Information Services, Division of Housing and Intergovernmental Relations.

SMART GROWTH EFFORTS

Former Governor Tommy Thompson overhauled Wisconsin's comprehensive planning statutes and established a comprehensive and transportation planning grant program in his 1999-2001 Biennial Budget.⁶⁵³

Wisconsin planning law now provides incentives for local governments to consider and implement smart growth strategies in their land use decisions. However, only two of these strategies have been labeled "smart growth." One, when the state reviews planning grant applications, it gives preference to those local governments identifying "smart growth areas" in their jurisdiction. A smart growth area is "an area that will enable the development and redevelopment of lands with existing infrastructure and . . . services, where practicable, or that will encourage efficient development patterns that are both contiguous to existing development and at densities which have relatively low municipal, state governmental and utility costs."⁶⁵⁴ Two, the 1999-2001 Biennial Budget supported the development of a "Smart Growth Dividend Aid Program" (discussed below). However, the program cannot begin absent authorizing legislation.

OTHER INITIATIVES RELATED TO SMART GROWTH

Although Governor Thompson did not enact a "smart growth" agenda in the 1999-2001 Biennial Budget, he did make substantial changes to the state planning laws which encourage the same principles as those espoused by the smart growth movement. For example, Wisconsin state planning law:

- 1) Requires nine particular elements to be addressed in all local comprehensive plans.⁶⁵⁵ These elements include:
 - a. *Issues and Opportunities.* Background information and policies, goals, and programs to guide the local government in twenty years of planning.
 - b. *Housing.* Assessment of current housing stock and plans to develop housing for people of all income levels, ages, and physical abilities.

⁶⁵³ See 1999 Assembly Bill 872, which made some technical changes to the budget; see also Office of Land Information Services website, <http://www.doa.state.wi.us/olis> (last visited May 8, 2001).

⁶⁵⁴ 2000 Wis. Laws § 16.965(1)(b).

⁶⁵⁵ See 2000 Wis. Laws § 66.1001(2).

- c. *Transportation.* Plans to develop a variety of transportation options, including highways, public transit, bicycle routes, and walking.
- d. *Utilities and community facilities.* Plans to develop these services.
- e. *Agricultural, natural and cultural resources.* Programs for the protection and effective management of these resources.
- f. *Economic development.* Policies and programs to stabilize, retain or expand the economic base and quality employment opportunities in the local governmental unit. Programs to promote brownfields cleanup.
- g. *Intergovernmental cooperation.* Policies and programs for joint planning.
- h. *Land use.* Policies and programs to develop/redevelop property, focusing on densities and “the boundaries of areas to which services of public utilities and community facilities . . . will be provided in the future.”
- i. *Implementation.* Sequential compilation of ordinances and regulations to be implemented to address the policies and programs of (a) through (h).

2) Requires consistency between comprehensive plans and all local land use actions and procedures, including zoning ordinances, impact fee ordinances, and agricultural preservation plans.⁶⁵⁶ This requirement is effective as soon as a local government adopts a comprehensive plan under the new guidelines or after January 1, 2010 for all local governments.

3) Provides funding to local governments for comprehensive plans and transit planning if applications contain compelling strategies for enumerated planning elements. One such element, “smart growth area” identification, was discussed above. Another element is the inclusion of the following goals in a comprehensive plan: redeveloping areas with existing infrastructure; encouraging neighborhood design that supports a range of transportation options; and building in “efficient development patterns.”⁶⁵⁷

4) Directs state officials to design model “conservation subdivision” and “traditional neighborhood development” ordinances for local governments to follow if they wish.⁶⁵⁸ A “conservation subdivision” is “characterized by compact lots, community open space and where the natural features of the land are maintained to the greatest extent possible.”⁶⁵⁹ A “traditional neighborhood development” is a compact, mixed-use neighborhood where residential, commercial and civic buildings sit next to each other.⁶⁶⁰

5) Strongly supports the cleanup and redevelopment of brownfields. Governor Thompson’s program provides guarantees for private bank loans taken out by developers and municipalities (up to \$500,000).

6) Encourages state agencies to design their land use policies with local comprehensive plans in mind and make their planning requirements practical for incorporation into local comprehensive plans.⁶⁶¹

Governor McCallum followed in his predecessor’s footsteps, peddling his suggestions for further changes to Wisconsin’s planning policy in the 2001-2003 Biennial Budget.

⁶⁵⁶ See 2000 Wis. Laws § 66.1001(3).

⁶⁵⁷ See 2000 Wis. Laws § 16.965(4).

⁶⁵⁸ See 2000 Wis. Laws § 66.1027(2)(a).

⁶⁵⁹ See 2000 Wis. Laws § 66.1027(1)(a).

⁶⁶⁰ See 2000 Wis. Laws § 66.1027(1)(c).

⁶⁶¹ See 2000 Wis. Laws § 1.13, 227.113; *see also*, <http://www.doa.state.wi.us/olis> (last visited May 8, 2001).

INITIATIVES TO KEEP AN EYE ON

Governor McCallum is proposing several operational changes to Wisconsin's state planning system. Primarily, he would like to streamline the planning process. He wants to eliminate the Land Information Board and assign its duties (including the review of planning grants) to the Department of Administration. The Governor also proposes to update the scope of the Land Information Technical Working Group, a group looking at cutting-edge technology in land information systems.⁶⁶²

Furthermore, there is talk that Governor McCallum will make Governor Thompson's proposed "Smart Growth Dividend Aid Program" a reality in the upcoming budget. Under this program, the secretaries of administration and revenue would provide direct aid to local governments that have comprehensive plans and effective zoning ordinances based on a points system. A local government would receive a point for each new housing unit sold or rented on lots no more than ¼ acre and a point for each new housing unit sold at no more than 80% median sale price.

At the local level, Mayor Gatzke is leading efforts to build a pedestrian-friendly, mixed-used City Center in New Berlin, Wisconsin. The project is part of a larger strategy to keep people in the city and to build off existing infrastructure rather than encourage sprawl.⁶⁶³ The Preservation of Rural Open Space Task force for Mequon, Wisconsin has come out with recommendations for immediate open space acquisition to protect against sprawl at the city's edges. Mayor Nuerberg is a strong advocate of this strategy, so it is expected that the city will implement most of the task force's recommendations.⁶⁶⁴ Finally, the city of New Berlin, lying on the outskirts of Milwaukee, has modified its master plan to increase residential density and protect open space. Under the new law, New Berlin will allow developers of 100-acre areas to build thirty-three homes, rather than the usual twenty, if they agree to keep half of the land as open space. Developers can build forty homes on the same area if they agree to protect seventy acres of the land as open space.⁶⁶⁵

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⁶⁶² For these and other proposals, see *Excerpts from Governor McCallum's 2001-2003 State Biennial Budget Proposal, Relating to Land Use & Land Information* (March 22, 2001), available at <http://www.doa.state.wi.us/olis> (last visited May 8, 2001).

⁶⁶³ See *Smart Growth: State by State* (June 2000), *supra* note 378.

⁶⁶⁴ See *Smart Growth: State by State* (Feb. 2001), *supra* note 378.

⁶⁶⁵ See *Smart Growth: State by State* (Jan. 2001), *supra* note 378.

WYOMING

STATE PLANNING MODEL

Wyoming does not have a comprehensive state plan. Counties and local governments are required to adopt land-use plans consistent with general state guidelines. However, there is little state oversight of these plans beyond some helpful assistance. Local governments clearly operate on their own planning prerogatives.

The nine member Wyoming State Land Use Commission (Commission) is responsible for guiding land use planning within the state.⁶⁶⁶ The Commission keeps the public and the governor informed about Wyoming demographics and land use planning; leverages funding for planning; adopts state land use goals; and assists local governments with their plans.⁶⁶⁷

SMART GROWTH EFFORTS

Research did not reveal any recent state smart growth efforts.

OTHER INITIATIVES RELATED TO SMART GROWTH

Wyoming is still "the least populated state," but it has the greatest opportunity to control growth, shape the future and save open space, according to Governor Geringer in his 2001 State of the State address.⁶⁶⁸ The governor has encouraged smart land use - for example, he recently pooled private and public funds for a guidebook on voluntary land conservation strategies. The book includes sections on conservation easements; escrowed commitments; land exchanges; and purchase of development rights.⁶⁶⁹ However, the governor and his state agencies have not moved beyond measures to educate and facilitate, apparently out of a strong conviction for the sanctity of private property rights.

In general, Wyoming law:

- 1) Requires counties and local governments to adopt land use plans, which are reviewable by the state Land Use Commission.⁶⁷⁰ Municipalities may adopt their own plan or sign on to their county's plan. A county may also enact a zoning ordinance if it appoints a planning commission.⁶⁷¹
- 2) Empowers municipalities to create planning commissions. Once established, commissions must adopt a municipal master plan.⁶⁷²
- 3) Requires companies to apply for a permit with the Industrial Siting Division of the Department of Environmental Quality before beginning construction of a new industrial facility.⁶⁷³ The application, which is reviewed at a public hearing, includes a projection of regional environmental and economic

⁶⁶⁶ See Wyo. Stat. Ann. § 9-8-101 *et seq.* (Michie 2000).

⁶⁶⁷ See Wyo. Stat. Ann. § 9-8-202 (Michie 2000).

⁶⁶⁸ See *Governors' Smart Growth Initiatives*, *supra* note 26, at 16.

⁶⁶⁹ See *Growing Pains*, *supra* note 30, at 38-9.

⁶⁷⁰ See Wyo. Stat. Ann. § 9-8-301 (Michie 2000).

⁶⁷¹ See Wyo. Stat. Ann. § 18-5-103 (Michie 2000).

⁶⁷² See Wyo. Stat. Ann. § 15-1-503 (Michie 2000).

⁶⁷³ See Industrial Siting and Development Act, Wyo. Stat. Ann. § 35-12-103 (Michie 2000).

impact. The Division may approve a permit conditional upon the payment of a bond to cover “impact.”⁶⁷⁴ Failure to acquire a permit before building may result in heavy fines or imprisonment.

4) Authorizes counties and local governments to cooperate in their planning efforts.⁶⁷⁵ The cooperating governments may jointly operate public facilities such as recreation, police, fire, water, waste, transportation, airports, schools, community colleges, hospitals and health facilities, courthouses, and jails.⁶⁷⁶

5) Provides technical and data acquisition assistance for statewide GIS projects and to agencies developing in-house GIS programs. The Wyoming Geographic Information Advisory Council, established in 1994 by executive order, shares available data and coordinates recording standards across the state.⁶⁷⁷

INITIATIVES TO KEEP AN EYE ON

There may soon be a state law to protect agricultural lands from sprawl. Governor Geringer has promised to support the recently introduced Agricultural Preservation Act if it requires "county commissioners to develop county-wide land use plans before implementing the option of development rights" transfer.⁶⁷⁸

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⁶⁷⁴ See Wyo. Stat. Ann. § 35-12-113 (Michie 2000).

⁶⁷⁵ See Wyo. Stat. Ann. § 16-1-101 *et seq.* (Michie 2000).

⁶⁷⁶ See Wyo. Stat. Ann. § 18-2-108 (Michie 2000).

⁶⁷⁷ See Wyoming Geographic Information Advisory Council homepage, <http://wgiac.state.wy.us/wgiac/wgiac.html> (last visited April 20, 2001).

⁶⁷⁸ See *Governors' Smart Growth Initiatives*, *supra* note 26, at 16.

CONCLUSION

Most states experiencing significant population growth or change have undertaken some sort of smart growth initiative. While most citizens recognize the drawbacks of sprawl, determining the proper state role in addressing it is a much more complicated task. Different states see the state's role differently, reflecting the diversity of state land use systems, state government structures, geography, politics, and demographics, and numerous other factors. Many states continue to struggle to achieve a balance between too much state control and too little. Several of the most "top-down" planning states, for example, have experienced a backlash against state control while other states without a role in planning have been left unable to shape the growth of the state.

Not only must states be mindful of the level of control they exert, but they must also make difficult choices between often conflicting values. Given the complexity of the debate over growth management, the most effective state policies emphasize flexibility. Traditional zoning and planning systems are being overhauled to promote incentives and "market friendly" approaches. These states then give localities the option of following state guidelines in order to receive funds. One of the most effective roles the state can play in managing growth is using its funds to create its desired policy at the local level. Another important role is leading by example by siting state buildings in developed communities and identifying and eliminating state policies that promote sprawl.

Americans are increasingly indicating their dissatisfaction with sprawl – although fewer agree on the steps necessary to achieve its elimination. As state smart growth efforts progress, most can agree that the costs of sprawl are significant – it drains the state's financial resources, eliminates open space and productive farmland, and leads to a decreased quality of life.

Because many of the state policies discussed in this report are new and reflect diverse situations, it would be prudent to study the effectiveness of the programs and determine whether the programs' goals and implementation methods are applicable to California. Taking a lesson from many of the states that have begun smart growth efforts, perhaps the first step is to evaluate the state's role in promoting and subsidizing sprawl and identify actions that the state can take to reduce sprawl subsidies. The following additional suggestions are also offered to guide ongoing smart growth efforts in California:

a. Studies/Information Gathering

- i. GIS mapping program (see Ohio, Wisconsin, Wyoming).
- ii. Town hall meetings around the state (see Utah).
- iii. Study the effectiveness of recent smart growth initiatives in other states. One approach would be to clearly identify one component of smart growth, increased traffic, for example, and identify the extent of the problem prior and subsequent to the passage of smart growth laws. Another approach would be to examine monitoring and enforcement mechanisms. Additionally, evaluations of the effectiveness of the fiscal carrot approach would be helpful. For example, many states have fine-tuned their tax credits for conservation easements. Why and with what result?

b. Actions/Programs

- i. Encourage voluntary joint planning (see Oklahoma, Pennsylvania, Texas, Virginia) – encourage local jurisdictions to plan jointly, appoint a joint planning commission, and (as in Pennsylvania) engage in revenue sharing, development rights transfers, etc.
- ii. Require local governments to provide greater matching funds for new infrastructure than improving existing infrastructure (see Ohio).
- iii. Promote growth in counties losing populations (if there is a way to ensure that rural character will be maintained?) (see Texas).
- iv. Provide model ordinances, plans.
- v. Offer land use dispute resolution TA or facilities.
- vi. Funding and capacity-building for planning efforts. We did not look in-depth at how or whether existing planning statutes are enforced but there seemed to be a general lack of enforcement of existing requirements. Certainly, in some states, that is due to a lack of funding.

As the number of state smart growth efforts increase, it appears that states are making progress in recognizing the significance of sprawl and identifying the most effective ways of diminishing its impact. As California begins to build its smart growth efforts, we hope that it will be able to draw from the experience of other states outlined in this report.

FOR MORE INFORMATION ON SMART GROWTH

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1978 Environmental Goals and Policy Report, *An Urban Strategy for California*, Governor's Office.

Smart Growth Information on the Internet:

American Planning Association, <http://www.planning.org>

American Planning Association, California Chapter, <http://www.calapa.org>

National Conference of State Legislatures, <http://www.ncsl.org>

Northeast-Midwest Institute, <http://www.nemw.org/smartgrowth.htm>

Smart Growth Network, <http://www.smartgrowth.org>

SmartGrowth.Net, <http://www.smartgrowth.net>