



GROWING SMARTSM USER MANUAL

FOR THE

GROWING SMARTSM LEGISLATIVE GUIDEBOOK:

MODEL STATUTES FOR PLANNING AND

THE MANAGEMENT OF CHANGE

2002 EDITION



American Planning Association
Making Great Communities Happen

Growing SmartSM is a program of the
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Part I

* Preface, Introduction and Initiating
Planning Statute Reform

Preface

State enabling legislation for planning and land-use control affects our lives in many important ways. We might not fully realize it, but most local governments in which we live and work have been planned and developed under state enabling statutes that establish the framework for community building.

State statutes delegate power to local governments to prepare comprehensive plans, zone land, regulate subdivisions, require the installation of public facilities in new developments, and redevelop older areas. They affect the quality of life that the built environment yields. They help determine public costs and tax burdens associated with providing infrastructure and public services, such as streets, sewer systems, and schools. The price you pay for housing, or indeed whether affordable housing is even available, is influenced by state planning and zoning enabling statutes and local policies that are authorized by and carried out under those state statutes. A local government's ability to designate areas of the community for commerce and industry, and thus help create a place for jobs, is also a function of enabling legislation.

Similarly, public policies and programs that are carried out under existing state statutes and the community-building objectives of local governments influence the quality of the natural environment. Whether a sensitive wetland is developed for an urban use, or set aside as an ecological preserve, will depend to some extent on the enabling statutes in your state and land-use regulations applied by local government.

A number of states are now taking innovative steps to reform their planning and zoning enabling statutes so that they help to revitalize neighborhoods, improve housing affordability, direct the pace and location of development, and ensure wise public expenditures for capital facilities. In other states, public and private groups need answers now about how to improve their communities and deal with issues of growth and change, and objective information on what planning and land-use control approaches work. It is time for more states to join the

innovators that have already recognized that reforming state planning and land-use enabling statutes holds the key to attaining contemporary public and private objectives.

To respond to this need, the American Planning Association has developed the *Growing SmartSM Legislative Guidebook: Model Statutes for Planning and the Management of Change*, 2002 Edition (Stuart Meck, FAICP, Gen. Editor). The *Guidebook* provides alternative approaches to reforming state planning and zoning enabling statutes with model laws and supporting commentary. Many of the model laws in the *Guidebook* are adaptations of existing, successful state statutes. This *User Manual* is intended to assist those interested in planning statute reform apply the materials in the *Guidebook* to develop innovative programs that are tailored to the needs of their own states.

Is This What The Future Holds?

Picture the following metropolitan region in the not-so-distant future. The central city, which once experienced disinvestment, is prospering once again. Residents of the central city are no longer disproportionately poorer, and living downtown has become attractive and popular again. Suburbs surrounding the city, even though they are maturing, have maintained their stability and have viable, attractive neighborhoods. The local governments in the inner-suburban areas of the region have been able to thwart decline and blight, due to changes in state laws that provide additional tools for economic development and tax-base sharing.

The region's outlying areas are protected by a productive agricultural greenbelt, which has helped to minimize the conversion of productive farmland to suburban subdivisions. The small towns in the outer portion of the region have maintained their small town features. Local governments in the growing suburban part of the region are keeping up with the demands of growth, due to changes to state planning statutes that authorize development impact fees and other innovative financing tools. Businesses in the region have a diverse, skilled labor force to choose from, due to the implementation of regional affordable housing plans and public transportation that is available within all parts of the region.

The natural environment of the region seems to be sustaining itself. Development is guided away from environmentally sensitive areas and into the most appropriate areas of the region because of supportive state policy, regional planning,

local regulation, and public-private partnerships. Wetlands that provide a rich ecosystem are maintained through innovative local approaches to mitigation authorized by state planning and land-use statutes. Open spaces are being permanently protected through conservation easements and land acquisition programs financed by new sources of revenue authorized by state statute.

Does this scenario accurately depict one or more regions in your state? A big part of the reason for success (or failure) lies in legislation—the adoption of state statutes that establish new planning systems and authorize tools to adapt to new times.

In metropolitan areas with characteristics described in this scenario, there is a growing appreciation that state planning and land-use enabling statutes have held the key to attaining their public and private objectives.

Why Planning Laws Need Reform:

- * *Complex intergovernmental systems*
- * *Need to assert state interests*
- * *Societal consensus for resource protection*
- * *A sophisticated and active citizenry*
- * *Complex legal issues*

Why Do We Need To Reform Planning Enabling Legislation?

Our planning tools date from another era. The planning and zoning statutes in many states are based on two model acts drafted by an advisory committee of the U.S. Department of Commerce in the 1920s, the *Standard City Planning and Zoning Enabling Acts*. When these acts were drafted, the nation was a different place. Growth was largely confined to central cities and the few suburbs that had commuter train lines. While control of air and water pollution, noise, and industrial hazards was always a fact in urban areas and prompted the adoption of early land-use regulations, appreciation of the complex interactions of ecological systems—and the human impact on those systems—was still in its infancy. After World War II, prompted by the construction of the Interstate highway system and by the availability of low-cost federally backed mortgages for homes, growth shifted outward from the central cities to the vast rural areas beyond.

In the 1920s we saw land merely as a commodity, something to be bought and sold. Today we view it as a resource for which there are competing social uses, and see the planning process as the vehicle to make decisions about those uses. In the 1920s, plans and development regulations were often developed without broad-based public involvement. Today, in virtually every community, citizens now expect to be engaged in community planning processes, and, when they participate, they expect to see results from their efforts. In the 1920s, government, especially local government, was simple, and there were fewer governmental units. Today, government is layered and complex, and there are many more governmental units—federal, state, regional, and local—whose actions affect each other.

Approaches that worked in the 1920s are plainly inadequate today. We must give people new choices concerning land use, housing, employment, transportation, and the environment. Statutory reform of planning laws is a serious contemporary concern that affects every state, region, and local government in our nation. The future is closing in, and it is time to grow smart.

Introduction

There is no single, “one-size-fits-all” model for planning statutes.

—Growing SmartSM Statement of Philosophy No. 1

What is the Central Purpose of the Legislative Guidebook?

The *Legislative Guidebook* is intended to provide users (see “target audiences”) with ideas, principles, methods, procedures, definitions, and alternative legislative approaches drawn from various states, regions, and local governments across the country.

- Target Audiences:**
- * *Governors*
 - * *State legislators*
 - * *State legislative research bureaus*
 - * *Local elected and appointed officials*
 - * *Public and private interest groups*
 - * *Planners*
 - * *Citizens*

What is Covered in the Legislative Guidebook?

The *Legislative Guidebook* addresses state statutes and provides models and alternatives for reforming them. State statutes are not exclusively regulatory in their contents, and neither is the *Guidebook*.

- Major Topics:**
- * *Planning*
 - * *Development control*
 - * *Infrastructure*
 - * *Judicial review*
 - * *Taxation*
 - * *Incentives*

It must be emphasized that alternatives are provided, as opposed to suggesting a “one-size-fits-all” approach. Pros and cons of the various alternatives are provided in the *Legislative Guidebook*.

How is the Legislative Guidebook Organized?

The *Legislative Guidebook* is organized in 15 chapters, with a preface and introduction. Each chapter follows a more-or-less standard organization of contents as follows:

Chapter Outline. Each chapter contains an outline that identifies major divisions of the chapter (e.g., “state planning agency organization”) and Section numbers of model statutes that pertain to them (e.g., 4-I01, 4-I02, etc.). Where the model statutes provide alternatives, they are identified in the chapter outline.

Cross References. In some of the chapters, cross references to other Sections of model statutes are provided to ensure that reader identifies statutory language related to the contents of the subject chapter.

Introductory Text. The content of each chapter begins with introductory text, which provides the context for the chapter and its contents. Introductory text is often divided into sections with title headings. Several chapters use tables and text boxes in the introduction to summarize contents, illustrate alternatives, reference key literature, or provide quotations for context. In many places, the introductory text is provided to divisions within a given chapter.

Commentary. A “commentary” precedes all model statutory language. Commentaries summarize the contents of the existing state statutes and relevant court decisions, alert the user to alternatives, and help the reader understand why the model statutes were drafted the way they are. Commentaries

Who Helped Develop the Legislative Guidebook?

also refer to prior model statutes, such as the U.S. Department of Commerce *Standard City Planning and State Zoning Enabling Acts* of the 1920s and the American Law Institute’s *Model Land Development Code* (1976), and they describe how the model statutes of the *Legislative Guidebook* incorporate or depart from those prior models.

Model Statutes With Alternatives. Following the commentary, the *Legislative Guidebook* provides statutory language. Where appropriate, alternatives are provided. Sections of the model statutes are identified with a bold title (section of a statute) that is numbered (e.g., 4-20I, 4-30I, etc.).

Notes. The *Legislative Guidebook* also contains “Notes” in selected places. Oftentimes, notes are used to illuminate a particular state or local approach to statutory reform or regulation that has proven successful and that was influential in the drafting of the model statutes. Like the introductory text, the “notes” also incorporate tables and text boxes where appropriate

Footnotes. Footnotes provide citations to literature, statutes, and regional and local approaches on which the content of the *Legislative Guidebook* is based.

A project Directorate, consisting of national organizations and representatives, advised the American Planning Association’s project team. Project supporters, which include several federal agencies and a private foundation, also had input to the content of the *Legislative Guidebook*. An extensive public review process was followed in the drafting of the *Legislative Guidebook*, and many changes were made as a direct result of comments received through it.

Does the Legislative Guidebook Make Recommendations or Sanction Individual Approaches?

The content of the *Legislative Guidebook* was guided by the Growing SmartSM program’s “statements of philosophy” formulated by the project Directorate. Ultimately, some choices were made in drafting alternative statutory models. However, the intent of the *Legislative Guidebook* is to provide alternatives, with commentary on the pros and cons of each alternative, out of the recognition that states should select or adapt the approach that best fits them.

Planning statute reform should look not just at regulation but also at infrastructure and property taxation.

—Growing SmartSM Statement of Philosophy No. 4

Model statutes should be based on an appraisal of what has worked.

—Growing SmartSM Statement of Philosophy No. II

Additional Features of the User Manual

This *User Manual* employs text boxes as “sidebars” to illuminate key points. Readers can skim through this *Manual* by reading the sidebars and gain an overall picture of the contents of the *Legislative Guidebook*, as well as the statements of philosophy that guide the Growing SmartSM project. The *User Manual* provides references to model statutes in parentheses (e.g. I-I01), and all references are to the *Legislative Guidebook* itself. The *User Manual* is “comprehensive” in the sense that it summarizes each major section of the model statutes provided in the *Legislative Guidebook*.

This *User Manual* also provides statements of “Caution” and “Interrelationships.” The purpose of the caution statements is to alert the user to be careful about some particular use or application of the *Legislative Guidebook*. The interrelationships are intended to guide the user into thinking more holistically about the particular task at hand or topic being considered. Also, the *User Manual* includes an occasional “Note.”



Part 2

* User Needs Checklists

User Needs Checklists

Part 2 divides user needs and goals into four checklists (see sidebar). Look through the list of needs and check all of those that apply. This part of the *User Manual* directs you to the appropriate chapters and sections of the *Legislative Guidebook*. You may also want to review Part 3 of this *Manual* for a synopsis of those particular sections of the *Legislative Guidebook* that interest you.

Note that in some cases a particular need or goal is not easily classified into one of these four groups. Sometimes, it depends on your perspective as to whether a particular issue is regarded as a state, regional, or local matter. Therefore, to be comprehensive, the user should read through all four checklists to find the checklist description that best fits the needs and goals of your state.

Where a Section number is provided in the checklists, the user should note that only the number of the Section that begins to cover a topic is provided. Readers should look immediately past that statute Section number to the following statute Sections number to see if additional model statutory provisions apply.

Needs and Goals Are Grouped by:

- * *State*
- * *Regions*
- * *Local governments*
- * *Specific subject areas*

User Needs Checklist I

Needs and Goals Related to States

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Decide how to approach statutory reform	I, Ingredients of Successful Reform Efforts	
<input type="checkbox"/> Decide whether planning should be required	4, Table 2-I	
<input type="checkbox"/> Organize state bureaus for planning	4, Organizing for State Planning; see also Table 4-2	4-10I
<input type="checkbox"/> Coordinate the efforts of various state agencies	4, State Plans; see also Table 4-3	4-202
<input type="checkbox"/> Consider and choose what type of state plan(s) to produce, and learn how	4, Organizing for State Planning	4-20I
<input type="checkbox"/> See what goals have been adopted by other states	4, Note on State Planning Goals	
<input type="checkbox"/> Prepare and adopt a state biodiversity conservation plan	4	4-204.I
<input type="checkbox"/> Decide which entity will adopt a particular state plan	4, Procedures Related to State Planning; see also Table 4-4	4-210
<input type="checkbox"/> Make sure all state agencies get copies of state plans	4, Procedures Related to State Planning	4-21I
<input type="checkbox"/> Promote and ensure wiser investments by state agencies	4, State Capital Budget and Capital Improvement Program	4-30I
<input type="checkbox"/> Require or guide state adoption of a capital improvement budget and program	4, State Capital Budget and Capital Improvement Program	4-30I
<input type="checkbox"/> Introduce greater fairness in the siting of state facilities by exercising state control	5, Siting State Facilities	5-10I
<input type="checkbox"/> Consider different approaches to siting state facilities	5, Siting State Facilities	5-10I
<input type="checkbox"/> Designate areas of critical state concern	5, State Land Use Control	5-20I
<input type="checkbox"/> Consider alternatives for reconciling inconsistencies between state environmental policy statute and local planning	12, Integrating State Environmental Policy Acts with Local Planning; see also Table 12-I	12-10I
<input type="checkbox"/> Establish a statewide geographic information system	15	15-10I
<input type="checkbox"/> Ensure citizens have access to land development records and regulations	15	15-20I

User Needs Checklist 2

Needs and Goals Related to Regions

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Decide whether regional planning should be encouraged or required	6, text box on first page	
<input type="checkbox"/> Consider alternatives and decide how to organize regional planning	6, Organizational Structure	6-101
<input type="checkbox"/> Create one or more regional planning agencies	6, Organizational Structure	6-101
<input type="checkbox"/> Designate substate planning districts and agencies	6, Designation of Regional Planning Agency as Substate District Organization	6-601
<input type="checkbox"/> Address disproportional voting powers on regional planning agencies	6, Organizational Structure	6-103
<input type="checkbox"/> Empower existing regional agencies to plan	6, Organizational Structure	6-107
<input type="checkbox"/> Learn about the experiences of regional planning in other states	6, Regional Plan Preparation, Note on Existing Regional Plans	
<input type="checkbox"/> Provide guidance to regional agencies in adopting functional plans	6, Regional Plan Preparation	6-202
<input type="checkbox"/> Establish procedures for public review, preparation, and adoption of regional plans	6, Procedures for Plan Review and Adoption	6-301
<input type="checkbox"/> Authorize regional agencies to enter into agreements for planning and service coordination	6, Relationships and Agreements With Other Units of Government	6-401
<input type="checkbox"/> Govern whether a local government can withdraw from a regional planning agency	6, Miscellaneous Provisions	6-501
<input type="checkbox"/> Address impacts of development that go beyond the borders of one jurisdiction	5, Developments of Regional Impact	5-301
<input type="checkbox"/> Learn from the experiences of other states with regard to developments of regional impact programs	5, Developments of Regional Impact	5-301
<input type="checkbox"/> Provide for regional or metropolitan tax-base sharing	14, Regional [Metropolitan] Tax-Base Sharing	14-101

User Needs Checklist 3

Needs and Goals Related to Local Governments

Local Planning

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Establish local planning agencies	7, Organizational Structure	7-101
<input type="checkbox"/> Consider alternatives for organizing local planning	7, Organizational Structure	7-105
<input type="checkbox"/> Authorize local planning commissions	7, Organizational Structure	7-105
<input type="checkbox"/> Require education and training of planning commissioners (and other appointed board members)	7, Organizational Structure	7-105
<input type="checkbox"/> Authorize local governments to prepare plans	7, Plan Preparation	7-201
<input type="checkbox"/> Decide whether a particular comprehensive plan element should be required or optional for local governments	7, Local Comprehensive Plan Elements	7-203
<input type="checkbox"/> Guide the review, adoption, and amendment of plans by local governments	7, Procedures for Plan Review, Adoption, and Amendment	7-401
<input type="checkbox"/> Authorize or guide the preparation of small area plans by local governments	7, Local Comprehensive Plan Elements	7-301
<input type="checkbox"/> Establish procedures for adoption, amendment, and periodic review of local comprehensive plans	7, Procedures for Plan Review, Adoption, and Amendment	7-403
<input type="checkbox"/> Create a local comprehensive plan appeals boards to hear appeals of state reviews of local comprehensive plans	7, Procedures for Plan Review, Adoption, and Amendment	7-402.1
<input type="checkbox"/> Decide whether review and/or approval of local comprehensive plans by the state should be required	7, Procedures for Plan Review, Adoption, and Amendment	7-402.2

Funding and Technical Assistance for Local Planning

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Provide for smart growth technical assistance by the state to local governments	I3, Smart Growth Technical Assistance Act	I3-201

User Needs Checklist 3 (continued)

Needs and Goals Related to Local Governments

Local Land Development Regulation

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Authorize local governments to adopt a variety of local land development regulations	8, General Provisions	8-101
<input type="checkbox"/> Ensure due process by establishing procedures for adoption and amendment of local land development regulations	8, General Provisions	8-102
<input type="checkbox"/> Provide for a unified development permit review process for land-use decisions	10, General Provisions	10-201
<input type="checkbox"/> Ensure local land development regulations are consistent with local comprehensive plans	8, General Provisions	8-104
<input type="checkbox"/> Ensure local land development regulations relate properly and legally to state and federal laws	8, General Provisions	8-105
<input type="checkbox"/> Clarify whether local land development regulations apply to lands owned by the state and/or other governmental units	8, General Provisions	8-106
<input type="checkbox"/> Authorize and guide (or require) local preparation of zoning ordinances	8, Zoning; see also Table 2-I	8-201
<input type="checkbox"/> Guide the processes of reviewing and approving conditional uses	10, Administrative Actions and Remedies	10-502
<input type="checkbox"/> Guide the processes of reviewing and approving variances	10, Administrative Actions and Remedies	10-503
<input type="checkbox"/> Authorize and guide local review and approval of subdivisions	8, Review of Plats and Plans	8-301
<input type="checkbox"/> Authorize and guide local review and approval of planned unit developments	8, Review of Plats and Plans	8-303
<input type="checkbox"/> Decide which body should review and approve local subdivision plats	8, Who Reviews Subdivisions	
<input type="checkbox"/> Provide for uniform development standards	8, Uniform Development Standards	8-401
<input type="checkbox"/> Review which states have vested rights statutes	8, Uniform Development Standards	8-501
<input type="checkbox"/> Clarify when a development has its rights vested	8, Development Rights and Privileges	8-501

User Needs Checklist 3 (continued)

Needs and Goals Related to Local Governments

Local Land Development Regulation (continued)

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Provide for local governments to negotiate mediated agreements	10, Administrative Actions and Remedies	10-504
<input type="checkbox"/> Provide for local regulation and amortization of nonconforming uses	8, Development Rights and Privileges	8-502
<input type="checkbox"/> Authorize local moratoria on issuance of development permits	8, Exactions, Impact Fees, and Sequencing of Development	8-604
<input type="checkbox"/> Learn more about which states have adopted statutes authorizing local development agreements	8, Development Agreements	8-701
<input type="checkbox"/> Authorize local governments to adopt development agreements	8, Development Agreements	8-701
<input type="checkbox"/> Authorize local hearing examiners	10, Hearing Examiners	10-301
<input type="checkbox"/> Authorize local land-use review boards	10, Land-use Review Board	10-401
<input type="checkbox"/> Establish procedures for the judicial review of local land-use decisions	10, Judicial Review of Land-Use Decisions	10-601
<input type="checkbox"/> Read relevant material on administrative and judicial review of land-use decisions	10, Appendix—Articles on Administrative and Judicial Review of Land-Use Decisions	
<input type="checkbox"/> Authorize or guide local governments to enforce land development regulations	11, Enforcement of Land Development Regulations	11-101
<input type="checkbox"/> Provide for administrative procedures for local enforcement of land development regulations	11, Enforcement of Land Development Regulations	11-201
<input type="checkbox"/> Provide for judicial procedures for enforcement of local land development regulations	11, Enforcement of Land Development Regulations	11-301

User Needs Checklist 4

Needs and Goals Related to Specific Subject Areas

Agriculture and Forest Preservation

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Guide content of local farm and forest resource protection plans	7, Local Plan Preparation	7-212
<input type="checkbox"/> Authorize transfer of development rights to protect agricultural lands	9, Transfer of Development Rights	9-40I
<input type="checkbox"/> Authorize local governments to purchase development rights and secure conservation easements to protect agricultural lands	9, Purchase of Development Rights; Conservation Easements	9-402; 9-402.I
<input type="checkbox"/> Provide local land-use incentives for open space dedications	9, Land-Use Incentives	9-50I
<input type="checkbox"/> Authorize preferential tax assessment of agricultural districts	14, Agricultural Districts	14-40I

Community Design

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Guide content of local community design elements	7, Local Plan Preparation	7-214
<input type="checkbox"/> Authorize local design review regulation	9, Historic Districts and Landmarks; Design Review	9-30I
<input type="checkbox"/> Provide local land-use incentives for good community design	9, Land-Use Incentives	9-50I

Corridor Maps

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Authorize local governments to adopt corridor maps to protect future transportation corridors	7, Implementation; Agreements With Other Government and Nonprofit Organizations	7-50I

User Needs Checklist 4 (continued)

Needs and Goals Related to Specific Subject Areas

Development Patterns

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Guide spatial development patterns and manage growth to control sprawl	4, State Plans; see also Table 4-3; State Functional Plans; Smart Growth Act	4-204; 4-401
<input type="checkbox"/> Guide content of local land-use elements	7, Local Plan Preparation	7-204
<input type="checkbox"/> Consider the pros and cons of establishing urban growth areas	6, Urban Growth Areas, Table 6-I	
<input type="checkbox"/> Adopt a statute to guide the designation and change of urban growth areas	6, Urban Growth Areas; see also Note on Urban Growth Areas and Regional Planning	6-201.I
<input type="checkbox"/> Provide for appeals of urban growth area designations	7, Procedures for Local Plan Review, Adoption, and Amendment	7-402.3
<input type="checkbox"/> Ensure an adequate land supply for development by requiring a land market monitoring system	7, Local Plan Preparation	7-204.I
<input type="checkbox"/> Help to time development through local concurrency (adequate public facilities) requirements	8, Concurrency or Adequate Public Facilities; Development Timing	8-603
<input type="checkbox"/> Authorize transfer of development rights to protect selected areas	9, Transfer of Development Rights	9-401
<input type="checkbox"/> Authorize local governments to purchase development rights and secure conservation easements to protect selected areas	9, Purchase of Development Rights; Conservation Easements	9-402
<input type="checkbox"/> Provide local land-use incentives for various objectives	9, Land-Use Incentives	9-501

Economic Development

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Provide for state role in promoting economic development	4, State Functional Plans	4-206
<input type="checkbox"/> Guide the content of local economic development plans	7, Local Plan Preparation	7-208
<input type="checkbox"/> Create joint economic development zones	14, Intergovernmental Agreements	14-201

User Needs Checklist 4 (continued)

Needs and Goals Related to Specific Subject Areas

Environment; Natural Hazards

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Clarify terms related to critical and sensitive areas and areas constituting natural hazards	7, Organizational Structure	7-101
<input type="checkbox"/> Guide content of local critical and sensitive area plan elements	7, Local Plan Preparation	7-209
<input type="checkbox"/> Guide content of local natural hazards plan elements	7, Local Plan Preparation	7-210
<input type="checkbox"/> Authorize local regulation of areas constituting natural hazards and critical and sensitive areas	9, Regulation of Areas Constituting Natural Hazards and Critical and Sensitive Areas	9-101
<input type="checkbox"/> Authorize transfer of development rights to protect ecologically sensitive areas	9, Transfer of Development Rights	9-401
<input type="checkbox"/> Authorize local governments to purchase development rights and secure conservation easements to protect ecologically sensitive areas	9, Purchase of Development Rights; Conservation Easements	9-402; 9-402.I
<input type="checkbox"/> Authorize local ordinances creating mitigation programs	9, Mitigation	9-403
<input type="checkbox"/> Provide local land-use incentives for open space preservation	9, Land-Use Incentives	9-501
<input type="checkbox"/> Consider alternatives for reconciling inconsistencies between state environmental policy statute and local planning	12, Integrating State Environmental Policy Acts with Local Planning; see also Table I2-I	12-101
<input type="checkbox"/> Review summaries of state environmental policy acts	12, Appendix B	
<input type="checkbox"/> Prepare and adopt a state biodiversity conservation plan	4	4-201.I

Geographic Information Systems

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Establish a state role in developing geographic information systems	15, Division of Geographic Information	15-101

User Needs Checklist 4 (continued)

Needs and Goals Related to Specific Subject Areas

Historic Preservation

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Guide content of local historic preservation plans	7, Local Plan Preparation	7-215
<input type="checkbox"/> Authorize local historic district and landmarks regulation	9, Historic Districts and Landmarks; Design Review	9-301
<input type="checkbox"/> Authorize transfer of development rights to protect historic areas and landmarks	9, Transfer of Development Rights	9-401
<input type="checkbox"/> Authorize local governments to purchase development rights and secure conservation easements to protect historic areas and landmarks	9, Purchase of Development Rights; Conservation Easements	9-402; 9-402.I

Housing

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Consider alternative approaches to promote affordable housing	4, Note on State Planning Approaches to Promote Affordable Housing	
<input type="checkbox"/> Address housing issues via state planning	4, State Functional Plans	4-207
<input type="checkbox"/> Address housing issues via regional housing planning	6, Regional Plan Preparation	6-203
<input type="checkbox"/> Determine contents of local housing plans	4, State Functional Plans; 7, Local Plan Preparation	4-208.9; 7-207
<input type="checkbox"/> Provide local land-use incentives for affordable housing	9, Land-Use Incentives	9-501

Human Services

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Guide content of local human services plans	7, Local Plan Preparation	7-213

User Needs Checklist 4 (continued)

Needs and Goals Related to Specific Subject Areas

Implementation

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Address implementation of local comprehensive plans	7, Local Plan Preparation	7-211
<input type="checkbox"/> Authorize implementation agreements among various governments and nonprofit organizations	7, Implementation; Agreements With Other Government and Nonprofit Organizations	7-503
<input type="checkbox"/> Use a benchmarking system to measure and track performance in local planning	7, Implementation; Agreements With Other Government and Nonprofit Organizations	7-504

Infrastructure

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Guide content of local community facilities plans	7, Local Plan Preparation	7-206
<input type="checkbox"/> Guide content or require local capital improvement programs and budgets	7, Implementation; Agreements With Other Government and Nonprofit Organizations	7-502
<input type="checkbox"/> Address when and how local governments can require development improvements and exactions	8, Development Improvements and Exactions	8-601
<input type="checkbox"/> Coordinate state capital improvement programming and budgeting	4, State Capital Budget and Capital Improvement Program	4-301
<input type="checkbox"/> Guide the spatial location of state infrastructure	4, Smart Growth Act	4-401
<input type="checkbox"/> Authorize local governments to adopt development impact fees	8, Development Impact Fees	8-602
<input type="checkbox"/> Review a list of “good” elements of development impact fee enabling statutes	8, Elements of a Good Impact Fee Statute	7-108
<input type="checkbox"/> Authorize and guide local concurrency or adequate public facilities programs	8, Concurrency or Adequate Public Facilities; Development Timing	8-603

User Needs Checklist 4 (continued)

Needs and Goals Related to Specific Subject Areas

Neighborhoods

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Designate neighborhoods	7, Organizational Structure	7-108
<input type="checkbox"/> Provide for neighborhood or community organizations or a neighborhood planning council	7, Organizational Structure	7-109
<input type="checkbox"/> Provide for a neighborhood plan	7, Organizational Structure	7-301

Participation

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Require public participation in the preparation and adoption of local plans	7, Procedures for Local Plan Review, Adoption, and Amendment	7-401

Redevelopment

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Guide content of local redevelopment plan elements	7, Local Plan Preparation	7-303
<input type="checkbox"/> Encourage redevelopment with tax relief	14, Redevelopment and Tax Relief	14-301

Taxation; Financing Planning

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Authorize local governments to levy property taxes to finance planning	13, Local Tax Financing of Planning	13-101
<input type="checkbox"/> Authorize local governments to levy real property transfer taxes to finance planning	13, Local Tax Financing of Planning	13-102
<input type="checkbox"/> Authorize local governments to levy development excise taxes to finance planning	13, Local Tax Financing of Planning	13-103

User Needs Checklist 4 (continued)

Needs and Goals Related to Specific Subject Areas

Taxation; Financing Planning (continued)

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Provide for regional or metropolitan tax-base sharing	I4, Regional [Metropolitan] Tax-Base Sharing	I4-I01
<input type="checkbox"/> Provide tax relief within redevelopment areas	I4, Redevelopment and Tax Relief	I4-301
<input type="checkbox"/> Authorize tax increment financing	I4, Redevelopment and Tax Relief	I4-302
<input type="checkbox"/> Authorize the abatement of taxes	I4, Redevelopment and Tax Relief	I4-303
<input type="checkbox"/> Authorize preferential tax assessment of land in agricultural districts	I4, Agricultural Districts	I4-401
<input type="checkbox"/> Understand the relationship of local planning to the financing of schools	I4, Note on Local Planning, School Finance, and the Property Tax	

Telecommunications

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Prepare a state telecommunications plan	7, State Plans	4-206.I
<input type="checkbox"/> Guide content of local telecommunications plans	7, Local Plan Preparation	7-207

Transportation

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Address transportation issues by adopting a state transportation plan	4, State Functional Plans	4-205
<input type="checkbox"/> Provide for regional transportation planning	6, Regional Plan Preparation	6-204
<input type="checkbox"/> Provide for transit oriented development	7, Local Plan Preparation	7-302
<input type="checkbox"/> Guide content of local transportation plans	7, Local Plan Preparation	7-205

User Needs Checklist 4 (continued)

Needs and Goals Related to Specific Subject Areas

Taxation; Financing Planning (continued)

We Want To	Chapter Number and Division of <i>Legislative Guidebook</i>	Model Statute Section Number
<input type="checkbox"/> Consider why local governments should adopt transportation demand management regulations	9, Trip Reduction/Transportation Demand Management Regulation	9-20I
<input type="checkbox"/> Authorize local governments to adopt regulations designed to reduce trips and manage transportation demand	9, Trip Reduction/Transportation Demand Management Regulation	9-20I
<input type="checkbox"/> Protect transportation corridors	7, Implementation; Agreements with other Local Governments and Nonprofit Organizations	7-50I



Part 3

* Synopsis of the *Legislative Guidebook*

Chapters I & Chapters 2:

Initiating Planning Statute Reform and Statements of Purpose in Planning Statutes



How Do We Approach Reform?

The views held by the public and legislative decision makers about the roles of governments will influence your state's approach to statutory reform, which will in turn determine which of the statutory alternatives you are likely to prefer. There is a continuum of four alternative approaches in existing statutory systems:

- Planning is voluntary only.
- Planning is encouraged, with incentives.
- Planning is mandated.
- A state-regional-local planning system is mandatory.

By presenting alternatives, the *Legislative Guidebook* helps you to determine and apply appropriate solutions to problems of growth and change. Planning statute reform sometimes occurs incrementally, sequentially, and in a progression from voluntary approaches to incentives to stronger mandates. The American Planning Association advocates planning as a requirement to underpin land-use regulation and public investment, but recognizes that states will take different approaches and will progress toward stronger statutes as circumstances dictate.

Which Approach Works Best?

The pros and cons of the four approaches to planning are provided in the *Legislative Guidebook* Table 2-I.

Statutes should account for the intergovernmental dimension of planning and development control.

—Growing SmartSM Statement of Philosophy No. 5

Statutes should anticipate the potential for abuse of planning tools and correct for it.

—Growing SmartSM Statement of Philosophy No. 7

Consider the Big Picture First:

Your immediate concern may be limited to a specific issue (e.g., affordable housing). The *User Manual* accommodates your needs by directing you to solutions based on the specific subject areas that concern you (see User Needs Checklist no. 4). Before you begin thinking about specific problems and issues, however, consider the big picture first.

Contemporary problems and issues are interrelated—what might appear to be a specific issue that can be addressed by one level of government or a single tool (e.g., a lack of affordable housing addressed by local affordable housing plans) may in reality be more complex and require a multitude of solutions by different levels of government. Problems of affordable housing are linked to other problems and issues, such as economic development strategies and local use (or misuse) of land-use regulations.

Rather than jumping into action immediately to pursue a goal or solve a particular problem, several states have taken a “big picture” approach to initiating planning statute reform by getting started with a study commission or task force to look at *all* or a number of goals, issues, or problems related to growth and the management of change.

The *Guidebook* provides five alternatives for initiating planning law reform in a “big picture” way. Statutory reform can be initiated by the governor, the legislature, or a private group. For 11 helpful hints on how to approach statutory reform, see “Ingredients of Successful Reform Efforts” in Chapter I.

Alternatives for Getting Started

- * *Study commission composed of state legislators*
- * *Independent study commission including citizen representatives (e.g., Delaware)*
- * *Permanent joint legislative study committee (e.g., Oregon)*
- * *Executive order establishing interagency planning and land-use task force*
- * *Executive order establishing independent study commission (Chapter 1)*

Chapter 3:

Definitions



Chapter 3 assembles in one location (3-30I) the definitions that are generally applicable to the *Legislative Guidebook's* model statutes. Specific definitions that are pertinent only to particular model statutes are located in their respective chapters.

▲ **Caution:** The user should be careful not to modify the definitions provided in a given Chapter of the *Legislative Guidebook* unless consideration is given to how the change of definition may change the meaning and applicability of the model statute itself. Understanding the particular context in which the definitions are meant to be applied is especially important.

Statutes should use familiar terminology.
—Growing SmartSM Statement of Philosophy No. 8

The following Sections of the *Legislative Guidebook* also contain definitions:

- 4-208.3 State Planning for Affordable Housing (Two Alternatives)
- 4-30I State Capital Budget and Capital Improvement Program
- 5-I02 Siting State Facilities
- 5-302 Developments of Regional Impact
- 7-I0I Local Planning: Organizational Structure
- 8-I0I Local Land Development Regulations: General Provisions
- I0-I0I Administrative and Judicial Review of Land-Use Decisions: General Provisions
- I4-I02 Regional [Metropolitan] Tax-Base Sharing

Definitions Are Important Because They:

- * *Establish precise meanings*
- * *Simplify the text*
- * *Translate technical terms for the user*

Chapter 4:

State Planning

Chapter 4 provides legislative alternatives for types of state planning agencies and their functions. It provides details of different types of state plans and procedures for their adoption and use by state agencies. Chapter 4 concludes with a model state capital budgeting and capital improvement programming statute.

Your approach to state planning can be characterized as either a “civic” or “management” model, summarized in the sidebar.

Your decision on which approach is needed depends on the type of state planning you choose to pursue. See the “State Plans” section in the *Legislative Guidebook*.

➔ **Note:** If you are only interested in a particular type of state planning (i.e., preparing a “functional” plan) such as transportation or housing, go to the next section of this *User Manual* on “functional planning,” then return to this section of the guide as appropriate.

Choosing the “civic” model means you are interested in initiating a state comprehensive plan or perhaps a state land development plan. On the other hand, choosing the “management” model suggests that you will likely be striving to produce and coordinate state agency strategic plans. A strategic futures plan might be appropriate under either the civic or management model. See the commentary in the *Legislative Guidebook* if you need help deciding which type of state planning you want to do. Note that multiple plans might be produced, as Florida has done.

After you choose either the civic or management approach (or perhaps you can do both) and consider what type of state planning you would like to do, those choices will begin to inform you about the most appropriate way to organize the administrative agency that will supervise and administer state planning functions.

Two State Planning Approaches:

1. *Civic: Long-range, citizen-based, oriented toward producing a comprehensive plan (e.g., land use)*
2. *Management: Short-range, governor-led, oriented toward state agency coordination (see “Two State Planning Models” and Table 4-1 in the Legislative Guidebook).*

Another important consideration is what the effect of the state plan should be on state agencies. For alternatives, see 4-212 and commentary in the *Legislative Guidebook*.

✦ **Interrelationships:** For any type of state plan, one must consider which entity will adopt the plan (see page 35 of this *User Manual* on “procedures related to state planning”). State planning will likely need to be coordinated with any “state functional plans” (see page 34 of this *User Manual*). The purposes of state plans and their relationships with regional planning and local planning must be considered (see later sections of this *User Manual*).

Types of State Plans:

- * *Civic approach means developing a state comprehensive plan (e.g., Florida, New Jersey) (see 4-203) or a state land development plan (e.g., Florida, Rhode Island, Connecticut) (see 4-204).*
- * *Management approach means developing a state agency strategic plan (e.g., Florida) (see 4-202).*
- * *A strategic futures plan (vision) (e.g., Florida) might be by either the civic or management approach (see 4-201).*
- * *See the Section on “State Plans” and Table 4-3*

State Goals

State goals may be a part of a statute, a state plan, or a state vision. Goals are also provided in any state functional plan. For a more detailed description of various state approaches to state planning goals, see Table 4-5 of the *Legislative Guidebook*. Following Table 4-5 is a menu of state goals.

For procedures on how to adopt state goals, see “Procedures for State Planning.”

Organizing for State Planning

The *Legislative Guidebook* (4-101) provides commentary and five alternatives for organizing state planning functions. It describes functions (4-102), rulemaking authority (4-103), and reporting requirements of state planning agencies and councils (4-104).

▲ **Caution:** Most states will not be starting from scratch in organizing state planning functions. The existing organizational structure of state planning might dictate what type of new planning can realistically be undertaken. In cases where existing state planning organizational structure does not match your newly emerging state planning goals a reorganization of existing state planning agency(ies) might be needed.

Statutes should build on the strengths of existing organizations that undertake and implement planning.

—Growing SmartSM Statement of Philosophy No. 3

State Functional Plans

Instead of, or in addition to, general state planning functions and general types of plans, state agencies undertake functional planning. For example, state departments of transportation produce statewide transportation plans. State functional plans are addressed separately because they are usually prepared by a department, agency, or commission other than the state planning office, department, or commission.

Options: Where Do State Goals Fit In?

- Statute (e.g., Florida, Hawaii, Vermont, Rhode Island, and Washington)
- State plan document or implementing administrative rule (e.g., Connecticut, New Jersey, Oregon, and Rhode Island)
- State vision (e.g., Maryland)

See “A Note on State Planning Goals” in Chapter 4

Functional Plans:

- * *Transportation* (4-205)
- * *Economic Development* (4-206)
- * *Telecommunications and Information Technology* (4-206.1)
- * *Housing*
 - *State Housing Plan; Housing Advisory Committee* (4-207)
 - *Alternatives for state affordable housing* (4-208)
 - A Model Balanced and Affordable Housing Act* (4-208.1)
 - Balanced and Affordable Housing Council* (4-208.4)
 - Council and regional planning agency* (4-208.6)
 - *Appeals board or court* (“Alternative 2, Application for Affordable Housing Development: Affordable Housing Appeals,” 4-208.1)

(Also see “A Note on State Planning Approaches to Promote Affordable Housing” at the end of Chapter 4).

Alternatives for State Planning Organization:

- * *State planning office*
- * *State planning department*
- * *State planning commission*
- * *Cabinet coordinating council*
- * *Department of development*
- * *See Table 4-2 of the Legislative Guidebook*

The *Legislative Guidebook* provides commentary and statutory models on four functional plans (see sidebar on page 34 of this *User Manual*). It also provides a model state biodiversity plan (4-204.I).

❖ **Interrelationships:** Functional plans are not the only types of state plans. You need to consider how state functional plans will be interrelated with, and complement, any state plans. The state is not the only level of government engaged in functional planning. Careful attention must be paid to how state functional plans will be interrelated with (and perhaps provide guidance to) any regional and local comprehensive plans.

Options: Who Should Adopt State Plans?

- Governor by executive order
- Governor and state legislature (adoption required)
- State board or commission
- State agency head

For pros and cons, see Table 4-4 and Section 4-210 in the *Legislative Guidebook*.

Transmitting Adopted Plans to State Agencies

For commentary and a model, see 4-211.

Public Review and Hearings

See “Procedures Related to State Plan Making, Adoption, and Implementation” in Chapter 4.

Procedures Related to State Planning

Who should adopt the state comprehensive plan or functional plan, and what process should be used?

The appropriate alternatives for which entity adopts a state plan, and the accompanying procedures, depend on the type of state plan (see “types of state plans” and “state functional plans” on pages 33 and 34 of this *User Manual*). For instance, a state functional plan is likely to be adopted by a state board or commission or a state agency head. State agency coordination plans are likely to be adopted by the governor via executive order. Other types of state plans might require some combination of approval by the governor and state legislature.

Adopted state plans need to be sent to state agencies for implementation. In addition, adopted state plans should be widely distributed to regions, localities, and libraries.

State Capital Budget and Capital Improvement Program

❖ **Interrelationships:** A state capital budget or capital improvement program should be carefully linked and coordinated with any state plans that exist. For commentary and a model, see “State Capital Budget and Capital Improvement Program” (4-301 et seq.).

For a model “Smart Growth Act,” which is intended to guide state capital investments and is patterned after a well-regarded 1997 Maryland law, see 4-401.

State Examples

* Texas

* Maryland

* New Jersey

Chapter 5:

State Land-Use Control

To further the public health, safety, and general welfare, states have authority to regulate land use. States delegate authority and authorize local governments to exercise local land-use controls as a police power. Certain aspects of development and community building cannot be achieved fully by local government actions. Some issues may be so important from a statewide standpoint that a state must exercise its land-use authority and assume a direct role in the regulation of land use.

Chapter 5 includes model legislation for three types of state land-use programs: (1) siting state facilities; (2) designating areas of critical state concern; and (3) regulating developments of regional impact (DRIs). Chapter 5 provides two alternatives to DRIs—one local and one regional.

Siting State Facilities

States construct, operate, and expand many different types of state facilities. These state facilities include courthouses, office buildings, museums, and other facilities, which are often welcomed into communities. Other state facilities, such as waste treatment plants, landfills, and group homes, are generally not welcomed.

State Land-Use Control

1. Siting state facilities (5-I01 – 5-II0)
2. Designating areas of critical state concern (5-201 – 5-214)
3. Regulating developments of regional impact (DRIs) (5-301 – 5-315)
 - Local
 - Regional



What is a State Facility?

For a definition, see “Types of State Facilities” in Chapter 5. State facilities can be:

- * noncontroversial,
- * sometimes controversial, or
- * controversial.

Why Are State Land-Use Controls Needed for State Facilities?

- * Locally Unwanted Land Uses (LULUs)
- * Not In My Backyard (NIMBY)
- * Environmental justice

Community opposition can frustrate the process of siting state facilities because of their unpleasant characteristics or potentially dangerous environmental effects. Undesirable and controversial state facilities are usually sited in communities where residents did not have the political power to stop their siting.

The state facility siting statute addresses the need to achieve an “equitable” distribution of undesirable state facilities, compensate those who have to coexist with them, and capture some of the economic windfall that is created by siting desirable state facilities. In short, the statute introduces several notions of “fairness” into state processes for siting facilities.

Chapter 5 discusses innovative approaches to the siting of state facilities. It provides a model state facilities siting act (5-101 – 5-110). The model legislation seeks to provide uniformity among decisions of state agencies with regard to siting, expanding, or closing state facilities. It seeks also to balance local considerations with regional and state needs, and it ensures public participation in the state facility siting process.

The model legislation is based on New York City’s fair-share siting process. For information on how New York’s fair-share program works, see the Note following discussion of developments of regional impact (DRIs) at the end of Chapter 4.

❖ **Interrelationships:** State agencies are involved in siting processes, through the establishment of rules. The state agency responsible for developing state facility siting rules may differ from state to state (see Table 4-2 and the section

“How to Organize for State Planning”). The criteria for decisions about state facility siting by state agencies may need

Approaches to Siting State Facilities:

- * *Point systems*
- * *Lotteries*
- * *Auctions*
- * *Fair-share processes*

to be included in or guided by state agency coordination plans (see the management model described in Table 4-I). As applicable, the state comprehensive plan, land development plan, or functional plans (see Chapter 4) should make reference to state facility siting criteria and processes as well as any adopted state facilities maps. Funding for state facilities should be done prior to their siting, rather than before them—states should formally adopt a state capital improvement program. For guidance on how to do that, see “State Capital Budget and Capital Improvement Program” (Chapter 4, 4-30I et seq.).

Areas of Critical State Concern

Each state has sensitive environmental areas that may require state regulation. Designating an area of critical state concern is a type of state land-use control that identifies public and private lands that are important to the environmental health of the state. Such controls seek to minimize the effects of development and public investment on environmentally sensitive lands or areas where natural, historic, or archaeological resources deserve protection. Local governments may not always have the technical capability or resources to control the complex consequences of development in critical areas.

Notions of Fairness

State facility siting should be:

- * *fair in the pattern of distribution;*
- * *fair in the efficiency of distribution;*
- * *fair in the procedures used to determine the distribution;*
- * *fair in the award of benefits and compensation; and*
- * *fair in implementing design standards.*

States may protect areas of critical state concern in one of two ways: statewide, or through ad hoc special programs directed at certain areas of the state. Several states have adopted critical area programs based on the American Law Institute's *Model Land Development Code* (1976). For a discussion of various approaches to areas of critical state concern, see Chapter 5.

Chapter 5 provides a model for the designation of areas of critical state concern (5-201 -5-214).

❖ **Interrelationships:** States that adopt an area of critical state concern program must first prepare and adopt a state land development plan (see "State Plans" in Chapter 4). For information on how to organize to regulate areas of critical state concern, see "Organizing for State Planning" (4-101). Regional planning agencies may also be provided with roles in the area of critical state concern designation process (see generally Chapter 6).

Developments of Regional Impact (DRIs)

Developments of regional impact statutes provide for or require a special review process for development proposals that have mutijurisdictional impacts. DRI processes are guided by review criteria established by rules of a state agency. Chapter 5 describes what a DRI is and how it has been implemented in Florida.

The model act for DRIs (5-301 – 5-314) provides two alternatives for reviewing DRIs: local government and regional planning agency. The model statute also includes provisions for enforcement, amendments, development agreements, and appeals.

❖ **Interrelationships:** A state planning agency is needed to adopt rules regarding developments of regional impact (see "Organizing for State Planning" (4-101) in Chapter 4). Alternatively, a regional agency may be the primary reviewing and permitting authority for DRIs (see generally Chapter 6). DRI programs may be referenced in or guided by a state comprehensive plan, state land development plan, or state functional plans (see "State Plans" and Table 4-3 in Chapter 4).

Approaches to Critical Area Protection

Comprehensive statewide system (e.g., Florida)

"Ad hoc" approach (e.g., New Jersey Pinelands, or the Virginia and Maryland Chesapeake Bay programs)

Example Approaches:

- * *Florida*
- * *Cape Cod Commission (Massachusetts)*
- * *Vermont*
- * *Metropolitan Council of the Twin Cities*



Chapter 6:

Regional Planning

Regional planning is planning for an area larger than the boundary of an individual local governmental unit—an area that has common social, economic, political, natural resource, or transportation characteristics. States establish regional planning programs for several reasons, as noted in the sidebar.

Chapter 6 provides a full range of alternatives for forming and organizing regional planning agencies and preparing and adopting regional plans. A model statute for designating a substate regional planning agency is provided. A special feature of this chapter is model language for the designation of regional urban growth areas (also known as urban growth boundaries) for incorporation into local comprehensive plans. Chapter 6 also includes model legislation for agreements between regional planning agencies and other governmental units.

Chapter 6 covers six major topics as shown in the sidebar. In addition, it provides notes on “weighted voting procedures,” “urban growth areas and regional planning,” and “existing regional plans.”

Organizational Structure

There are at least five possible structures for regional planning agencies. There is no ideal form for a regional planning agency. The regional planning agency may be mandated or voluntary. The structure may be determined by member governments, appointees of the governor, and/or state agency representatives.

Alternative I of the model statute in Chapter 6 (6-I01) provides for the voluntary creation of a regional planning agency. Section 6-I01 also discusses interstate regional planning compacts. The model statute also provides alternatives for the composition of regional planning agencies (6-I02). Commentaries focus on voting (6-I03), rulemaking (6-I05), and powers and duties of regional planning agencies (6-I07).

Chapter Outline, Regional Planning

- *Organizational Structure (6-101 – 6-108)*
- *Plan Preparation (6-201 – 6-204)*
- *Procedures for Plan Review and Adoption (6-301 – 6-305)*
- *Relationships and Agreement with Other Levels of Government (6-401 – 6-403)*
- *Miscellaneous Provisions (6-501 – 6-503)*
- *Designation of Regional Planning Agency as Substate District Organization (6-601 – 6-604)*

Why Should Regional Planning Be Encouraged or Required?

- * *Develop regional plans to guide, direct, or coordinate local planning*
- * *Articulate local interests and perspectives to other governments*
- * *Maintain a forum for exploring and resolving intergovernmental issues*
- * *Provide technical assistance to local governments*

Five Possible Approaches:

1. *Regional planning commission*
2. *Council of governments*
3. *Regional advisory committee*
4. *Regional allocation agency*
5. *Special purpose regional agency*

Should Urban Growth Areas Be Established?

For pros and cons, see Table 6-I in the *Legislative Guidebook*.

Regional Plan Preparation

A regional comprehensive plan provides a framework for local comprehensive planning. There are two approaches to preparing regional comprehensive plans. See 6-201.

Beyond these two general alternatives, there are several variations of regional plans in practice, including examples provided in the sidebar. For more information, see “A Note on existing Regional Plans” at the end of Chapter 6.

In addition to comprehensive plans, regional planning agencies may also prepare regional functional plans for transportation, parks and open space, water supply, sanitary sewerage, and other facilities. Chapter 6 provides a generic statute (6-202) for all types of functional plans rather than drafting model legislation specific to each regional planning function, except for specific models and commentary for regional housing plans (6-203) and regional transportation plans (6-204).

❖ **Interrelationships:** The relationship of any regional comprehensive plans or regional functional plans to state plans (see, generally, Chapter 4) and local plans (see, generally, Chapter 7) should be clear.

Urban Growth Areas

Urban growth areas are a regional land-use planning tool used to influence the spatial structure or pattern of development within a region and communities within it. Urban growth areas exist in Oregon, Washington, Maine, and Tennessee, and in selected local jurisdictions and regions in other states.

Chapter 6 recognizes the debate over the costs and benefits of designating urban growth areas. An optional statute (6-201.I) is provided. In addition, Chapter 6 provides a detailed note on urban growth areas and regional planning. Both alternatives require that a regional comprehensive plan be prepared prior to designation of an urban growth area.

❖ **Interrelationships:** If established, a regional urban growth area boundary must provide and maintain a land market monitoring system (see Chapter 7) and be periodically reviewed to ensure an adequate supply of buildable land is provided within the regional urban growth area boundary. (See “A Note on Urban Growth Areas and Regional Planning” for an example of how to calculate future land

Alternatives for Regional Comprehensive Plans:

- * *Advisory document*
- * *Document to integrate state, regional and local interests*

Existing Types of Regional Plans:

- * *Strategic regional policy plan (e.g., Florida)*
- * *Framework plan (e.g., Portland, Oregon Metro)*
- * *Regional growth management strategy (e.g., San Diego Association of Governments)*
- * *Land master plan (e.g., New York’s Adirondack Park Agency Act)*

Regional Functional Plans:

- * *Generic model (6-202)*
- * *Housing (6-203)*
- * *Transportation (6-204)*

needs.) If a state land development plan exists (see 4-204) and it includes criteria for establishing an urban growth area, the regional comprehensive plan must incorporate those standards and criteria. State statutes that provide for urban growth area designations should see the model statutory language and commentary on “Appeal of Determination Regarding Urban Growth Area Designation” (7-402.3).

Procedures for Plan Review and Adoption

Chapter 6 provides commentary and alternatives for the review and adoption regional plans. Alternatives include a simple and a detailed procedure for workshops and public hearings (6-301). Unlike state plans, options for adopting regional plans are limited. The model statute provides for adoption by the regional planning agency (6-303), certification of regional plans (6-304), and adoption by other governments (6-305).

❖ **Interrelationships:** The guidance in this Chapter is a parallel to procedures for reviewing and adopting state plans (Section 4-209). Conflicts between state, regional, and local plans need resolution (Sections 7-402.I to 7-402.5).

Types of Agreements:

- * *Planning and Coordination*
- * *Urban service (6-403)*

Relationships and Agreements with Other Units of Government

A regional comprehensive plan or regional functional plan must be clear regarding its status vis-à-vis local governments, special districts, and state agencies (6-401).

Model legislation provided in 6-402 authorizes regional planning agencies to enter into written agreements with other government units as a means of implementing regional comprehensive or functional plans.

Regional Plan Procedures:

- * *Workshops and Public Hearings (6-301)*
- * *Adoption by Regional Planning Agency (6-303)*
- * *Certification (6-304)*
- * *Adoption by Other Governments (6-305)*

Miscellaneous Provisions

Unless membership by a local government in a regional planning agency is mandatory, there will be a need to address withdrawal by a local government from the regional planning agency (6-501) and dissolution of the regional planning agency (6-503). The model statute also provides a provision for state aid to regional planning agencies (6-502).

Designation of Regional Planning Agency as Substate District Organization

This part provides a model statute that includes provisions on how to delineate districts (6-601), designation of substate district organizations (6-602), state agency use of substate district boundaries (6-603) and the effect of such substate district organization (6-604). Regional planning agencies are already established for purposes of regional transportation planning (i.e., “metropolitan planning organizations” or “MPOs”) (see Commentary, Preparation of Regional Transportation Plan.)

Chapter 7:

Local Planning

Statutes should prescribe the substantive contents of plans.

—Growing SmartSM Statement of Philosophy No. 5

The benefits of local planning are widely recognized (see sidebar). Some states provide guidance to local governments on how to organize local planning agencies and commissions. Some states find the need to improve the quality of local comprehensive plans by specifying elements that must be included. In addition, states may mandate local plans to ensure that statewide policies are carried out.

Chapter 7 provides model legislation for planning at the local level of government. The organization of Chapter 7 is similar to Chapter 6 on Regional Planning (see sidebar). It describes organizational structure for local government planning, preparation of plans, elements of local comprehensive plans, and implementation and monitoring efforts.

Chapter 7 also provides “notes” on neighborhood plans and comprehensive planning requirements in state statutes. Commentaries are provided for many different sections of this chapter.

Why Should Local Planning Be Required or Encouraged?

- * *Draws attention to local issues and opportunities*
- * *Provides a “big picture” view of the community*
- * *Provides a direct and efficient way to involve the public in determining the community’s future*
- * *Provides goals and policies that guide local regulations and public improvements*
- * *Provides information to guide private development proposals*
- * *Encourages predictability and consistency in governmental action*

Chapter Outline:

- ▶ *Organizational Structure (7-101 – 7-110)*
- ▶ *Plan Preparation (7-201 – 7-202)*
- ▶ *Local Comprehensive Plan Elements*
 - Required Local Plan Elements (7-203 – 7-211)*
 - Optional Elements (7-212 – 7-216)*
 - Subplans (7-301– 7-304)*
- ▶ *Procedures for Plan Review, Adoption, and Amendment (7-401 – 7-406)*
- ▶ *Implementation; Agreements with Other Government and Nonprofit Organizations (7-501 – 7-504)*

Organizational Structure

This section of Chapter 7 describes how to organize local planning functions and set forth the powers of local planning agencies and provides alternatives for structuring local planning commissions. It also provides guidance on how to organize for neighborhood planning.

Local governments should be given as much flexibility as possible in structuring local planning functions. There are at least four alternatives for voluntary local planning functions. Plan preparation, whether or not it is mandated by the state, may be overseen by a planning commission, a task force of the planning commission, or by an advisory group appointed by the legislative body. Instead of (or in addition to) jurisdictionwide planning functions, a state statute may provide for neighborhood planning councils (7-109) or the recognition of neighborhood or community organizations (7-110).

The most common organization for local planning is the local planning commission. Although the *Guidebook* presents the formation of a local planning commission as optional, the state statute should require that local planning commissions be created. The *Guidebook* provides alternative model language for establishment (7-105) and powers and duties (7-106) of local planning commissions.

To support the local planning commission or other appointed local planning organization, a local planning agency is needed to carry out local planning functions. The *Guidebook* provides model language describing powers and duties of local planning agencies (7-103) and giving them authority to adopt procedural rules (7-104). Annual reports may be required by either the local planning agency or commission (7-107).

Local Plan Preparation

This section of Chapter 7 describes local comprehensive plan contents; some elements are mandatory, and others are optional. It also describes subplans focused on specific areas like neighborhoods, transit stops, and redevelopment areas.

State statutes can provide for local comprehensive planning as an optional activity, or they can require that local comprehensive plans be prepared.

The Growing SmartSM Directorate prefers that state statutes require local planning commissions, but they are optional.

How Can Local Planning Be Organized?

- * *Local Planning Commission* (7-105 and 7-106)
- * *Advisory Task Force*
- * *Neighborhood Planning Council* (7-109)
- * *Neighborhood and Community Organization Recognition* (7-110)

Functions of Local Planning Agencies:

- * *Staff support to appointed commission* (7-103)
- * *Rulemaking procedures* (7-104)
- * *Education and training of planning commission (or other appointed board members)* (7-105)

Types of Local Plans:

- * *Comprehensive plans* (see “The Local Comprehensive Plan”)
- * *Subarea plans* (see “Subplans”)

For pros and cons on whether to mandate local comprehensive planning, see Table 7-4 in the *Legislative Guidebook*.

❖ **Interrelationships:** as an alternative to requiring local comprehensive planning, some states elect to induce local (or regional) planning by withholding grant funds from local governments that have not prepared plans. See “Commentary: Financial Incentive to Prepare New Plans” later in Chapter 7.

Local comprehensive plans can serve as advisory documents only, or they may be documents designed to integrate state, regional, and local interests (7-201). The state statute should provide guidance to the content of local comprehensive plans, and it may specify which elements are “mandatory” and which are “optional” (7-202).

➔ **Note:** See “A Note on Comprehensive Planning Requirements in State Statutes” at the end of Chapter 7 for an overview of state approaches.

The model local planning statute provides for the following local planning elements:

- Issues and opportunities (7-203)
- Land use (7-204)
- Transportation (7-205)
- Community facilities (7-206)
- Telecommunications (7-207)
- Housing (7-207)
- Economic development (7-208)
- Critical and sensitive areas (7-209)
- Natural hazards (7-210)
- Program of implementation (7-211)
- Agriculture, forest, and scenic preservation (7-212)
- Human services (7-213)
- Community design (7-214)
- Historic preservation (7-215)



❖ **Interrelationships:** This section also provides commentary on monitoring land markets (see 7-204.I, “Land Market Monitoring System”), which must be required if urban growth areas have been designated pursuant to Section 6-201.I.

Chapter 7 also provides commentary and statutory language for three types of subplans (see sidebar.)

➔ **Note:** For additional information on neighborhood planning, see “A Note on Neighborhood Plans” following the section in Chapter 7 titled “Implementation; Agreements with Other Government and Nonprofit Organizations.”

Types of Local Comprehensive Plan Elements:

- * *Mandatory (see “Required Elements”)*
- * *Optional (see “Optional Elements”)*

Subplans:

- * *Neighborhood (7-301)*
- * *Transit-oriented development (7-302)*
- * *Redevelopment area (7-303)*

Procedures for Local Plan Review, Adoption, and Amendment

This part of Chapter 7 sets forth procedures for plan review, adoption, and amendment. An optional process for state review and approval of local comprehensive plans is also provided. A public collaborative process in plan making is offered as an alternative to the “single public hearing” approach advocated in previous statutory models for local planning.

Planning statutes must do more to recognize and encourage, and perhaps even mandate, greater community involvement in local comprehensive planning. Several states require public participation in the development of local comprehensive plans (see sidebar). Techniques for public participation are left to the local government, but the model statute requires local governments to adopt written procedures for public participation (7-401).

The model statute provides for an appeal of a local adoption of a comprehensive plan to a comprehensive plan appeals board (7-402.I), which provides a means of hearing disputes over decisions made under planning statutes. State court systems are not the preferred appellate jurisdiction.

There are numerous reasons why a local government’s comprehensive plan should be reviewed at a broader level of government (see sidebar). Requiring state or regional review of a local comprehensive plan does not necessarily mean that a local comprehensive plan is required—that is, a statute can provide that if a local plan is prepared, it must be reviewed by a higher level (i.e., state or region). A bad plan can be worse than no plan at all under certain circumstances. For model language, see 7-402.2.

State statutes can provide guidance on procedural matters for adoption of local comprehensive plans and subsequent tasks. The model statute addresses the status and change of local comprehensive plans, once adopted (see sidebar).

Statutes should expressly provide for citizen involvement.

—Growing SmartSM Statement of Philosophy No. 5

States with Mandatory Public Participation in Local Comprehensive Planning:

- * *Maine*
- * *Florida*
- * *Oregon*
- * *Washington*

States with Comprehensive Plan Appeals Boards:

- * *Rhode Island*
- * *Florida*
- * *Washington*

Statutes should provide for planning that goes beyond the shaping and guidance of physical development.

—Growing SmartSM Statement of Philosophy No. 2

Implementation; Agreements with Other Government and Nonprofit Organizations

This portion of Chapter 7 describes measures to implement the comprehensive plan. Corridor mapping is offered as a more viable alternative than the old “official map” tool in avoiding problems of takings. Local capital budgeting is also described. This section also provides model agreements between local governments and other governments and nongovernmental organizations that have responsibilities for implementing local comprehensive plans. Finally, this section shows how benchmarking systems can be used to measure and track performance in achieving goals of local plans.

❖ **Interrelationships:** The *Legislative Guidebook* has explicitly included neighborhood organizations as potential parties to implementation agreements because of their quasi-governmental nature and their potential for bringing grass-roots perspectives and action to plan implementation.



Local Comprehensive Plans Should Be Reviewed By Higher Authority Because They Must:

- * *comply with all legal requirements;*
- * *be consistent with themselves internally;*
- * *be consistent with other local, regional, or state plans;*
- * *provide substantive direction; and*
- * *be “good” (i.e., sound and feasible, not ill-advised and faulty.)*

Additional Provisions Regarding Local Comprehensive Plans:

- * *Adoption (7-403)*
- * *Certification and filing (7-404)*
- * *Amendment (7-405)*
- * *Periodic review (7-406)*

Local Comprehensive Plan Implementation and Monitoring Tools:

- * *Corridor map (7-501)*
- * *Capital improvement program and budget (7-502)*
- * *Implementation agreements (7-503)*
- * *Benchmarks (7-504)*

Chapter 8:

Local Land Development Regulation

Statutes should allow flexibility in administration.

—Growing SmartSM Statement of Philosophy No. 10

State statutes should provide broad authorization for a wide variety of local land development regulations because local land-use regulation needs to be based on adequate enabling legislation. For model language that authorizes a broad array of local development regulations, see 8-102. For relevant definitions, see 8-101.

Topics covered in this chapter include zoning, subdivision, planned unit development (PUD), uniform development standards, exactions, development impact fees, vesting, nonconforming uses, and development agreements, among others.

❖ **Interrelationships:** Chapter 8 is intended to be used in conjunction with Chapter 9, 10, and 11.

General Provisions

Local land development regulations must be adopted and amended in accordance with procedures that ensure due process. Recommended procedures are shown in the sidebar.

The model statute is based on the principle that local comprehensive plans should be implemented through the local regulatory framework. This is known as the consistency doctrine—zoning and land-use regulations must be consistent with and implement the comprehensive plan. Numerous state statutes require consistency between local regulations and local comprehensive plans.

Why Consistency?

The local comprehensive plan is not simply a rhetorical expression of a community's desires. It is instead a document that describes public policies a local government actually intends to carry out. If it were otherwise, why bother to complete and adopt one? (8-104)

Purposes of Land Development Regulations:

- * *Implement comprehensive plans*
- * *Have regard for state interests*
- * *Promote public health, safety, morals, and general welfare (8-102)*

Aspects of the Model Statute Regarding Due Process:

- * *Allow property owners to initiate amendments*
- * *Review and recommendation by a local planning commission (if one exists)*
- * *At least one public hearing*
- * *Notice of public hearing via advertisement, mail to adjacent property owners, and a sign on the property affected (8-103)*

Local governments share land-use authority with other levels of government. In some cases, local governments cannot exercise certain land-use controls because the state or federal government already regulates that activity (i.e., “preemption” of local action by the state or federal government). State statutes need to address the relationships of local land development regulations with state and federal programs, rules, and laws. The model statute provides commentary and language for specifying those relationships.

One issue that should be addressed by state statutes is whether the state and its agencies are required to follow local land development regulations. Similarly, questions will arise as to whether counties and special districts must follow the regulations of cities, and whether public utilities are subject to local land-use regulations. Most state statutes are silent on these topics. The model statute provides four alternatives, as shown in the sidebar (8-106).

Local land-use regulations should be periodically and systematically updated. The model statute proposes that local governments conduct a general review of their land development regulations at least once every five to ten years (8-107).

Zoning Ordinance

The model statute provides that local governments “may” adopt and amend zoning ordinances, but it does not require a zoning ordinance. If a zoning ordinance is adopted, it should have a statement of consistency with the local comprehensive plan. State statutes should specify the basic structure of local zoning ordinances. Local governments may elect to add other special provisions, such as transfer of development rights, as their needs change (8-201).

What is Site Plan Review?

“Site plan review” refers to the local examination of certain land development proposals by the local government to see if the proposal fits with the characteristics of the site itself.

Why Should the Statute Address State and Federal Land Use Laws?

- * *Other programs and plans should be taken into consideration locally*
- * *Local actions may be prohibited by state or federal law (i.e., preemption)*
- * *Likelihood of poor coordination (8-105)*

Alternatives for Addressing Application of Local Land-Use Regulations to Federal and State Actions:

- 1. Federal government lands are exempt, state and other public agencies not exempt if a local plan is certified by the state*
- 2. Federal government lands are exempt, but there are no exemptions for state lands*
- 3. Federal and state lands are exempt entirely from local regulation, but special districts and school districts must comply*
- 4. Federal and state lands are exempt, but certain development proposals are subject to a non-binding public hearing (8-106)*

Why Should the State Require Local Land Use Regulations to Be Periodically Updated?

- * *Patchwork amendments make the regulations hard to understand*
- * *Parts don't fit together very well*
- * *Process becomes unpredictable*
- * *Federal and state case law can change (7-406)*

Review of Plats and Plans

A subdivision ordinance is a land development regulation that governs the division of land into two or more lots. Because a subdivision ordinance affects the lot configuration and street pattern, it is often thought to have more influence on urban form and is more permanent (or less easily changed) than zoning. The model statute requires local adoption of subdivision ordinances as a basic regulatory tool (8-301).

A number of states have statutes that expressly authorize site plan review. The model statute gives local governments authority to allow site plan review for nonresidential and multifamily residential uses that are permitted as of right, whether or not they require subdivision (8-302).

Planned unit developments (PUDs) are an innovative and flexible response to the rigid nature of conventional zoning regulations. State statutes should provide a legal basis for local governments to adopt PUDs. The model statute authorizes local governments to adopt PUD ordinances, but only if a local comprehensive plan is adopted first (8-303). Traditional neighborhood development standards may also be incorporated into a PUD ordinance.

Uniform Development Standards

Development standards are the provisions in various local land development regulations that prescribe the engineering and technical specifications for improvements, such as streets, sidewalks, sewer, and water lines, drainage, and placement of utilities. The model statute provides alternative procedures for preparing, adopting, and implementing uniform standards (8-401).

Why Are Uniform Development Standards Needed?

- * Small local governments don't have resources to prepare them.
- * Standards may be excessive or burdensome in their cost and application; uniform standards can relieve such burdens.
- * Public participation in preparing them may be limited. (Commentary, 8-401)

Who Reviews and Approves Subdivisions of Land?

The model statute does not specify who should review and approve subdivisions of land. Possible alternatives include:

- * the planning commission
- * the legislative body
- * the regional planning commission

(see "Who Reviews Subdivisions" in Chapter 8)

Purposes of Planned Unit Development Ordinances:

- * Allow traditional neighborhood development and cluster development
- * Permit flexibility and innovation in design
- * Mix land uses, housing types, and densities
- * Provide for efficient use of public facilities



Development Rights and Privileges

At some point in the development process, a developer secures the legal right to proceed under existing local land development regulations, and the local government cannot require that particular development to comply with any new regulations. Exactly when in the process a developer's rights become "vested" (i.e., at what time a permit or process triggers the entitlement) varies from state to state. Section 8-50I provides two alternative model vested rights statutes.

Most state statutes extend some degree of protection to nonconforming uses. See "Commentary: Regulation of Nonconforming Uses" following Section 8-50I. Eight states expressly allow for the amortization or phasing out of nonconforming uses. See 8-502 for model statutory language for the regulation of nonconformities and amortization.

Which States Have Vested Rights Statutes?

Arizona, California, Colorado, Florida, Kansas, Massachusetts, New Jersey, North Carolina, Oregon, Pennsylvania, Texas, and Virginia (8-50I).

What Are Nonconforming Uses, and Can They Be "Amortized"?

A nonconforming use is any land use that lawfully existed before a local regulation and does not meet that local regulation but is allowed to continue. In popular terms, this is called a "grandfather" clause. "Amortization," or the required phasing out of a use over time, is difficult in practice (8-502).

Exactions, Impact Fees, and Sequencing of Development

"Improvements" are on-site facilities that a developer installs to serve residents of the development itself. Improvement requirements are integral to subdivision, site plan review, and planned unit development ordinances. An "exaction" is a requirement that a developer provide certain improvements or pay a fee to cover the expense of a local government providing off-site infrastructure improvements. Section 8-60I authorizes local governments to require developers to provide certain necessary on-site improvements.

An impact fee statute authorizes local governments to assess fees on new development to defray or compensate for local government expenditures for new infrastructure that serves that development. Impact fees are authorized under 8-602. The commentary on development impact fees addresses the pros and cons and legal considerations. It also summarizes development impact fee statutes in 16 states and derives several "elements of a good impact fee statute" (see sidebar for examples).

A concurrency management or adequate public facilities ordinance conditions development approval on the availability of public facilities being available and adequacy at the time (or shortly after) development is approved. The *Legislative Guidebook* provides a model statute authorizing concurrency (8-603).

A moratorium is an authorized delay in the provision of government services or development approval. The *Legislative Guidebook* summarizes statutes on moratoria and relevant court cases, and provides a model statute (8-604) that can be adopted for alternative purposes.

Subsection Outline:

- * *Development Improvements and Exactions (8-601)*
- * *Development Impact Fees (8-602)*
- * *Concurrency or Adequate Public Facilities; Development Timing (8-603)*
- * *Moratorium on Issuance of Development Permits for a Definite Term (8-604)*

Selected Elements of a Good Impact Fee Statute:

- * *A local comprehensive plan and a capital improvement program is required.*
- * *Fee charged has rational nexus to impact and to developer benefits.*
- * *Fees cannot be imposed to address existing infrastructure deficiencies.*

(For others, see “Elements of a Good Impact Fee Statute” preceding 8-602)

Why Should States Authorize Local Moratoria?

- * *Avoid a rush of development applications before a local government can adopt or amend its comprehensive plan or development regulations*
- * *Inadequacy or lack of capacity in public facilities needed to serve new development*
- * *Other compelling health and safety reasons (8-604)*

Development Agreements

A development agreement is a statutorily authorized, negotiated agreement between a local government and a private developer. It provides some flexibility from existing development regulations and provides the developer with assurance of the right to develop a complex project over a long period of time, in exchange for providing additional infrastructure or agreeing to complete other actions. For commentary and a model statute, see 8-701.

Which States Authorize Development Agreements?

- * *Arizona*
- * *California*
- * *Florida*
- * *Hawaii*
- * *Idaho*
- * *Maryland*
- * *Nevada*
- * *South Carolina (8-701)*

What States Require or Authorize Concurrency?

Required: Florida and Washington

Authorized: Maryland and New Hampshire

Chapter 9:

Special and Environmental Land Development Regulations and Land-Use Incentives

Chapter 9 moves beyond the basic toolkit of local land development regulations to provide models of more specialized techniques, particularly those involving management of natural resources and the environment.

The first three sections of the model statutes are intended to implement particular elements of local comprehensive plans. The second group of statutes provide flexible tools for balancing the need to protect the environment with rights of property owners. The third part of this Chapter provides density and intensity incentives for affordable housing, good community design, and open space donation.

Regulation of Areas Constituting Natural Hazards and Critical and Sensitive Areas

Local governments need authorization to regulate critical, sensitive, and natural hazards areas. For commentary and a model statute, see 9-101.

▲ **Caution:** Local government regulations cannot conflict with, and may be preempted by, state or federal laws. Authorizations for local regulations of development within critical, sensitive, and natural hazards areas must therefore take into account federal and state statutes.

❖ **Interrelationships:** Local governments need to adopt comprehensive plan elements that provide the analytical support needed to regulate development within critical, sensitive, and natural hazards areas. See Chapter 7 for relevant

definitions (7-101) and local plan elements (7-209 and 7-210) that support these types of local land development regulations.

Trip Reduction/Transportation Demand Management Regulation

Transportation demand management (TDM) is a term used to describe a set of measures, which may include both incentives and regulations, designed to influence individual travel behavior. There are numerous benefits that can accrue from implementing TDM programs (see sidebar). TDM helps to reduce the number of vehicle trips taken, especially during peak time periods, and the numbers of persons that drive alone. For commentary and a model statute, see 9-201.

Chapter Outline:

- ▶ *Regulation of Areas Constituting Natural Hazards and Critical and Sensitive Areas (9-101)*
- ▶ *Trip Reduction/Transportation Demand Management Regulation (9-201)*
- ▶ *Historic Districts and Landmarks; Design Review (9-301)*
- ▶ *Transfer of Development Rights (9-401)*
- ▶ *Purchase of Development Rights (9-402)*
- ▶ *Conservation Easements (9-402.1)*
- ▶ *Mitigation (9-403)*
- ▶ *Land-Use Incentives for Affordable Housing, Community Design, and Open Space Dedication; Unified Incentives Ordinance (9-501)*

Critical, Sensitive, and Natural Hazard Areas:

- * *Watersheds*
- * *Drinking water wells*
- * *Wetlands*
- * *Floodplains*

Transfer of Development Rights is Used to Protect:

- * *open space or ecologically sensitive areas;*
- * *agricultural or forest uses; and*
- * *historic landmarks.*

Historic Districts and Landmarks; Design Review

Historic preservation and design review ordinances seek to preserve the existing character of structures, sites, or districts in a community. Design review ordinances promote community character by ensuring that a certain architectural style or styles are used. Aesthetics alone may, in some states, be considered sufficient grounds to justify such local regulations. For commentary and a model statute, see 9-30I.

Transfer of Development Rights

Transfer of development rights (TDR) is a local regulation designed to preserve land in an undeveloped or less-developed state in exchange for higher densities or more intensive uses elsewhere. At least ten states have adopted TDR enabling statutes. TDR is most often used for one of three major public purposes (see sidebar). For commentary and a model statute, see 9-40I.

Why Do States Need to Authorize Conservation Easements?

Conservation easements do not necessarily require a state enabling statute. In many states, however, there is uncertainty about the formation, enforceability, and assignability of conservation easements. Therefore, many states have addressed these issues with a statute authorizing conservation easements.

Purchase of Development Rights; Conservation Easements

Local governments with resources to do so may decide to buy certain development rights rather than limit or transfer them. Several states have statutes that expressly authorize the purchase of development rights for purposes of preserving resources (see sidebar for TDR, above). The tool by which a local government (and others) can purchase just the development rights it wishes, while leaving title in the owner's private hands, is the conservation easement. A conservation easement can prohibit all future development, or it can specify particular development activities that are prohibited. It can also include positive duties, such as maintaining a building in good repair. For commentary and models, see 9-402 and 9-402.I.

Benefits of Transportation Demand Management:

- * *Relieve traffic congestion*
- * *Diminish air pollution*
- * *Reduce fossil fuel consumption*
- * *Reduce injuries, fatalities, and property damage*

Why Should Mitigation Be Authorized by States?

There may be no practicable alternative to developing in wetlands. When mitigation requires equal quality and quantity of habitat, it can give developers options that would not otherwise exist.



Mitigation

As an alternative to prohibiting development within critical and sensitive areas, such as wetlands, local governments may require the developer to “mitigate” losses of critical and sensitive areas. This is often done through requirements to create, restore, or set aside equal amounts of critical and sensitive areas on site or off site. The development and mitigation of wetlands is already regulated by federal statutes and regulations. Almost half of the states have their own statutes requiring a permit for development in wetlands. Section 9-403 of the model statute authorizes local governments to enact ordinances creating mitigation programs.

❖ **Interrelationships:** A critical and sensitive areas element of a local comprehensive plan must be in place before a mitigation ordinance may be adopted. See 7-209.

Land-Use Incentives

Incentive zoning is a system by which specific incentives or bonuses are granted to a developer on condition that certain physical, social, or cultural benefits or amenities will be provided to the community.

There are a variety of incentives (see sidebar) that can be used to achieve community objectives such as smart growth, efficient use of land, infill development, and compact building forms. For commentary and a model statute, see 9-501.

Land-Use Incentives May Be Provided for:

- * *good urban design,*
- * *affordable housing, and*
- * *open space dedication.*

Illustrative Incentives:

- * *Added density or intensity (bonuses)*
- * *Modification of height, setback, and other controls*
- * *Waivers of requirements or fees*

Chapter 10:

Administrative and Judicial Review of Land-Use Decisions

Local land development regulations are applied through an administrative process that has (or should have) a beginning, middle, and end. State statutes should guide the procedures for review of development permit applications by local governments because local development permitting procedures might otherwise be fundamentally unfair or cause undue delays. States should use Chapter 10 to improve the fairness and timing of local development permitting processes. The model statute provides procedures for all types of land-use decisions that should be used by all review boards, including the local legislative body, planning commission, or any other review or appeals board.

Conditional uses (10-502) and variances (10-503) are two local processes that were not discussed in Chapter 8, but that need to be guided by state statute. A third process unique to the model code is a “mediated agreement” (10-504).

Disputes can and will arise between developers and local governments over development decisions. Judicial review of land-use decisions (i.e., provision for appeals) must be provided to address disputes about treatment and outcomes during administrative permitting processes. Review of decisions may take the form of a Hearing Examiner or a Land-Use Review Board.

General Provisions

For definitions of terms used in Chapter 10, see 10-101. The purposes of the various model statutes provided in Chapter 10 are described in 10-102.

Chapter Outline:

- ▶ *General Provisions (10-101 – 10-103)*
- ▶ *Unified Development Permit Review Process for Land-Use Decisions (10-201 – 10-211)*
- ▶ *Hearing Examiners (10-301 – 10-307)*
- ▶ *Land-use Review Board (10-401 – 10-405)*
- ▶ *Administrative Actions and Remedies (10-501 – 10-507)*
- ▶ *Judicial Review of Land-use Decisions (10-601 – 10-618)*

Unified Development Permit Review Process for Land-Use Decisions

For a model statute on development permits and a unified development permit review process, see Section 10-201. To be fair, development permit application processes must specify all information needed and criteria to determine when an application is complete (10-202; also see Commentary). A determination of completeness of the application must be made (10-203).

Processes Addressed in Chapter 10

- * *Development permit (10-201-10-211)*
- * *Conditional uses (10-502)*
- * *Variances (10-503)*
- * *Mediated agreement (10-504)*

The model statute is flexible in that it provides for the following options for development permitting processes (10-201) and appeals (10-209):

- Administrative review without a record hearing (10-204)
- Record hearing (for variances and quasi-judicial land-use decisions) (10-207).
- Record hearings require notice (10-205) according to specified methods (10-206).

The model statute does not make recommendations on which body should be responsible for record hearings, record appeals, and administrative reviews. The local government may choose any structure it prefers.

Local governments should be authorized to consolidate all permit review processes (rezoning, variance, conditional use, etc.) into one unified procedure (10-208). Combining procedures can be tricky, however, as some may be considered legislative while other processes are quasi-judicial; in such cases, combining the process would not be possible or advisable. To ensure that land-use decisions are not unduly delayed, time limits are specified, although the model statute provides an option in which a local government may set its own time limits (10-210). Local governments are authorized to charge a fee to recover the costs of reviewing and processing development permit applications and appeals (10-211).

Hearing Examiners

The model statute authorizes a local government to establish by ordinance a hearing examiner function (10-301). Local governments can choose the types of applications and duties assigned to the hearing examiner. The hearing examiner might be assigned functions that were previously assigned to the legislative body, planning commission, or administrative officer—the jurisdiction of the hearing examiner must be clearly specified (10-302). A hearing examiner must recuse himself from certain matters (10-303). Hearing examiners hold “record hearings” and make their decisions based on them (10-304), except in cases where a record hearing was already held by another board. In such cases, the hearing examiner’s decision must be based on that prior record (10-305). Decisions of the hearing examiner should be accessible to the public (10-308).

Who or What Body Approves Administrative Actions and Remedies? (Options)

- * *Legislative body*
- * *Planning commission*
- * *Hearing officer (10-301 – 10-308)*
- * *Land-use review board (10-401 – 10-404)*

Land-Use Review Board

Most zoning enabling statutes provide for a zoning board of adjustment or zoning board of appeals. As an option to such boards, the model statute (10-401) authorizes a Land-Use Review Board and provides for its organization and procedures (10-402) and powers (10-405). A local government may decide not to create a Land-Use Review Board. If it does, members may be compensated for their time and/or expenses (10-403). The model statute calls for mandatory training of review board members (10-404).

Administrative Actions and Remedies

This part of Chapter 10 addresses procedures (10-507) and requirements for variances and conditional uses. The model code is flexible in allowing choice of which officer or body has authority to approve administrative actions and remedies. Specific authority is granted by the model code (10-501) to whichever officer or body is designated.

The model statute authorizes the officer or designated body to approve conditional uses (10-502) and grant variances (10-503). The code authorizes an officer or body to refer a matter to the planning commission for review and recommendation (10-505). The model statute provides authority to make land-use decisions with conditions (10-506).

The model statute is more flexible than its predecessors because it does not assign specific functions to certain boards. A Land-Use Review Board is optional.

A Hearing Examiner's Action May Be:

- * *A recommendation only to another body, which has final decision*
- * *A final decision*

Judicial Review of Land-Use Decisions

The legal structure for the judicial review of land-use decisions varies widely from state to state. Past model statutes are incomplete and unclear in matters of judicial review. Important land-use disputes often cannot get to court. Chapter 10 provides extensive commentary on the methods, timing, scope, and approaches to judicial review.

The purposes of judicial review are set forth in Section 10-601 of the model statute. The statute is the exclusive method of judicial review for land-use decisions (10-602). Provisions for judicial review are provided in Section 10-603. A development applicant must exhaust all administrative remedies before proceeding to judicial review (10-604). There may still be an independent remedy via federal court jurisdiction, and the model code provides for that possibility (10-606). Petitions for judicial review must be filed and served in a timely manner (10-607) and contain the proper record (10-612).

The issue of who has standing to seek judicial review is a matter of choice for states, and the model statute provides alternatives for standing and intervention (10-607). Judicial review procedures should specify what is required in a land-use petition (10-608) and how hearings will proceed (10-609). The model statute requires “expedited” review, which is considered essential to avoid delays. A “stay of action” may be granted pending judicial review (10-611). Supplementing the record is an issue that is addressed in Section 10-613 of the model statute. “Discovery”—that is, the introduction of new information—when the record is supplemented should be strictly limited (10-614). The standards for granting relief to a petitioner should be clearly identified (10-615). Decision-making authority and the various options available during judicial review should be specified clearly (10-616). Judicial review may result in “definitive relief” (10-617) and should be clear on whether compensation for damages can be given (10-618).

Chapter II:

Enforcement of Land Development Regulations

Land development regulations, no matter how carefully crafted, are only as good as their enforcement. A local government rarely has to resort to enforcement. Nonetheless, local governments must be able to ensure compliance with land development regulations. There must be an enforcement procedure with remedies and penalties that will obtain compliance from violators. Local government should be expressly granted the general authority to enforce land development regulations (II-101).

Chapter II provides model statutes for enforcing local land development regulations. There are two types of procedures—administrative and judicial. The model statute stresses pursuing administrative remedies before resorting to judicial measures. It is unique in that it specifically provides for informal enforcement as an initial option. In cases where formal enforcement measures are required, the model language provides for official notice to alleged violators, procedures for issuing preliminary orders and conducting enforcement hearings, and methods for enforcing final orders. If administrative action is not successful, the local government can pursue judicial relief through civil and criminal proceedings that ensure compliance.

Most violations of local land development regulations occur more out of ignorance or negligence than intent. An informal enforcement method is the type procedure most often applied. Showing the violator that the enforcement agency is aware of the violation and then informing the violator of the alleged violation might attain compliance. If an informal enforcement procedure does not work, a formal administrative enforcement procedure may suffice (II-201 – II-204). Some violations of land development regulations may be so egregious or cumulative that immediate action is necessary. When violations—and violators—continue in the face of notices and warnings, formal enforcement procedures, administrative or judicial, must be commenced.

Chapter Outline:

General

- ▶ *Enforcement Generally (11-101)*
- ▶ *Adoption of Administrative Enforcement (11-102)*
- ▶ *Election of Procedures (11-103)*

Administrative Procedure

- ▶ *Enforcement Notice (11-201)*
- ▶ *Preliminary Order (11-202)*
- ▶ *Enforcement Hearing (11-203)*
- ▶ *Enforcement Order; Remedies and Penalties (11-204)*

Judicial Procedure

- ▶ *Civil Proceeding (11-301)*
- ▶ *Criminal Proceeding (11-302)*

Local governments are not required to establish an administrative enforcement process (II-201 – II-204), but the model statute provides for administrative proceedings as a first, formal step in enforcement procedures. It involves issuing an enforcement notice (II-201) and a preliminary order (II-202), followed by enforcement hearings (II-203) and issuance of an enforcement order (II-204).

Administrative proceedings will not always result in compliance. Even where administrative procedures are used, it may be necessary to enforce a resulting order in civil court using civil proceedings (II-301). Even if an administrative enforcement order is issued, it might be disobeyed by the person who has disobeyed local land development regulations. The model statute authorizes local governments to proceed directly with civil enforcement proceedings. Criminal proceedings (II-302) are a last resort, but yet they may be necessary in the most egregious enforcement cases.

Chapter 12:

Integrating State Environmental Policy Acts with Local Planning

Several states have environmental policy acts (SEPAs) that require an environmental review of certain types of proposed developments. Where state environmental policy acts exist, it is a challenge to integrate and coordinate their provisions with local comprehensive planning activities. Chapter 12 provides three approaches (see Table 12-1) and statutory alternatives (12-101) for evaluating the environmental effects of local comprehensive planning and problems of integrating SEPAs, where they exist, into local planning. Appendix B of this chapter provides a summary of SEPAs.



Alternatives for Melding Environmental and Local Planning Statutes:

- 1. Nonbinding evaluation of environmental impacts of the comprehensive plan by the local planning agency*
- 2. Binding environmental impact statement of the local comprehensive plan under SEPA*
- 3. Review of environmental impacts of individual land-use actions under SEPA*

Chapter 13:

Financing Required Planning

There are multiple activities involved in local planning, and they all cost money. State policy makers must consider whether state financial resources can be given to local governments. State funding is more important when local planning is required, rather than just encouraged. It may be desirable for the state to authorize a separate, dedicated, revenue stream for planning. Chapter 13 contains various model statutes that authorize methods of financing planning activities.

Sections 13-101 through 13-103 authorize local governments to adopt and impose taxes to finance planning (see sidebar). The model statute provides for depositing tax revenues into a special account and places limits on its expenditures (13-104).

This chapter also provides a Smart Growth Technical Assistance Act. The act (13-201) creates a state program under which grants may be made to regional planning agencies and local governments to support their “smart growth” planning activities. The state planning agency is directed to gather and distribute model plans and ordinances that encourage smart growth and to provide educational resources, training, and other technical assistance regarding the principles and methods of smart growth.



Financing Planning:

- * *Property tax (13-101)*
- * *Real property transfer tax (13-102)*
- * *Development excise tax (13-303)*

Chapter 14:

Tax Equity Devices and Tax Relief Programs

Chapter 14 discusses two alternative approaches used to address fiscal disparity, meaning the differences in revenue-raising capacity among local governments that are a product of the type of development that occurs. The two alternatives are regional tax-base sharing and interlocal agreements to create joint economic development zones. Redevelopment areas and agricultural districts are also addressed in this chapter. Chapter 14 concludes with summary of research on the relationship of elementary and secondary school finance to local planning and property taxation.

Section 14-301 provides a uniform but flexible framework for the redevelopment of areas that require financial assistance. For a model statute on tax increment financing (see explanation below), see 14-302. For a statute on tax abatement, see 14-303.

Redevelopment (14-301) involves development or improvement of an area that has at some time (recently or in the distant past) undergone development but has since deteriorated socially or physically. Every state has at least one statutory system for creating, financing, and operating redevelopment areas. Many states have overlapping redevelopment laws that need reform.

There is a need to replace the confusing multiplicity of redevelopment enabling legislation with a single, flexible redevelopment statute.

Chapter Overview

- ▶ *Regional [Metropolitan] Tax-Base Sharing (14-101 – 14-114)*
- ▶ *Intergovernmental Agreements (14-201)*
- ▶ *Redevelopment and Tax Relief (14-301 – 14-303)*
- ▶ *Agricultural Districts (14-401)*

Two Model Statutes for Reducing Local Fiscal Disparities

- * *Regional Tax-Base Sharing (14-101 – 14-114)*
- * *Voluntary Intergovernmental Agreement to Create Joint Economic Development Zone (14-201)*

Tax Relief Programs

- * *Redevelopment Areas (14-301)*
- * *Tax Increment Financing (14-302)*
- * *Tax Abatement (14-303)*

Nearly every state has adopted statutes authorizing tax increment financing programs to raise funds for redevelopment.

❖ **Interrelationships:** Redevelopment areas should be established only after a local government has adopted a redevelopment area plan or redevelopment element of its comprehensive plan (see 7-302).

Tax increment financing (I4-302) is a method of financing redevelopment activities that is directly tied to the success of those activities. Essentially, the local government borrows money and uses it to improve development prospects in the areas. As development occurs, tax revenues increase. The increase in tax revenue that results from redevelopment activities is used to pay off bonds used to finance improvements that helped make redevelopment occur in the first place.

The ability to reduce taxes in a redevelopment area may be useful in bringing about the economic resurgence of a depressed area. Several states authorize cities to employ tax abatement for various reasons, including low- and moderate-income housing. The model statute on tax abatement (I4-303) is intended to work integrally with the redevelopment area statute (see I4-303).

If rising land values can be avoided, chances are that agricultural land will stay in active production longer. Agricultural district statutes allow landowners to voluntarily establish special areas where commercial agriculture is encouraged and protected. Land within such areas is assessed at its “use” value rather than its “market” or “speculative” value. This action—called differential assessment (see sidebar)—can reduce pressure on landowners to sell or develop farmlands for nonagricultural uses. A model statute for the establishment of agricultural districts and use valuation is provided in I4-501.

❖ **Interrelationships:** Local ordinances establishing agricultural districts should be preceded by an agricultural, forest, and scenic preservation element of the local comprehensive plan. See 7-212.



According to the American Farmland Trust, every state provides property relief in some form or another to farmland, and 49 states specifically use “differential assessment.”

Methods of Tax Abatement

- * Lower property and/or sales taxes in a redevelopment area
- * Freeze property taxes

Chapter 15: State-Level Geographic Information Systems and Public Records of Plans, Land Development Regulations, and Development Permits



A geographic information system (GIS) is a computerized system that stores and links spatially defined data in a way that allows information display and processing and production of maps and models. GIS is one of the most powerful and technologically sophisticated planning and analysis tools.

Chapter 15 provides a model statute that establishes GIS functions within a Division of Geographic Information (15-101) of a state agency and provides for a Geographic Information Advisory Board (15-102).

Citizens need access to land development regulations and public records regarding land development permits. Most state statutes do not provide any guidance or requirements on making such information publicly available. State statutes should require the filing of development permits and land development regulations so that individual property owners can have easy access to public records and requirements. Section 15-201 of the model statute helps to meet this objective, and Section 15-202 requires recording of various public planning and regulatory documents. Section 15-203 provides for state approval of local tract-indexing systems.

Many states have adopted plans, policies, and standards to improve GIS technology availability and sharing among public and private organizations.



Part 4

* Example Applications

Example Applications

Part Four of this User Manual provides seven example applications of the Growing SmartSM model statutes for states to consider. They take the reader through a hypothetical scenario of how a state or other entity that is promoting statute reform might logically approach a particular goal by using provisions of the *Legislative Guidebook*. References to the model statutes are provided.

Scenario No. 1: Local Governments Need to Develop a Minimum Capacity in Comprehensive Planning

The state creates a special joint study commission composed of state legislators to investigate how the capacity of local government for planning can be increased. A state legislative commission is selected because the study involves an examination of state laws that may need to be changed. The study commission finds that some localities have established local planning agencies but others have not. It decides the state needs to provide better guidance in organizing local planning agencies and commissions (7-101 et seq.). It also recognizes that state aid to existing regional planning agencies (6-502) will help develop the planning capacities of local governments.

It reviews Table 2-1 and evaluates four different approaches to state directives for local planning: (1) advisory only; (2) encouraged with incentives; (3) a mandatory activity; and (4) mandatory as part of a state-regional-local planning system. The study commission decides that if planning were advisory only, some of the cities and counties in the state might not begin planning. The commission decides to provide a mix of carrots and sticks to promote planning; that is, it decides a combination of mandates and a program of state technical assistance are needed.

After reviewing the pros and cons of mandatory local planning as described in Table 7-4, the commission recommends amending the state statutes to require local governments to prepare comprehensive plans. It also elects to prescribe the substantive content of local comprehensive plans in the statute. It reviews Table 7-3 to determine whether various comprehensive plan elements should be mandated, mandated with an “opt-out” alternative, or optional. It frames the substantive content of local plans based on the various Sections in Chapter 7 of the *Legislative Guidebook*. The commission also clarifies the relationship of local plans to existing regional plans (6-401).

After reviewing the several alternatives for review of local and regional plans by the state, the commission decides that, to ensure quality, a state planning agency needs to be established to review all local comprehensive plans for compliance with the content requirements. After reviewing the *Legislative*

Guidebook's discussion of various types of state agencies (Chapter 4), it decides to recommend reorganization of existing state bureaus into a state planning agency (4-101) that will provide direct technical assistance to local governments, in addition to technical assistance provided by regional planning agencies to local governments. The commission recommends statutory provisions on state review of local comprehensive plans based on model statutory language found in the *Legislative Guidebook* (7-402.2). It also recommends certain specific statutory sections on adoption (7-403), filing (7-404), amendment (7-405), and periodic review (7-406) of local comprehensive plans.

The special study commission of state legislators recognizes that localities will need technical assistance to prepare comprehensive plans. It formally delineates substate regional districts (6-601) and strengthens the roles of regional planning agencies in each substate region as a way of delivering technical planning assistance to local governments. It also contemplates a role for regional agencies in preparing a regional comprehensive plan (6-201) and convening local governments to solve intergovernmental planning issues. It recommends a "Smart Growth Technical Assistance Act" based on the model provided in the *Legislative Guidebook* (13-201), which provides for the state to provide grants, model ordinances, and educational and training programs to local governments. In addition, to help partially offset the costs of local planning that will not be met by the programs of the new technical assistance act, the special study commission recommends preparation of a bill authorizing local governments to impose a real property transfer tax (13-103) or development excise tax (13-104) to finance planning.

Scenario No. 2: A State Wants to Direct Development and Investment to Designated Areas

A growth strategies commission that was formed by executive order of the governor two years ago has just released its report. The state, like many others, has seen too many acres of open space and productive

farmland being lost to haphazard development. It wants to control sprawl. There is a mismatch between the rapid pace of development in metropolitan areas and the local and state provision of infrastructure to serve the new development. In some places where infrastructure has been extended to new development, it has been done inefficiently. Private development is driving state investment decisions, not vice versa. The commission finds that it must ensure the provision of adequate and equitable educational, health, cultural, and recreational facilities through state policy. The timing, location, and intensity of development do not match but need to be linked with the existing and planned infrastructure in the state.

The commission reviews the "Smart Growth Act" (4-401), which is designed to encourage compact and contiguous patterns of growth. It decides to establish "smart growth areas" (patterned after the State of Maryland's "priority funding areas") and to prohibit state growth-related infrastructure and facility spending outside of them.

The growth strategies commission finds that it must protect agricultural and forest resources by directing future development away from prime farm and forest lands. To do this, the commission believes the state needs to be directly engaged in land development planning and to clearly define its interests. After reviewing "A Note on State Planning Goals" in Chapter 4, the commission drafts state goals for directing development and statewide capital investments. It recommends also that a stronger state planning agency be established to develop a state land development plan (4-204), which will then be submitted by the governor to the state legislature (Table 4-4). The state land development plan is not effective until adopted by the legislature. The growth strategies commission also recognizes the important role that regional planning agencies can play in the growth management process, and it authorizes the preparation of regional comprehensive plans (6-201).

The commission's review of past state facility siting practices reveals that the state economic development plan (4-206) promotes locations for state facilities that will help bolster poor economies. While some local economies have been stimulated by state investments pursuant to the state economic development plan, the commission finds that there is much inefficiency resulting from the dispersion of major state investments. It also finds that public opposition has frustrated the state facility siting process at times. It examines

the *Legislative Guidebook's* approaches to siting state facilities and the model statute for bringing equity to the facility-siting process (5-101 et seq.).

The commission decides that the state needs much better planning with regard to state investments. To ensure state agencies work together in pursuing common state investment strategies, the commission recommends that a cabinet coordinating committee be established (4-101). Furthermore, the commission recommends that a division of geographic information (15-101) be established to provide data and analysis on land uses and infrastructure systems in the state.

It recommends that the state prepare and adopt a capital improvement program and capital improvement budget (4-301) as recommended in the *Legislative Guidebook*, that state agencies must observe strict consistency with the state capital improvement program (4-212) and the smart growth areas (4-401) designated pursuant to the Smart Growth Act, and that the existing state transportation plan (4-205) and regional transportation plans (6-204) be amended to be consistent with the state capital improvement program. Without these requirements, the state transportation department and regional agencies might pursue investment strategies that are counterproductive to adopted state goals and investment strategies.

The commission also reviews the pros and cons of urban growth areas and the experiences in Oregon, Washington, Tennessee, and other states as summarized in Chapter 6 (Table 6-1). It reviews the optional model statute on urban growth areas (6-201.1) and the “Note on Urban Growth Areas and Regional Planning” in Chapter 6. It finds that the prerequisites of pursuing urban containment strategies are complex and that the capacity of regional and local planning agencies needs to be increased before such policies can be implemented. For instance, local governments would need to establish land market monitoring systems (7-204.1) that may require substantial state funding to implement. The commission finds that the smart growth areas designated under the Smart Growth Act (4-401) will serve some of the same purposes as urban growth areas. Besides, the commission observes that shorter-range objectives of guiding state investment are more pressing and will consume the state legislature’s attention in the next legislative session. It recommends further consideration of urban growth areas as a second phase of modernizing the state’s planning statutes, along with programs to increase the capacity of regional planning agencies and local governments to plan.

Local governments must do more to provide infrastructure and essential public facilities to serve new development. The commission recommends that local governments be authorized to adopt development impact fees (8-602) and concurrency or adequate public facilities ordinances (8-603) so that they can complement state investment and infrastructure provision.

Scenario No. 3: Local Governments Have Only Minimal Authority for Zoning and Subdivision Regulations, and No Authority for Innovative Mechanisms and Incentives

A state establishes a special independent study commission to consider whether local governments have adequate land-use controls to manage growth and change. It finds that local governments need to be empowered with a range of regulatory tools to manage growth and change locally in order to create quality communities. Questions exist as to the legal validity of local governments to adopt certain types of land development regulations.

Consulting the *Legislative Guidebook*, the commission tells its staff to draft a bill that provides local governments with the basic structure for zoning ordinances (8-201) and guides how local governments must address nonconforming uses (8-502). It also directs staff that the bill must authorize local governments to adopt regulations governing corridor maps (7-501), site plan review (8-302), planned unit development and traditional neighborhood development (8-303), development agreements (8-701), historic preservation and design review (9-301), transfer of development rights (9-401), purchase of development rights (9-402), conservation easements (9-402.1), land-use incentives (9-501), and other tools.

The commission would also like to examine further the idea of having uniform development standards (8-401) that apply across the state, so as to avoid inappropriate and excessively burdensome standards. Recognizing that several other states are way ahead when it comes to authorizing local government adoption of development impact fees, the commission also recommends that the state adopt a development impact fee statute (8-602) based on the model in the *Legislative Guidebook*. The existing zoning enabling statute has some regulations

governing the establishment of local planning commissions. However, local governments are unsure whether a hearing examiner (I0-301) should be authorized as an alternative to having a planning commission.

Scenario No. 4: Local Development Review Procedures and Judicial Review Procedures Have Serious Problems and Need Reform

Private development interests have combined in a coalition to bring pressure on the state legislature to bring order and more certainty to local development processes. Certainty and efficiency in the development review and approval process need to be improved, the coalition finds. It points to several local abuses of land-use regulations and argues that the state should anticipate the potential for abuse of planning tools and correct for it.

For instance, there are no limitations on how much time goes by before a local government acts on a development permit (see I0-210). There is a beginning, but no one seems to know exactly when the middle and end of local development permitting occur. There seems to be too many opportunities for backroom agreements or even corruption in certain local development review procedures.

The coalition points out how desperately the state's zoning and subdivision enabling statutes need modernization. Existing statutes were based on models written in the 1920s, and they have not been updated. There is great variation in the way local governments process permits and appeals due to the lack of guidance inherent in the state's planning and zoning statutes. To ensure due process, the coalition asks for new statutory language governing the adoption and amendment of local land development regulations so that standard notice and hearing provisions are clearly required (8-I03). They recommend that the state completely overhaul the administrative and judicial review procedures of local governments using Chapter I0 as a model or basis of departure. They ask that particular attention be paid to: (1) adopting the unified development permit review process for land-use decisions, as provided in Section I0-201, and (2) providing for consolidated permit review processes (I0-208).

Over time, most local land development regulations have become a patchwork of amendments that don't fit together well. Local regulations and procedures are hard for the sophisticated developer or home builder to understand, much less the average citizen. Developers have been unable to obtain copies of some land development regulations from some local governments because they have not published updated versions that contain all recent amendments. They underscore the difficulty of complying with local regulations that are moving targets. Developers urge that local governments be required to record copies of all land development regulations (I5-202) and establish requirements for local land-use decisions to be filed in a timely fashion (I5-201). They also urge that the state require local governments to periodically review their land development regulations and update them at least every five to ten years, as suggested in Section 8-I07.

Local governments make zoning decisions without consulting the comprehensive plan. The relationship between zoning decisions and the comprehensive plan are altogether unclear in the statute. Developers who try to rely on the local government's comprehensive plan find that local governments are not always updating and following them. Several states require that zoning regulations be consistent with and implement local comprehensive plans. The coalition works with certain legislators who are taking a hard look at the consistency issue (Chapter 8, "Commentary: Gauging Regulatory Consistency with a Local Comprehensive Plan").

Private development interests are concerned that the state's vested rights statute is unclear, if not altogether unfair. They seek greater certainty about when development is vested in the process. After considering alternatives in the *Legislative Guidebook*, the coalition seeks sponsorship of a legislative bill based on the vested rights model (8-501). They are also concerned about the possibility of local governments imposing development moratoria (8-604) and ask that amendments be prepared to the state statutes governing when a moratorium on development is warranted.

Yet another issue the state needs to confront, according to the coalition, is that certain local government regulations do not fit with state regulations and federal programs (8-I05). Local governments may be making decisions that are flatly prohibited by state and federal statutes.

The legal structure for the judicial review of land-use decisions is chaotic. Procedures are incomplete and unclear, and important land-use disputes often cannot get to court.

The coalition asks that the state provide for more timely and appropriate methods of judicial review (10-603).

The coalition finds also that there is another layer of duplication in the development review and approval process—there have been stories told about “turf wars” between local and state permit-issuing agencies. After consulting Chapter 12, the coalition urges the state to integrate more appropriately its existing state environmental policy act (SEPA) into local development regulatory processes to reconcile duplicate, parallel permit processes.

The coalition also urges that there be more flexibility in planning administration. Standards on which land-use decisions are based must be clear and predictable, but they must also allow for creativity and flexibility. It would also like to see some land-use incentives (9-501), as opposed to the state relying on the “stick” approach of regulation all the time.

Scenario No. 5: *Critical Resources Need Protection*

A joint legislative study committee is formed. Its task is to examine the issue of critical areas being lost to development or damaged by other development practices. Indeed, there is broad consensus that the state must protect its significant natural resources, such as wetlands and coastal estuaries. Before making decisions, the study committee reviews the experience of the state of Florida with regard to its longstanding critical areas program (Chapter 5). It also examines the “ad hoc” approaches used in some other states like New York, Massachusetts, New Jersey, and North Carolina as described in the *Legislative Guidebook*.

The joint legislative study commission decides it wants to propose an “areas of critical state concern” program. Staff of the commission consult the Growing SmartSM *Legislative Guidebook* and find that preparation of a state land development plan (Table 4-3 and model statute section 4-204), consisting of goals and policies, is needed to provide an overall framework for critical resource protection. The commission provides an outline of a new statute for designating areas of critical state concern based on the model provided in the *Legislative Guidebook* (5-201 et seq.). The outline of a new statute also authorizes regional planning agencies to prepare regional comprehensive plans (6-201) and regional functional plans (6-202) to identify and protect critical

resources of a regional nature. An areas of critical state concern statute is drafted and passed by the legislature, based largely on the Growing SmartSM model.

The new statute requires that local governments with areas of critical state concern within their jurisdictions amend their comprehensive plans and land development regulations to be consistent with the goals of the state land development plan and designations of areas of critical state concern (5-209) and to include a critical and sensitive areas element (7-209). In addition, local governments need authority to adopt their own ordinances regulating critical and sensitive areas (9-101), the commission finds. Furthermore, the legislative study commission finds that provisions need to be added to the planning and zoning statutes of the state so that local governments clearly have the authority to transfer development rights (9-401) and purchase development rights (9-402) to protect open spaces.

Testimony before the joint legislative study commission reveals that, even with the state program of designating areas of critical state concern and the preparation of regional comprehensive plans and regional functional plans, more efforts are needed. The commission, after hearing the testimony, recommends legislation that will require the preparation of a state biodiversity plan (4-204.I).

Scenario No. 6: *An Affordable Housing Shortage Exists in the State*

A private coalition brings to the attention of several state legislators that there is a lack of affordable housing in the metropolitan areas of the state. It also simultaneously pushes the governor to begin putting state administrative machinery and programs in place to provide a full range of housing opportunities for persons of all income levels. To clarify the term “affordable housing” for lawmakers, the coalition consults definitions provided in the *Legislative Guidebook* and explains to state officials the specific housing needs in the state.

Several state legislators, who have met numerous times with representatives of the coalition, review the “Note on State Planning Approaches to Promote Affordable Housing” in Chapter 4. They conclude that a state housing plan is needed first (i.e., a “top-down” approach). The state legislator chairing the committee that oversees state housing programs reviews the two alternatives for state planning for affordable housing, as

provided in the *Legislative Guidebook* (4-208 and 4-208.I). She considers the alternatives of (1) establishing a state housing appeals board and (2) following the model “Balanced and Affordable Housing Act” provided in the *Legislative Guidebook*. Furthermore, she considers the merits of requiring or encouraging regional housing plans (6-203). She directs her staff to prepare an affordable housing statute for the state that takes all or the most appropriate parts of these recommendations into consideration. Her bill is prepared, favorably reported from committee, and passed by the legislature.

The new affordable housing law establishes an affordable housing council which is responsible for preparing a state housing plan, designating housing regions in the state, preparing estimates of present and future needs for low- and moderate-income housing by region, developing regional fair-share allocations of such needs to local government, and reviewing and approving housing elements of comprehensive plans submitted by local governments. Local comprehensive plans now are required to contain a housing element that identifies how the local government will address the housing needs for all income groups, especially its allocated regional fair share. The state planning agency’s staffing levels are increased so as to review local comprehensive plans, particularly housing elements, and to help the affordable housing council ensure that local housing policies are consistent with the state housing plan and regional fair-share allocations.

The coalition also points out that regulatory reform can have a significant impact on encouraging affordable housing. It finds that local government zoning and land development regulations are unduly burdensome, and exclusionary in some cases, particularly with regard to manufactured homes. Local governments are using large lot requirements, minimum floor areas, roof pitch requirements, and other tools to exclude manufactured homes from the community. The coalition urges that manufactured housing, a key to future affordability policies, be treated the same as site-built housing and that manufactured single-family housing be permitted in any single-family residential use district established by local government zoning ordinances (8-201). It argues for uniform development standards (8-401) to avoid excessively burdensome development requirements that raise the costs of land and housing.

The coalition also finds that impact fees in some jurisdictions are disproportionately high with the intent of excluding some classes of housing. It argues for changes to the state’s development impact fee statute (8-602) to provide for exemptions of affordable housing from the payment of

impact fees. And the coalition asks that the state require local governments to adopt land-use incentives for affordable housing (9-501).

Scenario No. 7: A State Finds the Need to Encourage Redevelopment

Redevelopment areas are those parts of communities that have deteriorated socially or physically, or that contain development that has become obsolete. Most states have several statutes for creating, financing, and operating redevelopment areas. These separate statutes were often created to receive or transmit funding or other assistance from particular federal or state programs. Many of these separate laws overlap; several different statutory schemes potentially apply to the same area in need of redevelopment.

More and more, attention is being focused on “brownfields,” which are abandoned, idled, or underused industrial and commercial facilities where redevelopment is complicated by a real or perceived environmental contamination.

The director of the state redevelopment agency recommends that the state legislative committee on redevelopment and brownfields consider comprehensively overhauling the state’s duplicative and confusing statutes on redevelopment. The director suggests that the legislative committee use the redevelopment area statute in the *Legislative Guidebook* (14-301) as a model or basis of departure. The state redevelopment director seeks clearer authorization for local governments to adopt redevelopment area plans (7-303).

Certain redevelopment areas are unlikely to become revitalized unless the state empowers local governments to provide tax increment financing (14-302) and tax abatement (14-303). The legislative committee asks for a detailed report from the state redevelopment director on the use of these tools, and he consults Chapter 14 of the *Legislative Guidebook* in preparing a redevelopment statute that is expected to be introduced in next year’s session of the state legislature.

