S. HRG. 107–955

SMART GROWTH AND ECONOMIC DEVELOPMENT

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

S. 995, A BILL TO IMPROVE ENVIRONMENTAL POLICY BY PROVIDING ASSISTANCE FOR STATE AND TRIBAL LAND USE PLANNING, TO PROMOTE IMPROVED QUALITY OF LIFE, REGIONALISM, AND SUSTAINABLE ECONOMIC DEVELOPMENT, AND FOR OTHER PURPOSES

S. 1079, A BILL TO AMEND THE PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965 TO PROVIDE ASSISTANCE TO COMMUNITIES FOR THE REDEVELOPMENT OF BROWNFIELD SITES

MARCH 6, 2002

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ONE HUNDRED SEVENTH CONGRESS
SECOND SESSION

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SMART GROWTH AND ECONOMIC DEVELOPMENT

WEDNESDAY, MARCH 6, 2002

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
WASHINGTON, DC.

The subcommittee met, pursuant to notice, at 9:34 a.m. in room 406, Dirksen Senate Office Building, Hon. James M. Jeffords (chairman of the committee) presiding.

Present: Senators Jeffords, Chafee, and Wyden.

Also present: Senator Levin.

OPENING STATEMENT OF HON. JAMES M. JEFFORDS, U.S. SENATOR FROM THE STATE OF VERMONT

Senator JEFFORDS. Good morning. I'd like to begin by thanking all the witnesses for participating in today's hearing. I am really looking forward to listening to your testimonies.

Today's hearing stems from a long-term interest in helping our cities and towns become economically vibrant and culturally cohesive communities. One of the best ways to support these efforts is to provide our communities with growth planning and redevelopment tools.

I have always been involved in smart growth efforts since the 1960's, when I served as a Vermont State Senator and Attorney General of Vermont. I'm proud to have had a major role in drafting Vermont's development review plans that became Act 250, the first and most comprehensive State-level growth management policy in the United States.

I have continued my activities with regard to smart growth during my tenure in both the House and Senate. In January 1999, I established a Senate Smart Growth Task Force, a bipartisan and multi-regional caucus. Twenty-three Senators currently participate in the task force. The overall goal of the task force is to determine how the Federal Government can help States and localities address their own growth management problems.

Growth decisions should be made ultimately at the local level; however, the Federal Government needs to continue assessing Federal policies that may interfere with local government growth management. For example, the national interstate system has had a tremendous impact upon local development patterns. Over the past 10 years, we have brought substantial attention to the issue through the transportation and planning process. We will address this issue in our upcoming hearing on transportation and smart growth.

The Federal Government also needs to provide communities with the necessary tools and resources to achieve local growth objectives. I believe that the two bills before us today help us make great strides in that direction.

With the recent enactment of the Small Business Liability Relief and Brownfields Revitalization Act, we have made great progress in addressing local liability and financial concerns. Through the Brownfields Site Redevelopment Assistance Act, we have an opportunity to complement these efforts. S. 1079 will address the next step after assessment and cleanup. The step is which communities actually begin redeveloping the sites.

The economic benefits are incredible. The U.S. Conference of Mayors estimates that brownfields redevelopment could regenerate more than 550,000 additional jobs and up to $2.4 billion in new tax revenues for the cities.

The other bill we will discuss today is the Community Character Act. The bill presents another important opportunity to provide communities that wish to plan prospectively and proactively with the resources to do so. This is especially important in my home State of Vermont. Rural communities frequently grapple with the lack of planning and resources and expertise. I recently learned from the distinguished Vermont witness that only 39 percent of rural governments do comprehensive planning, versus more than 70 percent of the metropolitan governments doing so. S. 975 provides necessary resources to even out that ratio.

Finally, I am in the process of working on another smart growth legislative proposal. It will substantially improve decisionmaking capacity for local planners. The legislation will provide communities with the resource to access revitalization and modeling and other planning tools. I look forward to working with EPW colleagues on this legislation.

I now turn to my good friend from Rhode Island. I appreciate the work you've done, especially more recent passage of the brownfields bill. You've done a great job and you are a great Senator.

OPENING STATEMENT OF HON. LINCOLN CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you, Mr. Chairman. Good morning.

I introduced this legislation on May 25, 2001, and was joined by Senators Bennett, Specter, Jeffords, Cleland, Levin, Bingaman, and Lieberman in introducing the Community Character Act.

The bill provides Federal assistance to States and Indian tribes to create or update State-wide or tribal land use planning legislation. Up-to-date planning legislation empowers States and local governments to spur economic development, protect the environment, coordinate transportation infrastructure needs, and preserve our communities.

America has grown from east to west, as well as from an urban setting to a suburban one. The Nation's sweeping growth can be attributed to many things, including a strong economy and transportation and technology advancements that allow people to live greater distances from work due, in part, to inadequate planning, strip malls, and retail development catering to the automobile have become the trademark of the American landscape.

In the wake of the post-World War II building boom, my home town of Warwick, RI, had experienced the type of development that too often offends the eye and saps our economic strength. Due to a lack of planning, incremental and haphazard development occurred through a mixture of incompatible zoning decisions. Industrial and commercial facilities and residential homes were frequently and inappropriately sited next to each other. The local newspaper described the city as a suburban nightmare. However, we learned that proper approaches to planning would help every State meet its challenges, whether it is preserving limited open space in the east or protecting precious drinking water supplies in the west.

The Community Character Act will benefit each community and neighborhood by authorizing the Economic Development Administration to provide $25 million per year to States and tribes for the purpose of planning. The bill recognizes that land use planning is appropriately vested at the State and local levels and accords States and tribes flexibility in using their grants. The bill does not prescribe any particular approach to land use planning because, of course, each community must decide for itself what is appropriate. Mistakes made through haphazard development are very costly and not easily erased. Once started down that path, communities may feel like they can never get their head above water.

I view this legislation as an opportunity for the Federal Government to play a limited but helpful role. In the past, the Federal Government has been more of a culprit than a partner. Through enactment of numerous and oftentimes incompatible laws regarding transportation, housing, environment, energy, and economic development, the Federal Government has created demand for State and local planning.

The Community Character Act should be viewed as providing the Federal payment for a non-funded mandate whose account is overdue. The Senators who have sponsored the bill represent geographically diverse States, from Rhode Island to New Mexico, from Georgia to Utah. This bipartisan bill represents a small investment in our communities, but one that will yield large dividends to communities in each corner of the Nation.

I note that one of the cosponsors is Senator Bennett. Of course millions all over the world, if not billions, saw the value of Salt Lake City, but that city, evidenced by the fact that Senator Bennett is cosponsor, is experiencing lack of planning in its growth, and Senator Bennett said in 1846 when Brigham Young came over the mountains he was not well, and he was lying in his covered wagon, and as they came over the mountain they asked, "How does it look," and he sat up in his wagon and said, "This is the right place, move on." Of course, Salt Lake City was developed. We want it to be beautiful, and I think this bill would help make it stay beautiful, as millions around the world, billions around the world saw what a beautiful place it is. We want to make sure it stays that way, and all over the rest of the United States, also.

Thank you, Mr. Chairman.

[The prepared statement of Senator Chafee follows:]

STATEMENT OF HON. LINCOLN D. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Good morning. Thank you, Mr. Chairman, for conducting today's hearing on the Community Character Act of 2001. I introduced this legislation on May 25, 2001 and was joined by Senators Bennett, Specter, Jeffords, Cleland, Levin, Bingaman, and Lieberman. The bill provides Federal assistance to States and Indian tribes to create or update statewide or tribal land use planning legislation. Up-to-date planning legislation empowers States and local governments to spur economic development, protect the environment, coordinate transportation and infrastructure needs, and preserve our communities.

America has grown from East to West, as well as from an urban setting to suburban one. The nation's sweeping growth can be attributed to many things, including a strong economy and transportation and technology advancements that allow people to live greater distances from work. Due in part to inadequate planning, strip malls and retail development catering to the automobile have become the trademark of the American landscape.

In the wake of the post-World War II building boom, my hometown of Warwick, Rhode Island had experienced the type of development that too often offends the eye and saps our economic strength. Due to a lack of planning, incremental and haphazard development occurred through a mixture of incompatible zoning decisions. Industrial and commercial facilities and residential homes were frequently and inappropriately sited next to each other. The local newspaper described the city as a "suburban nightmare". However, we learned that proper approaches to planning would help every State meet its challenges, whether it is preserving limited open space in the East or protecting precious drinking water supplies in the West.

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Mistakes made through haphazard development are very costly and not easily erased. Once started down that path, communities may feel like they can never get their head above water. I view this legislation as an opportunity for the Federal Government to play a limited, but helpful role. In the past, the Federal Government has been more of a culprit than a partner. Through enactment of numerous and often-times incompatible laws regarding transportation, housing, environment, energy, and economic development, the Federal Government has created a demand for State and local planning. The Community Character Act should be viewed as providing the Federal payment for an unfunded mandate whose account is overdue.

The Senators who have sponsored this bill represent geographically diverse States, from Rhode Island to New Mexico and from Georgia to Utah. This bipartisan bill represents a small investment in our communities, but one that will yield large dividends to communities in each corner of the Nation.

Thank you, Mr. Chairman.

Senator JEFFORDS. Thank you.

Do you have a statement, Senator Wyden?

OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM THE STATE OF OREGON

Senator WYDEN. Thank you, Mr. Chairman. First let me say I'm glad you are on the mend. I think last night we were concerned that you were ill, so I'm glad you're here and able to chair.

Senator JEFFORDS. Thank you.

Senator WYDEN. Congratulations to you for all the work that you've done on smart growth issues over the years, really going back to your days as Attorney General, and also to Senator Chafee and Senator Levin, who have really championed these issues for some time.

What is so striking is how little the Federal Government has done over the years to promote smart growth. I think Senator

Levin might even remember that Senator Jackson of Washington State was one of the first to introduce a smart growth bill years ago when he was in the U.S. Senate, and it was basically labeled a communist plot. This very modest bill that Senator Jackson from my region had introduced was essentially described as a Federal zoning bill, an approach that was going to sweep out all efforts at the State and local level to promote smart growth. So it is striking that finally government at all levels is recognizing how important it is by the work that Senator Levin and Senator Chafee are doing, and, of course, the work that our chairman has done over the years has been a great catalyst.

At this point, as far as I can tell, there is only one Federal law on the books that promotes smart growth. I admit to being a little biased, because it came from this committee, and Senator Moynihan helped me put it in place. What we did as part of TEA–21 in 1997 was author the first program to provide incentives for State and local government to promote local smart growth policies. It's called the Transportation and Community System Preservation Act, by the way. Then chairman John Chafee was very supportive of that effort, as well. In just 5 years this particular program has grown from a modest $20 million program to one that provides over $100 million of funding for smart growth projects that are connected to transportation this year.

It seems to me what Senator Chafee's legislation does is build on that effort with TEA–21 to provide comprehensive smart land use planning by States, tribes, and cities so as to take a similar approach to economic development that the TEA–21 pilot project program has used in the transportation area.

My home State of Oregon, we consider ourselves pioneers in the development of smart growth. Brownfield redevelopment really combines smart growth and a variety of other public policies that make sense because it is certainly less costly to redevelopment formerly contaminated brownfield sites than to build in pristine greenfield sites that contribute to urban sprawl, so this type of redevelopment that turns polluted former industrial sites into new homes and new businesses is probably the ultimate form of recycling and smart growth.

I congratulate the sponsors, and I look forward to Senator Levin's contribution this morning. His legislation recognizes that the process of redevelopment doesn't end when the pollution is cleaned up, and that the Federal Government can help communities complete the process of revitalization and ensure that these sites are recycled into productive use.

I look forward to working with you and our colleagues, Mr. Chairman.

Senator JEFFORDS. Thank you for your excellent statement.

Now we turn to Carl Levin. He is the sponsor of S. 1079, the Brownfield Site Redevelopment Assistance Act, which is one of the two bills being discussed here today. Senator Levin is also my cochair on the Senate Smart Growth Task Force.

It is a pleasure to have you here. Please proceed.

STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Mr. Chairman, thank you. Senator Wyden, Senator Chafee, it is good to be with you all on a subject that is dear to the hearts of all of us. You've all been very deeply involved in smart growth efforts. We've had some successes actually recently in the smart growth area with the Brownfields Act, which eliminated some of the liability problems which prevented brownfields from being cleaned up and redeveloped. That was a great success story which this committee was very deeply involved in, and I congratulate you for it. You've all been involved in this effort.

As Senator Jeffords just mentioned, he and I co-chair a task force, a Smart Growth Task Force which is bipartisan, which is also multi-regional. All of our regions in one way or another are very deeply involved in this area. We are affected when we do not grow smartly, when we just use up greenfields and we don't recycle land. We recycle bottles and cans and newspapers. We have to recycle our land, too, and not just let it go to waste, as we too often have.

The two bills which are before you today are efforts in this direction. In the bill that was referred to, the Brownfield Site Redevelopment Assistance Act, which is Senate bill 1079, we do a number of things in that bill. We provide additional funds, $60 million each year for 5 years, for brownfields redevelopment. This will give the EDA the authority to provide grants for brownfields redevelopment projects, including development of public facilities; business development, including revolving loan funds; technical assistance and training; activities to help communities diversify their economies; and encourage in-fill development.

EDA has a current cap on their authorization appropriations at $335 million. We would add $60 million for this particular focus, purpose.

Until this year, the EDA has made brownfields redevelopment as one of its priorities, but in this year's EDA request they leave out that designation. In other words, with the limited pot of money that it has, when it submitted its budget this year brownfields redevelopment was not included as a funding priority, meaning there is not as strong a commitment at the EDA, if their budget is adopted as presented, as there has been in recent years where there was a priority given to brownfields redevelopment. So the adoption of our bill will help give a priority to that redevelopment, as well as some additional funding for it.

We have the support of a whole host of organizations, and I'll end with just this very brief reference. These are just some of the organizations which support this legislation: the National Association of Counties, the National Association of Towns and Townships, the National League of Cities, the U.S. Conference of Mayors, Council for Urban Economic Development, the Enterprise Foundation, National Association of Business Incubators, National Association of Development Organizations, National Association of Regional Councils, National Congress for Community Economic Development and Smart Growth America. There are other entities, as well.

I want to thank you, Mr. Chairman and members of this committee, for holding this hearing, for your support for smart growth. You've all been leaders in this effort, and I feel that I am not only among friends in presenting my thoughts to you, but that in many cases you are way ahead of me in a number of these areas, and it is a real treat just to be with people who are so committed to a very important cause.

Senator JEFFORDS. Thank you very much.

[The prepared statement of Senator Levin follows:]

STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM THE STATE OF MICHIGAN

Mr. Chairman and members of the committee, thank you for holding today's hearing on smart growth issues.

It is my honor to co-chair the Senate Smart Growth Task Force with Chairman Jeffords. We established this multi-regional bipartisan task force in 1999 to provide Senators with a forum to consider and coordinate efforts concerning sustainable growth patterns. The overall goal of the Task Force is to determine and promote ways the Federal Government can assist States and localities to address their own growth management issues. As part of that effort we have jointly sponsored and supported legislation that we believed would achieve this goal. Two of these bills are the focus of today's hearing: The Brownfield Site Redevelopment Assistance Act of 2001 (S. 1079); and The Community Character Act (S. 975).

Mr. Chairman, under your leadership I am hopeful that these two important community development bills can be enacted this year. They will provide States and communities with the tools they need to better plan for land use and development in order to improve the quality of life of our citizens.

Brownfields redevelopment is one of the most important ways to revitalize cities and implement growth management. The redevelopment of brownfields is a fiscally sound way to bring investment back to neglected neighborhoods, cleanup the environment, reuse infrastructure that is already paid for and relieve development pressure on our urban fringe and farmlands.

Under this committee's initiative and leadership, Congress recently took the important step of increasing funding for brownfields cleanup and providing necessary liability relief by enacting H.R. 2869 (S. 350) the Small Business Liability Protection and Brownfield Revitalization Act. That legislation will go a long way to help communities across the country start cleaning up and reusing the thousands of brownfields sites that now sit idle.

With THE big brownfields law enacted, it is tempting to think that we have solved the brownfields problem. But States, regional councils and local communities need financial assistance to make brownfields redevelopment happen. One way to do this is to give communities more tools to redevelop and promote the economic reuse of brownfield sites once they have been cleaned.

S. 1079, the Brownfield Site Redevelopment Assistance Act would do this. Senators Jeffords and I, along with Senators Baucus, Reid and Lieberman introduced this bill to expand the Department of Commerce's Economic Development Administration (EDA) efforts to assist communities with economic development. The bill authorizes a program to provide targeted assistance for projects that redevelop brownfield sites. The bill will provide EDA with increased funding flexibility to help States, local communities, Indian tribes and nonprofit organizations restore these sites to productive use. The bill authorizes $60 million each year for 5 years for brownfields redevelopment. It gives EDA the authority to provide grants for brownfields redevelopment projects, including:

- Development of public facilities
- Business development (including revolving loan funds)
- Technical assistance and Training
- Activities to help communities diversify their economies and encourage infill development
- Collaborative economic development planning.

While EDA assistance has helped communities redevelop brownfields, the agency lacks a specific authority and a dedicated source of funding for brownfields. As a result, there is no guarantee that the agency will be able to sustain the level of investment it has made in recent years. The current "cap" on EDA appropriations at the authorization level of $335 million will significantly affect the ability of the agency to support future brownfield redevelopment activities.

This bill would provide EDA with the authority to facilitate effective economic development planning for reuse; develop infrastructure necessary to prepare sites for re-entry into the market; and, provide the capital necessary to support new business development. It would also make brownfields redevelopment a priority for EDA. Our nation's population is growing and we need to find creative ways to accommodate growth while improving the lives of our residents and protecting our land, air and water. With limited Federal resources available to help communities with these important goals, it is critical that we encourage the reuse of our land. We recycle cans, bottles and newspaper B we must also recycle our land.

In communities across Michigan and across the country, the prevalence of brownfields sites is an obstacle to development. When redeveloped, these sites offer new opportunities for businesses, housing and green space. Undeveloped brownfields sites force expansion into green areas and open spaces, and many communities need support in order to reuse these sites. This bill would help to provide additional resources to communities and States to assist their brownfields conversion efforts.

The U.S. Conference of Mayors estimated that brownfields redevelopment could generate more than 550,000 jobs and up to $2.4 billion in new tax revenues. This legislation aims to support local communities and States in their efforts to reclaim brownfields by providing economic development resources to revitalize these sites.

Testimony to the critical need for this additional brownfields redevelopment funding is the support for the bill of the following organizations: National Association of Counties, National Association of Towns and Townships, National League of Cities, the U.S. Conference of Mayors, the Council for Urban Economic Development; Enterprise Foundation, National Association of Business Incubators, National Association of Development Organizations, National Association of Installation Developers, National Association of Regional Councils, National Congress for Community Economic Development, and Smart Growth America.

I am pleased the committee is taking up this legislation. It clearly complements the resources and liability clarifications enacted in H.R. 2869 (S. 350). It is a logical next step to provide communities with the financial assistance needed to leverage private investment in brownfields and accelerate reuse.

BROWNFIELD SITE REDEVELOPMENT ASSISTANCE ACT OF 2001

SECTION-BY-SECTION

Section 1. Short Title.—Brownfield Site Redevelopment Assistance Act of 2001

Section 2. Purposes.—To provide targeted assistance through the Department of Commerce's Economic Development Administration for projects that promote the redevelopment and economic recovery of brownfield sites in order to bring new income and private investment to distressed communities.

Section 3. Definitions.—Defines brownfield site (same definition as in the Small Business Liability Protection and Brownfield Revitalization Act). Permits the Secretary of Commerce in consultation with the EPA Administrator to include other pollutant or contaminants in the definition of brownfields. Other pollutants may include petroleum, lead and asbestos. EDA funding can current be used for remediation of these contaminants.

Section 4. Coordination.—Recommends that the Secretary of Commerce coordinate brownfields redevelopment activities with other Federal agencies, States, local governments, consortia of local governments, Indian tribes, nonprofit organizations and public-private partnerships.

Section 5. Grants for Brownfield Site Redevelopment.—Makes grants available through EDA for brownfields projects that alleviate excessive unemployment, underemployment, blight and infrastructure deterioration. Projects include: development of public facilities, development of public services, business development, planning, technical assistance and training. Grants may also be made available for activities identified by a community negatively impacted by brownfields. These activities include: diversifying the economy; carrying out industrial or commercial redevelopment projects; promoting smart growth through infill development that conserves environmental and agricultural resources; and carrying out collaborative economic development planning.

Section 6. Authorization of Appropriations.—Authorizes $60 million for each fiscal years 2002 through 2006.

Senator JEFFORDS. What limits does EDA currently have regarding their ability to do brownfields redevelopment?

Senator LEVIN. As I indicated, they could, if they put a priority on it, use their money for this purpose, but they have a cap on those funds. We would designate the money in this bill specifically for this purpose. Also until this year, they have at least identified brownfields redevelopment as a priority for their funding, and this year they left that out, which means that in their view it is not a priority. So we do two things—we add funds that otherwise are not designated for this purpose, and, we add emphasis and we add a targeting, a priority to the EDA which apparently is not otherwise assured. It is there some years, other years not. So we would guarantee that a priority and an emphasis be given to this particular purpose, as well as additional funding for it.

Senator JEFFORDS. Senator Chafee.

Senator CHAFEE. Thank you, Senator Levin.

What is your experience in Michigan on these lines? Are there many brownfield sites in Michigan?

Senator LEVIN. There are huge numbers, and actually my State has taken some very important initiatives in the brownfields area. To the extent that we have been able to, we have eliminated those really almost bizarre liability problems, which have so often deterred the cleanup and the reuse of brownfields, making subsequent owners liable to people, making banks who would subsequently lend money on mortgages liable for any damages which had previously been caused. I mean, you're not going to get people to undertake a piece of land, clean it up, and reuse it if they are going to be liable for previous damages which were caused to people before they took over the land.

Michigan has done everything that it could do in that area and has promoted significant brownfields redevelopment, and I want to give credit to the Governor and the legislature in Michigan for doing that.

Our bill was your bill I think a year or two ago when we took on the liability issue, then removed some of EPA's hurdles which it had placed to brownfields redevelopment based on some of those I consider to be irrational, almost, liability problems. So at a national level, with the adoption of that bill we removed some additional hurdles. Even before that Michigan had done everything it could do, I think, reasonably to remove the hurdles at the State level in terms of State law for people who were willing to undertake brownfields reuse.

Senator CHAFEE. OK, similar to my State of Rhode Island, I'm sure, a little industrial background, and we want to get them back on the tax rolls. They sit fallow and not providing revenue to our municipalities, which, of course, then we can put those property taxes to good use building schools or fixing roads, all the demands upon those officials in these communities. We removed, as you said, a lot of the liabilities in the previous bill, but your bill gives us the juice now to do it.

Senator LEVIN. Thank you.

Senator JEFFORDS. Senator Wyden.

Senator WYDEN. What kind of employment, Carl, do you think is created by legislation that will help redevelop these brownfields? It seems to me that, in addition to all the pluses that you've already

stated about your bill, which I strongly support, there's also a good component as an economic catalyst. What's your sense there?

Senator LEVIN. Well, the Conference of Mayors has estimated that brownfields redevelopment could generate more than a half million jobs, and, as Senator Chafee has pointed out, also generate up to $2.4 billion in new tax revenues. So the jobs point, which is an important point, is there.

The revenue for local communities, which are really strapped now, particularly in a recession—I mean, we've got local communities that have been pushed to the brink and over the brink as a result of this recession that really need this kind of tax revenue. So from both aspects it is a huge plus, as well as a number of other benefits in terms of reusing land instead of leaving it lie fallow from a purely social perspective and a community perspective.

Senator WYDEN. I don't have any other questions, but I just think you're making a very big contribution with your bill, and I literally go back to the Scoop Jackson days that I touched on, when not only was this not regarded as constructive, but somehow this was seen as preempting local authorities.

I think if you look at the kind of bills that we are advancing now as part of the Smart Growth Task Force and your legislation and Senator Chafee's legislation, in no way are we preempting local prerogatives. What your legislation does is puts the Federal Government in the business of being a good partner on the brownfields legislation. That's what we did on TEA–21 and the bill that I authored with Senator Chafee's dad and Senator Moynihan, so godspeed for your cause, and we'll help any way we can.

Thank you, Mr. Chairman.

Senator JEFFORDS. Thank you.

Senator LEVIN. Thank you. Can I just add one comment?

Senator JEFFORDS. You can say anything you want.

Senator LEVIN. One thought, because you mentioned Scoop Jackson and you mentioned your Dad, both of whom are great heroes of mine, as a matter of fact, and great champions of communities. I probably shouldn't get too sentimental here, other than to say the invocation of both of those former colleagues and friends of mine is very meaningful to me.

Senator JEFFORDS. Thank you very much. We look forward to working with you.

Our next witness is Dr. David Sampson, Assistant Secretary for Economic Development at the U.S. Department of Commerce. Both of the bills being discussed here today would come under the jurisdiction of the Economic Development Administration.

Dr. Sampson, thank you for being here today. We look forward to your statement.

STATEMENT OF DAVID SAMPSON, ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT, U.S. DEPARTMENT OF COMMERCE

Mr. SAMPSON. Thank you, Chairman Jeffords. Senator Chafee, good to see you both again.

I appreciate the opportunity to appear before the committee regarding the Economic Development Administration's role supporting brownfields revitalization and development planning. I do have a written statement that I would ask be entered into the

record, and with your permission would like to summarize that testimony at this time.

Senator JEFFORDS. It will be entered and you may summarize.

Mr. SAMPSON. Thank you.

The Administration, the Department of Commerce, and the Economic Development Administration recognize the need for brownfield revitalization and strategic land use planning objectives that are the focus of S. 1079 and S. 975. EDA has an established track record of working with local stakeholders to redevelop and reuse brownfields and has partnered with the Environmental Protection Agency to provide assistance similar to what is outlined in these bills.

The President has announced that his fiscal year 2003 budget will double the funds available through EPA from $98 million in 2002 to $200 million in the 2003 budget to help States and communities around the country cleanup and revitalize brownfields sites; however, given the demands on the Federal budget to fight the war on terrorism and safeguard our national and homeland security, the Administration cannot support the additional funding beyond the increased funding already in the President's budget for this item.

The Economic Development Administration has a longstanding role in supporting economic redevelopment of abandoned, idled, and contaminated industrial and commercial sites. As a matter of fact, since 1997 EDA has invested over a quarter of a billion dollars in 250 brownfield redevelopment projects, and last year, alone, EDA invested $55 million in 58 brownfield projects around the country. That's close to the level authorized in S. 1079.

EDA's flexible economic development programs, as you have referenced earlier—you and Senator Chafee both in your opening comments—have provided a wider range of tools that local communities can use through EDA to facilitate the redevelopment.

EDA has been a long-time supporter of the Environmental Protection Agency's brownfields initiative and was the first Federal Agency to enter into a partnership agreement with EPA, signing a memorandum of understanding in 1995, and a reauthorization of that memo is prepared and is awaiting the signatures of Secretary Evans and Administrator Whitman at this time.

Now, as the President stated upon signing EPA's landmark brownfields legislation in January, we believe the key to effectively and efficiently addressing the brownfields redevelopment challenges is for the Federal Government to pursue a more cooperative, common-sense approach. This brownfields legislation was passed with bipartisan support, and the legislation recognizes and supports State efforts directed at regulatory relief and market-based incentives for redevelopment.

An example of an effective market-based incentive that we strongly support but was not included in EPA's legislation is the brownfields tax incentive. This incentive allows for environmental cleanup costs to be fully depreciated in the year they are incurred, rather than being amortized and depreciated over the life of the property.

Under current law, favorable tax treatment for the contamination cleanup costs will expire at the end of 2003. As proposed in

the President's fiscal year 2003 budget, the Administration believes that the brownfields tax incentive should be made permanent. According to Government estimates, the $300 million annual investment in the brownfields tax incentive will leverage approximately $2 billion in private investment and return 4,000 brownfields to productive use.

Now, while there are many parallels between S. 1079 and EDA's current efforts to support brownfield revitalization efforts, portions of the bill represent a broad departure from EDA's mission. For example, the legislation calls for EDA to create parks, playgrounds, and recreational facilities. This type of development falls outside of EDA's principal mission as authorized by Congress.

Finally, we are concerned that S. 1079 calls for resources that are not included in the President's budget. We believe that the objectives of this legislation can be best attained within current budgetary resources through improved coordination of existing programs, a market-based incentive approach, and a locally driven development process.

Now, the committee also asked me to comment on the Community Character Act. Certainly in recent years concerns have been raised regarding the kinds of development occurring in America's suburban communities. We certainly believe that comprehensive, market-based local and regional planning is an essential component of successful, sustainable economic development, and for almost 40 years economic development planning has been a cornerstone of EDA's development programs. As a matter of fact, EDA is currently involved in and committed to local planning through its partnership planning program, which supports 325 multi-county economic development districts and 59 American tribes and Alaska Native villages.

Since 1997, EDA has provided planning assistance matching the level of funding that would be provided through the Community Character Act.

This process supports local planning by encouraging development of a regional comprehensive economic development strategy, or CEDS. The CEDS process is designed to guide the economic growth of an area through an inclusive and dynamic process that coordinates the efforts of community organizations, local governments, private industry, and economic development leaders. These grants can be used to enhance or update local land use plans, if that is the priority of participating local jurisdictions. While not prescriptive, local communities developing CEDS are encouraged by EDA to address economic issues and opportunities in a manner that promotes economic development, fosters effective transportation access, enhances and protects the environment, and balances resources through sound management.

Again, the Administration cannot support S. 975 because it calls for resources that are not included in the President's budget to support activities that can be accomplished through existing authorities and appropriations.

This Administration will continue to work for the American people to protect the quality of our air, land, and water, while building on the premise that environmental protection and economic prosperity go hand in hand. By working together with State and local

communities and leveraging the Federal Government's current resources and coordinating the efforts among agencies, we can work effectively to create a market-based approach to develop and revitalize communities across the Nation.

Thank you very much, Mr. Chairman and Senator Chafee for your leadership on these issues so important to us all. EDA appreciates your support and looks forward to working with you as we continue to achieve commonly held objectives. I would be happy to address any questions that you may have.

Senator JEFFORDS. Thank you for your testimony.

In your testimony you note that the Administration is seeking $200 million in fiscal year 2003 for EPA's brownfield program. How will EDA in a collaborating role keep up with EPA's activity without additional funding?

Mr. SAMPSON. Well, first of all, we intend to renew the MOU that we have with EPA on those joint efforts, and, second, I would point out that in our recently published final notice of funding availability in the "Federal Register," we do specify public works dollars will be used to support both tech-lead economic development and brownfield redevelopment projects, and so that is included in our final notice for public works projects for the coming year.

Senator JEFFORDS. In your testimony you comment that your brownfields activities are under existing statutory authority. Does EDA have specific authority to engage in brownfields redevelopment work? Is this authority adequate?

Mr. SAMPSON. I believe that we do, sir, and I believe that it is. As a matter of fact, in my short time at the helm at EDA, I've visited a number of brownfield redevelopment sites that EDA has worked on, and I think they are model redevelopment projects around the Nation.

Senator JEFFORDS. How has EDA supported local development planning in the past? How can EDA improve that work, especially in the rural areas?

Mr. SAMPSON. Well, EDA has a very long history of working with economic development districts around the country. In our 40-year history, planning has been the cornerstone of EDA's economic development strategy.

As I mentioned, since 1997 EDA has funded approximately $100 million to economic development districts, and last year, alone, we funded over $20 million to these economic development districts around the country, and we anticipate that that funding level will be maintained in next year's budget.

Senator JEFFORDS. Thank you.

Senator Chafee.

Senator CHAFEE. Thank you, Senator.

Welcome, Dr. Sampson.

Mr. SAMPSON. Thank you very much, Senator Chafee.

Senator CHAFEE. Good to see you again.

Senator Jeffords mentioned a lot of growth is occurring in the western States. I think Nevada and Idaho have seen some of the sharpest population growth—and Arizona, New Mexico—of any States—Montana. As Senator Wyden said earlier, planning used to be considered almost a communist thought, especially in the west, but now these communities are saying, "We've got to prepare.

We've got to organize the growth and have the industrial growth where the people want the industry, and we want retail where our citizens want retail, and residential, all the zoning, where the people of our community want it."

We very carefully want to have the Federal Government involved in that, understanding that there is some reluctance to have the Federal Government involved, so this bill, the Community Character Act, would just make available the funds.

My question is: does your Department have the capacity to dispense these funds if this bill were to be successful?

Mr. SAMPSON. Senator, if the bill were passed and the funds were appropriated to us, EDA would obviously be careful stewards of that money and would ensure that any funds are expended wisely and are used effectively.

As a former economic development professional at the State and local level in Texas, I am well aware that there are problems associated with the stress that growth brings on communities. In my travels around the country, I think that the primary concern that I've heard from State and local officials has been the lack of growth or stagnant growth in terms of job creation and the fear of losing core industries in States, and that's why in this year's notice of funding availability we have placed our first priority on assisting those communities that are going through economic dislocation or transition that are caused by changing economies.

But certainly for those communities that are experiencing a unique distress caused by rapid growth, the existing planning dollars that we use through our partnership planning program can be used by those local economic development districts, and especially the rural areas that might not have as many resources, for the comprehensive land use planning as outlined in the bill.

Senator CHAFEE. I would argue further that economic development would go hand-in-hand with a well-planned community where we don't—as I mentioned in my opening statement, my home town of Warwick, in the post-World War II boom—there was farm land in my home community, and it spilled out of the main city of Providence down there, and, as I said, strip malls and industry and retail and commercial and residential all—because there was no zoning to direct it, and we certainly—I would argue it inhibits economic development to have that kind of growth. As we see these western communities—Las Vegas; Boise, ID—just growing at a breakneck speed, I think everybody wants to have some kind of organization to it to promote economic development and good jobs and proper growth.

Mr. SAMPSON. Senator, I certainly would concur that high performance and development standards generally yield premium return on investment for the development community, and my experience as an economic development professional is that the development community is as concerned as anyone about high development standards and performance standards so that they know that their investment is going to be protected over the long term.

Further, the development community generally prefers to work in those communities where the rules of the game are clearly laid out so that they know that they can—if they come in and abide by

those rules and development standards, that their development will proceed in a timely fashion.

I do believe that, if you look around the country today, there is a very strong case that can be made that a locally centered, market-based approach that incorporates high performance and development standards does yield aesthetically pleasing, environmentally sensitive communities in which people want to live, work, and raise their families, and I think that those efforts at the local level are very appropriate.

Senator CHAFEE. Good ringing endorsement. Thank you.

Senator JEFFORDS. Thank you very much, Doctor. That was excellent testimony, and we look forward to working with you.

Mr. SAMPSON. Thank you very much.

Senator JEFFORDS. Our next witness is Elizabeth Humstone. Elizabeth is executive director of the Vermont Forum on Sprawl located in Burlington. She is co-author of a new American Planning Associations book, "Above and Beyond." She comes here both as a Vermonter and as a representative of the APA.

Welcome, Ms. Humstone.

STATEMENT OF ELIZABETH HUMSTONE, EXECUTIVE DIRECTOR, VERMONT FORUM ON SPRAWL, BURLINGTON, VT, REPRESENTING THE AMERICAN PLANNING ASSOCIATION

Ms. HUMSTONE. Good morning, Chairman Jeffords and Senator Chafee.

I am Elizabeth Humstone. I am the executive director of the Vermont Forum on Sprawl and vice chair of the Burlington, VT, Planning Commission. I am here as a Vermonter and on behalf of the American Planning Association. I offer our vision for smart growth and support for the legislation under consideration by the committee, particularly S. 975, the Community Character Act.

I know firsthand the daily struggle to achieve growth that supports environmental quality, rural working landscapes, healthy town centers, and community values of sharing, access, and equity.

Americans are increasingly aware and concerned that unplanned growth and its byproducts—loss of open space, congestion, limited housing options, decline of neighborhoods, duplicative and costly infrastructure, empty shopping malls, and loss of ecological biodiversity—are major problems. This is not just a suburban phenomenon. It is impacting cities, rural areas, and tribal lands, as well.

An alternative is smart growth, a movement taking root across the Nation as citizens seek ways of reversing decades of policies that have led to what is commonly referred to as "sprawl." Smart growth is a set of policies designed not to stifle growth, as some critics would have it, but to promote development in ways that create efficient communities of balanced consumer choice and lasting value.

Smart growth is a broad-based, grassroots-driven, bipartisan movement. Every political barometer—polls legislation executive orders, budget proposals, and ballot initiatives—indicates that planning reform and smart growth are major concerns.

In Vermont, affordable housing advocates, businesses, developers, environmentalists, historic preservationists, community de-

velopment specialists, planners, and social equity organizations are all working toward smart growth.

Planning is essential to achieve smart growth. The plan and the process of planning helps communities move boldly forward with a clear vision and articulate agenda for shaping their future. In spite of the importance of planning, many States still rely on model planning laws developed by then Commerce Secretary Herbert Hoover in the 1920's. While useful and innovative for their time, these ordinances are woefully inadequate today. Many communities that want to plan are inhibited by these outmoded statutes.

Even the States that have good planning laws are losing the battle to sprawl due to budget shortfalls, poor enabling statutes, and inability and failure to implement what they have. For example, in Vermont, despite, Mr. Chairman, your incredible efforts for smart growth in our State, we are known for interest and concern about growth issues but we still have sprawl, and it is getting worse. In Vermont we have no State planning office, no funds to enforce our Growth Management Act, and extremely limited resources to provide technical assistance to our many small towns.

The American Planning Association believes that the Community Character Act would be an effective and beneficial tool for promoting smart growth and improving planning, while respecting local and State land use prerogatives. We are not alone. Broad-based coalitions working to strengthen communities and neighborhoods through improved built and natural environments have joined in support of this legislation.

The bill provides flexible grants that could be used for a variety of planning and smart growth programs. States implementing reforms or seeking to bolster planning would be eligible for funding.

The Community Character Act also is designed to promote locally driven planning innovation through resources, technical assistance, and capacity building. Many areas, particularly rural regions and small towns—as, Mr. Chairman, you indicated in your opening remarks—suffer from a lack of planning resources and expertise.

At the Vermont Forum on Sprawl, we hear daily from citizens and local officials asking for help with local planning issues, and we are very hard pressed to meet this tremendous demand.

In Vermont, the Community Character Act could help us to review our existing State planning statutes, and, with the involvement of diverse interest groups and citizens, propose ways to make them more effective. It could support a State-wide local planner training program, or it could help regional planning commissions and local governments arrive at better regional approaches to smart growth.

All levels of government—Federal, State, regional, county, and local—have a proper role and responsibility in improving communities and supporting smart growth. Local governments have long and rightly been the principal stewards of land and infrastructure resources, yet Federal and State governments play important roles, as well.

We believe Federal incentives and assistant for smart growth are appropriate for you to consider. There are a variety of Federal tools that could help Vermont and organizations like mine pursue smart growth. I have focused this morning on the Community Character

Act. There is also the Brownfields Site Redevelopment Assistance Act and the Post Office Community Partnership Act, and, Mr. Chairman, your planned legislation to provide grant support for community visualization and decisionmaking technologies would also greatly aid smart growth planning efforts.

We are committed to working with you, Mr. Chairman, and this committee in making the promise of smart growth a reality.

This concludes my testimony. I thank you and the committee for the opportunity to be here today.

Senator JEFFORDS. Well, thank you for an excellent statement.

Our next witness is Deb Anderson. Deb Anderson is director of Wood Partners located in Durham, NC. She is representing the National Multi Housing Council, a national association representing the interests of the Nation's most prominent apartment firms.

Ms. Anderson, thank you for joining us today.

STATEMENT OF DEB ANDERSON, DIRECTOR, WOOD PARTNERS, DURHAM, NC, REPRESENTING THE NATIONAL MULTI HOUSING COUNCIL

Ms. ANDERSON. Thank you. Chairman Jeffords and Senator Chafee, my name is Deb Anderson and I am the director of Wood Partners, a multi-family apartment, real estate development firm located in the Raleigh-Durham area of North Carolina. I am here today on behalf of the National Multi Housing Council and the National Apartment Association, both trade associations representing the Nation's multi-family property developers, owners, managers, and financiers.

NMHC and NAA commend the members of this committee for their work on the important issue of strengthening America's communities. As I'm sure you already know, in recent years the concept of smart growth has taken the country by storm. In November 2000, more than 200 ballot initiatives were passed on suburban sprawl and open space preservation. While this is largely a State and local issue, there is also an important role for the Federal Government.

We believe that the Community Character Act under consideration today fits that role by providing the funding and incentives needed to help State and local governments develop sound and comprehensive land use plans. Tired of struggling with traffic, pollution, long commutes, and over-crowded schools, Americans are calling for more livable communities. They are looking for pedestrian-friendly neighborhoods with more open space and better traffic flow. They are seeking communities with walkable distances between homes and nearby shopping, schools, and entertainment.

Understanding that growth is inevitable, many State and local policymakers are searching for ways to expand without sacrificing quality of life. I know from my own experience in dealing with land use policymakers on the State and local levels that they face complex decisions as they endeavor to integrate all of the ingredients of a successful community into a specific land use decision.

Increasingly, these decisionmakers are coming to appreciate that smart planning will require new ways of thinking and new regional approaches. Many are expanding their community development

tool boxes to include important but often overlooked assets such as high-density housing.

As a developer of high-quality apartment homes, I believe that apartments are an integral piece of the smart growth solution. Apartments conserve land to help preserve open spaces and create pedestrian-friendly neighborhoods. They also use municipal infrastructure more efficiently. For example, apartment households generate 30 to 40 percent fewer vehicle trips than single-family homes. Apartments place less burden on local schools and regional transportation systems. They help revitalize neglected neighborhoods, they create new jobs, and they provide local, State, and Federal tax revenues.

Apartment homes are increasingly becoming the housing type of choice for a new demographic, representing both the aging in our population and the boom in younger households for the first time in 20 years.

Many local governments still have barriers in place to higher-density housing, such as zoning programs that do not permit compact development. The end result is that apartment developers like myself, eager to design and deliver new pedestrian-friendly neighborhoods that citizens are calling for, are often blocked from doing so.

This is where Congress can play a role. NMHC and NAA support S. 975's creation of a Federal grant program to provide States with the additional financial resources they may need to support and encourage local authorities to update their land use planning activities. The bill wisely relies on incentive-based measures rather than command and control systems. The bill also properly recognizes the need to explore regional land use planning. Smart growth issues often span the jurisdictional coverage of several communities, particularly in areas of transportation and economic development.

While the need for regional planning is almost universally recognized, there are few effective models. S. 975 specifically states that multi-State land use planning should be facilitated through the grant program. This incentive will go a long way to jump-starting a fresh approach to regional planning.

NMHC and NAA also strongly support the legislation's direction that a range of affordable housing options be included as a requirement by States before receiving Federal moneys. Communities that exclude apartments and other affordable housing jeopardize their own continued prosperity. In doing so, they squeeze out a segment of the population that is vital to local businesses, as both customers and employees. Communities that offer a diversified work force and a wide range of housing options are more likely to attract and retain top employers. An adequate supply of affordable housing, therefore, can be essential to a municipality's economic growth.

The fact that S. 975 encourages consideration of affordable housing options will encourage communities to take a fresh look at their approach to this issue and consider ways they can support more affordable housing.

This is particularly important in high-cost areas, where the price of land and the associated development costs have diminished the ability of the private market to create affordable housing on its own.

NMHC and NAA support the Community Character Act with the understanding that the bill does not endorse by oblique reference any one particular land use planning standard. We are specifically concerned that the American Planning Association's recent publication, "Growing Smart Legislative Guidebook," not be viewed as the definitive land use guide. APA's guidebook contains many sound provisions, but it does not enjoy universal support among stakeholders. Dissenting comments pointing out where the book is unbalanced in its approach are attached to this testimony for your review.

The important principle here is that we believe State and local jurisdictions must be free to study and employ a variety of planning tools as they deem appropriate. The Federal Government should encourage land use planning, but it should not specify the plan. Land use decisions should properly remain in the precinct of the local jurisdiction.

We believe the provision to encourage pilot projects of new land use planning activities developed by local policymakers will help create smarter answers to our Nation's growth challenges. We also endorse the use of funds to develop voluntary educational programs, new technologies, and new electronic data bases to support land use planning and local policymakers who do not always have access to these resources.

In summary, NHMC and NAA believe the role of the Federal Government in land use planning should be limited to funding through grants. As the Nation moves forward to strengthen its communities and accommodate changing demographics, local land use statutes will need to be responsive to the communities' needs. This bill is intended to provide support for State and local land use planning activities without undermining local land use control.

Thank you very much.

Senator JEFFORDS. Thank you.

Our next witness is Don Chen, who is the director of Smart Growth America, a coalition of advocacy organizations working on growth management issues at the national, State, and local levels.

Welcome, and please proceed.

STATEMENT OF DON CHEN, EXECUTIVE DIRECTOR, SMART GROWTH AMERICA, WASHINGTON, DC.

Mr. CHEN. Thank you very much. Mr. Chairman, Senator Chafee, thank you for holding today's hearing on smart growth.

I am the executive director of Smart Growth America, a nationwide coalition of over 70 groups, including the American Farmland Trust, the Natural Resources Defense Council, the League of Women Voters for Smart Growth, the National Low Income Housing Coalition, and the Enterprise Foundation. Together we promote smart growth, an approach to development that makes efficient use of natural resources and infrastructure, revitalizes neighborhoods, keeps housing affordable, protects farmland and open space, and provides more transportation choices.

Smart growth is a local issue, driven by the decisions of individuals and families, so people often ask if there is a Federal role. The answer is unequivocally yes. For decades the Federal Government has influenced the shape of America's communities through pro-

grams like the interstate highway system and FHA's home mortgage insurance program. The real question is: what is the appropriate role?

There are four key roles: No. 1, to share information about best practices, tools, and research; No. 2, to provide financial assistance to help States and localities use resources more efficiently; No. 3, to identify ways in which smart growth can help communities meet Federal requirements; and, No. 4, to lead by example and be a good neighbor.

Let me briefly elaborate.

First, information sharing is a critical Federal responsibility, because States and localities do not have the capacity to conduct extensive research on innovations. The Department of Housing and Urban Development's new report on modern rehabilitation codes, for instance, shares information about an innovation which has boosted rehab investment in Newark, NJ, Jersey City, and Trenton by 68, 83, and 40 percent respectively.

These innovations also include smart growth planning tools that model the fiscal and environmental outcomes of different growth scenarios, and software tools that enable the public to better visualize change. These tools have been applied with great success in places like Lancaster, PA; Salem, OR; San Diego, CA; and Kingston, RI.

Mr. Chairman, I'm delighted to learn of your interest in these community decisionmaking tools and would welcome the opportunity to work with you to develop them further.

Second, the Federal Government should provide financial assistance to support efforts to use economic and environmental resources more efficiently. For example, EPA recently provided a grant to the Envision Utah project. Using state-of-the-art demographic and land use projections, local leaders estimated that a smart growth scenario would save 171 square miles of open space, tremendously reduce traffic and commute times, and save the region $4.6 billion in infrastructure costs.

Third, the Federal Government should identify ways in which smart growth can help communities meet Federal requirements. A great example is the Atlantic Station Development in Atlanta, GA, which applied smart growth principles to meet Federal air quality standards. At the request of the developer, EPA's technical staff determined that the project would reduce regional travel by 50 million miles per year because of its excellent public transit access, walkability, and compact street design.

Fourth, the Federal Government should strive to be a good neighbor to States and localities that are pursuing smarter growth by, for example, locating its facilities in existing business districts and more efficiently disposing of HUD-foreclosed, abandoned buildings.

Several trends underscore the need for Federal action. As Senator Chafee noted, communities nationwide are grappling with rapid growth. As a result, housing affordability remains a dire and persistent problem. According to the congressionally established Millennial Housing Commission, 28 million Americans do not have access to decent, affordable housing.

Traffic problems are stifling the economies of regions all across America. Last year, congestion cost Americans $78 billion in lost time and wasted fuel.

Consumer housing preferences are also changing. According to a new study published by the Fannie Mae Foundation, aging baby boomers will drive a substantial shift in homebuyer preferences in which 31 to 55 percent of active homebuyers will prefer compact, walkable neighborhoods during the coming decade.

As a response to these trends, Americans are demanding better choices for their communities. In recent years, voters have approved hundreds of measures to preserve open space and farmland. A poll released in 2000 by Smart Growth America found that Americans overwhelmingly support smart growth measures, from affordable housing production to increased public transit spending. Such support is also found at the local level. This week a poll by the University of Toledo will report that metro Toledans support similar measures very strongly.

S. 975 and S. 1079 will help communities respond to the impacts of rapidly changing growth patterns that have resulted in the abandonment of some communities and over-crowded schools and over-burdened infrastructure in others.

The Community Character Act offers assistance to State and tribal governments that have identified a need to update planning legislation but lack the capacity to do so. Appropriately, S. 975 is not a mandate; rather, it helps State and tribal governments cover the costs of incurring public participation, developing land use plans, and acquiring technology.

S. 975 will help communities apply smart growth principles to future development, including reinvestment in existing communities. This committee has already shown great leadership on this issue. Senator Chafee, I congratulate you and the entire committee on the passage of the Small Business Liability Relief and Brownfields Revitalization Act. Smart Growth America was one of the first organizations to endorse S. 350, and we were delighted to see President Bush sign the final bill into law.

Despite such gains, cleaning up brownfields is only the first step to economic recovery, particularly for impoverished communities. S. 1079 complements the recently signed brownfields law by targeting assistance toward public facilities and services, planning, business development, and training to help communities reclaim not just their land, but also their livelihood.

Smart growth is about providing better choices for our communities and our Nation. Across the Nation, families are demanding more convenient and affordable transportation and housing options. Communities need tools to handle rapid change, and business and civic leaders want greater predictability in the development process.

The Community Character Act and the Brownfield Site Redevelopment Assistance Act will help deliver these goals. Smart Growth America supports both bills and looks forward to working with the committee to see their timely passage.

Mr. Chairman, Senator Chafee, thank you for the opportunity to share the experiences of communities from across the Nation. I'm happy to answer any questions.

Thank you.

Senator JEFFORDS. Thank you very much.

Our next witness is Gary Garczynski, the president of the National Association of Home Builders. He is a builder and developer in northern Virginia.

Mr. Garczynski, we appreciate your sharing with us your thoughts.

STATEMENT OF GARY GARCZYNSKI, PRESIDENT, NATIONAL ASSOCIATION OF HOME BUILDERS, WASHINGTON, DC.

Mr. GARCZYNSKI. I hope you'll feel that way when we're finished, Senator.

Senator JEFFORDS. I'll let you know.

Mr. GARCZYNSKI. Mr. Chairman and Senator Chafee, I, like both of you, have been laboring in the vineyards of smart growth for the last 4 years as the senior officer with oversight over the smart growth initiative and have been a co-founder of the Smart Growth Alliance for Metropolitan Washington, and am currently working with former Administrator of the EPA, Carol Browner, on an Aspen Institute initiative on smart growth, so we have been there.

My remarks today are centered, first of all touching on Senator Levin's S. 1079. We feel that what we've reviewed of the bill, that NAHB could soon very well be a supporter of that initiative, following up with what Senator Chafee did last year, although we would have liked to have seen petroleum included, we think it is a step in the right direction.

While we appreciate the efforts of the committee and the chair regarding S. 975, NAHB is opposed to the Community Character Act. We know that this country is going to grow, and we have been working for years on making sure that "where do we grow from here" is growing smart. There's a demand, no matter who you talk to—a demographer, an economist—that there is going to be 1.6 million households formed in this country continuously over the next decade, and there's really not an option of halting growth. It's going to be how is that growth molded.

Unfortunately, we feel the Community Character Act's effort to address the short-term pressures of growth is too much of a prescriptive intrusion into the local land use process, and for that reason, is unacceptable to the home building industry. We believe the legislation promotes a top-down approach and negates the critical role of a local and a regional approach in planning, regulating, and managing land resources.

Specifically, the act authorizes the Secretary of Commerce to make subjective determinations about inadequate or outmoded land use planning legislation and areas that are experiencing significant growth. Unfortunately, the Secretary is authorized to make a subjective judgment in an area where the Secretary can claim no special expertise, at least that we see at this point.

We believe strongly that local citizens and local governments and regional initiatives are the best arbiters of what is an appropriate design for local and regional land use plans, and not the intrusion of the Federal Government.

We are pleased that in S. 975 that you have alluded to a balance of affordable housing options, which we think are important to any

smart growth plan. In particular, the provision about the Secretary of Commerce favoring grant applications which include approaches to land use planning that are consistent with established professional land-use planning standards, we believe, gives off the perception, especially in criteria No. 6, that the bill could be tied to, from a perception basis, to the APA's No. 1 legislative priority, and that's its growing smart initiative.

S. 975 also authorizes grant funding for the use of integrating State, regional, tribal, local land use plans with Federal land use plans. I think in your opening statements it should be the reverse, as you both alluded to. There needs to be better coordination from the Federal Government with the local agencies, rather than local back to the Federal. Again, it is that top-down approach that we are concerned with.

You know, ultimately we have adopted a policy at the National Association of Home Builders that is fundamentally opposed to statewide planning and Federal intrusion into the process. Our overall experience in facing the challenges of "where do we go from here" is that that challenge is best met by the stakeholders at the local and regional level, and not on the State level. I have been hearing for 30 years from the Commonwealth of Virginia what Richmond was going to do to help northern Virginia. I've yet to evidence any help.

It is that premise that has led us to our compact with the National Association of Counties, working on compacts with the National League of Cities and the U.S. Conference of Mayors that planning belongs at the local and regional level. For that reason, at this time, we could not support S. 975.

Thank you.

Senator JEFFORDS. Thank you for your view.

Our next and last witness is Mary Lou Bentley. Mary Lou Bentley is executive director of the Western Nevada Development District in Carson City, NV. She is representing the National Association of Development Organizations, which advocates for a regional approach to community, economic, and rural development.

Thank you for traveling this great distance in coming to share your thoughts with us today.

STATEMENT OF MARY LOU BENTLEY, EXECUTIVE DIRECTOR, WESTERN NEVADA DEVELOPMENT DISTRICT, CARSON CITY, NV, REPRESENTING THE NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

Ms. BENTLEY. Thank you, Mr. Chairman and members of the committee, for the opportunity to testify today. It was an interesting trip across our great country yesterday, and I will be returning this afternoon.

I am the executive director of the Western Nevada Development District, which is headquartered in Carson City. If you're not aware, it is the State capital of Nevada. We represent a seven-county region in the very northwest portion of the State.

Incorporated in 1983, WNDD is one of the 325 designated and funded economic development districts that Dr. Sampson referred to earlier in his testimony. We are, however, a Nevada not-for-profit association of local governments, and we are governed by a policy

board that consists of county and city elected officials, along with tribal representatives, business leaders, and citizen representatives from our region.

The National Association of Development Organizations, or NADO, provides training, information, and representation for regional planning and development organizations that serve over 82 million people who live in small metropolitan and rural America. Founded in 1967 as a public interest group, NADO and its members are part of the intergovernmental partnership among Federal, State, and local governments.

Mr. Chairman, NADO strongly supports the goals of the EDA brownfields redevelopment legislation for three main reasons. First, Mr. Chairman, the EDA program would significantly strengthen the current portfolio of Federal brownfield programs. While the Environmental Protection Agency has an exceptionally effective and very important program, it is targeted almost exclusively toward helping urban communities assess and cleanup brownfields. The EDA program would establish a unique and a far more flexible set of tools to help local governments, regional development organizations, and nonprofits transform former brownfield sites into productive facilities.

As highlighted in two recent reports by the NADO Research Foundation, there have been a number of impediments historically to successful brownfields work in small metro and rural areas. These include a lack of local professional staff expertise and time, limited project implementation funds, liability concerns, and property ownership issues.

In addition, redevelopment activities are very costly, with a typical project costing over $5 million.

While the recently enacted EPA brownfields legislation aggressively addresses many of these impediments, such as the liability concerns and funding for assessment and cleanup, there is still a significant void in funding for redevelopment activities, including planning and technical assistance.

By establishing the new EDA program, local organizations would have potential support for activities that extend beyond the traditional cleanup efforts. Local communities could pursue strategies for taking previously productive industrial and commercial facilities and returning them to viable economic centers.

This, in turn, represents the best of both worlds, creating jobs and increasing local revenue, while also raising community pride, promoting sustainable development practices, and encouraging reinvestment in older areas.

Second, Mr. Chairman, the EDA brownfields program would help regional development organizations and local governments incorporate redevelopment efforts into their comprehensive economic development strategies. Currently, EDA provides seed funding for local communities, predominately through the 325 economic development districts, to prepare the comprehensive strategies that balance the environment and economic growth.

We believe that the legislation takes the right approach by providing supplemental planning assistance, instead of simply mandating another requirement in the current planning process.

It also makes sense to use economic development districts for planning and capacity building. This model builds professional expertise on a regional basis, instead of working individually with cities and counties. The national network of districts serves over 2,000 counties and 15,000 small cities and townships.

Third, Mr. Chairman, the proposed legislation would allow EDA to continue its successful brownfields redevelopment work without depleting its resources that are so desperately needed for the infrastructure needs of many of our small communities. Since 1997, EDA has invested more than a quarter of a billion dollars in over 250 brownfield redevelopment projects nationwide. However, we have little reassurance that the Agency can sustain this level of investment, especially given the existing appropriations and authorization caps.

By establishing a specific program for brownfields redevelopment, the Agency would be given the stability and the sustainability required to meet the growing needs of all communities, including both urban and rural areas.

By separating the program, the Agency would also be better positioned to assist distressed communities with their very pressing needs, whether it is recovering from a natural disaster, responding to a plant closing, or expanding existing businesses.

While many of the Nation's urban and suburban areas have enjoyed economic prosperity in recent years, there are still hundreds of small communities struggling to enter or re-enter the economic mainstream. Oftentimes, EDA is the only Federal Agency that can truly help these smaller distressed communities.

Over the past 35 years, EDA has developed a very successful track record in partnering with other Federal agencies and local communities, including regional development organizations, to revitalize, upgrade, and expand former commercial sites into industrial facilities. This work has resulted in the creation of quality jobs and expanded tax base for local governments, and a better quality of life for our area residents.

In conclusion, Mr. Chairman, we strongly believe that the expanded brownfields program would be a valuable addition to the EDA tool box. The legislation would significantly strengthen the current portfolio of Federal brownfields programs, and it would allow regional development organizations and their partners to incorporate brownfield redevelopment efforts into the identified projects through the comprehensive economic development strategy, and it would allow EDA to continue its brownfields work without depleting resources for its other job creation programs.

Mr. Chairman and members of the committee, thank you for the opportunity to testify today on behalf of NADO, and I would welcome any questions you might have.

Senator JEFFORDS. Thank you.

We thank all of you for very excellent testimony, and some disagreement, which is good. That's how we get things done in a better and more efficient way.

I'm going to pick on my good Vermonter first here. Ms. Humstone, can you tell me about the polling you have done evaluating citizen awareness of sprawl and desire for changing those growth patterns? What are the implications of that data?

Ms. HUMSTONE. Mr. Chairman, we have been doing polling since 1998, pretty much on an annual basis, with the University of Vermont helping us, and what we've found is the percentage of Vermonters who have heard of Sprawl development has dramatically increased to well above 70 percent, and, interestingly, in the Northeast Kingdom, which, as you know, is one of our most underpopulated areas and economically depressed, that percentage has really leaped during those 3 years of polling.

In terms of the need to take action against sprawl, when asked that question, "Do you feel there's a need to take action against sprawl," we have found very consistently that around 60 to 66 percent of Vermonters feel there is need to take action against sprawl in our polling.

In addition, if you look at some of the national polling by the American Planning Association, I believe it is around 78 percent feel that it is important at the Federal level that steps be taken to promote smart growth, as well.

So we feel that there is a strong grassroots support for what we are working on in the State, and we also see that in our legislature, as well. They've very much supported a development cabinet in the Governor's office that would coordinate State investments. They also have supported a downtown program that would provide incentives for more growth downtown and, in addition, have continually supported our Vermont Housing Conservation Board, which provides money for affordable housing and land conservation, even in very lean times. So we see that there is strong support reflected both among citizens and the legislature, as well.

Senator JEFFORDS. How do you respond to the perception that small States like Vermont don't really have any problems with sprawl?

Ms. HUMSTONE. That is a continual problem, and actually that's one reason why I wrote the book "Above and Beyond," because we wanted to show through aerial photography that we have problems with sprawl. It is different. It's not going to look like Atlanta. It's not going to look like Long Island. Rural sprawl tends to be fragmentation of natural resources, the breaking up of farmland into large lots, or linear commercial development along highways that causes congestion and ruins the scenic beauty of our State. When people come to Vermont, they come there for the scenic beauty and our wonderful small towns, and what we found is that with sprawl we're losing the vitality in these small towns and our highways are becoming congested and certainly not as pretty as they once were.

Senator JEFFORDS. Thank you.

Ms. Anderson, you mentioned in your testimony that higher-density housing has often been overlooked. Why do you think that is?

Ms. ANDERSON. Anecdotally, I can give you information from the area that I come from, which is Raleigh-Durham. We have an MSA there of well over a million people, and yet there are as many as a dozen jurisdictions in which I might be seeking a rezoning or an approval for a higher-density project. So, as you can imagine, when you take an area of that size and you break it down into 10 to 15 local jurisdictions, they are often working with land use plans that are maybe the first one they've ever had since the beginning of

time, or plans that need to be updated, plans that need to think ahead.

As an example, we are trying to have a project of about 60 units to the acre approved in Durham, NC. We should have known this, I suppose, but when we went to submit, we realized that their zoning ordinance didn't contemplate any multi-family housing in excess of 20 units to the acre. So to propose a project at 60 took everyone by surprise, and we spent months working with civil engineers, architects, planners to try to help the city of Durham draft a new zoning ordinance which would include high density.

So in many instances high density has been overlooked because it has never really been contemplated, even in areas where I think many of you might say, "Well, Raleigh-Durham surely has high-density housing," and, in fact, it does not.

So I believe this bill could help groups like these smaller towns and municipalities create plans that effectively deal with high density. Durham specifically tried to travel to other cities to see what they were doing in other cities, but there are time pressures, and once an application is submitted the staff has to respond quickly.

So we now have an ordinance in Durham that will carry capacity for 20, 40, 60, or even 80 units to the acre, but I'm confident that those planners need to work on the specifics. They were concerned about how to set open space requirements, parking limits, setbacks, buffers. All of the minutia that went into those higher categories were difficult for them to figure out, and our project has been the test case and we'll see how it works.

I think a lot of municipalities just don't have capacity in their code for high density.

Senator JEFFORDS. We look forward to talking to you again to see how it works.

Ms. ANDERSON. We do, as well. Thanks.

Senator JEFFORDS. Mr. Chen, many people have suggested that smart growth and affordable housing are mutually exclusive. Have you found that to be the case?

Mr. CHEN. No, we have not found that to be the case. If you look at the membership of our coalition, I think you will see that there are a great number of people who advocate for smart growth and affordable housing all working together.

This is actually an issue that has generated a great deal of heat, and that's why I was so pleased to see the Brookings Institution produce a report just last month that shed some light on the issue.

For starters, the Brookings Institution looked only at the academically juried research on this question of whether or not growth management affects affordable housing, and they found that overwhelmingly, the major factor that affects housing prices is the market—in other words, market demand. If you have a hot housing market, then prices will go up.

They found that growth management measures such as zoning and planning and others tend to have a very small impact, if any, on housing prices. In fact, they looked specifically at Oregon, at a number of studies there, and found that the increase of jobs and economic activity in the Portland area, in particular, tended to raise housing prices in that area, and that the urban growth boundary, did not have such an impact.

The study also concluded that, based on the research that's out there, the current system of sprawl development does not serve our purposes very well when it comes to affordable housing. It tends to lead to exclusionary housing measures and generally a very low supply of affordable housing.

The report's authors do argue that, in fact, well-maintained, good growth management strategies can, in fact, increase affordable housing production, and particularly if measures such as Montgomery County's inclusionary housing measure are implemented.

Senator JEFFORDS. With Federal, State, and local governments facing tight budgets, is small [sic] growth really an area that we should be venturing into right now?

Mr. CHEN. Well, that's a great question. Smart growth, as you may have heard from the couple of examples that I've mentioned, is about the efficient use of natural and economic resources. In Utah, for example, we saw a savings of $4.6 billion in infrastructure costs. Thanks to the scenario planning that they've conducted down there, in Atlanta we see a reduction in traffic and accompanying problems.

What is interesting about smart growth is that not only is it very important to conserve these resources, but I think that communities are really calling for tools that they can use to more efficiently use their resources. The Community Character Act certainly does that.

I also think that at this time, when we are in an economic recession, we especially need economic stimulation of the right kind, and, in particular, the brownfields bill that we are discussing today offers that type of assistance.

Senator JEFFORDS. Mr. Garczyinski, do you believe that the Federal role in land use planning is any greater in these bills than the numerous tax credits, developer incentives, and Federal grant programs already in existence that aid current development patterns?

Mr. GARCZYNSKI. I think typically the restrictions in Federal housing programs are imposed on builders through insurance requirements or financing requirements and regulations, but here you're getting into the very fundamental question of land use policy, so that's where I think the difference comes.

Senator JEFFORDS. Mary Lou, I am interested in hearing more about the challenges you face in coordinating economic development among the seven counties. What is your biggest challenge? What tool or resources besides funding, which we always know is one without asking, would make your job easier?

Ms. BENTLEY. Oh, my. Am I still limited to 5 minutes, Mr. Chairman?

In our case in Nevada, we have not been directly, as an organization, involved in a brownfields project for several reasons. One, as I stated earlier in my testimony, we are organized as a Nevada not-for-profit association. We are not a 501(C)(3), and there is no State legislation that recognizes or grants our organization any particular standing. We are there because our members see some benefit to having us there, and we are there because we are a designated EDA planning district.

Because we don't have that kind of legal standing and because we are not a 501(C)(3), we have not been able to get into the EPA

assessment program. One of our communities, our board endorsed their application, and through the State of Nevada they completed an assessment of a particular site that they are dealing with right now. Legislation that would move this into the EDA arena and would recognize the economic development districts would allow our board then to take a look at brownfields on a regional basis, without having to change the legal status of the organization or change any legislation at our State level that might be something they might regret later.

Senator JEFFORDS. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

I second your motion that it is good to have dissenting views. That's why we have hearings.

Hopefully we can improve the bills to meet some of your criticisms and hopefully get your endorsement. I'm sure you have been at public hearings, as I have, both kinds—those that last until 1 o'clock or 2 o'clock in the morning by all the angry neighbors out there ranting and raving until the wee hours opposed to a project, whether it's the density or just compatibility to their neighborhood, and then also been at public hearings where there's one or two people carefully looking at the plans and silently walking out of the room. I think the difference there is that if there is a master plan bought into by everybody, then when the projects come forward that do concur with the plan then there's not a lot of controversy, whether it is the density or the landscape design.

Senator JEFFORDS. Goodbye.

Senator CHAFEE [assuming chair]. Thank you. Very good questions. Thank you.

It is a lot easier for both the developer and the neighborhood to see growth in a community, and, as Mr. Chen said, we want it to be smart growth, and that's the object also with the Community Character Act. Whether it is Vermont, just a rural area that's seeing growth, or whether, as I mentioned, some of the western States that are just seeing enormous growth and how it is planned, and so when the developer does come forward there are some parameters that everybody is agreed to in a planning process, and the developer knows that the next fellow that comes 2 weeks later is going to have to conform with those parameters, and it is much easier for them.

I have been at both kinds of hearings, and I can say it's a lot easier to have the 45-minute hearing with not a lot of raised voices and not the officials, whether it is on the zoning board or the city council or whatever it might be, perspiring in front of their angry constituents.

I would just look forward to working with you on that bill and hopefully get your endorsement. I think Senator Jeffords had some good questions, and I appreciate your testimony and look forward to working with you and hopefully get a bill that will get everybody's approval and pass the Senate and the House and get the President's signature on both bills.

Thank you very much.

I guess I have the gavel, so I'm going to tape it. Thank you.

[Whereupon, at 11 a.m., the committee was adjourned, to reconvene at the call of the chair.

[Additional statements submitted for the record follow:]

STATEMENT OF SENATOR BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM THE STATE OF COLORADO

Thank you Mr. Chairman.

As we know, Brownfields are an ongoing concern in this country and specifically in my home State of Colorado. So far, this program has been very successful in its goal of revitalizing abandoned, idled, or under-used industrial and commercial facilities.

While these areas pose a low public health risk, they are often avoided by developers because of cleanup costs and potential liability. This designation has expanded as Superfund has, for the most part, already cleaned up the worst hazardous waste sites in the Nation.

The Brownfields program is instrumental in achieving the goal of cleaning up these less-hazardous areas by relieving the liability burdens on contiguous property owners, prospective purchasers, and innocent landowners. This is of increasing importance as cities expand into these former industrial areas. My home State of Colorado is home to Denver's Jefferson County, currently the third-largest growing in the Nation. It is vital that we make these lands usable by reducing potential health-risks to our citizens.

In fact, the city of Denver was recently named a Brownfield Showcase Community. These Brownfield Showcase Communities have three main goals:

1. To promote environmental protection, economic redevelopment, and community revitalization through the assessment, cleanup, and sustainable reuse of Brownfields.
2. To link Federal, State, local and non-governmental action supporting community efforts to restore and reuse Brownfields.
3. To develop national models demonstrating the positive results of public and private collaboration addressing Brownfield challenges.

I look forward to working with my colleague, Senator Levin, on this bill (S. 1079), which addresses issues affecting our nation's communities and seeks to aid their efforts to revamp abandoned Brownfield sites by providing new incentives and needed reform to expedite the process of mending these properties, especially since Denver has an estimated 100 Brownfield sites.

Now that there is a new administration and a fresh outlook on our environment and natural resources, I look forward to working with all of the interested parties to form a consensus on this issue.

It is of great importance that we provide the necessary relief to the many cities faced with the cleanup of Brownfields, and empower States to assist in shepherding the cleanup effort.

Thank you Mr. Chairman.

STATEMENT OF DAVID A. SAMPSON, ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT, U.S. DEPARTMENT OF COMMERCE

Chairman Jeffords, Senator Smith, members of the committee:

Thank you for this opportunity to appear before the Environment and Public Works Committee regarding the Economic Development Administration's role supporting brownfields revitalization and development planning.

The Administration, the Department of Commerce (DOC), and the Economic Development Administration (EDA) recognize the need for brownfield revitalization and strategic land-use planning objectives that are the focus of S. 1079, the Brownfield Site Redevelopment Assistance Act and S. 975, the Community Character Act of 2001. EDA has an established record of working with local stakeholders to redevelop and reuse brownfields and has partnered with the Environmental Protection Agency (EPA) to provide assistance similar to what is outlined in these bills. The President has announced that his fiscal year 2003 budget will double the funds available through EPA in fiscal year 2002 from $98 million to $200 million—to help States and communities around the country cleanup and revitalize brownfield sites. However, given the demands on the Federal budget to fight the war on terrorism and safeguard our national and homeland security, the Administration cannot support the additional funding beyond the increased funding already in the President's budget.

In addition, brownfield redevelopment and land use planning must be addressed through community-driven, market-based approaches instead of a centralized ap-

proach. We must focus our efforts on leveraging existing resources and authorities at the Federal, State, and local levels to support market-based solutions.

In the economic development arena, free markets, community organizations, private industry, and local governments are the drivers of successful long-term economic opportunity. It is the private sector that has the financial resources necessary to revitalize our communities and create jobs and wealth in America. Therefore, it is the Federal Government's role to create an environment that allows local governments to partner with private industry by encouraging market-based solutions that attract private sector investment to revitalize America's communities.

This strategy lies at the heart of EDA's mission to help our partners across the Nation create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and create higher-skill, higher-wage jobs. This approach is consistent with the Administration's vision that government should be active, but limited; engaged, but not overbearing. Government has a role to play in brownfields redevelopment and strategic economic development planning by creating an environment where private sector solutions can be realized.

Successful regions build on their inherited assets such as geography, climate, population, research centers, companies, governmental organizations, to create specialized economies that both differ from other regions and offer comparative advantages to local companies.

HISTORY OF EDA/DOC BROWNFIELDS REDEVELOPMENT ASSISTANCE

The Economic Development Administration (EDA) has a longstanding role in supporting the economic redevelopment of abandoned, idled, and contaminated industrial and commercial sites. Since 1997, EDA has invested over a quarter of a billion dollars in more than 250 brownfield redevelopment projects. Last year alone, EDA invested $55 million in 58 brownfield projects, that is close to the level authorized in S. 1079.

EDA's flexible economic development program tools have assisted local governments, nonprofit organizations, and regional Economic Development Districts in overcoming their brownfields revitalization challenges. Under existing statutory authority, EDA provides assistance to brownfields-impacted communities designed to achieve long-term economic revitalization. In assisting with brownfields redevelopment activities, EDA has used a variety of different program tools to address various phases of brownfields redevelopment, including:

- Providing targeted planning and technical assistance investments to support market feasibility studies and geographic information system (GIS) inventories of brownfields;
- Assisting communities with infrastructure investments to rehabilitate land and buildings, attract private capital investment that in turn creates jobs; and
- Making investments to capitalize local revolving loan funds used to provide gap financing in support of local business development.

In my brief tenure at the helm of EDA, I have visited several brownfield sites and have viewed first hand the powerful economic transformation that can occur when previously constrained market forces are unleashed. For example, at the former Fitzsimons Army Medical Center in Denver, Colorado, a BRAC closure and brownfield site, EDA has invested $9.4 million to replace the 4,000 jobs and $192 million in annual expenditures lost to the Aurora community.

The site is currently being transformed into a new employment center with 25,000 jobs anchored by a new medical campus for the University of Colorado and a 160-acre bioscience research and development park. The bioscience research and development park is the first of its kind west of the Mississippi. The new work force already exceeds 2,000 people, with a projected full replacement of jobs lost by 2004.

More than $500 million in construction is completed or underway, and ten biotechnology companies have already located at Fitzsimons. Major private investments include a $55 million gift for a clinical complex and $18 million in venture capital for the largest biotech company located in the business incubator on the site. Total private investment to date is estimated to be well over $100 million.

EDA has been a longtime supporter of the Environmental Protection Agency's (EPA) Brownfields Initiative and was the first Federal agency to enter into a partnership agreement with EPA—signing a memorandum of understanding (MOU) in 1995.

Pursuant to this partnership, EPA funds a Brownfields Coordinator position in EDA headquarters to enhance communication and coordination among the two agencies, and our prospective applicant beneficiaries. This unprecedented level of cooperation between two Federal agencies, with markedly different missions, has es-

tablished a new model for intergovernmental collaboration and effective delivery of assistance to local communities.

Another part of the Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA), has also been involved in the cleanup and redevelopment of brownfield sites. NOAA is the Nation's primary coastal steward and the Agency has worked to improve our Nation's coastal areas and resources in a number of areas. NOAA programs are working at coastal brownfield sites to sponsor local workshops focusing on brownfields restoration; revitalizing waterfronts and redeveloping sites through effective coastal zone management; and providing advice to communities on cleaning up and restoring contaminated coastal areas. For example, NOAA is sponsoring a Brownfields Showcase Community coordinator for the city of New Bedford, MA to work on the joint EPA and NOAA issues. This coordinator is assisting the local brownfields task force in cleaning up and restoring brownfields sites in the city. NOAA works with a number of other local communities to deliver tools and services that promote effective local decisionmaking to revitalize local economies and communities. EDA and NOAA are looking at ways to enhance what our two agencies, as part of DOC, can bring to these communities.

Despite these efforts, we recognize the need for a more comprehensive approach to dealing with brownfields redevelopment across the Nation. Toward this end, the Department of Commerce and the Environmental Protection Agency are drafting a memorandum of understanding that empowers all DOC bureaus to partner with EPA to comprehensively address brownfields redevelopment. This partnership would allow DOC and EPA to provide additional assistance to brownfields-impacted communities across the country.

CURRENT CHALLENGES IN BROWNFIELD REDEVELOPMENT

As the President stated upon signing EPA's landmark brownfields legislation in January, we believe the key to effectively and efficiently addressing the brownfields development challenges facing our nation's communities is for the Federal Government to pursue a more cooperative common sense approach. This brownfields legislation was passed with the support from both Republicans and Democrats. Notably, the legislation recognizes and supports State efforts directed at regulatory relief and market-based incentives for redevelopment.

An example of an effective market-based incentive that we strongly support, not included in EPA's legislation, is the brownfields tax incentive. This incentive allows for environmental cleanup costs to be fully deducted in the year they are incurred, rather than being amortized and depreciated over the life of the property. Under current law, favorable tax treatment for the contamination cleanup costs will expire at the end of 2003. As proposed in the President's fiscal year 2003 budget, the Administration believes that the brownfields tax incentive should be made permanent. According to government estimates, the $300 million annual investment in the brownfields tax incentive will leverage approximately $2 billion in private investment and return 4,000 brownfields to productive use.

The Administration believes brownfields redevelopment is about reclaiming land and returning it to productive use by encouraging private sector investments that will create jobs, rejuvenate local tax roles, and support sustainable use of restored natural resources. Public policy in this area should focus on incentives to encourage entrepreneurs and developers to invest in and revitalize brownfields sites. Furthermore, it is essential that we engage in collaborative partnerships and leverage funding through existing programs to provide assistance to brownfields-impacted communities.

Given the scope and complexity of brownfields throughout the United States, one program, agency, or organization is not able to adequately address the multitude of issues involved in brownfields redevelopment. Therefore, the best approach to address this complex problem is through an enhanced coordination between Federal agencies and leveraging existing assets at the Federal, State, and local levels which create an environment that attracts private sector investment. The collaboration of all parties will result in the redevelopment of brownfields, new jobs and a cleaner environment.

An example of Federal agencies coordinating their efforts and assets is the national Brownfields Showcase Communities Initiative that has provided technical assistance and resources from more than 20 Federal agencies to selected communities grappling with brownfields issues.

ADDRESSING THE BROWNFIELD SITE REDEVELOPMENT ASSISTANCE ACT OF 2001 (S. 1079)

S. 1079 recognizes EDA's historic role in supporting national brownfields revitalization efforts through planning, technical assistance, infrastructure construction,

and revolving loan fund development tools. With EPA focused on the front-end assessment and cleanup of brownfields, and EDA focused on the back-end redevelopment and revitalization of sites, we believe this model partnership is the proper vehicle to address the nation's brownfields challenges. Recognizing the success of this partnership, EDA and NOAA will work to strengthen collaboration with EPA and other partners on the revitalization of brownfields-impacted areas.

While there are many parallels between this legislation and EDA's current efforts to support brownfields revitalization activities, portions of this bill represent a broad departure from EDA's mission. For example, the legislation calls for EDA to "create parks, playgrounds, and recreational facilities." This type of development falls outside of EDA's principle mission as authorized by Congress.

Finally, we are concerned that S. 1079 calls for resources that are not included in the President's budget. We believe that the objectives of this legislation can be best attained within current budgetary resources through improved coordination of existing programs, a market-based tax incentive approach, and a locally driven development process where community and business leaders come together to address economic and environmental needs.

THE COMMUNITY CHARACTER ACT OF 2001 (S. 975)

The committee has also asked me to comment on the Community Character Act. In recent years, concerns have been raised regarding the kinds of development occurring in America's suburban communities. Concern exists that development is occurring in a way that detracts from quality of life as characterized by traffic congestion, air and water pollution, and unfocused and unattractive development.

This problem is addressed through local community planning with a focus on investments that look beyond the immediate economic horizon and anticipate economic changes in the local regional economy and embrace market-based rigorous development standards.

HISTORY OF EDA/DOC SUPPORT FOR LOCAL PLANNING

Comprehensive market-based local and regional planning is an essential component of successful economic development. Effective planning creates a road map for communities to grow and develop with a focused approach toward creating higher-skill, higher-wage jobs.

For almost 40 years, economic development planning has been a cornerstone of EDA's development programs. During this time EDA has found that effective economic development planning is accomplished at the local level. Other than special circumstances such as coastal zone management planning, as a general rule, States are too far removed from local history, background, and circumstances involving land use planning to reasonably find solutions to what are frequently unique local circumstances. Local stakeholders are best able to effectively identify and analyze local problems and opportunities, and implement the vision of the community.

EDA is currently involved in and committed to local planning through its Partnership Planning program, which supports 325 multi-county Economic Development Districts and 59 American Indian tribes and Alaska Native villages. Since 1997, EDA has provided planning activities matching the level of funding that would be provided through the Community Character Act. Last year alone, EDA provided over $18 million to Economic Development Districts and more than $2.5 million to American Indian tribes through the Partnership Planning program. This program provided approximately $100 million in assistance to support regional development. Last year, EDA made 49 short term planning investments totaling almost $3 million; 26 of these investments were to regional planning districts, 14 to urban areas, and 9 directly to States.

This process supports local planning by encouraging development of a regional comprehensive economic development strategy (CEDS). The CEDS process is designed to guide the economic growth of an area through an inclusive and dynamic process that coordinates the efforts of community organizations, local governments, and private industry concerned with economic development.

While our CEDS process is a prerequisite for EDA infrastructure construction assistance, its greater value to communities is the development of a strategic vision as well as a capacity-building program. While not prescriptive, local communities developing CEDS are encouraged to address economic issues and opportunities in a manner that promotes economic development, fosters effective transportation access, enhances and protects the environment, and balances resources through sound management.

Fundamental to the success of the CEDS process is that regional strategies are market-based and recognize that each community or region must craft an economic

development plan that focuses on its unique strengths. These local strategies then translate into a holistic approach to local land use planning by considering multiple issues of concern by community stakeholders, including job creation, environmental protection, transportation options, and public works investments, among others.

In addition, NOAA, under its Coastal Zone Management Act responsibilities, has a 30-year history of working with coastal States to support effective local planning. Coastal zone management plans provide a framework for successful economic development and the maintenance of environmental quality at the State and local level. Thirty-three coastal States and territories, covering 99 percent of our Nation's ocean and Great Lakes coasts, have approved coastal zone management plans.

ADDRESSING THE COMMUNITY CHARACTER ACT OF 2001 (S. 975)

The Community of Character Act proposes new funding to establish a grant program to promote comprehensive land use planning at the State, tribal, and local levels. The bill would authorize $25 million each year, for 5 years at the State level for planning activities. The Administration cannot support S. 975 because it calls for resources that are not included in the President's budget to support activities that can be accomplished through existing authorities and appropriations, and a centralized approach to land use planning is not the most effective solution to address issues of sprawl and unfocused economic development.

Rigorous development standards in land use planning, which are market-based, locally defined, and focused beyond the immediate economic horizon, are good business. While quality of life issues surrounding poor land use planning in America's suburbs are a growing concern, the most effective approach to land use planning is to create a locally devised plan that is market-based in its focus.

EDA's experience has proven local planning efforts work. As I stated earlier in my testimony, EDA's planning grants require the participation of local economic development stakeholders including community organizations, local governments, and private industry. Ultimately, this process must involve leveraging public, private and community resources, to achieve a commonly held vision for the community. This approach will allow for different local planning views to be considered, resulting in market-based planning that is flexible enough to accommodate innovation.

This market-based approach is currently addressing the concerns about sprawl throughout the country. Developers are using cutting-edge designs that mitigate the unpleasant aspects of sprawl, while satisfying citizens' demands for clean and convenient communities. Markets are naturally driving developers toward high-end development standards demanded by consumer interest in development designs that reflect their desire for pleasing aesthetic environments, convenience, safety, and affordability. In the end, a market is more than a place; it is a process.

EDA, for example, has been actively involved in supporting eco-industrial development as a preferred redevelopment technique for brownfields impacted areas and has supported many of the nation's early efforts in this regard. Eco-industrial development emphasizes synergistic corporate relationships and closed loop industrial systems, where the waste product of one industry is used as input for another. Eco-industrial development takes many forms, but the overarching goal is to catalyze local economic growth through cost saving, performance based long-term development approaches. Fundamental to this concept is the use of high-end development standards.

There are several innovative approaches in the marketplace addressing eco-industrial development. For example, The Londonderry, New Hampshire Ecological Industrial Park is a successful example of the eco-industrial concept. The anchor tenant for this industrial park is a 720 mega-watt combined cycle natural gas power plant that will use treated wastewater from the neighboring city of Manchester for cooling as part of a closed-loop industrial system. The industrial park is located adjacent to several residential areas and was developed through a market-based local planning process that included government, private-sector, and community participants. As such, the park includes 100 acres of permanently protected open space and other aesthetic amenities providing value added benefits to tenants and the surrounding community.

Another innovation in the marketplace is the emergence of environmentally sensitive development. This emerging market niche marries real estate development with natural and rural amenities. Typically, some portion of these "eco-developments," as they are known, is set aside as community space while the remainder is divided up for commercial and residential uses. An example of this kind of development is Prairie Crossing in Grayslake, Illinois located between Chicago and Milwaukee. This development incorporates agricultural production and open space preservation in a model that allows developers to realize returns in the top quartile of

the area real estate market. Development in Prairie Crossing is holistically integrated with the natural environment including 150 acres of agricultural land and community gardens; 228 acres of lakes, wetlands, meadows, and prairies; and 15 miles of hiking trails.

CONCLUSION

This Administration will continue to work for the American people to protect the quality of our air, land, and water, while building on the premise that environmental protection and economic prosperity go hand in hand. It is important to provide flexibility to States and local communities to craft solutions that address their unique situations. Further, legal obstacles to clean up brownfields should be removed, brownfield tax incentives made permanent, and Federal financial assistance made more effective by cutting red tape. Brownfields cleanup, restoration, and redevelopment are important because they revitalize communities by improving public health and environmental conditions, boosting local property tax rolls, and creating jobs.

In all aspects of its development and implementation, economic development must be addressed at the local level if it is to be successful in its objectives of creating wealth and minimizing poverty by promoting a favorable business environment to attract private capital investment and job opportunities.

By working together with State and local communities, leveraging the Federal Government's current resources, and coordinating the efforts among agencies, we can work effectively to create a market-based approach to develop and revitalize communities across the Nation.

Thank you for allowing me to testify before you today. I would be pleased to answer any questions that you may have.

RESPONSES BY DAVID SAMPSON TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. In the past, EDA identified brownfields, and Environmental Protection Agency (EPA) designated Brownfields Assessment Pilots in particular, as strategic funding priorities in the agency's Notice of Funding Availability (NOFA). I note this year, that brownfields redevelopment is no longer listed as a funding priority. Can you tell me why? Without brownfields redevelopment as a specific priority, how does EDA plan to maintain its commitment to work with communities, States and other Federal agencies on brownfields redevelopment?

Response. Each year EDA establishes its investment priorities in the Notice of Funding Availability (NOFA) based on a variety of factors, including the exigencies of the nation's contemporary economic conditions; the emergence of new effective models to address poverty and economic distress; and Administration policy priorities. For example, EDA's fiscal year (FY) 2002 NOFA prioritizes investments that assist communities in developing and implementing economic adjustment strategies in response to sudden and severe economic dislocations. Such economic adjustment strategies leverage regional assets and support community and faith-based social entrepreneurship.

Brownfields redevelopment remains a top priority of EDA and the Administration. In EDA's fiscal year 2002 NOFA, we highlight brownfields redevelopment together with technology-led development, and eco-industrial development as one of three principal investment types the Agency is interested in under its Public Works and Economic Development Facilities Assistance program. Brownfields transactions, in fact, have always been encouraged because from an economic efficiency standpoint they take advantage of readily available infrastructure and markets.

The EDA has a longstanding role in supporting the economic redevelopment of abandoned, idled, and contaminated industrial and commercial sites. Since 1997, EDA has invested over a quarter of a billion dollars in more than 250 brownfield redevelopment projects. Last year alone, EDA invested $55 million in 58 brownfield projects, that is close to the level authorized in S. 1079. Furthermore, EDA has been a longtime supporter of the Environmental Protection Agency's (EPA) Brownfields Initiative and was the first Federal agency to enter into a partnership agreement with EPA—signing a memorandum of understanding (MOU) in 1995.

Pursuant to this partnership, EPA funds a Brownfields Coordinator position in EDA headquarters to enhance communication and coordination among the two agencies, and our prospective applicant beneficiaries. This unprecedented level of cooperation between two Federal agencies, with markedly different missions, has established a new model for intergovernmental collaboration and effective delivery of assistance to local communities.

Question 2. The objective of S. 1079 is to ensure that EDA is able to help communities promote brownfields redevelopment and economic revitalization and to improve coordination. It also allows a greater number of community partners such as universities, non-profit organizations, and regional councils, help spur revitalization. Funding issues aside, would this authority help EDA work with communities on brownfields redevelopment and job creation?

Response. Through its existing statutory authority and appropriations, EDA currently has the ability and resources necessary to support national brownfields revitalization activities including community partners such as universities, non-profit organizations, and regional councils. In fulfilling its mission, EDA is guided by the basic principle that local communities must be the drivers of their own economic development and revitalization strategies. Based on these locally and regionally developed strategies, EDA responds to local economic development needs that are consistent with the agency's statutory requirements and established investment priorities. Under EDA's highly responsive investment strategy, the Agency has naturally been funding more brownfields revitalization activities as national needs have increased. Since EDA already has the necessary flexibility in its authorization to address Brownfields requirements, new authorities in separate legislation would be redundant.

Question 3. EDA's NOFA this year includes seven new investment criteria. How do you think these new investment criteria will influence funding of brownfield projects at EDA? In what ways will the use of these criteria impact the selection of the kinds of brownfield projects that EDA has historically funded? I am concerned that many brownfields are located in poor market areas and therefore these new criteria may be a barrier to brownfields redevelopment. Do you anticipate a change in the number of projects that will be funded, relative to previous years, as a result of the use of these new criteria?

Response. Application of the guidelines will lead investment decisions to be based on outcomes such as value-added employment and private sector investment. The investment criteria will ensure that those brownfields redevelopment projects selected for funding will have a higher likelihood of success and provide a greater return on taxpayer investment. EDA does not anticipate a significant change in the number of brownfields projects that will be funded this fiscal year relative to recent years; however, because EDA investments are based on locally driven needs, the number and aggregate amount of funding does vary from year to year. During the period from fiscal year 1997 through 2001 EDA funded a high of 78 projects totaling $79 million (1998) and a low of 31 projects totaling $35 million (1997). We expect that future EDA investments will fall within this range. Furthermore, we believe that in conjunction with the resources requested in the President's fiscal year 2003 Budget for the EPA, and as a result of developers ability to continue taking advantage of the Brownfields Tax Incentive through fiscal year 2003, that EDA will be able to identify numerous prospective brownfields investments that meet the Agency's new investment criteria.

Question 4. Could you please provide an example from EDA's current brownfields projects that you believe meets these new investment criteria, and an example of a project that you feel does not, explaining why in both instances.

Response. The redevelopment of the Fitzsimons Army Medical Center is an example of a project that meets EDA's Investment Policy Guidelines. At this BRAC closure and brownfield site, EDA has invested $9.4 million to replace the 4,000 jobs and $192 million in annual expenditures lost to the Aurora community. The site is currently being transformed into a new employment center with 25,000 jobs anchored by a new medical campus for the University of Colorado and a 160-acre bioscience research and development park. The new work force already exceeds 2,000 people, with a projected full replacement of lost jobs lost by 2004. More than $500 million in construction is completed or underway, and ten biotechnology companies have already located at Fitzsimons. Major private investments include a $55 million gift for a clinical complex and $18 million in venture capital for the largest biotech company located in the business incubator on the site. Total private investment to date is estimated to be well over $100 million.

An early EDA brownfield redevelopment investment that meets EDA's Investment Policy Guidelines is the Cornerstone Partnership Project in Wellston, Missouri. Many of the community's WWII-era employers left a legacy of environmental contamination from their former industrial activities including significant levels of PCBs. EDA investments in Wellston began in 1984, and have totaled over $8.9 million for infrastructure and rehabilitation of an existing building to create the Advanced Metals Technology Training center. A principal goal of the training center is to assist 5,000 displaced defense workers and 600 defense contractors in

transitioning from jobs supporting defense functions to jobs in global commerce. Since inception in 1998 over 500 students have enrolled and the average placement wage of all graduates is $10.77 per hour. In 2000, there were 87 placements at an average wage of $11.51 per hour.

While it is likely that EDA has made past brownfields redevelopment investments that would not have been selected under EDA's Investment Policy Guidelines, the majority of past investments would likely qualify under the guidelines. However, generally EDA is not interested in funding projects that lack solid market fundamentals and have limited likelihood of supporting the future growth of the regional economy. This would include speculative projects with no clear plan for future development or very long development lead times. As a general rule, EDA is also not interested in funding projects that have a minimal impact on securing jobs and leveraging private investment or have undefined purposes. I believe such cleanup activities are most appropriately handled by State and Federal agencies with this responsibility.

Question 5. You expressed concern about the S. 1079 provision to provide funding for publicly owned parks or cultural centers. Healthy economies need healthy communities and public facilities are an important component for spurring reinvestment in distressed communities. Studies show that public facilities and green space in urban areas can serve as a catalyst for economic development as businesses like to provide these amenities to workers. In the past, I believe that EDA has funded these types of public facilities. Why do you feel it is inconsistent with the Agency's effort to encourage economic investment?

Response. As noted previously, EDA's authorizing legislation and mission is to invest in projects that create jobs and attract private investment. Such projects provide a high return on taxpayer investment. Without question, publicly owned parks and cultural centers encourage reinvestment in economically disadvantaged areas. As a general rule, however, these types of activities do not provide for the long-term, higher skill, higher wage jobs that EDA seeks to encourage with its limited capital pool. Creation of parks and recreational facilities is best left to the purview of State and local governments and other Federal agencies that are more suited to advancing and overseeing this kind of activity.

Question 6. In your testimony, you note the fiscal constraints on the Federal Government. However, you also speak of the tremendous return on investment from brownfields redevelopment. Don't you agree that examples, like the former Fitzsimons Army Medical Center in Denver, make a compelling case for Federal investment in brownfields redevelopment?

Response. The revitalization of Fitzsimons Army Medical Center is an excellent example of the role that the Federal Government can play in supporting brownfields redevelopment. Moreover, the Fitzsimons Army Medical Center is an example of the type of project that EDA would look to fund out of our existing program resources in the future. It is a market-based investment that capitalized on the regions existing regional infrastructure to build comparative advantages for future business investment. EDA's $9.4 million investment in the facility advanced innovation and productivity by transforming the facility into a new employment center with 25,000 jobs.

Fitzsimons is anchored by a new medical campus for the University of Colorado and a 160-acre bioscience research and development park as a part of a long term regional strategy that has resulted in ten biotechnology companies that have already located at Fitzsimons. This strategy, developed by a concerted effort of local officials, has resulted in a new work force that already exceeds 2,000 people, with a projected full replacement of lost jobs lost by 2004. Furthermore, this project is maximizing the return on taxpayer investment by stimulating $500 million in construction that is completed or underway. Major private investments include a $55 million gift for a clinical complex and $18 million in venture capital for the largest biotech company located in the business incubator on the site. Total private investment to date is estimated to be well over $100 million. This will result in the replacement of $192 million in annual expenditures lost to the Aurora community by the base closure.

As I stated in my testimony, brownfields redevelopment remains a top priority of EDA and the Administration. We highlight brownfields redevelopment in our fiscal year 2002 NOFA as one of three principal investment types the Agency is interested in under its Public Works and Economic Development Facilities Assistance program. Last year alone, EDA invested $55 million in 58 brownfield projects and look to continue funding competitive proposals that redevelop abandoned, idled, and contaminated industrial and commercial sites. Finally, EPA will look to enhance our coordi-

nation with the EPA through a more comprehensive MOU to leverage the resources of both agencies more effectivley.

Question 7. Please tell me about the success of tools such as market feasibility studies and geographic information system (GIS) inventories.

Response. Geographic Information System: In addition to the infrastructure investments that EDA commonly makes in support of local brownfields redevelopment efforts, many communities have found that EDA's economic adjustment, planning and technical assistance programs can be effectively leveraged to support their redevelopment efforts using tools such as market feasibility studies and geographic information system (GIS) inventories. Many communities, for example, have used EDA planning grants to support the development of local or regional GIS inventories of idled, abandoned, or under-used industrial sites (i.e., brownfields) or other vacant land in support of regional economic development activities. These inventories are useful to both local decisionmakers, for purposes of planning where community growth and development will take place; and for private developers and corporations making location decisions by assisting them in identifying a site that has necessary characteristics. For example, a developer or corporation might need a certain size site with both highway and deep-water port access. Characteristics such as these are easily input and identified in a GIS system, frequently in a graphical manner with many associated layers of data (e.g., property titles, infrastructure maps, etc.), allowing prospective employers to easily locate sites.

Market Feasibility: Some local communities have used EDA local technical assistance grants to determine the market feasibility of a particular brownfield site for adaptive reuse or other purposes. Market feasibility studies are an effective tool to determine what uses the market will support on a particular site. While these local technical assistance grants are typically small in size and scope, they can prevent costly mistakes and misguided investments that are sometimes made when they are not conducted. This stems from the fact that economically distressed communities sometimes have a pre-disposition toward the same types of industries that have historically been employers in an area, while market forces may be moving in another direction all together. Costly infrastructure investments to support obsolete industries are not an efficient and effective use of public resources, and will not support the long-term economic interests of local communities. Targeted market feasibility studies can help communities overcome these hurdles and identify tomorrow's higher-skill, higher-wage employers.

Question 8. How could EPA and EDA strengthen their collaboration under current brownfields redevelopment authority?

Response. As noted previously, EDA has been a longtime supporter of the Environmental Protection Agency's (EPA) Brownfields Initiative and was the first Federal agency to enter into a partnership agreement with EPA—signing a memorandum of understanding in 1995. Since 1997, EDA has invested over a quarter of a billion dollars in more than 250 brownfield redevelopment projects. Last year alone, EDA invested approximately $55 million in 58 brownfield projects.

Recognizing the need to buildupon this historic relationship and foster a more comprehensive approach to brownfields redevelopment, EDA is exploring new mechanisms to enhance coordination between Federal agencies and leverage existing assets at the Federal, State, and local levels. The Department of Commerce and the EPA are developing a memorandum of understanding to strengthen the partnership between the agencies, and replicate successful brownfields redevelopment partnerships such as the Brownfields Showcase Communities Initiative.

Question 9. How can the Federal Government do a better job of creating the market-based solutions that attract private sector resources to distressed areas?

Response. To attract private sector resources to distressed areas the Federal Government must foster an economic and regulatory environment that allows the private sector to do what it does best—grow the economy and create jobs. In some cases, this means that the government must streamline its efforts to assist communities, in others it involves preventing the government from inhibiting markets, in still others it entails directly assisting the private sector to overcome market barriers.

Brownfields redevelopment is an area where government clearly has a role to play, by supporting private sector efforts to clean up and reuse contaminated former industrial and commercial land. In this regard, the Administration advances a two-pronged approach to national brownfields revitalization efforts—a permanent brownfields tax incentive and enhanced collaboration and cooperation among Federal agencies, through existing programs and appropriations, in support of local market-driven redevelopment efforts.

Under current law, favorable tax treatment of contamination cleanup costs will expire at the end of 2003. As proposed in the President's fiscal year 2003 budget, the Administration believes that the brownfields tax incentive should be made permanent. According to government estimates, the $300 million annual investment in the brownfields tax incentive will leverage approximately $2 billion in private investment and return 4,000 brownfields to productive use.

Furthermore, we believe that EDA's new investment criteria will help to target EDA investments in such a way that leveraging of private sector resources in distressed areas will be maximized. These new criteria channel EDA capital toward market-based, pro-active investments that will help to diversify local economies, attract private capital, promote higher wage jobs, maximize the governments return on investment, and have a high probability of success.

Question 10. I note where the Commonwealth of Massachusetts has established a Brownfields Redevelopment Access to Capital program. In the last 2 years it has resulted in over 70 Brownfield cleanups and some $400 million in loans and cleanup. The key component of this program is State funded subsidized environmental insurance that for the most part secures loans and cleanup costs. Has the EDA looked at this program, and more importantly, can EDA grant funds to States or local governments be used to establish a similar program? If yes, will you work with my State to see if a program can be piloted this year to determine if it is feasible to do on a national basis?

Response. EDA is aware of the Commonwealth's Brownfields Redevelopment Access to Capital (BRAC) program and its record assisting parties that purchase, cleanup and develop brownfields in Massachusetts, as well as the lenders who finance them. Programs such as BRAC both leverage limited existing public resources and help attract private sector capital. As you know, the goal of this innovative program is to use market-driven tools to create a positive financing environment for brownfields cleanup and redevelopment by leveraging a small amount of public funds (in the form of an insurance loan pool) into a large amount of private capital for revitalization efforts. In essence, through State-subsidized insurance allowing developers to more easily access capital needed for development projects the program transfers the environmental risks associated with brownfields redevelopment transactions to the insurer. The results have been impressive. Since inception, developers and lenders working through the BRAC program have invested over $600 million ($400 million in 2001 alone) while creating or retaining some 5,800 permanent, full time jobs in the State. Nevertheless, we believe that additional research regarding the specific components of the program, and legal opinions from our counsel are prudent next steps in our exploration of this development tool.

RESPONSE BY DAVID SAMPSON TO ADDITIONAL QUESTION FROM SENATOR SMITH

Question. I was very pleased that you included eco-industrial development (EID) in your testimony. As you know, I have a strong interest in EID, an economic development concept that partners growth with conservation and efficiency. I believe it fits well with the mission of EDA.

I have tried to incorporate this concept into a few of the bills I have worked on, including the Appalachian Regional Commission Act and the Water Investment Act. In the two bills before the committee today, I see great potential to further develop the EID concept.

I understand that you have concerns with these two bills, however, if the committee proceeds with them and your concerns can be addressed, do you see a means to buildupon EID through them and to foster a better understanding of this important development tool?

Response. EDA has been actively involved in supporting eco-industrial development as a preferred redevelopment technique for brownfields impacted areas and has supported many of the nation's early efforts in this regard. Eco-industrial development is also an example of an area where EDA has coordinated closely with EPA and other partners to achieve local development objectives. EDA will continue to support this innovative development concept through its existing programs and appropriations. As noted previously, eco-industrial development was identified together with brownfields redevelopment and technology-led development as one of three primary investment types that EDA is interested in under its Public Works and Economic Development Facilities Assistance program this fiscal year.

I believe there is ample opportunity to advance this innovative development technique under EDA's existing authorities and appropriations. I look forward to work-

ing with you and the other members of the committee to find new and better ways to promote eco-industrial development issues.

STATEMENT OF ELIZABETH HUMSTONE, EXECUTIVE DIRECTOR, VERMONT FORUM ON SPRAWL AND VICE CHAIR, CITY OF BURLINGTON, VERMONT PLANNING COMMISSION

Good morning Chairman Jeffords, Ranking Member Smith, and members of the committee, I am Elizabeth Humstone, Executive Director of the Vermont Forum on Sprawl and Vice Chair of the Burlington, Vermont Planning Commission. I appear today both as a Vermonter and on behalf of the American Planning Association.

The American Planning Association represents 32,000 professional planners, planning commissioners, and citizen activists interested in shaping the vision for the future of their communities. APA's members are involved in formulating planning policies and land-use provisions at all levels of government. APA has a long history of promoting public policies to improve quality of life in the nation's communities and neighborhoods through better planning.

APA has long promoted smart growth and believes strongly that good planning is essential to achieving it. We are here this morning to offer our vision for smart growth and support for the legislation under consideration by the committee, the Community Character Act and the Brownfields Site Redevelopment Assistance Act.

As one engaged daily in the struggle to achieve growth that is consistent with Vermont values of environmental quality, rural working landscape, healthy town centers and community values of sharing, access and equity. My organization, the Vermont Forum on Sprawl, works to assist citizens and communities throughout the State in achieving compact settlement surrounded by rural landscape while encouraging community and economic development consistent with this vision.

We are not alone in this quest. In Vermont, ten non profit organizations, including affordable housing, social equity, planning, historic preservation and environmental groups, have embraced a common set of smart growth principles and banded together to work cooperatively on these issues. The Forum also is part of the national Growth Management Leadership Alliance, a collection of grassroots organizations promoting smart growth in States and communities.

My work as Vice Chair of Burlington's Planning Commission and nearly 30 years of experience working with communities on land use issues means that I know first hand how planning informs development patterns, the challenges that communities face in achieving development that builds value while promoting high quality of life, and the importance of local land use authority as an instrument to reflect the vision of local citizens. However, I have also developed a keen understanding of the absolutely vital role that the State and Federal Governments play in the development process.

I applaud you Mr. Chairman, Ranking Member Smith and members of the committee for demonstrating the vision and leadership to hold this hearing, which is, I believe, the first time a congressional committee has specifically examined the issue of smart growth. I would also like to thank Senator Chafee for his strong efforts in introducing and supporting the subject of today's hearing, the Community Character Act. My home region is certainly well represented today.

Americans are increasingly aware and concerned about unplanned growth and its byproducts-loss of open space, congestion, limited housing options, decline of neighborhoods, empty strip development, and loss of ecological biodiversity-as clearly indicated by surveys and the passage of numerous local ballot initiatives to address these issues. This hearing is an important step in advancing the public discussion about how the Federal Government can appropriately and effectively support State and local smart growth activities that seek to address these problems.

IMPORTANCE OF SMART GROWTH

Smart growth refers to a citizen-led movement taking root across the Nation as citizens seek ways of reversing decades of policies that have led to what's commonly referred to as sprawl. Sprawl is the all-too-familiar pattern of strip development and spread-out, auto-dependent, low-density development in the countryside that leads to a gradual decline in community life and values, and the erosion of the economic base in cities and towns.

Smart growth, by contrast, is a set of public policies designed not to stifle growth, as some critics would have it, but to promote development in ways that create communities of balance, consumer choice, and lasting value. Smart growth is planning, designing, developing, and revitalizing communities to promote a sense of place, preserve natural and cultural resources, minimize public outlays, and equitably distribute the costs and benefits of development. Smart growth enhances ecological in-

tegrity over the short-and long-term, and improves the quality of life by expanding the range of transportation, employment, and housing choices in a fiscally responsible manner. Compact, pedestrian-oriented, mixed-use development patterns epitomize smart growth and achieve more sustainable communities.

Smart growth is a broad-based, grassroots-driven, bipartisan movement. Every political barometer—polls, legislation, executive orders, budget proposals and ballot initiatives—indicates that planning reform and smart growth are major concerns. A recent APA analysis of planning reform activity in the States during the past 3 years confirms that planning reform and smart growth are among the top political concerns in statehouses across the Nation. More than 2,000 planning bills were introduced between 1999 and 2001, and approximately 20 percent of them were approved.

In Vermont in the past 4 years, our legislature, with the support of Governor Dean, has passed bills that provide significant new incentives for downtown development, direct State agencies to manage their investments and programs to support smart growth, and reinforce the importance of town plans in State permit proceedings.

Activity has been bipartisan; of the 24 smart growth executive orders issued between 1992 and 2001, 12 came from Republican Governors and 12 from Democratic Governors; 27 Governors—15 Republicans, 10 Democrats, and 2 Independents—made specific planning and smart growth proposals in 2001. The President's own cabinet reflects this support with former Governors Whitman, Thompson, and Ridge along with former County Executive Martinez all having taken leading roles in support of planning and smart growth during their tenure in State or local government. This bipartisan interest and support for smart growth is further reflected in the work of this chamber's Senate Smart Growth Task Force. Mr. Chairman, we thank you for your leadership of this effort as co-founder and co-chairman of the Task Force.

In Vermont, affordable housing advocates, businesses, developers, environmentalists, historic preservationists, community development specialists, planners and social equity organizations are all working toward smart growth. For example, the Vermont Forum on Sprawl is allied with the Vermont Business Roundtable, a policy organization of 125 chief executive officers of large and small Vermont companies, to develop new models for commercial and industrial development more reflective of smart growth principles. The Coalition for Vital Downtowns—including the State homebuilders and realtors associations, League of Cities and Towns, State chamber of commerce, a regional chamber of commerce, developers, the Preservation Trust of Vermont, and our organization—developed and successfully lobbied for more incentives for downtown development. More recently, the Vermont Smart Growth Collaborative, so far made up of 10 diverse organizations, is pooling its resources and technical expertise to promote better State agency planning, to assist communities, and to build public awareness of the issues with sprawl and the opportunities with smart growth.

Smart growth provides a framework for growth and development that assists all types of communities: inner cities, first ring suburbs, exurban communities, small towns, and rural America. Importantly, smart growth recognizes and promotes multijurisdictional cooperation and regionalism in planning as means of coordinating development that leads to greater efficiencies, reduced public expenditures, enhanced quality of life, and protection of natural resources.

Many people believe that smart growth does not apply to rural areas or that curbing sprawl in small towns means "no growth." My experience in Vermont demonstrates that the opposite is true. We are slowly destroying our valuable farm and forest land with wasteful, large lot development often dictated by well-intended local regulations. Our once scenic highways are becoming congested as the roadsides fill up with fast food restaurants, gas stations, strip centers and big box stores. Vermont communities are experimenting with alternatives, such as the Richmond (2000 population: 4,090) housing project, a relatively dense, but attractive, pedestrian-oriented, affordable housing complex that fits well with the historic village character. A new two-story Filene's department store in downtown Burlington shows that 150,000 square feet of retail space can fit into a built-up area and does not have to go on a corn field.

In addition to citizen concerns about eroding quality of life, one of the major catalysts for smart growth and improved planning is the recognition of the increasingly high costs, for government and individual taxpayers, related to existing patterns of development. There is growing awareness that poorly planned development is a hidden tax on citizens and communities alike.

States and communities are dealing with the growing fiscal implications of unmanaged growth facing metropolitan areas, suburbs and neighboring towns. Plan-

ning reforms and smart growth provide long-term savings by eliminating inefficiencies caused by inconsistent and uncoordinated planning and widely scattered development. With planning, communities can focus development where infrastructure is already located avoiding duplication and costly waste. The fiscal situation is becoming more acute as more States face deficit budgets. These deficits not only make smart growth planning more necessary to control costs over the long term. At the same time, ironically, financially strapped State and local governments are hard pressed to implement better planning in the short term. In the current State fiscal environment, Federal resources—financial and technical—are critically needed. Indeed, some data resources needed for good planning and new planning technologies (e.g., Geographic Information Systems, or GIS) can only be provided through the Federal Government. This situation makes Federal assistance in the form of the Community Character Act more timely and necessary than ever.

The Vermont Forum on Sprawl has carefully examined the potential savings resulting from implementation of smart growth and improved planning. Our research has shown that sprawl patterns can cost from 3 to 4 times more than compact patterns of development. More compact and carefully planned development patterns can lower costs for roads, bus and transit service, water and sewer service, school bus transportation, police and emergency services, thus saving on Federal, State and local governments' infrastructure expenditures. Developers also can save on land costs, installation costs for road, sewer, water, electric and gas lines, sidewalks, curbing, landscaping and other improvements, thus lowering the housing costs for homebuyers and renters.

ROLE OF PLANNING IN PROMOTING SMART GROWTH

Planning is essential to achieving smart growth. Plans help a community establish a common vision of development and a means of realizing that vision. The plan and the process of planning helps communities move boldly forward with a clear and articulate agenda for shaping their future. Within a planning framework of diverse interests, a regional perspective and a vision of place, the interests of preservation, environmental conservation, economic development, fair housing, transportation and development can all move forward more effectively. A plan is the foundation of a smart growth agenda. Various smart growth policies—from open space acquisition to urban revitalization—are only effectively realized in the context of a plan.

Although planning is essential to achieving the smart growth vision, many States still rely on model ordinances developed by then-Commerce Secretary Herbert Hoover in the 1920's. These statutes, the Standard City Planning and Zoning Enabling Acts, were designed to support the rise of zoning and were almost universally adopted. While useful and innovative for their time, ordinances and planning for turn-of-the-20th-Century America are woefully inadequate for America at the turn of the 21st Century. It is the updating of these enabling statutes and the implementation of those reforms that the Community Character Act most seeks to support. But unlike the Hoover model, the Community Character Act does not suggest imposing a single model on all the States but rather supports reform and implementation that is developed based on the unique needs and context of individual States and communities.

The pace of reform activity is astonishing. A recent APA report, "Planning for Smart Growth: 2002 State of the States," found that reform is increasing in terms of the level of activity and the number of places focusing on the issue. Twenty 5 percent of the States are implementing moderate to substantial statewide comprehensive planning reforms, and nearly one-third of the States are actively pursuing their first major statewide planning reforms for effective smart growth. Fifteen Governors issued executive orders related to planning and smart growth during the past 2 years, compared to nine in the previous 8 years combined. Eight States issued legislative task force reports on smart growth, compared to ten such reports during the entire decade of the 1990's. Reform efforts also can no longer be characterized as an East Coast—West Coast phenomenon. The movement is clearly spreading across the Nation with inland States representing 13 of the 25 total States actively engaged in reform efforts.

Unfortunately, too many States and communities still lag behind. Approximately one-quarter of the nation's States have made few or no updates to the original 1920's model planning statute. These States, like the rest of the Nation, are struggling with issues like congestion and loss of agriculture land but lack the planning tools to cope effectively. Many counties and municipalities have no legal access to some of the most rudimentary planning techniques. New planning strategies and

approaches are needed so growth and development can be managed in a way that maintains and improves quality of life.

Even the States that have good planning laws are losing the battle to stop sprawl due to budget shortfalls, poor enabling statutes and inability and failure to implement what they have. For example, the State of Vermont for over 30 years has attempted to maintain its historic settlement pattern of compact community centers separated by rural countryside by adopting a State land development law (Act 250), in which Chairman Jeffords had a major role, and a State growth management law (Act 200), as well as providing incentives through the Vermont Housing and Conservation Board grants program and the Downtown Program. These laws and programs have generated strong interest in community planning, preserved 100,000's of acres of prime farm and forest land, provided over 6,000 units of perpetually affordable housing, and revitalized downtowns and village centers.

Yet, despite many years of interest and concern about growth issues among the major political parties in Vermont, we still have sprawl, and it is getting worse. Why? There are many reasons, but among them are State public investments that work against State growth policies, poor local planning due to lack of training and technical expertise, lack of awareness of alternative ways to grow, and failure to coordinate planning among separate jurisdictions. In Vermont we have no State planning office, no funds to enforce our growth management act, extremely limited resources to provide technical assistance to our many small towns, and a regional planning system that has been ineffective in managing growth. The Vermont Forum on Sprawl is working to draw attention to these problems, but we need your help.

THE COMMUNITY CHARACTER ACT

APA believes that the Community Character Act would be an effective and beneficial tool for promoting smart growth and improving planning while respecting State and local land-use prerogatives. I am greatly encouraged by today's hearing and hope that it is but the first step toward enacting this important legislation.

APA is not alone in our support for the Community Character Act (S. 975). Like smart growth in general, a broad-based coalition working to strengthen communities and neighborhoods through improved built and natural environments has joined in support of this legislation, and I am pleased to include this coalition's letter of endorsement with my testimony this morning. Likewise, the measure enjoys support among grassroots organizations like mine. In Vermont, eight groups comprised of citizens concerned about smart growth have endorsed the Community Character Act.

The reason for the measure's strong support is that it responds to widespread citizen interest in smart growth by providing critical resources to help State and local leaders, business and environmental interests, and concerned citizens bring about positive change in their communities through better planning. It provides an incentive for better planning while maintaining flexibility for States and localities. Without legislating local or State planning policy, the bill would be a landmark in encouraging planning that achieves some key smart growth objectives, such as linking planning to implementation, encouraging regionalism and public participation, supporting housing choice and affordability, making more efficient use of land and infrastructure, and conserving vital resources.

S. 975 encourage States to create a framework for smart growth planning without mandating local land-use policy. The bill provides support for innovative and updated tools needed by States and communities working to manage the many challenges presented by growth. Communities would not be forced to pursue smart growth strategies, but S. 975 would provide assistance to those that choose to do so.

The bill supports planning reform and implementation through grants that could be used for a variety of planning and smart growth programs. Grant funding is designed to be flexible and responsive to local needs and vision. States could pass grant funding directly to local governments for planning activities. Grants could also be applied to activities other than statutory revision, such as research and development activities for State, regional or local planning, public meetings, policymaker workshops and coordination of local plans and Federal land management. Funding could also be used to acquire information technology and equipment to improve planning, such as GIS systems, and public understanding of the consequences of current development patterns, as well as envisioning alternatives.

Mr. Chairman, your planned legislation to provide grant support for community visualization and decisionmaking technologies would greatly aid smart growth planning efforts. That legislation, in combination with the support possible through the Community Character Act, would greatly enhance planning and public participation

in crafting a vision for the community. We look forward to continuing to work with you on behalf of both bills.

Program eligibility would be broad and not limited to States revising enabling statutes. A major focus of the bill is promoting the reform of State planning statutes; however, States implementing reforms or seeking to bolster comprehensive planning would also be eligible for funding. S. 975 establishes criteria for grants that recognize statutory reform as an important priority but lays out other criteria under which any State could apply, including economic development, environmental protection and regionalism.

The Community Character Act is designed to promote locally driven planning innovation through resources, technical assistance and capacity building. Many areas, particularly rural regions and small towns, suffer from a lack of planning resources and expertise. According to a survey of county governments conducted last year, only 39 percent of rural governments do comprehensive planning versus more than 70 percent of metropolitan governments. At the Vermont Forum on Sprawl we hear daily from citizens and local officials asking for help with local planning issues. Several thousand citizens have requested our Way To Grow! planning guides and nearly 25 percent of Vermont communities have been represented in our training courses. We are hard-pressed to meet the tremendous demand for help. S. 975 sets up a grant for local or regional planning pilot projects to promote smart growth and continued planning innovation. The measure also establishes a technical assistance and capacity building program that would support improved planning in a variety of ways, including expanded research, training programs, new data resources for local planning and improved intergovernmental cooperation.

With such tremendous need for planning resources and the many opportunities for Community Character grants to make a substantial impact, the singular drawback to legislation before the committee is the limited amount of funding authorized. We recognize the fiscal limitations of the moment but hope that funding levels might ultimately be increased. APA has found through various studies that any investment in planning will pay dividends many times over in money saved on unnecessary waste, duplication and inefficiency. Quite simply, we cannot afford not to help communities plan.

This legislation is also a long overdue step toward assisting tribal governments with comprehensive planning and promoting improved cooperation on land-use planning between Federal land management agencies and State and local land-use planning officials. The bill correctly notes that tribal governments routinely lack adequate resources for planning and that improved land-use planning would enhance environmental protection, housing opportunities and socioeconomic conditions for tribes. Some funding would be reserved for use by tribal governments. The bill also seeks to encourage improved consultation on land-use decisions among Federal agencies, State governments, local governments and nonprofit organizations.

In Vermont the Community Character Act could help us review our existing State planning statutes and, with the involvement of diverse interest groups and citizens, propose ways to make them more effective. It might even generate interest in the return of our State planning office. It could support a statewide local planner training program that would improve the development and implementation of local plans reflecting community visions. Or it could help regional planning commissions and local governments arrive at better regional approaches to smart growth.

But the reach of the Community Character Act certainly is not limited to my State. Potential uses of the legislation include helping States with formal State smart growth commissions, such as Kentucky, Colorado, Florida, and New York; easing the implementation of planning reform in States like Pennsylvania, Wisconsin, New Jersey, and Tennessee; or simply aiding the local and regional innovations in States across the Nation.

NEED FOR A FEDERAL ROLE

Some will argue that because planning and land use are local responsibilities, the Federal Government should play no role. APA recognizes that all levels of government, as well as the nonprofit and public sectors, play an important role in creating and implementing policies that support planning and smart growth. The complex array of incentives, assistance, regulations, and financial considerations already in place affect and drive development practices. The current patterns of development do not occur in a vacuum.

All levels of government—Federal, State, regional, county, and local—have a proper role and responsibility in improving communities and supporting smart growth. Local governments have long, and rightly, been the principal stewards of land and infrastructure resources through implementation of land-use policies. Smart growth

respects that tradition, yet recognizes the important roles that Federal and State governments play as leaders and partners in advancing and implementing smart growth principles.

In fact, the Federal Government has often contributed to sprawl in the past. The Federal Government remains the nation's largest landlord. While we often think of the vast Federal tracts of land in West, we might also consider all the post offices, courthouses, and Federal buildings that dot the landscape in almost every town and county in the Nation. All too often in the past, Federal facility regulations or outright exemptions from planning and land-use policies have led to Federal agencies harming downtowns while simultaneously aiding and abetting sprawl.

In Vermont, right now, to meet Federal design specifications, a new Immigration and Naturalization Service building in Chittenden County will be forced to locate on a greenfield because no existing downtown buildings or sites can qualify. Numerous communities, such as Westminster and Enosburg Falls, are fighting to keep their post offices in their town centers, but many have already lost the battle. We are most appreciative of the leadership of Chairman Jeffords and Senator Baucus in addressing the problem of "postal sprawl" with Federal legislation, S. 897.

Similarly, other Federal policies, seemingly unconnected to land-use and development patterns, have had a profound, if unintended, impact. Post World War II policies ranging from the mortgage interest tax deduction to water and sewer extension aid were major factors in shaping patterns of development. Few would argue the benefits associated with expanding homeownership and providing needed infrastructure. However, we are now at a moment in our nation's history where, as good stewards of our resources, we must address how we can better plan and coordinate development if we hope to maintain the quality of life and quality of community demanded by citizens. If the Federal Government has been part of the problem, surely it can now be part of the solution.

I believe that Federal incentives and assistance for smart growth are appropriate for you to consider because promotion of smart growth is squarely in the national interest and demands a national response. I am not alone. A national public opinion survey conducted for APA found that 78 percent of voters in the last election believe Congress should provide incentives to help promote smart growth and comprehensive planning. This same survey found that more than three-quarters of those surveyed believe it is "important for the 107th Congress to help communities solve problems associated with urban growth." These findings were underscored by almost identical support levels in a survey conducted by my panel colleague this morning, Don Chen and Smart Growth America, as well as surveys conducted on behalf of the Forum on Sprawl.

Many who oppose assistance for planning today will be back tomorrow looking for tax breaks and infrastructure assistance to support the development status quo. If we are prepared to support tax incentives or other forms of assistance for specific types of development in specific places, however beneficial, why then can we not offer assistance to communities for better planning and coordinating that development? I would say to my friends who might oppose an incentive for planning, how is one more intrusive of local prerogatives than the other? Should they not work together?

Some interest groups will wrap themselves in the mantle of smart growth, crowing about its importance, yet consistently oppose any real legislative reform. These organizations view any incentive or assistance, however modest or voluntary, as somehow "Federalizing" land use. Nothing in the legislation before the committee this morning contains anything of this sort. Support for planning and smart growth must be more than rhetorical exercises intended to respond to public opinion polls.

The types of incentives envisioned in both the Community Character Act and the Brownfields Site Redevelopment Assistance Act are in the national interest because each would provide broad environmental enhancement outcomes and would do so without relying on regulations and enforcement. In addition, the kind of strategic planning, investment coordination, and public participation envisioned in both bills would leverage a wide range of existing Federal investments, from Community Development Block Grants to an array of new or expanded Federal land conservation programs. The Federal Government offers many programs aimed at economic and community development. However, all too often these programs provide little or no support for planning. An investment in planning would increase the ultimate impact of the Federal investment.

The Environmental Protection Agency under both the Clinton and Bush administrations has recognized the need for a Federal role in promoting planning and smart growth. Administrator Whitman recently made the Administration's support clear: "Addressing new environmental challenges requires us to manage all of our resources better—economic, social, and environmental—and manage them for the long

term. That is why Smart Growth is so important—it is critical to economic growth, the development of healthy communities, and the protection of our environment all at the same time. The Bush Administration—and the EPA especially—understands the importance of Smart Growth."

Administrator Whitman was echoing comments offered by Housing and Urban Development Secretary Martinez during his confirmation hearing when he indicated that smart growth issues would be a priority at HUD. He called for "a national dialog on the challenges of growth and its impact on quality of life" in his testimony, and in response to a question on what HUD's role should be in smart growth, Martinez answered that managing growth is part of HUD's mission. He also stressed that a Federal response to growth issues goes beyond HUD and would involve other agencies and departments.

There is also a strong need to promote multi-state cooperation on these issues. The Community Character Act specifically attempts to do this by enabling grants for multi-state regional cooperation on planning. Fostering regional cooperation and education is essential because natural resources, watersheds, city borders, and development impacts do not stop at artificial political boundaries. This is certainly the case in New England, where all the States in the region recognize the need to learn from each other and collaborate in order to produce sustainable, smart growth outcomes throughout the region. We know we cannot go it alone in Vermont and be successful without engaging other States. We have worked with New Hampshire in assisting them with analyses of State expenditure patterns as part of a State sprawl report. Additionally, we have conducted joint training and planner exchange programs with the Maine State Planning Office, and a similar program has been requested by people in Massachusetts.

But New England is not the only place in the Nation where this type of multi-state cooperation on planning is needed. Federal action is sorely needed to help overcome the obstacles of working across State lines. Grants through the Community Character Act for precisely this kind of activity would provide a valuable incentive for improving regional communication and collaboration, resulting in improved land use throughout an entire region.

BROWNFIELDS SITE REDEVELOPMENT ASSISTANCE ACT

APA and other proponents of smart growth were delighted by the final passage of brownfields reform last year and equally pleased to see the Bush Administration's budget request for brownfields programs. Mr. Chairman, you and the members of this committee deserve great praise for leading the long effort to seeing brownfields reform become law.

Now is the time to build on that success with targeted assistance for the planning and redevelopment of brownfields sites. Earlier efforts focused on solving liability problems and providing resources for site identification, evaluation and clean-up. These were critically important first steps. But in order to realize the full economic, environmental, and social potential of brownfield redevelopment, we must go beyond a focus on remediation alone to an approach that places brownfields within the larger context of community reinvestment and revitalization. This is precisely what S. 1079 does.

By providing resources for planning, development of public facilities and services, revolving loan funds for business development, and general technical assistance associated with brownfield sites, this legislation allows communities to not only clean-up sites but also make these sites part of a broad economic development plan and strategy. In essence, this bill would function as a "multiplier" effect for current Federal investments in brownfield remediation and further leverage private sector investments in these communities.

As one familiar with the particular challenges facing small towns and rural areas, I am pleased that this legislation recognizes that brownfields are not limited to urban America. Provisions focusing on communities experiencing difficulties related to economic restructuring, outmigration, and infrastructure deterioration will make this a valuable resource for small towns.

The planning provisions in the bill are positive steps forward. By promoting consistency between plans and brownfield projects, this legislation helps ensure that grants would not just provide isolated assistance but would be a catalyst for broader economic and community development. Additionally, the legislation rightly articulates the importance of community participation and visioning in planning for brownfields-related redevelopment. Such provisions help answer long-standing concerns about environmental justice in distressed neighborhoods.

Finally, the bill envisions assistance for brownfield redevelopment projects that "conserve environmental and agricultural resources." This focus directly responds to

the demand for smart growth plans and projects. By including assistance for adaptive reuse, development of land and abandoned property, and the of creation parks and recreational opportunities, the bill can be an incentive for improved planning and smart growth.

CONCLUSION

Planners are heartened by this hearing and the important step forward it represents. We are further encouraged by the legislation contemplated this morning that would offer vital assistance to numerous States and communities struggling with the consequences of change, whether rapid growth and development or economic decline. These bills recognize that the Federal Government can, and should, be a constructive partner with communities seeking innovative solutions to improving local quality of life through better planning and land use. The Community Character Act and the Brownfields Site Redevelopment Assistance Act are a modest investment that will bring substantial dividends in improving the livability of cities, towns, neighborhoods, and rural areas throughout the Nation. We hope this hearing is but a first step toward their enactment.

We are committed to working with you, Mr. Chairman, and this committee in making the promise of smart growth a reality.

Mr. Chairman, this concludes my testimony. I thank you and the committee for the opportunity to be here today, and I would be pleased to answer your questions at the appropriate time.

March 4, 2002.

Hon. JAMES JEFFORDS, Chairman,
U.S. Senate,
Washington, DC.

Hon. ROBERT SMITH, Ranking Minority Member,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN JEFFORDS AND SENATOR SMITH: The undersigned organizations, representing a broad array of interests and professions working to strengthen communities and neighborhoods through improved built and natural environments, applaud your leadership in holding a hearing on smart growth and, particularly, the Community Character Act (S. 975). We endorse this bipartisan legislation introduced by Sen. Lincoln Chafee and urge you, and your committee colleagues, to consider and approve S. 975.

This hearing is an important step in advancing the public discussion about how the Federal Government can appropriately and effectively support State and local smart growth activities. S. 975 provides an opportunity to assist and complement State and local efforts to promote smart growth and is a perfect example of how to support local planning efforts without undermining local control of land use. With most State and local governments facing dire fiscal situations, the need for limited Federal assistance is greater than ever.

Americans are increasingly aware and concerned about unplanned growth and its byproducts—loss of open space, congestion, limited housing options, strip malls, and loss of ecological biodiversity—as clearly indicated by surveys and the passage of numerous local ballot initiatives to address these issues. S. 975 responds to these concerns by authorizing voluntary funding assistance to State, tribal, and local governments that request help in planning and implementing their respective visions of sustainability.

The legislation recognizes that land use planning should not stop at arbitrary jurisdictional boundaries and promotes coordinated, regional land use planning. Further, S. 975 seeks to address the tremendous need for planning and community development by the nation's tribal governments. Other provisions allow grants for acquiring new information technology to improve local planning, pilot projects to support innovative planning, and technical assistance. This legislation promotes smart growth principles and encourages States and localities to create or update the framework necessary for good planning. It creates a partnership with communities through incentives, not mandates. This program is a modest investment that will bring substantial dividends in improving the quality and character of cities, towns, and neighborhoods.

Good planning and design make good business sense, in addition to minimizing some of the harmful impacts that unmanaged growth can have on local and regional ecosystems. Long-term planning and design help to create communities with char-

acter and a variety of options for living and working. As people are drawn to such places—as tourists or residents—the economy thrives.

Again, thank you for your leadership and vision in holding this important hearing. We ask that you continue to demonstrate your support for smart growth by supporting and adopting S. 975.

Sincerely,

Lisa Blackwell, Managing Director, Government Affairs, American Institute of Architects; W. Paul Farmer, AICP, Executive Director, American Planning Association; Marcia Argust, Director, Legislative and Public Affairs, American Society of Landscape Architects; Mark Shaffer, Senior Vice President, Defenders of Wildlife; Robert Sokolowski, Executive Director, National Association of Regional Councils; Deron Lovaas, Deputy Director, Smart Growth Policies, Natural Resources Defense Council; Gordon Kerr, Director, Congressional Affairs, National Trust for Historic Preservation; John Kostyack, Senior Counsel, National Wildlife Federation; Meg Maguire, President, Scenic America; Debbie Sease, Legislative Director, Sierra Club; Don Chen, Executive Director, Smart Growth America.

March 4, 2002.

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This hearing is an important step in advancing the public discussion about how the Federal Government can appropriately and effectively support State and local smart growth activities. S. 975 provides an opportunity to assist and complement State and local efforts to promote smart growth without undermining local control of land use. With most State and local governments facing dire fiscal situations, the need for limited Federal assistance is greater than ever.

Vermonters, like many Americans, are increasingly aware and concerned about unplanned growth and its byproducts—loss of open space, congestion, decline of neighborhoods, limited housing options, strip malls, and loss of ecological biodiversity. According to our 2001 poll, nearly two thirds of Vermonters think that current development trends will lead to sprawl and that there is a need to take action to stop it. S. 975 responds to these concerns by authorizing voluntary funding assistance to State and local governments that request help in planning and implementing their respective visions of sustainability.

Many communities find that they cannot develop or implement their visions due to outmoded State planning and zoning enabling laws. The legislation will offer assistance to States that want to update their laws and find better ways to provide assistance to communities. Other provisions allow grants for acquiring new information technology to improve local planning, pilot projects to support innovative planning, and technical assistance. S. 975 recognizes that land use planning should not stop at arbitrary jurisdictional boundaries and promotes coordinated, regional land use planning. This program is a modest investment that will bring substantial dividends in improving the quality and character of cities, towns, and countryside.

Good planning and design make good business sense, in addition to minimizing some of the harmful impacts that unmanaged growth can have on local and regional ecosystems. Our work with the business community in Vermont demonstrates their commitment to long-term planning and better design that will create communities with character and a variety of options for living and working. As people are drawn to such places—as tourists or residents—the economy thrives.

Again, thank you for your leadership and vision in holding this important hearing. We ask that you continue to demonstrate your support for smart growth by supporting and adopting S. 975.

Sincerely,

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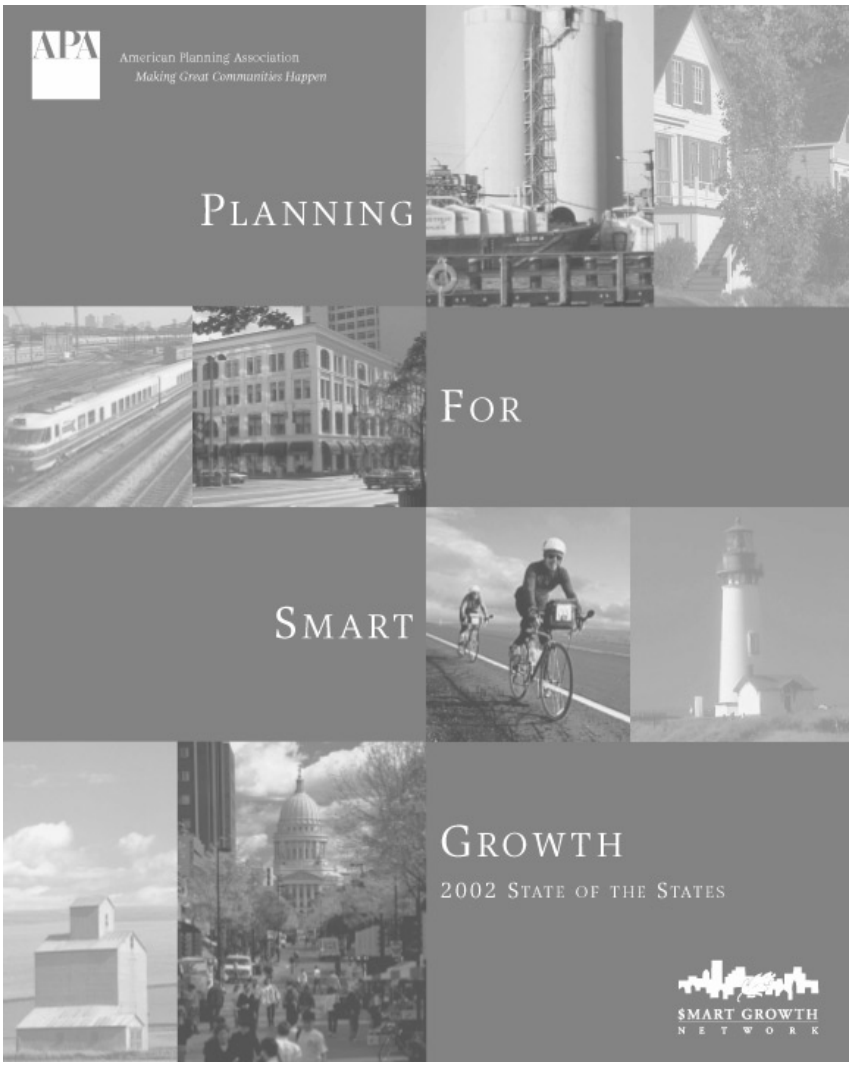
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2002 State of the States

A survey of state planning reforms and smart growth measures in order to manage growth and development

American Planning Association
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Smart Growth Network

February 2002

APA, AICP, GROWING SMART℠

The American Planning Association (APA) and its professional institute, the American Institute of Certified Planners (AICP), are dedicated to advancing the art, science and profession of planning—physical, economic and social—at the local, regional, state and national levels. APA encourages planning that contributes to public well being by developing communities and environments that more effectively meet the needs of all people. APA has offices in Washington, D.C. and Chicago, Ill. For more information, visit APA's World Wide Web site at http://www.planning.org.

In October 1994 APA launched Growing Smart℠, a major initiative aimed at helping states modernize statutes affecting planning and the management of change. The first phase of the program focused on state and regional planning and the relationship and responsibilities that exist among state, regional and local planning efforts. The second phase resulted in model legislation dealing with local planning, including planning agency and planning commission structure, plan preparation, and the integration of state environmental policy acts with local planning. The third phase provides communities and states with model legislation for the implementing tools communities need to manage change.

Providing assistance to APA with this program is the Growing Smart℠ Directorate, composed of individuals appointed by the country's major organizations that represent elected officials. Included are representatives of the Council of State Community Development Agencies, National Conference of State Legislatures, National League of Cities, National Association of Counties, National Association of Regional Councils, National Association of Towns and Townships, and U.S. Conference of Mayors. In addition, the Directorate includes several members-at-large who represent the built and natural environments and local government law.

For other documents from APA about planning reform, see the list beginning on page 140. If you have any questions, comments or need more information about this report, please contact the APA Policy Department at tel. 202-872-0611 or by email to govtaffairs@planning.org or the Growing Smart℠ program at tel. 312-431-9100 or by email to growingsmart@planning.org.

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Disclaimer: The co-authors and publisher are solely responsible for the accuracy of the statements and interpretations contained in this report. Such interpretations do not necessarily reflect the views or policies of the U.S. Government or any other Growing Smart™ program sponsor..

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EXECUTIVE SUMMARY

The American Planning Association's (APA) comprehensive survey of planning reform and smart growth activity in the states between 1999 and 2001 confirms that these subjects are among the top political concerns in statehouses across the nation.

Activity is increasing in terms of the number of states taking up these issues, and the depth and breadth of planning-related matters under consideration. APA's review also identifies a number of common elements that must be present if the states are to succeed in modernizing their comprehensive planning laws and implementing smart growth.

Indicators of Activity

- More than 2,000 planning bills were introduced between 1999 and 2001 with approximately 20 percent of the bills being approved.
- Seventeen governors issued 19 executive orders on planning, smart growth and related topics during the past two years compared to 12 orders issued during the previous eight years combined.
- Eight states issued legislative task force reports on smart growth between 1999 and 2001, compared to 10 reports between 1990 and 1998.
- Activity has been bipartisan; of 24 smart growth executive orders issued between 1992 and 2001, 12 came from Republican governors and 12 from Democratic governors.
- In the 2000 election, 553 state or local ballot initiatives in 38 states focused on issues of planning or smart growth with an approval rate of more than 70 percent.
- Twenty-seven governors—15 Republicans, 10 Democrats, and 2 Independents—made specific planning and smart growth proposals in 2001.
- Reform efforts are no longer limited to the East and West coasts. Increasingly, more states in the U.S. Heartland are actively engaged in reform efforts.

State of the States

- Approximately one-quarter of the states are implementing moderate to substantial statewide comprehensive planning reforms: Delaware, Florida, Georgia, Maryland, New Jersey, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington and Wisconsin.
- One-fifth of the states are pursuing additional statewide amendments strengthening local planning requirements, or they are working to improve regional or local planning reforms already adopted: Arizona, California, Hawaii, Maine, Nevada, New Hampshire,

New York, Texas, Utah and Virginia.

- Nearly one-third of the states are actively pursuing their first major statewide planning reforms for effective smart growth: Arkansas, Colorado, Connecticut, Idaho, Illinois, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Mexico, North Carolina and South Carolina.
- Approximately one-quarter of the states have not made and are not currently pursuing significant statewide planning reforms: Alabama, Alaska, Indiana, Kansas, Louisiana, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia and Wyoming.
- Half of the 25 states where active reform efforts are underway do not border an ocean: Arizona, Arkansas, Colorado, Idaho, Illinois, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nevada, New Mexico and Utah.

Nearly one-third of the states are actively pursuing their first major statewide planning reforms.

Trends in State Planning Reform

APA's review of activity revealed eight trends that consistently emerge in states actively engaged in planning and smart growth reform. These trends offer insight into the recipe for political success but also point to some of the key barriers and obstacles to reform:

- *Challenge of Implementation.* In many states where reforms have been previously enacted, recent efforts have focused on implementation. States are continuing to experiment with the right mix of incentives, mandates and initial investment costs associated with implementation.
- *Having a Political Champion Key.* In virtually every instance where reform has been adopted, there was committed leadership from either the governor or a key legislator.
- *Linkage to Other Issues.* Numerous public opinion polls and ballot initiatives show the popular appeal of smart growth. States having achieved reforms were able to link planning reform and smart growth with traffic congestion, housing affordability, environmental protection and other quality-of-life issues.
- *Coalitions and Consensus Essential.* Smart growth is not a single-constituency issue. A wide array of groups has a vested interest in planning reform. Successful legislative initiatives require coalitions and consensus.

- *Backlash Responses.* Such efforts, aimed at weakening managed growth programs, appear more common in states where reforms have been in place. Erroneous information and unsubstantiated claims are used as part of misinformation campaigns to mislead voters and elected officials, and in legal challenges that allege regulatory takings of private property.
- *Task Forces.* Convening such a group to study planning reforms and smart growth measures and to make recommendations continues to be the most common way for a governor or legislature to take up the issue. Task forces often indicate political support for reform and they can facilitate coalition building, although some states use task forces to avoid or delay taking action.
- *Ballot Initiatives.* An increasingly popular tool to promote planning reform and smart growth despite the complex nature of these issues, which do not easily lend themselves to this format. Use of ballot initiatives appears likely to increase, particularly in the West.
- *Piecemeal versus Comprehensive Approaches.* State after state has debated whether to approach planning reform and smart growth comprehensively or narrowly. While a comprehensive approach is likely to yield better results, "piecemeal" reform efforts often are more practical and politically realistic.

There is growing awareness that poorly planned development is a hidden tax on citizens and communities alike.

Economic Benefits of Planning, Smart Growth

As more states face deficit budgets, questions about the cost and efficiency of smart growth are more important than ever. Increasingly, the fiscal implications of unmanaged growth and change facing metropolitan areas, suburbs and neighboring towns are becoming an important catalyst to reform outdated planning and zoning laws.

Planning reforms and smart growth provide long-term savings by eliminating inefficiencies caused by inconsistent and uncoordinated planning. There is growing awareness, too, that poorly planned development is a hidden tax on citizens and communities alike.

Planning Law Reform—Smart Growth's Foundation

Planning statute reform is the foundation for innovative and sensible land-use regulation and public investment, for helping reach agreement on important public policy directions, and for providing the tools for states and local governments to ensure a

better quality of life for their citizens.

The approaches being taken towards such reforms in order to address rapid population growth, threats to farmlands and environmental resources, inadequate public infrastructure and affordable housing shortages are as varied as the states themselves. Recognizing this, APA's Growing Smart™ project set out to help states and communities through the planning reform process.

The approaches to planning reforms are as varied as the states themselves.

The *Growing Smart™ Legislative Guidebook: Model Statutes for Planning and the Management of Change 2002 Edition* and accompanying *Growing Smart™ User Manual* provide governors, legislators, governmental officials, planners, developers, homebuilders, environmentalists and others with annotated model statutes and other tools and resources to revise planning laws in order to effectively manage growth and development.

What works in Oregon or Washington will not necessarily fit Florida or Alabama, so the *Legislative Guidebook 2002 Edition* does not recommend a single, one-size-fits-all approach. Instead, the checklists and examples described in the *User Manual* help those using the *Guidebook* tailor a statutory reform program that is specific to their respective state's needs.

Role of Federal Assistance

While state and local governments bear the primary responsibility for planning and implementing smart growth, the federal government can and must play a role by supporting and facilitating reform efforts in states and communities. Budget problems and shortfalls in the states are likely to be the single most significant impediment to further state planning reform in 2002.

Additionally, many of the states making smart growth progress are encountering growing financial and technical assistance needs related to implementing planning reform. The federal government can help by providing targeted incentives and narrowly tailored grant assistance. One pending legislative proposal in Congress that would provide needed federal assistance and incentives to states and communities for planning reform, while still protecting local land-use authority, is the Community Character Act (H.R. 1433 / S. 975).

The General Accounting Office found in its most recent smart growth analysis that

The federal government can and must play a role by supporting and facilitating reform efforts in states and communities.

Congress should encourage a better link between land use and environmental protection. Specifically, the General Accounting Office urged new incentives for comprehensive planning. An increased, but limited, federal role in promoting state planning reform could have an important, positive impact in helping states overcome fiscal and technical obstacles to reform and implementation.

Building Public Support, Consensus

While citizen and voter interest in smart growth is strong, in many states that interest has yet to be translated it into successful legislative actions aimed at helping solve planning- and growth-related issues. Although the issues and political circumstances vary widely, building common ground among a wide spectrum of stakeholders is essential. To be successful, it is important to first establish trust among stakeholders before they are brought together for negotiations. To help with this process, some states are using facilitated meetings to work through contentious issues and reach consensus.

Equally important are strategic public education and participation programs. Such efforts need to be designed for key audiences to help build support early on for updating planning statutes and adopting smart growth measures. It should be the responsibility of all sectors to provide for, and participate in, the design and implementation of public education initiatives.

Although the issues and political circumstances vary widely, finding common ground among a wide spectrum of stakeholders and the public is essential. Part of this process involves building consensus. Educating targeted audiences about the value and benefits of planning and smart growth, and uncovering myths used by opponents to misconstrue smart growth, also are necessary.

Equally important is challenging interests that seek to pass new legislation expanding the activities that qualify as regulatory takings and, therefore, require compensation under the Fifth Amendment of the U.S. Constitution.

For states and communities seeking ways to meet the growth and development challenges of the new century, the *Growing Smart*[SM] *Legislative Guidebook 2002 Edition, User Manual* and other resources of APA offer solutions that not only address sprawl, but can help generate economic growth and development in ways that do not harm valuable natural and cultural resources.

Recommended Actions

- Planners need to use their professional skills and abilities to facilitate discussions among stakeholder groups and promote public awareness about the need for planning reform and for implementing plans that encourage smart growth strategies.
- Planning commissioners and local elected officials, who are on the front lines addressing the consequences of unmanaged growth, need to help actively shape and secure state planning reforms and smart growth measures.
- States that have not enacted planning reforms should establish study commissions or task forces to evaluate and recommend specific legislative actions. Commissions should be held to strict timelines and recommendations should be acted on in a timely manner.
- State planning reform legislation should include assistance and resources for implementing reforms and smart growth plans.
- Congress and the federal government need to facilitate, assist and create incentives for states to undertake planning reforms, build planning capacity, and implement smart growth measures to ensure prosperity and an enhanced quality of life for all citizens.

INTRODUCTION

by

Denny Johnson
Jason Jordan
Patricia Salkin

INTRODUCTION

Despite a downturn in the U.S. economy, state legislative activity to reform outdated comprehensive planning statutes and adopt related smart growth measures has risen from 1999 to 2001 in terms of the number of states addressing these issues, and the depth and breadth of planning-related issues under consideration. A 50-state review of this activity by the American Planning Association (APA) finds:

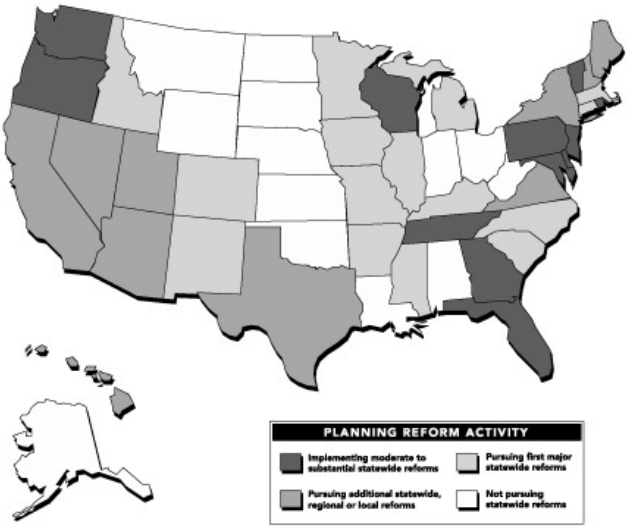
Indicators of Activity

- More than 2,000 planning bills were introduced between 1999 and 2001 with approximately 20 percent of the bills being approved.
- Seventeen governors issued 19 executive orders on planning, smart growth and related topics during the past two years compared to 12 orders issued during the previous eight years combined.
- Eight states issued legislative task force reports on smart growth between 1999 and 2001, compared to 10 reports between 1990 and 1998.
- Activity has been bipartisan; of 24 smart growth executive orders issued between 1992 and 2001, 12 came from Republican governors and 12 from Democratic governors.
- In the 2000 election, 553 state or local ballot initiatives in 38 states focused on issues of planning or smart growth with an approval rate of more than 70 percent.[1]
- Twenty-seven governors—15 Republicans, 10 Democrats, and 2 Independents—made specific planning and smart growth proposals in 2001.
- Reform efforts are no longer limited to the East and West coasts. Increasingly, more states in the U.S. Heartland are actively engaged in reform efforts.

Every political barometer—polls, legislation, executive orders, budget proposals and ballot initiatives—indicates planning reform and smart growth are major state issues.

State of the States

- Approximately one-quarter of the states are implementing moderate to substantial statewide comprehensive planning reforms: Delaware, Florida, Georgia, Maryland, New Jersey, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington and Wisconsin.
- One-fifth of the states are pursuing additional statewide amendments strengthening local planning requirements, or they are working to improve regional or local planning reforms already adopted: Arizona, California, Hawaii, Maine, Nevada, New Hampshire, New York, Texas, Utah and Virginia.



- Nearly one-third of the states are actively pursuing their first major statewide planning reforms for effective smart growth: Arkansas, Colorado, Connecticut, Idaho, Illinois, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Mexico, North Carolina and South Carolina.
- Approximately one-quarter of the states have not made and are not currently pursuing significant statewide planning reforms: Alabama, Alaska, Indiana, Kansas, Louisiana, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia and Wyoming.
- Half of the 25 states where active reform efforts are underway do not border an ocean: Arizona, Arkansas, Colorado, Idaho, Illinois, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nevada, New Mexico and Utah.

Recommended Actions

1. Planners need to use their professional skills and abilities to facilitate discussions among stakeholder groups and promote public awareness about the need for planning reform and for implementing plans that encourage smart growth strategies.
2. Planning commissioners and local elected officials, who are on the front lines addressing the consequences of unmanaged growth, need to help actively shape and secure state planning reforms and smart growth measures.
3. States that have not enacted planning reforms should establish study commissions or task forces to evaluate and recommend specific legislative actions. Commissions should be held to strict timelines and recommendations should be acted on in a timely manner.
4. State planning reform legislation should include assistance and resources for implementing reform and smart growth plans.
5. Congress and the federal government need to facilitate, assist and create incentives for states to undertake planning reforms, build planning capacity, and implement smart growth measures to ensure prosperity and an enhanced quality of life for all citizens.

Trends in State Planning Law Reform

APA's review of activity revealed eight trends that consistently emerge in states actively engaged in planning and smart growth reform. These trends offer insight into the recipe for political success but also point to some of the key barriers and obstacles to reform:

- *Challenge of Implementation.* In many states where reforms have been previously enacted, recent efforts have focused on implementation. States are continuing to experiment with the right mix of incentives, mandates and initial investment costs associated with implementation.
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- *Coalitions and Consensus Essential.* Smart growth is not a single-constituency issue. A wide array of groups has a vested interest in planning reform. Successful legislative initiatives require coalitions and consensus.
- *Backlash Responses.* Such efforts, aimed at weakening managed growth programs, appear

Table I: Governor Executive Orders (other than to form study commissions), 2000

Massachusetts	No. 418, creating a two-year Community Development Plan Program
Oregon	No. 00-07, to address sustainability issues and establish the Governor's Work Group on Sustainability
Tennessee	An executive order to establish Tennessee Strategically Targeted Areas of Redevelopment
Vermont	No. 01-00, creating a Development Cabinet

more common in states where reforms have been in place. Erroneous information and unsubstantiated claims are used as part of misinformation campaigns to mislead voters and elected officials, and in legal challenges that allege regulatory takings of private property.

- *Task Forces.* Convening such a group to study planning reforms and smart growth measures and to make recommendations continues to be the most common way for a governor or legislature to take up the issue. Task forces often indicate political support for reform and they can facilitate coalition building, although some states use the task force to avoid or delay taking action.
- *Ballot Initiatives.* An increasingly popular tool to promote planning reform and smart growth despite the complex nature of these issues, which do not easily lend themselves to this format. Use of ballot initiatives appears likely to increase, particularly in the West.
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Increasingly, the fiscal implications of unmanaged growth are becoming an important catalyst to reform outdated planning and zoning laws.

Better Planning Saves Money

As more states face deficit budgets, questions about the cost and efficiency of smart growth are more important than ever. Increasingly, the fiscal implications of unmanaged

Table 2: Governor Executive Orders (other than to form study commissions), 2001

Arizona	No. 2001-02, creating the Growing Smarter Oversight Council
California	D-46-01, directing state Department of General Services to reuse state buildings in downtowns, central cities
Delaware	No. 14, directing state agencies, departments to implement steps curbing sprawl
Indiana	No. 01-03, establishing the Indiana Land Use Forum
Maryland	No. 01.01.2001.01, creating the Commission on Environmental Justice and Sustainable Communities
Missouri	No. 01-16, establishing the Missouri Commission on Intergovernmental Cooperation No. 01-19, directing the Executive Branch to help achieve measurable improvements in state's quality of life
S. Carolina	No. 2001-09, creating an affordable housing task force No. 2001-11, establishing a swine facilities moratorium
Vermont	No. 01-07, fostering conservation of land near interstate highway interchanges and discouraging strip-type development along these areas

growth and change facing metropolitan areas, suburbs and neighboring towns are becoming an important catalyst to reform outdated planning and zoning laws.

Planning reforms and smart growth provide long-term savings by eliminating inefficiencies caused by inconsistent and uncoordinated planning. There is growing awareness, too, that poorly planned development is a hidden tax on citizens and communities alike. For example:

- Louisville and Jefferson County Metropolitan Sewer District in Kentucky "spent more than $500 million in the past 10 years addressing infrastructure deficiencies related to poor or misaligned planning and zoning policies."[2]
- Between 1975 and 1995, Maine state government alone committed $727 million to new school construction and renovations although the number of elementary and secondary public school students in the state declined 27,000 between 1970 and 1995.[3]
- Much of the $16 billion in property damage resulting from the 1993 great flood along the Upper Mississippi River was fully predictable. The warning signs were not unheeded weather forecasts but "public policies that had encouraged intensive use of land along the region's rivers and streams."[4]
- The pattern of spread-out development or "sprawl" caused households in Houston, Atlanta, Dallas-Fort Worth, Miami and Detroit to devote the highest portion of their budget to transportation, according to a national study in 2000. Out of every dollar spent by the average Houston-area household, 22 cents went for transportation or more than $8,800 annually or $2,528 more than the national average. Households in the

Table 3: Planning Reform, Smart Growth or Related Commissions, 2000

Alabama	Executive order creating the Alabama Commission on Environmental Initiatives; report Jan 2001
Colorado	Governor's Commission on Saving Open Spaces, Farms and Ranches; 11 proposals Dec 2000
Florida	Executive Order No. 2000-196, creating the Growth Management Study Commission; report Feb 2001
Illinois	Executive Order No. 2000-8, creating Balanced Growth Cabinet; Legislature creates Illinois Growth Task Force; series of Task Force reports completed in 2000
New York	Executive Order 102, creating Quality Communities Interagency Task Force; report Jan 2001
North Carolina	General Assembly creates Commission to Address Smart Growth Management and Development Issues; report Nov 2001
Rhode Island	Executive Order 00-2, creating Growth Planning Council; first annual report Aug 2001
	General Assembly creates a commission to study how state government can encourage sustainability; report Jan 2002

How To Get Involved

Planning reform cannot occur in your state without citizen support and participation. Here are several ways to obtain more information and to become involved with efforts to help secure more effective planning measures:

1 Contact the American Planning Association (APA). The association offers a number of resources to help you become involved in planning reform efforts including:

- Information through APA's Growing Smart™ Program to help you become familiar with how your state's planning laws work and whether they need to be changed in order to be more effective. APA's resources can be accessed through the organization's web site, www.planning.org.
- Assistance through APA's Policy and Public Affairs Department in Washington, D.C., for help with organizing conferences, workshops and other legislative and policy programs. You can reach the department at tel. 202-872-0611 or by sending an email message to govtaffairs@planning.org.
- Speakers from APA who can give presentations to civic organizations or other groups to which you belong about the need for planning statute reform in your state. For more information, contact APA's Policy and Public Affairs Department in Washington, D.C., at the telephone number or email address noted above.
- Help through the state and regional chapters of APA. For additional information about this network of volunteer organizations, please see the list of chapter web site addresses under the ADDITIONAL RESOURCES section of this report (pp. 146-147).

2 Visit and use APA's Online Legislative Action Center at www.planning.org/advocacy/. Here you can access the latest alerts about federal legislation and send e-mail to your U.S. Representative and U.S. Senators. The action center also provides useful information and resources about meeting with legislators, writing advocacy letters and effective advocacy e-mail, organizing a state lobby day and meeting with the media. Also provided is a list of legislative liaisons with the state chapters of APA.

3 Write to, or meet with, your state legislators to express your concerns about the need for planning statute reform.

4 Contact such groups as the state municipal league, state association of counties, state association of homebuilders and environmental action groups and let them know you think reform or strengthening of the planning enabling acts in your state should be a high priority.

5 Encourage groups of which you are a member to join a coalition or alliance of organizations that is working to reform planning statutes where you live. If no coalition or alliance exists, join with others to form a broad-based organization of groups that recognizes the need for planning reform.

6 Write letters to the editor of your local newspaper and guest commentaries about the need for comprehensive planning requirements if other smart growth measures are to be effective. Results from laws and activities designed to manage growth and development will be far more limited than in places that have adopted planning reforms.

7 Attend public meetings, workshops, legislative hearings and other events related to planning reform and growth management issues in your state. If no meetings are planned at this time, join with others in organizing a workshop or other event.

Table 4: Planning Reform, Smart Growth or Related Commissions, 2001

Kentucky	Executive Order 2001-628, creating bipartisan Task Force on Smart Growth; report Nov 2001
North Dakota	H.C.R. 3023, establishing a study to examine use of conservation easements to protect farmland, recreational lands
New Hampshire	State's General Court created three study commissions to address affordable housing, shoreland protection and rail transit; reports Nov 2001, Jan 2002
Vermont	Legislature creates land-use permitting process study commission, an affordable housing study commission and a downtown redevelopment task force
Virginia	General Assembly creates Commission on Growth and Economic Development; work continuing in 2002

three least expensive metro areas surveyed—Honolulu, New York and Baltimore—spent almost one-third less.[x]

- Nationally, the estimated tax subsidy for the most popular farmland preservation technique and authorized in all states—preferential or differential property tax assessment—is $1.1 billion annually. Yet, *total expenditures nationwide* since the mid-1970s to protect 819,490 acres of farmland through purchase of development rights—considered to be a far more effective provision to stop agricultural land from being developed—have amounted to only $100 million more or $1.2 billion.[x]

Planning Law Reform—Smart Growth's Foundation

Statutes authorizing comprehensive planning in the U.S. date back to the 1920s when two model enabling acts for planning and zoning were developed by the U.S. Department of Commerce. Thus far, about one-half of the states have updated these laws to one degree or another. The remaining states still need to undertake planning statute reform, which is the foundation for innovative and sensible land-use regulation and public investment; discussions to reach agreement on important public policy directions; and a better quality of life for all citizens.

In order to address rapid population growth, threats to farmlands and environmental resources, inadequate public infrastructure and affordable housing shortages, as well as other issues, the approaches being taken are as varied as the states themselves. Recognizing this, APA's Growing Smart™ program set out to help states and communities through the process.

Begun in 1994, the program provides governors, legislators, governmental officials, planners, developers, homebuilders, environmentalists and others with annotated model statutes and other tools and resources to revise planning laws in order to effectively manage growth and development. What works in Oregon or Washington will not necessarily fit Florida or Alabama, so the *Growing Smart™ Legislative Guidebook 2002 Edi-*

Table 5: Selected Examples of Assistance for Planning, Implementation*

Delaware	Funding, technical assistance for plans through "Livable Delaware" initiative	2001
Georgia	$250,000 for smart growth grants $5 million for Atlanta communities	2001 2000–2003
Massachusetts	$30,000 per municipality in assistance to draft community development plan	2000–01
Minnesota	$500,000 for 10 one-time grants to regional development commissions	2001
New Jersey	$1.7 million for Smart Growth planning or implementation grants	2001
New York	$1.4 million for 28 grants under Quality Communities program	2000
Pennsylvania	$3.6 million in state budget (FY2000-01) for planning, assistance	2000
Utah	$100,000 in state budget for developing, implementing local plans	2001
Wisconsin	$3 million in 2001-02 state budget for local comprehensive planning	2001

* Not a complete list. Highlights selected examples of recent monetary or technical support for comprehensive planning or smart growth measures.

tion and accompanying *Growing Smart*[SM] *User Manual* do not recommend one-size-fits-all approaches. Instead, the checklists and examples described in the *User Manual* help those using the *Guidebook* tailor a statutory reform program that is specific to their respective state's needs.

Although states may borrow ideas from other states' legislation, and concepts of the *Legislative Guidebook 2002 Edition* may influence the language of reform efforts, no two bills are identical across state lines.

Urban Sprawl and Smart Growth

One of the major issues driving interest in planning reform has been urban sprawl or "the pattern that takes over when, with little coordinated planning, people and businesses desert established communities to develop the open countryside."[7] Since the 1970s, there have been more than 500 studies on the issue of sprawl, with a significant amount of literature published in the 1990s.[8]

To address sprawl and related problems, APA encourages states to adopt "smart growth" measures to manage development. As APA defines it, smart growth is the planning, design, development and revitalization of cities, towns, suburbs and rural areas in order to create and promote social equity, a sense of place and community, and to preserve natural as well as cultural resources. Smart growth enhances ecological integrity over both the short- and long-term, and improves quality of life for all by expanding, in

Enacting a statewide smart growth law may not be enough. Effective implementation requires a clear connection between the goals and requirements of the act and what local governments actually do through their plans and regulations.

a fiscally responsible manner, the range of transportation, employment and housing choices available to a region.

Planning Reforms Make Smart Growth Work

However, without updating comprehensive planning statutes and providing a certain amount of coordination and guidance between local jurisdictions, achieving any level of smart growth can be next to impossible. This is especially true in states with strong home-rule governments and different planning requirements among localities, as in Michigan, Connecticut and Massachusetts.

A similar situation also exists where geography isolates different areas of a state from one another or cultural differences or other factors contribute to a strong regional instead of comprehensive statewide approach to smart growth, as in Virginia, Texas, Nevada and California.

Just enacting a statewide smart growth law may not be enough. Effective implementation requires a clear connection between the goals and requirements of the act and what local governments actually do through their local comprehensive plans and land development regulations. A recent study from Maryland, which has a statewide smart growth act, is a case in point.

The report estimated that by 2020 more than 40,000 acres of farm and forest land would be cleared to accommodate new home construction outside designated growth areas in the five-county Baltimore region if improvements were made to highways extending beyond areas identified for further development.[9] Maryland's smart growth law allows development to occur in non-designated growth areas, and state funding for infrastructure improvements and public services in those areas can be sought through an exemption process.

Massachusetts provides another example. If new smart growth measures were enacted in the state, where moderate planning reforms already have been made but additional changes are still needed, land-use plans developed in accordance with the new smart growth law would "have little chance of being implemented...without significant changes to the existing state statutes that govern zoning and subdivision control."[10]

Provisions in Massachusetts' current planning statutes would allow plans for new development to circumvent smart growth measures by:

- allowing unlimited divisions of individual parcels of land along existing roads without meeting review requirements;
- exempting certain uses of land, such as religious or educational purposes, from zoning requirements; and

- allowing construction of affordable housing in unsuitable locations through a "comprehensive permit," which effectively bypasses local planning and zoning requirements.[11]

In states where planning reform and smart growth measures are being adopted on a piecemeal basis, such changes can be counter-productive or, at best, have limited effectiveness. Interest in Virginia appears to be shifting towards a system that authorizes local jurisdictions to design their own smart growth measures instead of a growth management program that requires state participation.

Implementing the New Jersey State Plan between 2000 and 2020 will save as much as $2.3 billion in capital costs for local road, water and sewer infrastructure; deficits for municipalities and school districts will be reduced by as much as $160 million a year.

Similar efforts are underway in California where some groups are strongly advocating stronger planning and growth management strategies for particular regions within the state. These and similar approaches may address growth issues for the time being, but without a comprehensive program administered statewide, development could be managed and controlled in much smaller areas than if the entire state were part of one uniform smart growth strategy.

Planning's Economic Return

Concerns are raised in some states that implementing planning reforms for smart growth are too costly—despite job growth, economic development, revitalization, improved quality of life and other benefits. Numerous studies show the opposite is true:

- Oregon's four largest urban areas can avoid more than $11.5 billion in road expansion costs as a result of the state's 1991 Transportation Planning Rule, which has been adopted for a 20-year period. Forty other cities in the state also are implementing the rule.[12]
- Keeping new growth and development during the next 50 years in the greater Salt Lake City metropolitan area from spreading out no more than 125 square miles will save approximately $4.5 billion in transportation, water, sewer and utility investments. In addition, 171 square miles of land will be conserved by implementing growth management steps outlined in "Envision Utah,"[13] the 2002 recipient of APA's prestigious Daniel Burnham Award for using the planning process to help improve an area's quality of life.
- Managing growth for a 20-year period could save Virginia Beach, Va., $275 million in infrastructure costs, generate a $5 million annual surplus for the municipal general

Used properly, updated planning statutes and smart growth measures can help states improve areas in economic decline.

fund instead of a $19 million annual loss, and reduce the area's vehicle miles traveled count by 65 percent or more than one million vehicle miles a day.[14]

- Implementing the New Jersey State Plan between 2000 and 2020 will save as much as $2.3 billion in capital costs for local road, water and sewer infrastructure while fiscal deficits for municipalities and school districts statewide will be reduced by as much as $160 million a year during the same period.[15]
- Developing a regional transit system for the Minneapolis-St. Paul metropolitan area and encouraging more compact development could save the area $538 million in local road costs, as well as eliminating 245,000 daily automobile trips.[16]

For other states, the problem is not controlling sprawl, protecting farmland or expanding public transit, but developing stronger economies. Topping the priority lists of several governors is stimulating, not managing, growth and development. Used properly, updated planning statutes and smart growth measures can help states improve areas in economic decline. One dramatic example: redevelopment of the nation's 450,000 to 600,000 brownfield sites.

As of July 2000, a $2.9 million public investment in Massachusetts' brownfield restoration program had attracted $88 million in private-sector monies for cleanups and $1.8 billion in total investments. In addition, more than 175 brownfield projects were projected to create or retain more than 30,000 jobs in the state.[17] Other states capitalizing on this opportunity include New Jersey, Michigan, Maryland and Pennsylvania.

"There is a compelling economic case for state spending on brownfields," points out the National Governors Association in a brownfields study released in 2000.[18] "A dollar of state spending produces about 10 times to 100 times more dollars in economic benefits." The new mission for brownfields, the report goes on, "means leveling the playing field, making brownfields projects competitive with greenfields projects that contribute to scattered suburban sprawl. By emphasizing urban redevelopment, brownfields projects help preserve farmland, rural communities, and open spaces."[19]

To help communities capitalize on the economic benefits resulting from effective planning, Delaware, Georgia, New Jersey, New York, Pennsylvania, Wisconsin and other states go a step further. They provide local jurisdictions with financial incentives and technical assistance to do comprehensive planning. Such support is especially critical to smaller or more rural communities, which often do not have the funds or expertise to develop general or master plans. The latest national figures show that 70 percent of metropolitan governments, but only 41 percent of adjacent governments and 39 percent

Table 6: States Enacting Noteworthy Planning or Smart Growth Bills, 2000

Arizona	Growing Smarter Plus Act
Maine	Two bills involving designated growth areas, modifying tax policies
Michigan	Several bills involving airport zoning, zoning appeals, other appeal procedures, purchase of development rights
New Hampshire	Three bills encouraging smart growth, matching grants for protecting open space, brownfields revolving fund
Pennsylvania	Acts 67 and 68, creating growth areas and allowing transfer of development rights
Utah	Amendments addressing municipal and unincorporated area annexation; transportation corridors, land subdivisions

of rural governments, are currently engaged in comprehensive planning.[20]

APA recognizes that there is no one "best way" to modernize planning statutes that will apply equally in each and every state. The variety and intensity of planning modernization and reform efforts across the country are as diverse as the states themselves.

State and local officials acknowledge that, although Euclidean zoning[21] may have helped with urban planning at the turn of the 20th century, it is no longer adequate to meet today's complex needs—or the amount of development expected to occur during the next 25 years. Some estimates suggest half of all development that will exist in the United States by 2025 has not yet been built.[22]

Recent legislative approaches reflect the wide spectrum of options and design flexibility municipalities want when planning more livable communities. Recognizing this, the model laws presented in the *Growing Smart*[SM] *Legislative Guidebook: Model Statutes for Planning and the Management of Change 2002 Edition* do not recommend a single approach.

Need for Regional Cooperation

More and more state governments are continuing to follow the lead of those states that already have adopted statewide comprehensive planning or growth management systems during the last quarter century.[23] Recognizing that the impact of local land-use decisions knows no political boundaries, states are more actively requiring written local comprehensive plans, coordination among neighboring jurisdictions in the planning process, and inter-jurisdictional consistency among the various plans.[24]

Another reason for coordinated planning among communities and government agencies is to more effectively conserve sensitive and other important natural resources.

Table 7: States Enacting Noteworthy Planning or Smart Growth Bills, 2001

Connecticut	Three bills addressing municipal plans, revenue sharing, collaboration
Kentucky	Mandatory training for planning officials, commissioners
Maryland	Four bills or amendments addressing infill guidelines, smart building codes, property tax credits, vision statements
Michigan	Four bills involving plan reviews by neighboring jurisdictions, cluster housing developments
Nevada	18 measures affecting master plans, impact fees, planning commissions; placing $200 million bond proposal on November 2002 ballot
New Hampshire	Bills authorizing joint, private-public transportation projects and expanding Resources and Development Council responsibilities
Pennsylvania	Amendments expanding agricultural protection provisions, funding for farmland protection, infrastructure
Utah	Amendments requiring annexation plans

Notes the recent study, *State Biodiversity Strategies, A Status Report*: "The topic of biodiversity conservation is increasingly being discussed across the country. Not only are actual strategies developing in more states, but the importance of component parts, such as statewide planning, is recognized by many."[25]

One example of this already taking place involves the Biodiversity Recovery Plan for the Chicago Region, which was recognized with a 2001 APA Outstanding Planning Award for a Plan. Helping lead the 125 organizations involved is the Northeastern Illinois Planning Commission. More than 140 recommendations are included in the 200-page plan outlining strategies and actions to protect and restore natural landscapes in northeastern Illinois and adjacent parts of Indiana and Wisconsin.[26]

There is growing awareness that, as *On Borrowed Land: Public Policies for Floodplains* author Scott Faber points out, "People living within a single drainage basin must begin to share responsibility for their land-use decisions. New planning must be done for entire river basins, linking communities together in watershed-wide economic and environmental strategies. The states—not the federal government—should serve as umbrellas for inter-jurisdictional cooperation among local governments, resolving disputes and facilitating the creation of basin and sub-basin plans."[27] Although Faber was writing about changes needing to be made with respect to floodplains, his comments are just as relevant to other planning-related issues.

Role of Federal Assistance

While state and local governments bear the primary responsibility for planning and implementing smart growth, the federal government can and must play a role by supporting and facilitating reform efforts in states and communities. Budget problems and shortfalls in the states are likely to be the single most significant impediment to further state planning reform in 2002.

Additionally, many of the states making smart growth progress are encountering growing financial needs related to implementing planning reform. The federal government can help by providing targeted incentives and narrowly tailored grant assistance. One pending legislative proposal in Congress that would provide needed federal assistance and incentives to states and communities for planning reform, while still protecting local land-use authority, is the Community Character Act (H.R. 1433/S. 975).

> One proposal in Congress that would provide federal assistance and incentives to states and communities for planning reform is the Community Character Act.

The General Accounting Office found in its most recent smart growth analysis that Congress should encourage a better link between land use and environmental protection. Specifically, the General Accounting Office urged new incentives for comprehensive planning.[28] An increased, but limited, federal role in promoting state planning reform could have an important, positive impact in helping states overcome fiscal and technical obstacles to reform and implementation.

In some states broad public support to take action to address problems associated with sprawl—traffic congestion, overcrowded schools, loss of farmland or open space, funding shortages for public services as a result of new development—has not been enough to achieve results through the legislature and governor's office. In Hawaii, for example, differences between the governor and legislature last year thwarted efforts to make additional changes to the state's managed growth program.

Building Public Support and Consensus

While citizen and voter interest in smart growth is strong, in many states that interest has yet to be translated into successful legislative actions aimed at helping solve planning- and growth-related issues. Although the issues and political circumstances vary widely, building common ground among a wide spectrum of stakeholders is essential. To be successful, it is important to first establish trust among stakeholders before bringing them together for negotiations. To help with this process, states such as California are using

Table 8: Selected State Examples of Brownfields Legislation, Programs*

Delaware	New law provides up to $1 million a year in matching grants for assessments	2001
New Hampshire	Brownfields Revolving Loan Fund; enables state to qualify for federal funds	2000
Ohio	'Clean Ohio' enacted; $200 million annually for brownfields restoration	2001
Pennsylvania	Industrial Sites Act amended to include performance-based loans for cleanups	2000
Rhode Island	State House forms brownfields study commission; report Jan 2002	2001
South Carolina	General Assembly approves, governor enacts voluntary clean-up program	2000
Tennessee	General Assembly passes, governor signs bill for cleanup and reuse	2001

* Not a complete list. Highlights selected examples of recent legislation affecting brownfields.

facilitated meetings to work through contentious issues and reach consensus.

It also entails educating targeted audiences about the value and benefits of planning and smart growth, and uncovering myths used by opponents to misconstrue smart growth. Some interests opposing smart growth measures seek to pass new legislation expanding the activities that qualify as regulatory takings and, therefore, require compensation under the Fifth Amendment of the U.S. Constitution. The most extreme example of this to date is so-called "Measure 7" in Oregon, although similar interests exist in other states including Arizona, Florida, Virginia, Georgia, North and South Dakota, Wyoming and Washington.

If provisions such as Measure 7 are successful, government's ability to protect the public health, safety and welfare, and to build strong communities could be restricted to the extent that implementation and compliance with plans and regulations through enforcement actions could be effectively prohibited.

For states and communities seeking ways to meet the growth and development challenges of the new century, the *Growing Smart*™ *Legislative Guidebook 2002 Edition* and other resources of APA offer solutions that not only address sprawl, but can help generate economic growth and development in ways that do not harm valuable natural and cultural resources.

NOTES

1 Meyers, Phyllis. *Growth at the Ballot Box: Electing the Shape of Communities in November 2000.* Brookings Institution Center on Urban and Metropolitan Policy, February 2001, p. 3.

2 Garner, Gordon (Louisville, Kentucky Metropolitan Sewer District Executive Director). Quote in *A Report of the Governor's Smart Growth Task Force.* Kentucky Gov. Paul E. Patton, November 2001, p. 3.

3 The Cost of Sprawl. Maine State Planning Office, May 1997.

4 Faber, Scott. "*On Borrowed Land: Public Policies for Floodplains.*" Lincoln Institute of Land Policy, 1996, p. 2.

5 Executive Summary. *Driven to Spend.* Surface Transportation Policy Project and the Center for Neighborhood Technology. November 2000. Baltimore households used less than 15 cents out of every spending dollar on transportation or $5,236 annually.

6 Heimlich, Ralph E. and William D. Anderson. *Development at the Urban Fringe and Beyond, Impacts on Agriculture and Rural Land.* U.S. Department of Agriculture, Economic Research Service Agricultural Economic Report No. 803, June 2001, pp. 60-61.

7 "Smart Growth Bill Bows to Reality: Fight Sprawl or Watch it Get Worse." *Buffalo News,* May 3, 1998, p. H-2.

8 Transportation Research Board, The Costs of Sprawl—Revisited (1998). The study, authored by Robert Burchell et. al., contains references to approximately 500 studies on sprawl published between 1970 and 1998.

9 Gordon, Adam. *Planning for Sprawl? A Look at Projected Residential Growth in the Baltimore Region.* Baltimore Regional Partnership, September 2001, p. 2.

10 "Time For A Change In Massachusetts Land Use Legislation." Zoning Reform Working Group, two-page briefing paper, December 2001, p. 1.

11 Id., pp. 1-2.

12 *In the Fast Lane: Delivering More Transportation Choices to Break Gridlock.* National Governors Association Center for Best Practices, 2000, p. 30; See: www.nga.org/Center.

13 Utah Governor's Office of Planning and Budget analysis of Envision Utah Quality Growth Strategy report, January 2000. For more information about the growth strategy, see: www.envisionutah.org.

14 Siemen, Larsen & Purdy; Rogers, Golden & Halpern, Inc.; and Hammer, Siler, George Associates. *Crossroads: Two Growth Alternatives for Virginia Beach* (between 1990-2010). March 19, 1990.

15 Burchell, Ph.D., Robert W., William R. Dolphin and Catherine C. Galley. *The Costs and Benefits of Alternative Growth Patterns: The Impact Assessment of the New Jersey State Plan.* Center for Urban Policy Research, Edward J. Bloustein School of Planning and Public Policy, Rutgers, The State University of New Jersey, September 2000, p. 20.

16 *In the Fast Lane: Delivering More Transportation Choices to Break Gridlock.* National Governors Association Center for Best Practices, 2000, p. 8; See: www.nga.org/Center.

17 *New Mission for Brownfields: Attacking Sprawl By Revitalizing Older Communities.* National Governors Association, Governors Strategies for Growth and Quality of Life, 2000, p. 22.

18 Id. p. 7.

19 Id.

20 Kraybill, David and Linda Lobao. "Changes and Challenges in the New Millennium." *Rural County Governance Center Research Report No. 1,* produced in cooperation with Ohio State University, Rural Policy Research Institute, Colorado State University and the National Association of Counties, July 2001.

21 Euclidean Zoning is the phrase used to describe zoning that divides an entire municipality into various zoning districts, with the regulations in each district being uniform throughout all of the same districts. This type of zoning was named after the 1926 U.S. Supreme Court landmark case of Euclid v Ambler, the first case to uphold the constitutionality of comprehensive zoning.

22 "Estimates of Future New Development." Description of a works in progress by Chris Nelson with the Georgia Institute of Technology. Brookings Institution Center on Urban and Metropolitan Policy. 2001.

23 See, Buchsbaum & Smith, State & Regional Comprehensive Planning: Implementing New Methods for Growth Management, American Bar Association (1993); Bosselman and Callies, The Quiet Revolution in Land-use Control (1971).

24 Cobb, Rodney. "Toward Modern Statutes: A Survey of State Laws on Local Land-use Planning." *Modernizing State Planning Statutes: The Growing Smart Working Papers, Vol. 2,* American Planning Association, 1998.

25 George, Susan. *State Biodiversity Strategies, A Status Report.* State Biodiversity Clearinghouse, Defenders of Wildlife, January 2001, p. 9.

26 Knack, AICP Ruth. "Biodiversity Recovery Plan for the Chicago Region." *Planning,* March 2001, p. 6.

27 Faber, Scott. *On Borrowed Land: Public Policies for Floodplains.* Lincoln Institute of Land Policy, 1996, p. 25.

28 "Environmental Protection: Federal Incentives Could Help Promote Land Use That Protects Air and Water Quality," U.S. General Accounting Office, GAO-02-12, October 2001.

II STATE LEGISLATIVE SUMMARIES

by

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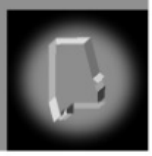
ALABAMA



Efforts in Alabama to reform significantly outdated state comprehensive planning laws, which date back to the 1920s,[1] continue to lag far behind changes being made by surrounding states including Tennessee, Georgia and Florida. Given concerns of some legislators and voters in the state, however, the challenge facing planners may be more of one preventing bills from being adopted that erode the ability of local government to plan for, and regulate, land use and development.

While more than a dozen planning and land-use related bills have been introduced in the past several years, including measures sought by the Alabama Chapter of APA and others aimed at subdivision law and master planning, none of these proposals have been enacted. Minor changes were made to the state's planning and zoning laws in 1994 to expand the powers and duties of regional planning and development commissions, but no substantive amendments were made to the statute's comprehensive planning requirements.[2]

One encouraging step occurred in January 2001 when the Alabama Commission on Environmental Initiatives issued a report to Gov. Don Siegelman recommending, among other things, that a smart growth commission be created to tackle urban sprawl.

In light of revenue shortfalls and the 2002 elections, the governor and legislature have not placed that recommendation on the legislative agenda or any of the 60 other proposals voted on by the 63-member commission.[3]

The commission, formed by the governor in April 2000, was comprised of representatives from state and local government, the Alabama Forever Wild Land Trust, and community or business leaders from each congressional district who were "charged with researching and developing quality options to encourage the long term preservation of Alabama's natural environment."

Nonetheless, signs that communities in the state face a range of urban sprawl and related issues continue to mount. For instance, a report in August from the U.S. Census Bureau[4] placed Alabama first in the nation in terms of the percentage of people who drive to work by themselves. The bureau found that about 1.6 million residents, or 84.6 percent of Alabama workers 16 and older, drive alone to and from their jobs. Only 11 percent carpool, and fewer than 1 percent use public transportation.

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 1994 Ala Laws Act 94-574.
3 See: http://www.al.com/news/birmningham/Dec2000/7-e429051b.htm
4 Johnson, Bob. "Ala. Leads Nation in Solo Commuters." Associated Press Online, Aug. 6, 2001.

ALASKA

Few cities or boroughs in the state beyond Anchorage, Fairbanks and Juneau have implemented comprehensive land-use regulations. What state comprehensive planning requirements there are have not been changed since 1985.[1] However, no significant amendments were made at that time to the comprehensive planning section of that statute.[2]

State law[3] grants that a first or second class borough "shall provide for planning, platting and land use regulation on an area-wide basis." This power may, in turn, be delegated to a city in the borough if the borough government consents. One tool the State Department of Community and Economic Development has published to provide technical assistance on planning and zoning to smaller communities is Alaska Planning Commission Handbook.

There are, however, several indications that state leaders and residents alike are beginning to see the value and need for state-of-the-art planning statutes, tools and practices. Last January, during Gov. Tony Knowles's 2001 state of the state speech, he pledged to further improve the state's environment and transportation network. With a record $2.7 billion invested in land, water and air transportation since 1994, Gov. Knowles said he would launch a new, comprehensive transportation initiative to better take advantage of federal funds.[4]

The Denali Commission, established by Congress in 1998, is an innovative federal-state partnership designed to provide critical utilities, infrastructure and economic support throughout the state. The commission has placed a high value on local land-use and development plans to increase local self-determination and to guide federal and state agencies in providing aid and capital funding for local projects. Among the commission's efforts is an educational initiative to increase the capacity of rural communities to create and implement local plans.

Another sign that residents in the 49th state are beginning to understand the need for modernized planning requirements is a series of public meetings, sponsored by the nonprofit Alaska Humanities Forum, designed to "give Alaskans a voice in policy decisions."[5] Started in late November 2001, "Alaska 20/20: Alaskans Charting Our Future" is a three-year, $1 million process to establish the state's needs during the next 20 years with respect to the economy, education,

1 Sec. 11 ch. 74 SLA 1985.
2 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
3 Alaska Statute 29.40.410.
4 See: http://www.smartgrowth.org/news/bystate.asp?state=AK.
5 See: http://www.and.com/alaska/v-printer/story/737132-p-784920c.html.

Among the Denali Commission's efforts is an educational initiative to increase the capacity of rural communities to create and implement local plans.

communities and families, the environment, and sustainable funding for public services.

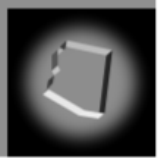
Three Alaska communities are leading the way. Anchorage, which received the APA 2001 Public Education Award for "Anchorage 2020—Anchorage Bowl Comprehensive Plan," involved residents in planning their city's future through a comprehensive outreach and communications campaign.[6] Hundreds of citizens responded, filling out and returning numerous clip-and-mail public opinion surveys published in local newspapers and being part of focus groups, task forces, community meetings and workshops.

Similar efforts have emerged on the Kenai Peninsula. In Soldotna, citizens, businesses and natural resource interests worked together to decide how to use a state highway improvement project announced in 1994 to improve their community identity and protect nearby valuable natural features connected with the Kenai River's world-class salmon fishery. The effort later attracted attention throughout the country when it was honored with an APA national award in 1996.[7]

Farther north, the Northwest Arctic Borough worked closely with scattered rural communities and native Alaskans to develop a plan that honors traditional values and preserves subsistence resources at the same time it identifies strategies to increase the economic vitality of this largely remote, cash-poor region. The plan received APA's national Paul Davidoff Award for advocacy planning in 1990.[8]

6 Andrews, James H. "Anchorage Bowl Comprehensive Plan Education Program." *Planning*, March 2001, p. 13.
7 Rothschild, Jan. "Mainstreet Alaska: Soldotna '95." *Planning*, April 1996, p. 18.
8 Schwab, Jim. "Alaska's Northwest Area Plan." *Planning*, March 1990, p. 11.

ARIZONA



Few states during the past four years have matched Arizona's focused attention on land-use planning reform and smart growth. The amount of political and legislative activity, however, should not come as a surprise given that two of the 10 fastest-growing metropolitan areas in the country are in Arizona. The Phoenix metropolitan area alone added more than a million residents between 1990–2000 while Yuma added 53,000.[1]

Substantive statewide planning reform began in 1998 when the state legislature passed a statute authorizing municipalities to establish procedures for transfer of development rights[2] and passed the Growing Smarter Act. The act, which included a provision on citizen participation in plan making that was based on language from APA's Growing Smart™ *Legislative Guidebook*, mandated local jurisdictions to give greater thought to how and where growth would occur, and how it would be financed. The act mandated local jurisdictions to give greater thought to how and where growth would occur, and how it would be financed.

The act also created the Growing Smarter Commission and directed the 15 members to delve into at least eight complex issue areas including modifications to existing planning enabling legislation. Following release of the commission's final report in September 1999, Gov. Jane Dee Hull called a special legislative session in February 2000, which resulted in the Growing Smarter Plus Act. Signed into law in May 2000, Growing Smarter Plus included statutory provisions that revised the state's municipal zoning policies by:

- requiring large or fast-growing communities to establish voter-approved general plans that include designated growth areas;
- granting counties the same power as cities to assess developer impact fees, provided the county adopts a capital improvements plan;
- requiring local general plans to have an analysis of how water supplies will serve future growth;
- prohibiting municipalities, without approval of the landowner, from designating private lands or state trust lands as open space, recreation, conservation or agricultural lands in order to meet a general plan's open space and growth elements;
- requiring municipalities to adopt a citizen review process for rezonings;
- authorizing municipalities to designate infill incentive districts and adopt an infill incentive plan to encourage redevelopment in such districts; and
- requiring authorization for subdivision and

1 Table 4, "Population Change for the Ten-Fastest Growing Metropolitan Areas: 1990 to 2000." *Population Change and Distribution 1990 to 2000*. U.S. Census Bureau, April 2001, p. 6. Yuma, AZ, #3, 49.7% increase; Phoenix-Mesa, AZ, #8, 45.3% increase.
2 S. 1238, Ch 145, Arizona, 1997.

split parcel review involving five or fewer lots.

In November 2000, voters defeated two high-profile ballot initiatives on planning and growth management. Proposition 100, the governor's proposal for a constitutional amendment to create the Arizona Conservation Reserve, was rejected by a 52-48 percent margin.[3] The reserve would have designated up to 70,000 acres of state trust land for permanent conservation and provided a framework for designating up to 200,000 additional acres.

Proposition 202, the Citizens Growth Management Initiative sponsored by the Sierra Club, was defeated by a 70-30 percent margin.[4] Among other things, this constitutional amendment would have required most cities and counties to adopt 10-year urban growth boundaries.[5]

The failure of these ballot initiatives, however, does not herald the end of planning reform and smart growth in Arizona. Last February Gov. Hull signed an executive order establishing the Growing Smarter Oversight Council.[6] A public-private partnership, the council is charged with monitoring the effectiveness of Arizona's growth management statutes (Growing Smarter and Growing Smarter Plus acts) and offering suggestions for improvement. In her 2001 state of the state address, Gov. Hull asked the legislature to appropriate $800,000 for small community planning assistance.[7] Lawmakers did not approve the request, however.

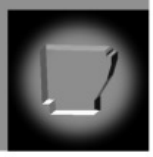
> The oversight council, a public-private partnership, is charged with monitoring the effectiveness of Arizona's Growing Smarter and Growing Smarter Plus statutes, and offering suggestions for improvement.

Planning proponents, led by the Growing Smarter Oversight Council, are now focusing on making improvements to the Growing Smarter and Growing Smarter Plus acts. Modifications include giving jurisdictions more time to adopt updated general plans and clarifying that the deadline for adoption of the general plans (December 2001) refers to municipal council action, not voter approval.

Other concerns involve the costs associated with holding special elections to approve the general plans and with implementing the plans, and adding penalties or other enforcement strategy to ensure communities comply with the act.

3 "Smart Growth by State." Smart Growth Network, November 2000; See: http://www.smartgrowth.org/information/news_trends11-00.html.
4 Id.
5 Meyers, Phyllis. Growth at the Ballot Box: Electing the Shape of Communities in November 2000, Brookings Institution Center on Urban and Metropolitan Policy, February 2001.
6 Exec. Order 2001-02 (Gov. Hull, 2/16/01).
7 State of the State, 45th Arizona Legislature, First Regular Session, Governor Jane Dee Hull, Jan. 8, 2001; See: http://www.governor.state.az.us/sos/index.html.

ARKANSAS



Many in the state believe Arkansans are ready to embrace more aggressive planning strategies and to update their state comprehensive and other planning laws. An April 2001 report on planning issues[1] by the Institute of Governments found sprawl ranks second to crime as the biggest concern of the state's urban residents, and it's the third biggest concern at the county level.[2]

Two bills were approved during the 83rd general assembly last year, helping to focus attention on planning reform and smart growth in Arkansas. Advocates are hopeful more substantial changes can be made during the next several years since the last time any significant changes were made to the statute authorizing comprehensive city planning in the state was 1957.[3]

Under one of the new laws enacted in 2001, cities that become adjacent and contiguous to one another through annexation must now ensure that zoning within 1,000 feet of the joint city boundaries is compatible.[4] The other new law[5] promotes inter-governmental cooperation in cases where a municipality is located in two or more different planning and development districts.

The state general assembly also amended the state constitution to allow for the creation of redevelopment districts and tax increment financing.[6] Legislators acted following voter approval in November 2000 of Amendment 78. This new law gives counties and cities redevelopment bond authority to help communities eliminate or prevent blighted areas. A separate bill,[7] which would have extended tax credits to those involved in renovating or rehabilitating historic properties, died in committee upon adjournment.

With the increase in discussions about smart growth issues, some lawmakers have responded by proposing legislation that would require the state "to compensate owners of real property for excessive regulations." Two bills,[8] each titled "Private Property Protection Act," died in committee when the general assembly adjourned last year.

1 "Growth in Arkansas," University of Arkansas at Little Rock's Institute of Governments, April 2, 2001.
2 Crouch, Elisa. "Arkansans want managed growth: survey discovers urban sprawl viewed as problem." *Arkansas Democrat Gazette*, April 3, 2001, p. B1.
3 Act 186. For additional information about those changes, see Rodney Cobb's article, "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning," in *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
4 Act 1198 (S.B. 173) signed April 2, 2001. See: http://www.arkleg.state.ar.us/ftproot/acts/2001/htm/act1198.pdf.
5 Act 754 (H.B. 2025) signed March 13, 2001. See: http://www.arkleg.state.ar.us/ftproot/acts/2001/htm/act754.pdf.
6 Act 1197 (H.B. 2415) signed March 27, 2001. See: http://www.arkleg.state.ar.us/ftproot/acts/2001/htm/act1197.pdf.
7 S.B. 338. See: http://www.arkleg.state.ar.us/ftproot/bills/2001/htm/SB338.pdf.
8 H.B. 2305. See: http://www.arkleg.state.ar.us/ftproot/bills/2001/htm/HB2305.pdf; and H.B. 2343. See: http://www.arkleg.state.ar.us/ftproot/bills/2001/htm/HB2343.pdf.

CALIFORNIA

Long a leader in promoting progressive planning as a way to solve growth challenges, California helped set the standard for revision of outdated planning enabling legislation with reforms in 1971 referred to as the "McCarthy Legislation,"[1] which required that land-use decisions be consistent with comprehensive plans.[2] Then, the explosive growth in the state during the mid- to late-1990s was a catalyst for more reforms, causing smart growth and planning issues from the ballot box to the state house to become prominent fixtures on California's political landscape.

In January 2000, state Assemblywoman Patricia Wiggins organized the Smart Growth Caucus. This bipartisan, geographically diverse coalition is comprised of 34 California legislators who believe that the state must pursue land-use policies that are economically, environmentally and socially sustainable. The caucus also is committed to advancing a smart growth legislative agenda.[3] Last March and April the caucus, along with key legislative committees, held hearings on several growth-related issues including: "Reducing Commutes and Promoting Housing," "Reinvesting in Urban Neighborhoods," and "Protecting California's Shrinking Agricultural Lands."[4]

At the same time, individual members of the caucus have taken active roles in discussing smart growth. For example, Assemblyman Gil Cedillo held a legislative hearing in Los Angeles in March 2001 on the state's role in promoting smart growth.[5]

In November 2000, Speaker Robert Hertzberg formed the Speaker's Commission on Regionalism in collaboration with the California Center for Regional Leadership to better manage growth and encourage regional cooperation.[6] Also in November 2000 voters turned out to consider a number of smart growth-related ballot initiatives involving transportation; affordable housing; schools; water quality; open space/natural resources/recreation; economic development; growth management; and governance/flexibility. All but two of these initiatives were locally initiated, and more than half of the 78 state and local measures were approved.[7]

While a wide variety of legislative initiatives were introduced during 2000 and 2001 to address smart growth issues, only a few were enacted. Among the defeated proposals were the California Farmland Conservation Bond Act of 2002 that

1 1971 California Statute Chp. 1446.

2 For a history of comprehensive planning in California see, Curtin, Daniel J. and Cecily T. Talbert, Curtin's California Land Use and Planning Law, 21st ed. (2001); and dissent by J. Arabian in *DeVita v County of Napa*, 9 Cal.4th 763, 772-74 (1995).

3 See: http://www.assembly.ca.gov/sgc/default.htm.

4 See: http://www.calfutures.org/resource/LUL/LUL_Mar01.html.

5 Romney, Lee. "Hearing Focuses on Creating Coherent Growth Strategy." *Los Angeles Times*, Bus. Part C, p. 2 (March 24, 2001). Among the speakers at the hearing were California State Treasurer Phil Angelides, former Massachusetts Governor Michael Dukakis, and Sun American Inc. Chairman Eli Broad.

6 See: http://regionalism.org/about/index.html.

7 Meyers, Phyllis. *Growth at the Ballot Box: Electing the Shape of Communities in November 2000*. Brookings Institution Center on Urban and Metropolitan Policy (February 2001).

would have authorized the state to sell bonds to buy farmer development rights in areas threatened by sprawl and to promote urban infill.[8]

The Local Government General Plan Update and Sustainable Communities Grant Program would have awarded grants of up to $250,000 to cities and counties to revise and update their plans and policies, and encourage coordination between land use, housing and transportation planning.[9] A proposal enacting recommendations of the Speaker's Commission on Regionalism would have implemented policies and strategies encouraging regional collaboration among local governments, businesses and community organizations.[10]

Other measures introduced but not approved included bills: requiring local plans to have urban growth boundaries and to be submitted to the Office of State Planning for approval no later than July 1, 2002;[11] funding a study that monitors and evaluates the fair share of housing starts, a requirement of a local plan's housing element;[12] authorizing counties and cities to prepare joint cooperative general plans in lieu of individual plans as part of a pilot program helping localities develop plans consistent with adopted regional planning principles;[13] and funding regional planning and general plan updates.[14]

However, the 2001 legislative session ended on a high note for planning reform advocates when Gov. Gray Davis signed all of the bills supported by planners in the state. These measures included S.B. 497, which limits the use of lot line adjustments and certificates of compliance to reconfigure ancient subdivisions.

The measure was the legislature's response to the Hearst Corporation's use of an 1852 subdivision map to create 279 buildable parcels on the Hearst Ranch in San Luis Obispo County. The California Coastal Commission supported the bill, as did the California Chapter of APA, which mounted a major public awareness campaign to counter efforts by real estate interests seeking a veto of the bill.

California's APA chapter sponsored and assisted in passage of A.B. 1553, which requires the state Office of Planning and Research to add environmental justice to its general plan guidelines. Planners also assisted in formulating S.B. 221, which requires local governments to include proof of adequate water supply as one condition of approving subdivision housing projects involving 500 or more residential units.

Also approved was S.B. 610, which expands the existing requirement that public water systems prepare water supply assessments for large development projects and improves their long-term water supply planning studies. The governor used the signing of these bills to call for more infrastructure projects so as to increase water storage capacity throughout the state.

The issue of "school sprawl" was targeted with A.B. 1367, which requires school districts and local

8 A.B. 52 (Assembly member Wiggins, introduced 2001).
9 A.B. 291 (Assembly member Corbett, introduced 2001).
10 A.B. 787 (Assembly member Hertzberg, introduced 2001).
11 A.B. 1514 (Assembly member Canciamilla, introduced 2001).
12 S.B. 213 (Sen. Perata, introduced 2001).
13 A.B. 924 (Assembly member Wayne, introduced 2001).
14 A.B. 1968 (Assembly member Wiggins, introduced 2000); and A.B. 2774 (Assembly member Corbett, introduced 2000).

governments to work together on long-range school siting plans. It was sponsored jointly by the League of California Cities and the California Chapter of APA. A.B. 1602 was approved, which puts a proposal for a $2.6 billion parks and land preservation bond issue on the 2002 election ballot. In signing the bill, Gov. Davis noted that the slowing economy is already having a severe impact on state revenues. If the voters approve the bond issue, the governor said he would spend the money slowly so as to balance debt service costs against other, high-priority funding needs.

S.B. 211, which extends the life of local redevelopment agencies, also was enacted. It tightens the requirements for declaring a redevelopment area blighted and requires agencies to spend more money on low-income housing. Finally, to address transportation gridlock and congestion concerns, Gov. Davis signed a package of bills that provides $5.3 billion for his five-year, Transportation Congestion Relief Fund.[15]

The California Chapter of APA helped develop another proposal, sponsored by Assembly Member Pat Wiggins (A.B. 857) and Senator Byron Sher (S.B. 741), that was approved last year by both the state Assembly and Senate. Work by a joint conference committee to reconcile differences in the two proposals is still pending. The assembly bill would require state smart planning principles that both the state agencies and local governments would incorporate into their planning. Many of these principles are similar to ones suggested in APA's Growing Smart[TM] *Legislative Guidebook*. The senate version would require state smart planning principles to govern state funding for infrastructure projects.

Gov. Davis has taken other steps to promote smart growth and good planning. On Oct. 29, 2001, he signed Executive Order D-46-01 directing the California Department of General Services to promote downtown revitalization by constructing and reusing state buildings in downtown and central city areas. Smart growth patterns of development are to receive maximum support; renovations of state-owned office buildings are to be done with site plans and architectural designs of the highest quality; communication with local residents, property owners, business people and others is to occur to help determine local concerns; and facilities are to be located and leased within easy access of transportation and available housing that is affordable. He has also asked the state Office of Planning and Research to hold regional smart growth forums throughout the state to get local input about smart growth proposals that the state should support.

Previously, Gov. Davis established The Governor's Commission on Building for the 21st Century.[16] The commission issued two reports evaluating infrastructure deficits in the state and recommending solutions. As a result of the commission's work, the governor and state legislature have agreed to a process that will result in a five-year capital outlay plan beginning with the Budget Act of 2002.[17]

15 See: http://www.dot.ca.gov/dist07/route5/is5_mip.htm.
16 Commission was created by Executive Order D-4-99 in 1999.
17 2000-01 Governor's Budget Summary, Commission on Building for the 21st Century.
See: http://www.dof.ca.gov/html/BUDGT00-01/Building21st-N.htm.

COLORADO

Perhaps more than any other state, Colorado has been at the forefront of efforts to enact planning reform and smart growth measures. This should come as no surprise considering the state has undergone explosive growth and demographic transformations since 1990. The latest figures, in fact, show Colorado's 3 percent rise in population since April 2000 to be the third-largest increase nationwide and nearly three times the national average.[1]

Despite being at the top of the state's political agenda, planning reform and managed growth have generated more debate than legislation. Coloradoans have witnessed multiple special legislative sessions, an acrimonious ballot initiative, and an array of legislative proposals that led to some minor successes.

At the end of a second special session last fall, a number of limited reforms finally were approved. Some suggest that these reforms do not reflect progress as much as political expediency. Smart growth advocates see this as a welcome first step, but caution much work remains since the comprehensive planning requirements communities in the state must follow still remain essentially the same as the 1920s model legislation after which they're copied.[2]

Following the extraordinary second special session convened last year by Gov. Bill Owens, four planning-related bills were enacted. The measures authorize the collection of impact fees by certain municipalities;[3] set forth procedures for municipalities to resolve conflicts;[4] alter the process for certain "flagpole" annexations;[5] and require certain counties and cities to adopt master plans.[6]

Planning experts in the state characterize these measures as "baby steps" toward growth management, pointing out that the new laws do little, if anything, to solve problems associated with poorly managed or uncontrolled growth. The Colorado Municipal League, for instance, says the mandatory master plan legislation covers municipalities that already have plans in place or in progress. Equally problematic is the fact that the only required plan element resulting from the legislation was a recreation provision. The master plan statute still does not contain a required land-use element.

Many in the state also are concerned about certain provisions that were attached to the impact fee bill, including language that limits how the fees can be used; requires fees to be directly relat-

1 "U.S. Adds 3.4 Million Since Census 2000." U.S. Census Bureau, Dec. 28, 2001. Colorado's growth was estimated at 2.7 percent; the national average was 1.2 percent.
2 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
3 S.B. 01S2-015 (2001).
4 H.B. 01S2-1020 (2001).
5 H.B. 01S2-1001 (2001).
6 H.B. 01S2-1006 (2001).

ed to development impacts; and attempts to apply the bill to home rule municipalities. The last provision may very likely generate litigation.

Many groups promoting planning reform in the state will continue to push for legislation that addresses growth management comprehensively. Since Colorado public opinion polls continue to indicate sprawl is residents' top concern, hopes remain that some sort of comprehensive growth management initiatives will surface this year.[7]

Planning reform and smart growth discussions during the Colorado General Assembly's 2001 session began when Gov. Owens, in his state of the state address last year, asked lawmakers to implement the recommendations of the Governor's Commission on Saving Open Spaces, Farms and Ranches.[8] The blue ribbon commission, established by the governor in May 2000, developed 11 proposals that were released in December 2000.[9]

One bill would have provided for a comprehensive growth plan,[10] and another would have given voters the opportunity to limit the increase in the number of residential building permits to 3 percent, while limiting the development of rural lands outside a municipality to no less than 35 acres or cluster developments.[11] Other bills not adopted last year included requirements that some counties and cities develop public works plans;[12] creation of a Denver regional planning agreement;[13] and authorization of grants to help local governments implement master plans.[14]

Still other growth-control bills, introduced during the first of two special legislative sessions ordered last year by the governor, also were not adopted. They included a proposal that would have provided a non-binding, alternative dispute resolution option for counties and cities;[15] a grant program that would have helped local governments develop master plans;[16] and formation of land-use courts that purported to provide efficiencies in the resolution of land use disputes.[17]

Since taking office Gov. Owens has sought smart growth measures and planning reforms. In January 2000 he announced his "Smart Growth: Colorado's Future" initiative,[18] which led the state general assembly that year to considered an array of planning-related measures. Although lawmakers were unable to reach consensus on most issues, five limited reforms were adopted and signed by the governor.

The first bill, H.B. 1427, created the Office of Smart Growth within the Department of Local Affairs. The executive director is authorized to designate areas in the state as "Colorado Heritage Communities." Communities so designated are eligible to receive planning grants provided applications are submitted jointly by the governing bodies of at least two local jurisdictions and critical planning issues—including land use and development patterns, transportation planning, mitigation of environmental hazards, and energy use—are addressed.

7 "From the State House." American Planning Association, December 2001.
8 "Owens Signs Anti-Sprawl Legislation." Office of the Governor, press release, May 24, 2000.
See: www.state.co.us/owenspress/05-24-00a.htm.
9 "Colorado's Legacy to its Children." Governor's Commission on Saving Open Spaces, Farms & Ranches, report, December 2000.
10 S.B. 01S-012 (2001).
11 S.B. 01S-002 (2001).
12 H.B. 01S2-1025 (2001).
13 H.B. 01S2-1010 (2001).
14 H.B. 01S2-1002 (2001).
15 H.B. 01S-1013 (2001).
16 H.B. 01S-034 (2001).
17 S.B. 01S-034 (2001).
18 State of the State Address, Gov. Bill Owens, Jan. 6, 2000; See: http://www.state.co.us/owenspress/2000sos.html.

The second proposal that was signed, H.B. 1001, provides additional criteria that may be used in local government comprehensive plans including public places and facilities; schools; the location of adequate water supply; existing, proposed or projected location of residential neighborhoods; and sufficient land for future housing development to meet projected needs.

The third bill enacted, H.B. 1306, promotes urban redevelopment and infill development through a state income tax incentive of up to $100,000 for each individual developer who cleans up brownfields. The Department of Health and Environment is charged with certifying the cleanup has occurred and verifying the cleanup costs.

The fourth bill adopted, H.B. 1302, provides a state income tax credit to developers who build low-income rental housing and agree to make such housing available within their developments for 15 years. The fifth measure that was signed, H.B. 1348, offers a state tax refund up to $20,000 for the donation of conservation easements. The law also authorizes landowners to transfer all or a portion of unused tax credits to another taxpayer.

Despite these accomplishments, more sweeping reforms proposed in 2000 were defeated. This led a group of citizens, Coloradoans for Responsible Growth, to seek reform through a ballot measure. Named the Responsible Growth Initiative or Amendment 24, the proposal called for certain cities and counties to designate urban growth boundaries on maps subject to citizen approval; impact analysis of growth plans; and regional cooperation. The initiative[19] prompted much debate and led critics to spend several million dollars to campaign against the proposal,[20] which was defeated by a 40 percent margin (30 percent for, 70 percent against) during the November 2000 election.

Colorado's master plan statute still does not contain a required land-use element.

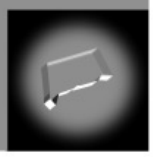
Despite the high profile defeat of Amendment 24, it belied the continuing strength of popular support for smart growth reform. Altogether there were two statewide initiatives and 65 local initiatives put before Colorado voters in 2000 addressing such smart growth issues as transportation, affordable housing, schools, water quality, open space, natural resources, recreation, economic development, growth management and governance. More than half of the initiatives in Colorado and other western states were approved.[21]

19 This initiative did not have the support of Gov. Owens.

20 Meyers, Phyllis. *Growth at the Ballot Box: Electing the Shape of Communities in November 2000.* Brookings Institution Center on Urban and Metropolitan Policy, February 2001, p. 14.

21 Id., p. 9.

CONNECTICUT



Modest changes to the state's planning laws have been made since 1958, however in 2001 several legislative proposals were enacted that, while not making substantial changes to local comprehensive planning requirements,[1] set the stage for additional planning reforms and smart growth measures to be adopted in the state.

The Connecticut Chapter of APA was instrumental in drafting legislation, which for the first time provides clear direction to communities in terms of what plans must contain, consistency with other jurisdictions, and requirements that all planning commissions consider using cluster development in order to leave more land as open space.[2]

Connecticut Chapter President Daniel Tuba notes, however, that much work still remains to be done in the state. To that end, discussions are underway in the general assembly to develop a smart growth program. To accomplish that, the state APA chapter suggests that a blue-ribbon panel be convened to investigate approaches and make recommendations.

Two other important bills also were enacted last year. One of the new laws, Public Act 01-117, allows the 169 municipalities in the state, which has no county jurisdictions or governments, to enter into agreements to share services and tax revenue.[3] The other measure, Public Act 01-158, establishes steps, including inter-town collaboration, to help revive communities characterized by low median household incomes, declining populations and high property tax mill rates.[4]

Several other planning-related bills remained under committee consideration at the end of the 2001 legislative session, including a measure establishing "fundamental planning principles to enable communities to more successfully meet the needs of the people who live and work in them."[5] Other proposals were designed to "establish and implement a state-wide growth policy that promotes state-municipal partnerships and identifies strategies to preserve environmental integrity by protecting open space and agricultural land and cleaning up brownfields"[6] and to establish a smart growth policy for economic development.[7]

A similar smart growth economic development act in 2000 also failed.[8]

Besides activity in the general assembly, coordinated efforts by Gov. John Rowland and the

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." Growing Smart Working Papers Vol. 2, American Planning Association, 1998.
2 P.A. 1-97 (2001), An act revising the Process for Adoption of Municipal Plans of Conservation and Development. Mandates local land-use plans and directs that the plans be updated every 10 years.
3 "State of Connecticut 2001 Public Act Summary." Connecticut Chapter, APA, 2001, p. 3.
4 Id. p. 5.
5 H.B. 6603 (2001).
6 S.B. 301 (2001).
7 H.B. 6258 (2001).
8 H.B. 5264 (2000).

state's Department of Economic Development involve other planning-related issues including brownfield redevelopment, business relocation incentives, expanded public transit, and housing rehabilitation/ownership.[9]

In his 2001 state of the state speech, the governor pledged to "further investments in our urban areas and the people who live there." Vital to achieving this goal, the governor noted, is state-of-the-art planning: "More than ever before, transportation policy has to be coordinated with economic development and environmental protection. Economic development in urban areas creates new wealth and new opportunity. Cleaning up brownfields encourages investment in the poorest parts of our state. And preserving open space helps control growth and protect the beauty and character of this place we call home."[10]

One example of Gov. Rowland's commitment was the Transportation Summit he convened in September 2000 to discuss a variety of transportation concerns, including public and intermodal transportation and parking. Among the results of the meeting was creation of a 15-member Connecticut Transportation Strategy Board,[11] which was to propose an initial transportation strategy and preliminary costs to the governor and general assembly by Jan. 15, 2002.

Gov. Rowland also established an urban homeownership program in May 2001 with the goal of attracting "to the cities suburban residents who will see that this offering is too good to pass up, and to help urban renters into homeownership opportunities."[12] The live-where-you-work program allows purchasers in 16 cities to apply for 30-year fixed-rate mortgages, of up to $35,000, at an interest rate of a .25 point below that offered by the state's Housing Finance Authority.[13]

Another new initiative, the Brownfields and Information Technology Financing Program,[14] allows the Connecticut Development Agency of issue bonds on behalf of towns for brownfields projects statewide. Last August the agency committed its first funds under the program—$2 mil-

The Connecticut Chapter of APA was instrumental in helping draft legislation that requires communities to consider cluster development in order to leave more land as open space.

9 See: http://www.state.ct.us/ecd/.
10 See: http://www.state.ct.us/governor/news/sos2001.htm.
11 Public Act 01-5; See: http://www.cga.state.ct.us/2001/act/Pa/2001PA-00005-R00HB-07506SS1-PA.htm.
12 See: http://www.state.ct.us/governor/news/052901.htm.
13 See: http://www.state.ct.us/governor/news/071601.htm.
14 See: http://www.cga.state.ct.us/2001/act/Pa/2001PA-00179-R00SB-00823-PA.htm.

The Connecticut Chapter of APA suggests a blue-ribbon panel be convened to investigate and recommend approaches to smart growth.

lion, of an estimated $25 million needed, to remediate a site in Hartford.

In addition to focusing on urban revitalization and brownfields, headway is being made to protect open space in the Constitution State. In 1998, the state established an open space preservation program with a goal of preserving 20 percent of the state's acreage by 2025. At the end of 2000, 14,000 acres had been preserved at a cost of about $40 million. In February 2001, the governor announced the state's largest land purchase—15,300 acres at a cost of $98 million.[15]

The state has allowed the transfer of development rights for farms for approximately the past 20 years. In 2001, including the December 2001 Bond Commission meeting, the state spent more than $3 million on farmland preservation. Even though only $2 million was authorized in Fiscal Year 2002, previously authorized bond funds continue to be spent as a result of pressure from the statewide coalition, the Working Lands Alliance. Only nine farms were preserved under the Farmland Preservation Program between 1995 and 1999, however 19 farms sold their development rights to the state in 2000 and 2001. These transfers involved $7 million and preserved more than 2,000 acres. Through last October, 187 farms totaling 27,990 acres[16] had been protected.

The governor also has boosted the amount of protected state lands through the Natural Area Preserves, to which 1,192 acres were added in December 2000.[17] Such designation requires development of detailed management plans to protect each preserve's unique species and communities.

The general assembly also approved in 2001 legislation[18] requiring all municipalities to consider cluster development in their plans of conservation and development. Previously this requirement applied only to towns where more than 20 percent of the land was identified as undeveloped. Cluster development generally places buildings closer together than conventional developments, leaving more land as open space.

15 See: http://www.state.ct.us/governor/news/020601.htm.
16 See: http://www.state.us/governor/news/092401b.htm.
17 See: http://www.state.ct.us.governor/news/120400.htm.
18 Public Act 01-197; See: http://www.cga.state.ct.us/2001/act/Pa/2001PA-00197-R00HB-06736-PA.htm.

DELAWARE

Leading efforts to further modernize statewide planning laws and implement smart growth practices in the First State are both the general assembly and Gov. Ruth Ann Minner. In 1995 Delaware began to substantially update its comprehensive planning laws, making it one of 12 states that have undertaken such reforms.[1]

Additional improvements were made last year with enactment of the governor's "Livable Delaware" initiative, including legislation[2] that provides funding and technical assistance to municipalities to develop comprehensive plans. Measures addressing two other important planning issues—brownfields and historic preservation—also were enacted in 2001.

Five legislative proposals were signed into law last summer as part of Gov. Minner's Livable Delaware agenda. The first statute[3] establishes a Governor's Advisory Council on Planning Coordination. Chaired by Lt. Governor John Carney, the council is charged with developing "accurate, fair, graduated impact fees"[4] to discourage sprawl. The proposed schedule of impact fees was expected to be submitted to the General Assembly by Jan. 15, 2002.

The council, which includes representatives of local governments, homebuilders, agriculture and civic associations, also will assist the governor in identifying and addressing current and future state development and land-use issues, and will recommend legislation, policies and tools that support the Livable Delaware initiative.

Last March Gov. Minner also issued an executive order[5] requiring all state agencies and departments to develop measures for Fiscal Year 2003 that would implement recommendations curbing sprawl outlined in the 1999 state report, *Shaping Delaware's Future: Managing Growth in the 21st Century*.[6]

And with creation of the Realty Transfer Tax for Conservation Trust Fund,[7] also in 2001, the state's formula for funding the acquisition and maintenance of open space has changed significantly. Delaware now will provide $9 million annually for the next 18 years for the purchase and stewardship of undeveloped land.

Another new law enacted in 2001 provides up to $1 million a year in matching grants for environmental assessment and remediation of brownfields. The measure[8] also encourages infill by standardizing the definition of brownfield for the purposes of certain tax credits.

1 Meck, Stuart. "An Ever-Changing Landscape." *Planning Communities for the 21st Century*. American Planning Association, December 1999, p. 5.
2 H.B. 255 (Comprehensive Plans and Annexation).
3 S.B. 105 (Planning Coordination).
4 H.B. 235 (Graduated Impact Fees).
5 See: http://www.state.de.us/governor/executive_orders/2001/eo014.htm.
6 See: http://www.state.de.us/planning/livedel/index.htm.
7 H.B. 192 (Realty Transfer Tax for Conservation Trust Fund).
8 S.B. 183 (Brownfields Development).

Although not part of the governor's Livable Delaware agenda, the Historic Preservation Tax Credit Act[9] was signed in February 2001. The measure places the state among 15 others that offer tax credits to those who restore or rehabilitate historic properties. Income-producing as well as owner-occupied historic properties may qualify for the credit.

Another bill, taken up in 2001 by the Senate Community/County Affairs Committee[10] but not approved by the General Assembly, would require the development of zones wherein counties and municipalities would develop joint plans. The legislation also provides for notice of proposed land-use action by either the county or municipality.

Delaware began its smart growth efforts in December 1994 when the Cabinet Committee on State Planning Issues sponsored the conference, "Shaping Delaware's Future."[11] The program reached the public and private sectors in an effort to develop a 25-year statewide vision.[12] Several major consequences of failing to coordinate growth and development were identified, including loss of community character and identity; continued decline of older cities; growing separation between cities and suburbs; adverse effects on older suburban areas; adverse effects on natural resources; and loss of productive farmland.[13] One important aspect of the program was public involvement.[14]

The following year the report, *Shaping Delaware's Future*, was released.[15] To better plan for an expect population increase of 180,000 and for a possible loss of 125,000 acres in open space by 2020, the report recommended 10 development goals.[16] Following the release of the report, the governor established by executive order a State Planning Citizen's Advisory Panel and an Advisory Panel on Intergovernmental Planning and Coordination.[17] That same month, the Shaping Delaware's Future Act was introduced and signed into law three months later.[18] The act requires, among other things, that the counties submit comprehensive land-use plans to the Office of State Planning Coordination.[19]

9 H.B. 1 (Historic Preservation Tax Credit Act).

10 S.B. 90 (Intergovernmental Coordination Zone Act).

11 *Shaping Delaware's Future*, newsletter of the Delaware Cabinet Committee on State Planning Issues, Feb. 17, 1995.

12 Id.

13 Id.

14 Id. Interactive open houses were scheduled to keep the dialogue going.

15 *Shaping Delaware's Future*, newsletter of the Delaware Cabinet Committee on State Planning Issues, April 1995.

16 (1) Directing state investment and future development to existing communities, urban concentrations, and designated growth areas; (2) protecting important farmland from ill-advised development; (3) protecting critical natural resource areas from ill-advised development; (4) developing methods for assessing the fiscal impact and cost-benefit analysis of development for use by both state and local governments when considering land-use policies and infrastructure investment; (5) streamlining regulatory processes and providing flexible incentives and disincentives to encourage growth in desired areas; (6) encouraging redevelopment and improving livability of existing communities and urban areas, and guiding new employment into under-used commercial and industrial sites; (7) providing high quality employment opportunities for citizens with various skill levels, and attracting and retaining a diverse economic base; (8) protecting the state's water supplies, open spaces, farmlands, and communities by encouraging revitalization of existing water and wastewater systems and the construction of new systems; (9) promoting mobility for people and goods through a balanced, multi-modal transportation system; and (10) providing access to educational opportunities and health care for all Delawareans. Id at 8-15.

17 Executive Order No. 29.

18 70 Delaware Laws 270 (1995).

19 Id.

FLORIDA

When the Sunshine State overhauled its comprehensive planning and land-use statutes in 1985,[1] the changes were recognized at the time as one of the country's first efforts to devise a statewide growth management system. Among other things, the landmark reforms included a state comprehensive plan,[2] although implementation of the statewide plan has been limited and has not been linked to the state budget.

Under Florida's approach, local and regional comprehensive planning is required. Also included was a "concurrency" provision, which requires new public facilities and services to meet the demands of new development to be installed at the same time the development takes place.

Another statute the state enacted as part of its planning reform efforts addressed developments of regional significance. Two additional planning laws were enacted in 1998 that added criteria to the future land-use elements of local comprehensive plans and clarified that mayoral veto power did not extend to zoning variances. A measure enacted in 1999 authorized counties and municipalities to designate urban infill and redevelopment areas based upon specific criteria.

For the most part, however, adequate funding to carry out the state's innovative growth management system has not been provided. This has led to several challenges in implementing these and other planning-related statutes during the 1990s when Florida was one of the 10 fastest-growing states in terms of population.[3] Consequently, planners and others have called for stronger growth management policies and implementing measures, and sufficient funding.

To measure public sentiments about land-use policies and quality-of-life issues, the Florida Department of Community Affairs conducted a statewide Growth Management Survey in February 2000.[4] Traffic congestion, urban sprawl, loss of wildlife habitat and limited water supplies were the most serious growth management problems noted.[5]

Survey results also showed broad public support for limiting urban sprawl; requiring intergovernmental coordination; providing incentives for urban redevelopment, community visioning and design; and keeping land in agricultural uses.[6] Respondents also supported changes that would strengthen links between transportation and land use; establish urban growth boundaries; develop a

1 Omnibus Growth Management Act and the Local Government Comprehensive Planning and Land Development Regulation Act (Fla. Stat 163.3161-.3215), 1985. Also, in 1984 the State and Regional Planning Act (Fla. Stat 186.001-.911) was adopted.
2 State Comprehensive Plan (Fla. Stat 187.201), 1985.
3 "Population Change and Distribution 1990 to 2000." *Census 2000 Brief*. U.S. Census Bureau, April 2001, p. 2.
4 *Growth Management Survey Report*. Florida Department of Community Affairs, February 2000; See: http://www.dca.state.fl.us/growth.
5 Id.
6 Id.

state comprehensive plan that had clear priorities for growth; and improve citizen participation.[7]

The following July Gov. Jeb Bush signed an executive order creating a state-level Growth Management Study Commission.[8] The commission was directed to recommend state, regional and local implementation strategies in order to meet identified goals and achieve desired outcomes. The commission, chaired by Mel Martinez who now is secretary of the U. S. Department of Housing and Urban Development, also was asked to consider growth trends that affect the state's quality of life, environment and economy, and to review existing growth management systems. To gather public input, the commission held hearings in eight cities.[9]

While the commission's study was being completed, a citizen-led initiative calling for statewide high-speed rail transit was placed on the November 2000 ballot. Voters subsequently passed the constitutional amendment by a 6 percent margin, calling for a high-speed monorail, fixed guideway or magnetic levitation system between Florida's five largest urban areas. The new transit system also will provide access to existing air and ground transportation facilities and services. Construction is scheduled to begin no later than Nov. 1, 2003.[10]

By February 2001 the Growth Management Study Commission's final report, Liveable Florida for Today and Tomorrow, was completed. Altogether 89 recommendations were made, including creation of partnerships between state and local governments instead of the state having a stronger role. Another recommendation, which attracted national interest, is full-cost accounting to help local and other governments better project the actual costs of sprawl.[11]

Several of the commission's proposals were considered during the 2001 legislative session, including two promoted by Gov. Bush: schools and full-cost accounting. Controversy around these and other issues, however, prevented the proposals from being adopted last year although they are expected to readdressed this year.

However, the legislature did approve funding for a fiscal impact analysis study and two related rural land proposals. One of these programs offers private landowners a per-acre payment from the state in exchange for a conservation easement to keep land rural, although funding for the program still must be approved. The second measure is a pilot program to designate rural land stewardship areas and promote cluster development through transferable rural land-use credits.

7 Id.

8 Exec. Order No. 2000-196, signed July 3, 2000.

9 *A Liveable Florida for Today and Tomorrow*. Florida Growth Management Study Commission, February 2001; See: http://www.dca.state.fl.us/growth/pdf/gmsc.pdf.

10 Myers, Phyllis. *Growth at the Ballot Box: Electing the Shape of Communities in November 2000*. Brookings Institution Center for Urban and Metropolitan Policy, February 2001.

11 See: http://www.smartgrowth.org/information/news/article.asp?art=1002.

GEORGIA

A dozen years after substantially overhauling its state comprehensive planning laws[1] and adopting other smart growth measures, 99 percent of Georgia's 688 local governments have developed comprehensive plans and met the requirements of the 1989 Georgia Planning Act.[2] The next step in the planning process is the required "plan update," starting in 2004.

The state's Department of Community Affairs has set a goal of 100 percent participation in the update phase. It intends to accomplish this by encouraging joint planning between counties and cities, and by developing a web-based online tool, PlanBuilder, that will streamline and simplify the comprehensive planning process for local governments.[3] In addition, the Department of Community Affairs is developing a model land use management code for small cities and rural counties, which eventually will be web-based.

The 1989 planning statute, later amended in 1992, also requires development of regional plans. As of October 2001, all but one of the regional plans had been completed. The one remaining plan was expected to be finished at the end of 2001.[4]

However, local response to environmental planning criteria, prepared by the state's Department of Natural Resources, is lagging. Only 330 of the 688 municipalities required to develop environmental ordinances consistent with the planning criteria have responded.[5] Concerns about the lack of implementation have led the department to postpone its 2002 deadline and assemble a task force to examine successes and failures. The task force is due to report early this year.[6]

The most recent smart growth measure adopted by the state is a $250,000 grant program approved last year. Although funds for the program are currently on hold, grant applications are being submitted and planners are hopeful the funds will be released.[7]

Another sign that 2002 holds promise for planning reform was a story last November in the *Atlanta Journal-Constitution* that reported Gov. Roy Barnes "hopes to draft a new model zoning ordinance that local government can adopt, stressing new land-use methods."[8]

Other smart growth measures that have been approved include a transfer of development rights law enacted in 1998. Besides these state efforts, the Atlanta Regional Commission in 2000

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 See: http://www.dca.state.ga.us/planning/status.html.
3 See: http://www.dca.state.ga.us/planning/status.html.
4 See: http://www.dca.state.ga.us/planning/status.html.
5 See: http://www.dca.state.ga.us/planning/status.html.
6 See: http://www.dca.state.ga.us/planning/status.html.
7 Weitz, Jerry, AICP. "Legislative Activities Report." Georgia Chapter of APA newsletter, 2001.
8 Id.

began awarding planning grants as part of its Livable Centers Initiative. The initiative's intent is to promote "quality growth in the region by encouraging greater mobility and livability within existing employment and town centers, thereby using the infrastructure already in place instead of building anew."[9]

To date, 22 communities in the Atlanta region have received a combined total of $2 million. The commission will award another $3 million over the next three years and, beginning in 2003, will make $350 million available for project and plan implementation.

The regional commission also established the Job Access Transportation Coalition, a 65-member task force that will assist in developing a comprehensive job access and reverse commute plan for the region. Goals of the plan include improving access to employment opportunities for individuals transitioning from welfare to work, and providing additional transit options and access to suburban employment opportunities.[10]

The Georgia Regional Transportation Authority, established in 1999 by Gov. Barnes to curb sprawl and address traffic congestion in Atlanta, is making headway on its comprehensive, $36 billion, 25-year transportation plan. The effort combines road, transit, bikeway and sidewalk projects designed to reduce traffic congestion and improve air quality.[11] Serving 13 metro counties, the transportation authority can veto projects from local governments or from the state Department of Transportation. Although local governments can override vetoes, failure on the part of municipalities to cooperate with the transit authority jeopardizes certain federal and state funding.

Also underway in the Atlanta metropolitan region is a $2 billion program by the state Department of Transportation to add 262 miles of H-O-V lanes to the region's highway system.[12] The department predicts that by 2006, H-O-V lanes will be either open or under construction on all metro interstates outside Atlanta's perimeter.

In 2001, the Georgia General Assembly created the North Georgia Water Planning District.[13] The new law provides a framework for local governments to work together on water quality issues. Last December a district board of directors, charged with developing regional- and watershed-specific plans for the 18-county area, was expected to issue recommendations to the governor for funding mechanisms for water-related infrastructure improvements.[14]

At the request of Gov. Barnes, the general assembly in 2000 created the Georgia Greenspace Program to help developed and rapidly developing counties and municipalities preserve open space.[15] Some $30 million was made available to localities to help protect at least 20 percent of the open space in each county of the state.[16]

9 See: http://www.atlantaregional.com/landue/pr02.28.01.htm.
10 See: http://www.atlantaregional.com/jatp/press.html.
11 See: http://www.ganet.org/grta.
12 See: http://www.gagovernor.org/coleman.html.
13 S.B. 130 (2001), http://www.gagovernor.org/water_district.html.
14 See: http://www.gagovernor.org/water_district.html.
15 S.B. 399 (2000), http://www.ganet.org/dnr/greenspace/description.html.
16 See: http://www.ncsl.org/programs/esnr/growthdate.cfm.

HAWAII

In 1961 Hawaii enacted and implemented the nation's first statewide planning system, commonly known as the state Land Use Law.[1] Hawaii again led the nation in 1978 when state legislators adopted a state plan as law.

The State Land Use Commission remains actively engaged in managing land use under the four state land-use districts—Urban, Rural, Agricultural and Conservation. However, the Hawaii State Plan and its elaborate implementation structure have fallen into disuse. An all-encompassing goal document, the state plan is given lip service but has little practical effect.

Although the Land Use Law has worked well to contain urban development and preserve lands in the Conservation district, there is concern about the spread of large-lot subdivisions in the Agricultural district and the lack of well-defined strategies for conserving important agricultural lands and scenic open space. Pressure to develop Agricultural district lands is rising because of extensive tourism development and the burgeoning market for vacation residences; the near-total loss of plantation agriculture; and the break-up of large family land trusts.

An underlying part of agricultural and rural district discussions are fundamental concerns and issues involving whether the state or counties should control these areas.

Last year in his state of the state address, Gov. Ben Cayetano called for a long-range analysis of the state's natural carrying capacity in order to create a strategic plan to address future growth.[2] However, when legislators approved a bill, S.B. 1473, providing for a special smart growth advisor to be appointed by the governor, the measure was vetoed.

"This bill is unnecessary because existing laws already allow the Office of Planning to develop growth objectives and strategies, and advise the governor and legislature on planning matters," Gov. Cayetano stated in a press release last June explaining why he vetoed the bill. "Furthermore, there is no need to statutorily establish a temporary advisory council with no appropriation of funds to operate."

Several other legislative initiatives were introduced in 2001 but not seriously considered. One of these proposals would establish an Open Lands Task Force to evaluate the feasibility of implementing open lands protection under the state constitution.[3]

1 Codified as Chapter 205, Hawaii Revised Statutes.
2 Wells, Barbara. "Governors' Smart Growth Initiatives." Northeast-Midwest Institute, July 2001, p.7. See: http://www.sprawlwatch.org/frames.html.
3 S.C.R.86 SD1, Sen. Chun, 2001.

With 2002 a gubernatorial election year in Hawaii, serious attempts to amend the Land Use Law are not likely before 2003.

Other proposals sought to establish a statewide greenways strategy, including creation of a steering committee to direct the strategy[4] and declare a temporary, four-year moratorium on reclassifying lands currently categorized as Agricultural, Conservation or Rural.[5]

The state's Land Use Law has changed little from its original form, although a 1978 amendment to the Hawaii State Constitution mandated the legislature to define and map "important agricultural lands." The legislature has sponsored development of a Land Evaluation and Site Assessment system, but has yet to act on the mandate. Nor has the legislature approved other reform proposals, chief among them:

- creation of a new "Open District" as a means of distinguishing undeveloped lands with little or no agricultural value from high-potential agricultural land;
- elimination of the state Land Use Commission or transferring some of its regulatory authority over the Agricultural and Rural Districts to Hawaii's four county governments; and
- creation of effective state regulations for residential development in non-urban areas.

At the outset of 2002, policymakers' attention is occupied by a struggling economy; failing statewide school system; state budget problems; native Hawaiian issues; conflicts over water resources; and highway traffic problems on the four major islands. As to the Land Use Law, there is little consensus over its problems and, for the time being, nothing to galvanize a constituency to advocate reforms. With 2002 a gubernatorial election year in Hawaii, serious attempts to amend the Land Use Law are not likely before 2003.

4 H.B. 266, Rep. Fox, 2001.
5 H.B. 1455, Rep. Case, 2001.

IDAHO

In Idaho, mostly limited, single-issue proposals—not comprehensive reforms—have been adopted.

Rapid population growth during the past quarter century—especially in Boise and surrounding areas—has caused many outlying suburbs and rural communities in Idaho to become urbanized. A survey in January 1994 of 105 state legislators found overwhelming support for local governments to manage the planning process.

Yet, mostly limited, single-issue proposals—not comprehensive reforms—have been adopted since the mid-1990s. While there were no significant planning or related proposals enacted in 2001, a bill was signed into law in 2000 that allows an applicant, affected person, zoning or planning commission, or governing body to request the use of voluntary mediation to resolve land-use disputes.[1]

In 1999 a bill was signed into law giving local jurisdictions the option to establish transfer of development rights programs.[2] Other legislation enacted in 1999 amended the state's 1975 Local Land-use Planning Act,[3] while two laws approved in 1998 addressed the siting of manufactured housing and the placement and operation of junkyards.

Legislators moderately updated their state's comprehensive planning laws[4] through the 1975 Local Land-Use Planning Act,[5] which authorizes a planning commission or a planning and zoning commission to undertake the process of preparing, implementing, reviewing and updating a community's comprehensive plan. Other Idaho statutes enable communities to manage growth through the use of impact fees, planned unit developments and development agreements.[6]

1 H.B. 601, enacted 2000.
2 H.B. 323, signed March 25, 1999.
3 S.B. 1201, signed March 29, 1999.
4 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
5 Idaho state report. Sprawl Watch Clearinghouse. See: http://www.sprawlwatch.org/frames.html
6 Statutory Summary for the State of Idaho, American Planning Association Growing Smart[SM] Project, May 1996.

ILLINOIS

Will it play in Peoria? The answer to this proverbial political litmus test for planning reform and smart growth appears to be yes. These issues have been near the top of the political agenda for both Gov. George Ryan and the state legislature. Despite nearly universal agreement across political parties on the need for action—given that local comprehensive planning requirements in the state remain essentially the same as the 1920s model legislation upon which they are patterned[1]—there has been little in the way of consensus about the right package of tools and reforms.

Illinois has long been an important political bellwether state, partly because it reflects the nation in miniature since the Land of Lincoln has all three of the country's major land groupings—a major metropolitan area, fast-growing suburbs and rural counties. Illinois also reflected the urban renaissance during the 1990s when Chicago reversed three decades of near-zero population growth with a 9 percent increase.

Politics in the state generally reflect parity between the parties with control of the state legislature and governor's mansion often shifting. Illinois also has a reputation for producing leaders of national prominence in both parties, including House Speaker Dennis Hastert and Chicago Mayor Richard M. Daley. These factors, combined with the state's continuing demographic and political shift toward the suburbs, make it an interesting political laboratory for smart growth and planning reform.[2]

What planning-related smart growth measures have been adopted thus far in Illinois are the result of executive activity. Just as several other governors have, Gov. George Ryan established in April 2000 a special task force, the Balanced Growth Cabinet,[3] to address the results of unmanaged growth.

The cabinet was asked to coordinate key decisions that impact growth and development, and evaluate existing state programs to ensure they accomplish the governor's smart growth goals—protecting open spaces and farmland, restoring decaying architecture and urban structure, and decreasing traffic congestion. Also, the executive order directed the cabinet to recommend ways to achieve balanced growth and increase public participation.

At the same time, Gov. Ryan announced his

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 Barone, Michael and Richard Cohen. *The Almanac of American Politics 2002*, National Journal, 2002.
3 Exec. Order 2000-8 (Gov. George Ryan, April 28, 2000).

smart growth initiative, "Illinois Tomorrow." This is a voluntary, incentive-based effort designed to "provide municipalities with the tools they need to encourage the creation, expansion, and restoration of livable communities."[4] Based on five principles—reducing traffic congestion, preserving open space, reinvesting and redeveloping, protecting quality of life, and partnering with local government—the program provides state assistance for local projects and partnerships.[5]

In addition, three new programs were created as part of the initiative: Prime Sites and Linked Development, which are both operated by the Department of Commerce and Community Affairs, and Transportation Corridor Grants, which are administered by the state Department of Transportation.[6]

The state House of Representatives initially responded by establishing its own commission and holding hearings throughout the state. A year later, however, it was agreed to expand the effort to include the state Senate and form the Illinois Growth Task Force. This group was charged with developing a set of statewide land-use, housing and transportation goals.[7] A series of reports were produced in 2000, including detailed proposals that would provide local governments with tools and technical assistance to manage growth; provide a planning negotiation act; establish a state advisory planning commission; and create incentives to promote inter-governmental planning and coordination.[8] The task force continued its work in 2001, and a series of meetings were held throughout the state late last year.[9]

Although studies, recommendations and reports abound, virtually all smart growth legislative proposals failed to win support.

Although studies, recommendations and reports abound, virtually all smart growth legislative proposals failed to win support. These included: The Illinois Growth Act, which would have created the Balanced Growth Council to meet in conjunction with the Governor's Balanced Growth Cabinet and to serve as a monitor for cabinet activities;[10] the Growth Planning Act, which would have required every county except Cook to appoint a coordinating committee to recommend a growth plan for the county or to file one with the state Department of Commerce and Community Affairs if one had

4 See: Ryan Unveils New Balanced Growth Initiative, "Illinois Tomorrow," April 28, 2000. Available at: http://www.state.il.us/gov/press/00/apr/iltom.htm; also see the Illinois Tomorrow Balanced Growth Clearinghouse at http://www.state.il.us/state/balanced.
5 Id.
6 Id.
7 S.J.R. 2 (2000). See: http://www.leginfo.org/billdetail.cfm?billid+193.
8 All three Task Force Reports are available at www.growingsensibly.org.
9 See: http://dnr.state.il.us/orep/nrec/lgtf/meetings.htm .
10 H.B. 793 (Rep. Slone/ Sen. Rauschenberger, 2001).

What planning-related smart growth measures have been adopted thus far in Illinois are the result of executive activity.

been adopted within the last five years;[11] and amendments to the Regional Planning Commission Act in order to establish an inter-governmental, municipal/ county council. The council would recommend and develop plans to coordinate land use, transportation and infrastructure improvements, and provide a forum for resolving inter-governmental, land-use related disputes.[12]

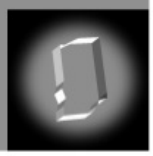
Several bills that were introduced but not adopted by the legislature in 2001 were based on APA's Growing Smart℠ model statutes including: H.B. 1084, which would have authorized counties and municipalities to adopt a program for the purchase of development rights and to allow them to adopt ordinances to authorize development incentives for affordable housing and public amenities. H.B. 1086 would have allowed counties and municipalities to adopt design review ordinances to preserve the exterior architectural appearance of buildings within a design review district.

Other proposed legislation using Growing Smart℠ model statutes included H.B. 3185, the Land Use Decision Act, which was aimed at revamping the process of obtaining development permits, providing for a unified development permit review system, and providing for a judicial review system for land-use decisions. H.B. 3186, the Local Land Development Act, would have authorized an entire suite of land development regulations, as well as clarified the vested rights of development, and authorized the adoption of adequate public facilities ordinances. H.B. 505, the Local Planning Technical Assistant Act, would have provided state technical assistance funds to local communities to help them prepare and implement comprehensive plans; the bill also would have clarified the relationship between local plans and land development regulations.

In Illinois, and many other states where planning reform is a significant issue, a common pattern has emerged. Commissions are established, reports are issued and then the legislature fails to act on those or other recommendations. Many observers in Illinois, however, believe planning reform has made significant progress during the past two years. It remains a ripe issue since selecting a new governor is among the key elections taking place later this year.

11 H.B. 1085 (Rep. Slone, 2001).
12 H.B. 942 (Rep. Moore, 2001).

INDIANA



To date little has been done to overhaul Indiana's comprehensive planning statutes, which still closely resemble measures adopted in the 1920s.[1] Although there have been minor planning and zoning amendments over the years, including changes made in 1999 regarding the adoption of comprehensive plans for the development of contiguous unincorporated areas,[2] these changes have not strengthened local comprehensive planning requirements.

Gov. Frank O'Bannon, however, is encouraging state offices and departments to work with communities to address a number of timely land-use issues, such as farmland preservation, natural resources protection, open space development and urban revitalization.

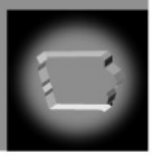
One outcome of these efforts is expected in March 2002 when the Indiana Land Use Forum, established in March 2001 by executive order,[3] will issue its recommendations on ways the state can collaborate with local governments and the private sector to develop coordinated and balanced land-use policies.

The forum is the governor's latest step to advance planning-related issues. In April 1999 he signed a bill into law creating the Indiana Land Resources Council,[4] which has been providing information, advice and educational and technical assistance to governmental units concerning land-use strategies and issues since 2000.[5] Formation of the council was one recommendation of the state-initiated Hoosier Farmland Preservation Task Force.

Other actions have included directing state agencies to locate regional offices in downtowns and historic districts; providing financial incentives to redevelop brownfields; and organizing a conference focused on the environment and land-use policies.[6]

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 P.L. 216 (1999).
3 Exec. Order 01-03, Gov. O'Bannon, March 27, 2001.
4 S.B. 26, signed April 29, 1999.
5 Indiana Land Resources Council, A Report on the Council's Work in 2000 (March 2001), available at http://www.in.gov/oca/ilrc/reports/ILRC_report.pdf.
6 Executive Order creating the Indiana Land Use Forum, March 27, 2001.

IOWA



Efforts to reform the state's comprehensive planning statutes, which are based on model legislation from the 1920s, and adopt stronger growth management measures have yet to move beyond discussions and studies.

Although minor changes were made over the years to enabling laws that authorize communities to plan and zone, including a new subdivision statute that became effective in July 1990, none of these reforms affected the comprehensive planning requirements[1] or provided updated methods to manage or promote urban growth and development.

The most recent study proposal, aimed at preserving agricultural land in the state, was put before the Iowa General Assembly last year. The measure recommended that a comprehensive study be done by the Iowa State University on land-use policies within the state and nationwide.

The bill called for the university to review policies discouraging agricultural land conversion; the feasibility and potential uses of the county land inventories; annexation laws; zoning laws and requirements related to comprehensive plans; smart growth policies in other states; and state and local tax assessments and incentives that encourage development.[2]

Although Iowa lawmakers did not approve last year's study proposal, another bill introduced in 1997 creating a Commission on Urban Planning, Growth Management of Cities and Protection of Farmland[3] was approved.

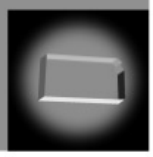
That commission completed its report in January 1999 and recommended, among other things: developing a statewide land-use inventory; providing assistance for local governments to maintain their inventories; revising and maintaining a state strategic development plan; requiring cities and counties to prepare plans; and stipulating that developments within counties that do not comply with the plans would not be eligible for government incentives.

Three bills designed to implement some of these recommendations were introduced during the 1999 legislative session, but none of them were approved. Another proposal, the Comprehensive Planning and Land Development Act, was introduced in November 1999 but it, too, was not approved.[4]

Given that 2002 is an election year, planners in the state do not expect any major or omnibus land-use or Smart Growth legislative bills to be enacted during the 2002 general assembly.[5]

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 S.I. 626 (formerly SSB 1209), 2001.
3 State of Iowa, *Final Report of the Commission on Urban Planning, Growth Management of Cities and Protection of Farmland*, January 1999.
4 H.B. 723, 1999.
5 Beck, Les. "President's Message." Iowa Planning, Fall 2001, p. 4.

KANSAS



Kansas is one of a score of states where portions of its planning and zoning laws were amended for counties in 1984[1] and cities in 1991,[2] but virtually no changes were made to the comprehensive planning elements of those laws, which date to the 1920s.[3] Except in a few places, little outward progress is being made to address critical land-use issues facing communities in the Wheat State, including loss of farmland to development and making cities more pedestrian friendly.

Last year legislation was introduced to help neighborhood organizations develop and implement neighborhood revitalization plans.[4] The bill proposed establishing a $2 million Urban Revitalization Fund to assist in the development and implementation of plans. In addition, businesses could receive tax credits for contributing to neighborhood revitalization organizations. Credits would be limited to 50 percent of the contribution, not to exceed $5 million a year.

At the close of the legislative session last year, the bill creating an urban revitalization fund remained before the Senate Committee on Assessment and Taxation. Currently grants for community development planning and plan implementation are offered through the Kansas Department of Commerce and Housing,[5] although less than $200,000 is available to fund the program. Both urban and rural communities may apply for the grants, which may not exceed $15,000.

During the 2000 legislative session S.B. 551 was introduced so counties could place standards on hog lagoon seepage rates and establish separation distances between hog facilities and homes or recreation areas. The Senate Agriculture Committee, however, refused to hold hearings on the bill.[6]

Lack of action in Topeka has not made managing rapid development any easier for Kansas farmers and ranchers. A 1997 report by American Farmland Trust included 87 percent or 91 of the 105 counties in the state among the areas nationally where prime agricultural land is most vulnerable to loss from development.[7]

Currently Kansas has a statewide right-to-farm law and differential tax assessment rates for agricultural land, while local governments have the authority to protect farmland from being developed through agricultural protection zoning.[8] Cities and municipalities—but not counties[9]—can use transfer of development rights to protect

1 Kansas Statute Chp.19, Article 29 Sections 56 through 65, 1984.
2 Kansas Statutes, Chp.12 Article 7, Section 55, 1991.
3 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
4 S.B. 244 (2001); See: http://www.accesskansas.org/legislative/fulltext/bills.cgi/bill/2002/244.pdf.
5 See: http://kdoch.state.ks.us:82/ProgramApp/program_detail_display.jsp?RECNO=999485177296
6 Benjamin, Charles. "2000 Kansas Legislature." *Planet Kansas*, June/July 2000, p.3.
7 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.
8 "Table 11: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.
9 Kansas Statute No. 19-260, 1984.

open space or recreational areas from being developed.[10] The state's planning laws, however, do not allow communities to establish urban growth boundaries.[11]

Farmland protection and management of large-scale livestock feeding and processing operations are not the only controversial land-use issues coming to the fore. Johnson County is studying various options for the decommissioned Sunflower Army Ammunition Plant east of Lawrence in DeSoto. The county's Board of Commissioners last fall denied an application to develop a theme park based on the Wizard of Oz story at the site. The proposal had generated much debate and raised concerns that that the park would cause additional traffic congestion and fuel more urban sprawl in the area.[12]

Interested residents also are speaking up about the shortage of transportation alternatives in the state. A report by the Surface Transportation Policy Project, *Changing Direction: Federal Transportation Spending in the 1990s*, ranked Kansas among 14 states in the country showing a "weak commitment" to improving travel choices.[13] For example, between 1990 and 1999, the state spent less than $5 per capita of its federal funds to expand bicycle, pedestrian and transit-oriented transportation options. The national average for the same period was $17.26 per capita.[14]

There are signs, however, that some of the old approaches to land use in the state are beginning to change. Discussions are underway by the Kansas Livestock Association and The Nature Conservancy to create a land trust in the state that would accept conservation easements from landowners, thereby providing a way to protect farms and other agricultural land from development.[15]

In 1998, 69 percent of the voters going to the polls in Johnson County approved a $6 million bond initiative for acquiring park space.[16]

Elsewhere, the City of Lawrence and Douglas County are stepping up their planning efforts in order to better manage growth and development. All development in the city and county must go through a careful planning review and approval process.[17] Topeka, meanwhile, is embarking a 10-15 year downtown redevelopment plan in order to make the city more pedestrian friendly,[18] and Wichita is implementing smart building codes to encourage reuse of existing buildings.[19]

10 Kansas Statutes, No. 12-755.

11 Prindle, Allen M. "Table 1: Farmland Protection Programs, By State." Proceedings, The Performance of State Programs for Farmland Retention. A National Research Conference. Columbus, Ohio, Sept. 10-11, 1998.
See http://www.farmlandinfo.org/fic/ft/ohio/prindle.html.

12 "States at a Glance: Kansas." Fall 2000 Sprawl Report, Sierra Club. See: http://www.sierraclub.org/sprawl/50statesurvey/kansas.as.

13 *Changing Direction: Federal Transportation Spending in the 1990s.* Surface Transportation Policy Project, March 2000, p.32. See http://www.transact.org/reports/cd.

14 Id., p. 15.

15 Associated Press. "Team tries to preserve prairie sites." Lawrence Journal-World, Nov. 24, 2001.

16 "November 1998 Open Space Acquisition Ballot Measures." Land Trust Alliance, Nov. 20, 1998. See http://www.lta.org/referenda.html.

17 Lawrence-Douglas County Metropolitan Planning Office. See: http://www.lawrenceplanning.org/longrange/longrange.html.

18 "Spotlight on Topeka, Kansas." *U.S. Housing Market Conditions Regional Activity, Great Plains.* U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Summer 2001.

19 Hattis, David B., et al. "Smart Codes In Your Community, A Guide to Building Rehabilitation Codes." U.S. Department of Housing and Urban Development, August 2001, p. 17.

KENTUCKY

After much debate but relatively little action on planning reform and smart growth measures during the state General Assembly's 2000 session, the lawmakers did pass a bill requiring planning commissioners, members of boards of adjustments, planning professionals, zoning administrators and other zoning officials to complete mandatory training programs.[1]

The legislation is the first such measure to be enacted by a state. Playing a critical role in developing the legislation and securing broad support for passage was the Kentucky Chapter of APA.

Although no other planning-related measures of significance were passed by the legislature during the 2000-01 session, Gov. Paul Patton issued an executive order last May creating a bipartisan Task Force on Smart Growth.[2] Among other things, the task force held public forums throughout the state and conducted a thorough review of Kentucky's growth-related statutes, regulations and programs.

The task force's findings and recommendations, which were released last November,[3] emphasized five objectives: encouraging planned and coordinated growth; planning Kentucky's future; promoting thriving downtowns and neighborhoods; preserving what is uniquely Kentucky; and inviting citizen and stakeholder participation.[4] The report also outlined 13 goals and numerous options to reach them.[5] It's likely the report will set the tone for the next round of debate on comprehensive planning reform and smart growth in Frankfort.

The state's comprehensive planning act underwent its last moderate updating[6] in 1966.[7] Other changes to the state's land-use planning and zoning laws occurred in 1998 when a bill was enacted allowing the establishment of local purchase of development rights programs. Other new laws adopted that year addressed the location of cellular communication facilities and zoning code enforcement issues.

In October 1999 the General Assembly's Subcommittee on Planning and Land-Use released a sketch of its "Blueprint for a New Century of Growth in Kentucky," which culminated one and a half years of work by the subcommittee.

The following year Rep. Jim Wayne introduced legislation[8] that, if enacted, would make significant reforms to the state planning and zoning acts, including greater emphasis on citizen par-

1 H.B. 55 (enacted Chap. 50 of the Laws of 2001). For more information, see: Slagle, Marshall, "Kentucky Enacts Continuing Education for Planning Officials: The Inside Story," *Land Use Law & Zoning Digest*, Vol. 53, No. 9 (September 2001), pp. 11-12.
2 Exec. Order 2001-628 (Gov. Patton, May 17, 2001).
3 "A report of the Governor's Smart Growth Task Force." November 2001.
4 Id. p. 8.
5 Id. pp. 8-32.
6 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
7 K.R.S. Chap. 100; See also, Horwitz, Betsy A., "Planning and Zoning in Kentucky: Who Really Adopts the Comprehensive Plan?," 9 N. KY. L. Rev. 498 (1982).
8 H.B. 524 (2000-01).

ticipation by establishing an Office of Neighborhood Advocacy to monitor land use, zoning, capital investments, transportation and other planning processes to ensure that they were fair and open.[9]

The proposal also directed local comprehensive plans to have one or more full-service areas designated within the jurisdiction. The designations were to be based upon the probability of growth over a 25-year period and a five-year plan showing the availability of a full range of government services. Urban growth boundaries were set forth in the legislation by mandating that no local government would extend urban levels of sewer or water service to underserved parcels in designated limited-service areas.[10]

In addition, the proposed legislation would have required municipal comprehensive plans to include a comprehensive growth policy element that: provides for the most efficient and appropriate use of land; limits unnecessary growth; provides for mixed uses of developments and land; maximizes the efficient design, use and maintenance of government services; protects community identity and quality of life through the preservation of historic, scenic and natural resources and open spaces; protects air and water quality; encourages infill and revitalization in existing developed areas of the community; recognizes that some sites are not suitable for development; and examines the possibility of directing development to facilitate alternate modes of transportation.[11]

Such items were to be subject to a compatibility review by the regional planning council[12] and by the state planning office. The legislation also called for regional planning areas, and would have authorized local governments to designate neo-traditional neighborhoods.[13]

Rep. Wayne also sponsored bills in 2000-01 that would allow impact fees to be charged to offset the cost of infrastructure improvements and other public services in areas of new development.[14] The impact fee provision was based on a model statute developed as part of APA's Growing Smart™ program. Rep. Wayne also proposed measures to protect farmland vulnerable to conversion from development[15] and to provide tax credits for restoring historic structures.[16]

Besides this ambitious legislation, Kentucky lawmakers considered a bill establishing a voluntary brownfields clean-up program[17] and a Joint Legislative Resolution establishing a Statewide Task Force on Smart Growth.[18] Introduced in February 2001, the resolution was passed by the state general assembly but not signed by the governor, who instead established his smart growth task force.

9 Id.
10 Id.
11 Id., Sec. 5.
12 H.B. 524 (2000-01).
13 Id.
14 H.B. 924, Rep. Wayne.
15 H.B. 523, Rep. Wayne.
16 H.B. 521, Rep. Wayne.
17 H.B. 104 (Rep. Bather 2001).
18 H.J.R. 107 (BR 1294) (J. Barrows, et al. 2001).

LOUISIANA

Comprehensive planning statutes in Louisiana remain virtually identical to the 1920s legislation upon which they are modeled.[1] In 1977, to address the problems of growth and development in urban and regions of the state that cross local government boundaries, the legislature amended the state law to authorize state planning and development districts to facilitate inter-governmental cooperation.[2] At that time, however, no major changes were made to laws governing local comprehensive planning.

Unlike other southern states as Florida, Georgia and Tennessee, where major planning law reforms have been made, neither Louisiana's governor nor legislature has yet to take any major steps towards updating planning statutes. Last May the state senate did pass a bill requiring at least three hours of formal training for members of planning and zoning commissions.[3] However, the state House of Representatives ran out of time during the 2001 legislative session to vote on the measure.

Undeterred, planners note momentum still exists to update the state's planning statutes to include guidelines for comprehensive and regional planning; financial and other incentives to local communities to plan and implement their plans; and planning commissioner training.

Still, many of Louisiana's communities are not waiting for changes in state planning legislation before taking an updated approach to comprehensive planning. In 1997, for instance, APA presented a national planning award to the 4.1-million-acre Barataria-Terrebonne bayou region for its Estuary Comprehensive Conservation and Management Plan. The plan guides efforts to stop land losses, reduce pollution and create economic opportunities.[4]

The Mid City Redevelopment Alliance in Baton Rouge is another national award-winning effort. Last year APA and the U.S. Department of Housing and Urban Development recognized the alliance's efforts to plan and implement measures bringing about the redevelopment of a 67-block area of East Baton Rouge.[5] Other communities where comprehensive planning is underway include St. Tammany Parish, Jefferson Parish, St. John Parish, the City of New Orleans and Bossier City.

Although Louisiana has had a moderate, 6 percent increase in population between 1990 and 2000 compared to the robust 15 percent average

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 La. Acts of 1977, No. 472, sec. 1.
3 S.B. 1084, Sen. Schedler, 2001.
4 Knack, Ruth. "Barataria-Terrebonne Estuary Comprehensive Conservation and Management Plan." *Planning*, April 1997, pp. 8-9.
5 Dunne, Mike. "Mid City Redevelopment Alliance, Baton Rouge." *Planning*, March 2001, p. 15.

Neither Louisiana's governor nor legislature has yet to take any major steps towards updating planning statutes.

increase for neighboring Texas, Arkansas and Mississippi,[6] development pressures continue to build in the state. Sixty-four Louisiana parishes were included in a 1997 American Farmland Trust study identifying those areas nationwide where prime agricultural land is most vulnerable to loss from development.[7] Louisiana has a statewide right-to-farm law and differential tax assessment rates for agricultural land, but there are no state or local authorizing statutes to protect farmland through transfer of development rights programs.[8]

Concerns also have been raised about another planning-related issue—affordable housing for very-low-, low- and moderate-income households. Recent studies show nearly 50 percent of renters in the state pay more than 30 percent of their total annual income in housing costs.[9]

6 "Population Change and Distribution 1990 to 2000." Census 2000 Brief. U.S. Census Bureau, April 2001, p. 2.
7 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.
8 "Table 1.1: Farmland Activities By State." Saving American Farmland: What Works. American Farmland Trust, 1997.
9 "Out of Reach: America's Growing Wage-Rent Disparity." National Low Income Housing Coalition, September 2001, p. 153.

MAINE

More than a decade after significantly updating (1988), and then making the program voluntary and weakening financial support for its state planning laws[1] (1991), there is growing support for comprehensive planning law reform in order to address urban sprawl and growth management issues in the state.

Two task forces—one a governor's cabinet-level group, and the other a 13-member committee representing urban, rural and suburban communities—began examining Maine's growth management laws, fiscal policies, sprawl control efforts and a number of other growth management issues in late 1999[2] that resulted in recommendations at year's end.

In his 2000 state of the state address, Gov. Angus King strongly endorsed the task forces' recommendations and a resulting package of legislative and policy initiatives he dubbed "Smart Growth: the Competitive Advantage." Subsequently two bills were enacted later in 2000 by the Maine Legislature that augment the 1988 Comprehensive Planning and Land-Use Management Act.

One bill[3] encourages smart growth planning at the local level by limiting the state's growth-related capital investments to designated growth areas contained in a local government's comprehensive plan or to areas served by a public sewer system that can provide service to a new project.[4] It also created a fund that established a new program, the Maine Downtown Center, to encourage downtown revitalization and required the State Board of Education to adopt rules to encourage the siting of new schools in locally designated growth areas.

The other bill[5] modifies a number of tax policies to enhance state farm and open space tax laws, and to provide relief for municipalities that bear more than their fair share of the property tax burden.

In addition, the State Planning Office announced plans last April for an educational campaign, funded with a $40,000 federal grant, to convince potential homebuyers of the benefits of denser, walkable, mixed-use communities.[6] The planning office also was working on a "livable design" guide for homebuilders that demonstrates how to develop a "Great American Neighborhood." Developers of such neighborhoods in a Maine city or town can take advantage of a $3 million low-interest loan program that extends sewer connections from existing municipal systems.[7]

1 Salkin, Patty. "Reform Proposals by the Thousand." *Planning Communities for the 21st Century*, American Planning Association, December 1999, p. 94.
2 Bell, Tom. "Task Force Scrutinizes State's Sprawl." *Portland Press Herald*, Sept. 18, 1999.
3 LR 3908 (2000).
4 "Document 2600 (Enacted as 2000 Chapter 776)"; See: http://www.ncsl.org/programs/esnr/growthdata.cfm.
5 L.R. 4129 (2000).
6 See: http://www.centralmaine.com/news/stories010416realestas.html.
7 "State Encourages Neighborhoods with Loan Plan." *Portland Press Herald*, Oct. 13, 2001, p. 88.

MARYLAND

Under the guidance of Gov. Parris Glendening, Maryland continues as a strong example of how planning can be used to shape growth and development. Beginning with passage of the 1992 Maryland Economic Growth, Resource Protection and Planning Act, and later the 1997 Smart Growth Areas Act,[1] the state's planning laws and managed growth initiatives continue to be revised and improved.

In his 2000 state of the state address, Gov. Glendening proposed a "Smart Codes" program and promised priority funding eligibility to jurisdictions that accept the codes without amendment.[2] The governor also made smart growth his top priority when he became chairman of the National Governors' Association in July 2000.

That year, the Maryland General Assembly passed a bill requiring the state Department of Planning to draft model land-use codes and guidelines for infill development.[3] A law to encourage the rehabilitation of existing buildings through "smart codes" passed,[4] as did amendments modifying existing laws so that they now require a statement of "visions" in the comprehensive, general or master plan related to the protection of sensitive areas and development in suitable areas.[5] Also, as part of the state's redevelopment programs, municipalities were authorized to grant property tax credits for rehabilitation.[6]

In 2001, during his state of the state address, Gov. Glendening pledged to "take the next dramatic steps to make Smart Growth a permanent fixture on Maryland's landscape." His first step was creation of the Commission on Environmental Justice and Sustainable Communities.[7] Acknowledging that some communities suffer disproportionately from environmental hazards related to programs and policies that encourage industrial, municipal or commercial revitalization, the governor called for environmental justice considerations to be integrated into statewide revitalization initiatives for reducing sprawl, encouraging redevelopment, and enhancing community life.

Established by the general assembly in spring 2001,[8] the Governor's Office of Smart Growth is an information clearinghouse for local governments, state agencies, planners, developers and concerned citizens. The office helps ensure that every department and agency is acting in accord with smart growth principles. It has a staff of four and a budget of roughly $400,000.[9]

1 "Planning Communities for the 21st Century." American Planning Association, December 1999, p. 26.
2 See: http://www.gov.state.md.us.gov/speech/2000/html/sos00.html.
3 H.B. 285 (2000).
4 S.B. 207 (207).
5 H.B. 889 (2000).
6 S.B. 507 (2000).
7 Executive Order 01.01.2001.01, signed March 9, 2001.
8 S.B. 204 (2001).
9 Baker, Chris. "Official wants 'smart growth' all over Maryland." *The Washington Times*, June 4, 2001, p. D5.

Gov. Glendening also announced his intention to have the state intervene in local zoning decisions when they would conflict with his administration's efforts to limit suburban sprawl.[10] The first test of the governor's resolve came last September when the state Department of Planning announced its opposition to a new Wal-Mart store near Chestertown.[11] While the state lacks the power to approve or deny such projects, it can help those it favors by lending its expertise in planning, design and legal issues.

On May 18, 2001, the governor signed legislation creating the Maryland GreenPrint Program.[12] Funded at $35 million in Fiscal Year 2002,[13] this initiative allows for the purchase of easements on agricultural lands, and creates an integrated network that links existing preserved areas to maximize environmental value. The governor also began withholding state Rural Legacy Program funds from counties that failed to use their farmland preservation allocations to protect open space and limit sprawl. Despite the Rural Legacy Program's success, Maryland loses more than 12,000 acres of farmland a year, mostly as a result of lax zoning in several counties.[14]

Also last May, Gov. Glendening signed a bill creating the Community Legacy Program.[15] This competitive program, funded at $10 million in Fiscal Year 2002, supports neighborhood revitalization efforts, provides funds that fill in gaps between existing programs, and helps communities focus on comprehensive planning strategies and approaches to revitalization.[16]

Maryland loses more than 12,000 acres of farmland a year, mostly as a result of lax zoning in several counties.

The general assembly also passed the majority of the governor's transit proposals, which will allow the state to invest $500 million over the next six years to upgrade mass transit service and infrastructure.[17] The state hopes to double transit ridership by 2020.

Planners with the Maryland Chapter of APA point out that there are still many state-funded highway projects that, if approved, could encourage development outside of Priority Funding Areas, which are designated areas where the state intends to concentrate development. A study

10 LeDuc, Daniel and Anita Huslin. "In the War on Sprawl, Md. Aims at Zoning: State Officials to Intervene in Local Decisions." *The Washington Post*, May 30, 2001, p. B01

11 LeDuc, Daniel. "Md. Officials Taking Sides to Oppose Sprawl." *The Washington Post*, Aug. 24, 2001, p. B1.

12 H.B. 1379 (2001)

13 http://www.smartgrowth.state.md.us/about.htm

14 http://www.sunspot.net

15 H.B. 301 (2001)

16 http://www.dhcd.state.md.us/legacy/index.cfm.

17 http://www.co.mo.md.us/council/news2001/1005govtransit.pdf.

There are still many state-funded highway projects that, if approved, could encourage development outside of Priority Funding Areas.

released last fall found that by 2020 more than 40,000 acres of farm and forestland would be cleared for new home construction outside of designated growth areas in the five-county Baltimore region if several highway improvements are authorized and completed.[18]

Such development can still occur because the state's smart growth program is not mandatory. In such instances, however, the state will not provide funding for roads or road improvements, sewer and water services, schools or other infrastructure needs outside of the pre-determined growth areas unless an exemption is approved by the Maryland Board of Public Works. That board is made up of the governor, state comptroller and state treasurer.

Pointing out that it is one thing to enact policies and quite another to implement them, one planner in the state commented that Maryland still does not have the full set of policies necessary for its smart growth program—such as an affordable housing element—or enough tools to ensure implementation. In addition, more time is needed to better gauge the program's effectiveness and results.

18 Gordon, Adam. *Planning for Sprawl? A Look at Projected Residential Growth in the Baltimore Region*. Baltimore Regional Partnership, September 2001, p. 2.

MASSACHUSETTS

Efforts to substantially improve moderate revisions to the state's comprehensive planning laws[1] have proved unsuccessful despite a 10-year push by planning advocates to enact measures requiring all communities to develop master plans and to link these plans to local zoning regulations.

The most recent attempt to secure comprehensive planning reform is the Liveable Communities Act (S. 1962), which was reported out favorably by the Joint Committee on Natural Resources last year and is currently before the Senate Ways and Means Committee.[2] A proposal similar to S. 1962 was introduced during the 1999-2000 legislative session as well.

A recent briefing paper from the Zoning Reform Working Group, formed in 1999 to bring together planning advocates and supportive legislators to develop proposals to update the state's confusing, outdated and restrictive zoning and subdivision statutes, points out: "Without significant changes to the existing state statutes that govern zoning and subdivision control, plans developed in accordance with these bills, [such as S. 1962], have little chance of being implemented."[3]

The working group has guided efforts to rewrite many of the statutes most injurious to local smart growth measures and hopes to link proposed regulatory reforms to one of several comprehensive planning bills now before the legislature.

In 1991 a planning reform bill was introduced to implement a series of recommendations from the 1990 Special Commission on Growth and Change. The proposal called for municipalities to adopt and implement local comprehensive plans consistent with regional and state policies and plans; and that land-use regulations, capital improvement plans and decisions made in the permitting process be consistent with local policies and plans.[4] The bill was not approved, however.

Five years later a planning-related executive order signed by former Gov. Paul Cellucci, "Planning for Growth," directed the state to enhance inter-agency coordination; consider local and regional growth plans; help cities implement their plans and avoid unintended impacts of state-sponsored development projects; empower communities to plan through incentives and technical assistance; and streamline regulations to encourage smart growth.[5]

More recent initiatives helping to advance voluntary planning in the state included Executive

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 Highlights at the State Level. *New England Planning*, September 2001, p. 5.
3 "Time For A Change In Massachusetts Land Use Legislation." Zoning Reform Working Group, two-page briefing paper, December 2001, p. 1.
4 The Commonwealth of Massachusetts, Special Commission on Growth and Change, Final Report, Jan. 23, 1990. See also Russell, Joel. "Massachusetts Land-Use Laws – Time for a Change." *Land Use Law & Zoning Digest*, Vol. 54, No. 1 (January 2002), pp. 3-6.
5 Executive Order 385, 1996.

... $30,000 in professional planning assistance is available to each municipality to draft a plan.

Order No. 418 creating the Community Development Plan Program. Signed in January 2000 by then-Gov. Cellucci, the order encourages municipalities to develop community plans that address future housing needs, open space and resource protection, and economic and transportation development.[6]

Designed as a two-year program, the state Executive Office of Environmental Affairs, Executive Office of Transportation and Construction, and Department of Housing and Community Development were encouraged to assist local jurisdictions with plans that identify where new housing opportunities can be created; where economic development should be targeted; how existing transportation infrastructure should be improved; and where and how open space should be preserved.[7] The three state agencies have collectively made $30,000 in professional planning assistance available to each municipality to draft a community development plan.

This executive order was followed by approval of the Community Preservation Act in September 2000.[8] The act authorizes local governments to establish up to 3 percent property tax surcharge for acquiring, creating and preserving open space, historic resources, recreational land and affordable housing.[9] The Community Preservation Act and Community Development Program are complementary.

Through December 2001, 150 of the 351 cities and towns in the state were participating in the Community Development Program and 36 had passed the Community Preservation Act.[10] In addition, last summer the state announced it was halfway towards its goal of protecting 200,000 acres of open space by the year 2010. One hundred thousand acres of land has been protected in two years, marking the first time in 20 years that more land in the state was being protected on a daily basis than was being developed.[11]

6 Exec. Order 418 (Gov. Cellucci, 1/21/2000).
7 Id. See: http://ci.lexington.ma.us/Planning/Documents/ComprehensivePlan/ExecOrder418.htm.
8 Ch. 448 (2000).
9 Id.
10 Table, communities with signed CDP agreements, August 2001. See: http://www2.ocd.state.ma.us/eo418/homepage.htm
11 Press release, Gov. Jane Swift, August 14, 2001.

MICHIGAN

Last April a decade-long effort by Michigan planners to equip communities with more effective laws to address urban growth and related land-use concerns took a major leap forward. More than a dozen state lawmakers joined together in introducing legislation requiring coordinated land-use and capital facility planning among cities, villages, townships, counties, regions, and state and federal agencies.[1]

Known as the Community Planning Act, the bill was designed to unify and modernize four of the state's seven planning enabling acts,[2] some of which date to 1931.[3] Although the measure was not approved, last fall the state House[4] and later the Senate took the first successful step towards planning reform when it passed a three-bill package requiring townships, counties, cities and villages to allow neighboring municipalities to review and comment on plans before final adoption. The measure was later signed by Gov. John Engler in early January 2002.

Last year House Republican leaders introduced a bill designed to curb sprawl and protect the state's lakes and rivers.[5] Called the "Open Space Bill," the measure was signed into law last December by the governor. Now all counties, townships and municipalities are required to amend their zoning ordinances to include provisions for cluster housing developments.

The new law enables developers, in exchange for preserving 50 percent of the land as open space, to build up to three dwellings per acre if public sewer services are available and up to two dwellings per acre in areas without sewer service. The law also limits the development in cities and villages to not more than 80 percent of the property to receive the increased density allotment in order to take into consideration more limited space in urbanized areas.[6]

Nearly two years ago, in March 2000, Gov. Engler signed several bills relating to various aspects of zoning and smart growth issues. The measures addressed enforcement of airport zoning regulations;[7] clarification of the role of the county board of zoning appeals;[8] clarification of the role of the township board of appeals;[9] and procedures for appeal in a city or village.[10] Also, an agricultural preservation fund was established

1 H.B. 4571, Rep. Birkholz, et al. Introduced April 17, 2001.
2 H.B. 4571. The Municipal Planning Act; the Township Planning Act; the County Planning Act; and the Regional Planning Act. The intent was to unify the four planning acts first and then, at a later date, unify the three zoning acts—the Township Rural Zoning Act; the County Rural Zoning Enabling Act; and the City-Village Zoning Act.
3 See http://www.planningmi.org/news/cpact.htm (Michigan Society of Planning web site).
4 Associated Press. "House Ok's bills to improve communication on land use." *The Detroit News*, Oct. 31, 2001.
5 H.B. 4926 (Rep. Johnson, introduced June 7, 2001).
6 "Governor Engler Signs Three Land Use Bills." Governor's Office press release, Dec. 14, 2001.
7 S.B. 509 (Sen. North), Act No. 16, March 7, 2000).
8 S.B. 516 (Sen. Bullard), Act No. 18, March 7, 2000).
9 S.B. 517 (Sen. Bullard), Act No. 19, March 7, 2000).
10 S.B. 518 (Sen. Johnson), Act No. 20, March 7, 2000).

to provide grants to local governments for purchase of development rights and agricultural conservation easements.[11]

In his 2000 state of the state address, the governor asked the legislature to approve a new brownfields redevelopment program as part of a core cities strategy aimed at reducing development pressure in rural areas while encouraging investment in blighted areas and the reuse of old buildings.[12] Gov. Engler also called upon legislators to adopt a proposal that would change the tax on agricultural land from market value to use value, a key recommendation of the Agricultural Preservation Task Force.[13]

More recently, the legislature's House Democratic Land Use Task Force released a report outlining more than a dozen steps aimed at addressing sprawl, traffic congestion and farmland preservation.[14] Among the recommendations was creation of a Commission on State Land Use Policies designed to develop, through public participation, statewide land-use goals and priorities.

Serious planning reform discussions in the state go back to the early 1990s when a report was released citing the absence of land-use planning as the biggest threat to Michigan's natural resources.[15] The study led the Michigan Natural Resources Commission to create the Task Force on Integrated Land Use in 1994.[16] Among other things, the task force called for comprehensive planning, a referendum on zoning, the codification of planning and zoning laws, and new growth management tools.[17]

The task force also recommended reforms in inter-governmental communication, urban revitalization, rural preservation and data dissemination.[18] In addition, the Michigan Chapter of APA also called for planning law reforms. The chapter agreed with many of the task force recommendations, and recommended several additional changes including unification of the state's seven planning statutes into one enabling statute with clear legal authority.[19] Other recommendations included promotion of compact urban growth patterns, provisions for affordable housing, and natural resource protection.[20]

11 H.B. 5780 (Signed into law as Act No. 262, Sept. 26, 2000).
12 See: http://www.michigan.gov/gov/1,1431,7-103-705-19338M_2000_1,00.html. (Gov. Engler's 2000 State of the State Address).
13 Id.
14 State Rep. Chris Kolb, task force co-chair. Press release, Nov. 1, 2001.
15 Gov. John Engler, *Michigan's Environment and Relative Risk*, June 1992.
16 "Toward Integrated Land Use Planning." *Planning and Zoning News*, No. 5, March 1996, pp. 5-6.
17 *Id.* at 8.
18 *Id.* at 11- 12.
19 *Id.*
20 DeGrove, John M. "State Growth Management Systems That Integrate and Coordinate Land Use Planning: An Overview, Land Use Issues and Alternatives." *Planning and Zoning News*, No. 3, January 1996, p. 9.

MINNESOTA

During the 2001 legislative session several important planning-related measures were introduced but not approved. The first proposal would have required local zoning and land-use controls to conform with land-use plans.[1] The second proposal would have required the attorney general to develop guidelines for state agencies to use in determining whether their actions constitute a taking of private property.[2]

Two other proposals introduced in both the Minnesota House and Senate last year would have required metropolitan area local governments to establish urban growth boundaries.[3] Although these proposals were not approved, the legislature did pass several appropriation bills in 2001, including $500,000 for one-time grants of $50,000 to each of the regional development commissions or their equivalents to undertake various planning efforts.[4]

These were the latest steps aimed at further strengthening local planning requirements and practices in Minnesota, which has only slightly updated its comprehensive planning laws[5] by passing the 1996 Sustainable Development Act and the 1997 Community-Based Planning Act.

Under the Sustainable Development Act, the state Office of Strategic and Long-Range Planning has developed a model ordinance and planning guide to help local governments undertake development that "meets the needs of the present without compromising the ability of future generations to meet their own needs."[6]

The 1997 law established a planning process specific to communities; created an alternative dispute resolution process; and enabled communities to establish urban growth boundaries in addition to authorizing pilot projects and funds to undertake planning.[7] In 1999 the state reported that 16 of 87 counties, along with numerous cities, townships and other local governmental units, were participating in the voluntary program.[8]

Subsequent efforts in 1999, 2000 and 2001 to pass legislation that would continue funding the community planning program, as well as provide for an alternative dispute resolution process, urban growth boundaries and pilot projects, were unsuccessful.

In 2000, however, the legislature did approve a

1 S.F. 1618, Sen. Dille; introduced March 15, 2001.
2 S.F. 1333, Sen. Stevens; introduced March 5, 2001.
3 H.F. 882 and S.F. 786; introduced February 2001.
4 Carlsson, Cindy. "Cindy's Final Legislative Update." Planning Minnesota Online. Minnesota Chapter of APA, 2001. See: http://www.mnapa.com/cindy.html.
5 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
6 Sustainable Development Act of 1996, Laws of Minnesota, Chp. 454. See: http://www.mnplan.state.mn.us/SDI/sdact.html.
7 Minn. Stat. 462.3535.
8 *Making Plans: Community-Based Planning's First Two Years*. Minnesota Planning, August 1999. See: http://www.mnplan.state.mn.us/commplan/makingplans.html.

In 2000, Washington County became the first county in Minnesota to establish a purchase of development rights program.

$600 million transportation package, including funds for planning, endorsed by Gov. Jesse Ventura.[9]

Also in 2000, Washington County became the first county in the state to adopt an ordinance establishing a purchase of development rights program.[10] Amendments to state statutes allowing such programs—designed to protect farmland, scenic vistas, environmentally sensitive lands, natural habitat and open space—were approved by the state legislature during a 1997 special session.[11]

A smart growth conference held in June 1999 provided a forum that led to 10 Smart Growth Principles for Minnesota being endorsed by members of the Smart Growth Network, a consortium of 25 public and private organizations in the state.[12] The principles emphasize using land efficiently and effectively; providing a variety of transportation choices, including pedestrian-friendly neighborhoods; conserving open space, farmland and critical environmental areas; and revitalizing existing urban and rural community centers.[13]

9 Minnesota Statutes, Chapter 479, H.F. No. 2891. Minnesota Session Laws, 2000.
See: http://www.revisor.leg.state.mn.us/slaws/2000/c479.html.

10 Harper, Jane. "Washington County Establishes Purchase of Development Rights Program." *Planning Minnesota*. Minnesota Chapter, APA, April 2000, p. 1.

11 Minnesota Statutes, Chapter 216, Sections 135 and 138. Minnesota Session Laws, 1997.
See: http://www.revisor.leg.state.mn.us/slaws/1997/c216.html.

12 Rhees, Suzanne S. "Smart Growth Movement Keeps Growing, Attracts Governor's Support" *Planning Minnesota*. Minnesota Chapter, APA, August 1999.

13 Id.

MISSISSIPPI

In the 1980s and 1990s state laws authorizing local governments in Mississippi to undertake comprehensive planning were modified slightly from the 1920s legislation upon which they were modeled.[1] While the changes authorized local planning commissions to prepare, adopt and amend comprehensive plans, this did not significantly change the way local comprehensive planning occurs since plans in effect prior to July 1, 1988 were exempted.[2]

In September 2000 the Mississippi Chapter of APA called on Gov. Ronnie Musgrove to establish by executive order a smart growth task force. The governor initially responded favorably to the proposal, but eventually declined to follow through. Nonetheless, the chapter is continuing to call on the state to:

- clarify and strengthen the relationship between a jurisdiction's comprehensive plan and ordinances implementing the plan;
- define the nature and content of a comprehensive plan and the methods employed to develop such plans;
- reform the annexation process to require a general plan before approving an annexation;
- amend state statutes to strengthen the role of the local planning commission and professional planners in planning process, and eliminate the exclusive professional advisory function of engineers; and
- add provisions that require planning commissioners to meet certain qualifications and to receive training.

One planning-related measure introduced in the state legislature last year, the Smart Growth Economic Development Infrastructure Act, would have created a Smart Growth Economic Development Fund to provide financial assistance to qualified distressed counties for certain infrastructure needs.[3] The measure, however, was not enacted.

Although Mississippi's 10.5 percent increase[4] in population between 1990 and 2000 was below the 17.3 percent average for states in the South,[5] according to the U.S. Census Bureau, the state continues to face development pressures. A 1997 American Farmland Trust study included every one of Mississippi's 82 counties on the list of areas nationwide where prime agricultural land is most vulnerable to loss from development.[6]

Currently Mississippi has a statewide right-to-farm law and differential tax assessment rates for

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 MS Local Government Code sec. 17-1-11.
3 S.B. 2917, Sen. Farris, 2001.
4 "Population Change and Distribution 1990 to 2000." *Census 2000 Brief*. U.S. Census Bureau, April 2001, p. 2.
5 Delaware, Maryland, District of Columbia, West Virginia, North Carolina, South Carolina, Georgia, Virginia, Florida, Tennessee, Alabama, Mississippi, Kentucky, Arkansas, Louisiana, Oklahoma and Texas.
6 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.

The Mississippi Chapter of APA continues to call on the state to strengthen the role of local planning commissions.

agricultural land,[7] but there are no state or local laws authorizing county or other governments to establish purchase of development rights programs to protect agricultural land from development.

Another indication of the low priority the state is placing on planning-related issues appeared in *Changing Direction: Federal Transportation Spending in the 1990s*, a report released in 2000 by the Surface Transportation Policy Project. The study ranked Mississippi among 14 states in the country that were "behind the times" in terms of improving travel choices.[8] For example, between 1990 and 1999, the state spent slightly more than $3 per capita of its federal funds to expand bicycle, pedestrian and transit-oriented transportation options compared to $17.26 per capita nationally.[9]

A national study released last September underscored another important planning issue in the state—affordable housing. Although Mississippi is one of the most affordable places to live in the country, 40 percent of renters in the state still pay more than 30 percent of their total annual income in housing costs.[10]

7 "Table 1.1: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.
8 *Changing Direction: Federal Transportation Spending in the 1990s*. Surface Transportation Policy Project, March 2000, p. 7. See: http://www.transact.org/reports/cd.
9 Id., p. 15.
10 "Out of Reach: America's Growing Wage-Rent Disparity." National Low Income Housing Coalition, September 2001, p. 201.

MISSOURI

Last November, towards the end of his first year in office, Gov. Bob Holden scrapped plans to issue an executive order mandating review of local land-use policies.[1] It marked another setback for advocates seeking to update the state's comprehensive planning laws that, except for the act relating to municipal planning in 1963, remain essentially the same as the 1920s model legislation upon which they're patterned.[2]

The proposed executive order would have created a "growth and investment task force" charged with looking at how best to spend public development funds. According to a news report in *The St. Louis Post-Dispatch*, the governor ran into difficulties after "some suburban officials... feared the panel was the first step toward turning the state into a giant planning and zoning commission that would restrict new subdivisions and strip malls."[3]

Undeterred, the governor announced later that he plans to find an existing state agency or board to facilitate discussions in the state about smart growth policies. The Missouri Chapter of APA is working with Gov. Holden to ensure this occurs.

In other developments earlier last year, Gov. Holden issued two executive orders that promote collaboration and planning at various levels of government. The first order[4] established the Missouri Commission on Intergovernmental Cooperation to encourage state-local partnerships for problem solving and planning. The second,[5] which directs the executive branch to manage for results, promotes collaboration between and among state agencies and other organizations in order to achieve "measurable improvements Missourians desire in the quality of life in their state and communities."

The governor also tried to enact one of his major legislative initiatives in 2001, a transportation plan. Developed after a series of statewide public meetings, the proposal called for a $535 million sales tax increase to finance transportation improvements. Transportation spending, however, has long been a contentious issue in the state and the measure died in committee after a fierce partisan battle in the general assembly.[6]

In addition, when put on the ballot and supported by Kansas City leaders, unions and many businesses, 60 percent of the city's voters in November 2000 rejected a 25-year, half-cent sales tax increase to fund a proposed $793 million, 24-mile light rail system.

1 Stern, Eric. "Holden Scraps Plan to Issue Executive Order on Land Use." *St. Louis Post-Dispatch*, Nov. 15, 2001, p. C1.
2 Kling, Stephen L., Jr., "Municipal Planning Law in Missouri," 56 J. Mo. B. 346 (2000).
3 Stern, Eric. "Holden Scraps Plan to Issue Executive Order on Land Use." *St. Louis Post-Dispatch*, Nov. 15, 2001, p. C1.
4 Executive Order 01-16; See: http://mosl.sos.state.mo.us/lib-ser/libref/orders/2001eo01_016.html
5 Executive Order 01-19; See: http://mosl.sos.state.mo.us/lib-ser/libref/orders/2001eo01_019.html
6 Robertson, Tommy. "Ortwerth, RCGA Leader Agree: Area Needs More Money for Transportation." *The St. Louis Post-Dispatch*, Dec. 3, 2001, p. 1.

Earlier last year Gov. Holden issued two executive orders that promote collaboration and planning.

There was some progress in 2000, however, when the General Assembly passed the Neighborhood Preservation Act.[7] The act authorizes state tax credits for residential and construction costs for properties located in distressed communities or defined U.S. Census Bureau blocks. Some $16 million is authorized for this tax credit program.

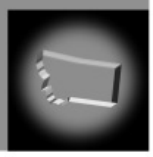
At the local level, some cities are taking steps to address the impacts from sprawl. For instance, Kansas City, which received a 1999 APA national award for a plan, continues to guide growth throughout its boundaries. Through its comprehensive planning process—nicknamed FOCUS Kansas City for Forging Our Comprehensive Urban Strategy—citizen groups meet regularly to review plan implementation and to discuss growth issues of importance to the city and region.

The following year another community in the state—Liberty—also received APA's National Outstanding Planning Award for a Plan. The entry, "Blueprint for Liberty—Future Land Use Plan," was singled out as an exemplary example of how to engage citizen support and build consensus. Through a variety of forums, workshops, meetings and other activities, planners in the community near Kansas City, Mo., increased public participation at the same time they addressed through the 10-year comprehensive plan sustainable development, transportation, housing, open space, historic preservation and other related land-use issues.

MISSOURI

7 S.B. 20 (2000).

MONTANA



Dozens of growth-related bills have flooded the state legislature during the past two years, but only a few have been enacted.

Efforts to enact stronger laws for managing growth and development in the Treasure State have not progressed beyond measures adopted in 1999 that made slight modifications to the state's comprehensive planning laws and addressed several related land-use issues.[1] The changes, however, did little to significantly change the state's authorizing statute, which is based on model legislation developed in the 1920s,[2] enabling local jurisdictions to develop comprehensive plans.

To promote significant comprehensive planning and related reform in the state, the Montana Smart Growth Coalition last January released a 130-page report by the American Planning Association assessing the need for statutory changes to improve planning and land-use control in the state.[3]

Presented to the state's Growth Policy Forum[4]—a partnership of state agencies, local governments, realtors, developers and concerned citizens—the report engendered much discussion. The report's analysis drew kudos from forum members, but reaction to the recommendations was mixed.[5] This is not surprising given a recent poll by the Montana Association of Realtors showing that 45 percent of Montanans think growth should be managed more, and 49 percent believe is should be managed less.[6]

Dozens of growth-related bills have flooded the state legislature during the past two years, but only a few measures have been enacted. Several bills targeted the growing "doughnut" areas surrounding municipalities. A resolution,[7] approved by the legislature, called for an interim (2001-2002) study of annexation laws. The study, how-

1 S.B. 97 (signed May 10, 1999).
2 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
3 "A Critical Analysis of Planning and Land Use Laws in Montana." The American Planning Association, January 2001.
See: http://www.planning.org/plnginfo/GROWSMAR/guidebk.html.
4 See: http://www.state.mt.us/MCC.
5 Davis, Tim. "APA Study on Land-use Planning." *Montana Growth Policy Forum* newsletter, Montana Smart Growth Coalition, Fall 2001, p. 2.
6 Trenk, Peggy. "What Citizens Think About Growth." *Montana Growth Policy Forum* newsletter, Montana Smart Growth Coalition, Fall 2001, p. 2.
7 HJR 24 (2001).

Local governments can now adopt subdivision regulations promoting cluster development and open space preservation.

ever, was not assigned to an interim committee.[8]

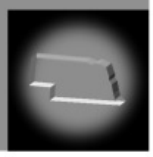
One of the legislative proposals[9] that was enacted last year authorizes local governments to adopt subdivision regulations promoting cluster development and open space preservation. Another proposal that passed[10] requires governing bodies that adopt growth policies to then adopt subdivision regulations that are in accordance with the goals and objectives of the growth policy.

Reforms adopted in 1999 include replacing in the planning statute the phrases "master plan," "comprehensive plan," and "comprehensive development plan," with the term "growth policy."[11]

Other measures approved three years ago clarified the time limits for a governing body to take action on a preliminary plat or a minor subdivision;[12] implemented recommendations of the affordable housing and land-use initiative;[13] revised the laws relating to local planning and subdivision review;[14] and modified procedures for protesting changes to zoning regulations and for hearings on annexation in conjunction with a hearing on zoning.[15]

8 Vandenbosch, Mary. "Recent Legislative Activity." *Montana Growth Policy Forum* newsletter, Fall 2001, p. 2.
9 S.B. 0479 (2001); See: http://data.opi.state.mt.us/bills/2001/billhtml/SB0479.htm.
10 H.B. 0543 (2001); See: http://date.opi.state.mt.us/bills/2001billhtml/HB0543.htm.
11 S.B. 97 (signed May 10, 1999).
12 H.B. 300 (signed April 27, 1999).
13 H.B. 245 (signed April 27, 1999).
14 S.B. 97 (signed May 10, 1999).
15 S.B. 423 (signed April 19, 1999).

NEBRASKA



It has been only within the past four years that the majority of Nebraska's rural counties have developed comprehensive plans and adopted zoning regulations although the state statute granting counties such authority was first enacted in 1967.[1] Prompting these counties to take another look at the benefits of comprehensive planning was the proliferation of large-scale hog feeding operations in the less populated regions of the state.

Unlike neighboring states, the authorizing statute for comprehensive planning and zoning in non-urban Nebraska counties allows local jurisdictions to limit agricultural uses in rural areas.[2] As a result, by the end of last year, approximately 85 of the state's 93 counties had developed comprehensive plans and adopted zoning regulations compared to 35 counties in 1997.

This is one of several indications that even in a state "traditionally wary of planning and zoning,"[3] these tools and approaches are finding favor. Observers note Nebraska still has a long way to go to bring its comprehensive planning laws into the 21st century. State statutes authorizing comprehensive planning for municipalities, for instance, remain virtually identical to the 1920s legislation upon which they are modeled.[4]

Unlike states further south and west, population growth during the past decade has not created serious urban sprawl or scattered development in Nebraska. The state grew 8.4 percent between 1990 and 2000[5] or .5 percent ahead of the average population increase for the other states in the U.S. Census Bureau's Midwest region.[6] Still, there are concerns in the more urbanized parts of the state about traffic congestion and development.

For example, a public survey in 2000 for the City of Lincoln and Lancaster County Planning Department found three out of four residents said it is either extremely or very important that the city and county plan for urban development and growth in a way that preserves the natural environment and quality of rural life as well as the county's highly productive agricultural land.[7]

The same survey found more than half of the residents said it is extremely important or very important to preserve the character of older neighborhoods and their unique historical and architectural features, as well as to encourage growth and development in downtown Lincoln.[8]

1 Originally Chp. 117, Sec. 1, p. 366; now Nebraska Revised State Statutes Chp. 23, Sec. 114.
2 Id.
3 Schwab, Jim. *Planning and Zoning for Concentrated Animal Feeding Operations.* American Planning Association, Planning Advisory Service Report No. 482, December 1998, p. 30.
4 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning," *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
5 "Population Change and Distribution 1990 to 2000." *Census 2000 Brief.* U.S. Census Bureau, April 2001, p. 2.
6 Michigan, Illinois, Indiana, Wisconsin, Ohio, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska and Kansas.
7 Nutter, Dennis and Inta Didrichsons. "Narrative Report of the Results of A Study of Public Attitudes and Opinions Regarding Various Planning and Development Issues in Lincoln and Lancaster County." Sigma Group, L.L.C., November 2000, p. 32.
8 Id.

Three out of four residents in Lincoln say it is either extremely or very important for the city and county to plan for urban development and growth in a way that preserves highly productive agricultural land, the environment and the quality of rural life.

When asked what one issue should be the primary emphasis of elected officials during the next 3 to 5 years, respondents mentioned traffic and improving traffic flow most often (35 percent).[9]

Besides concerns being expressed by residents in both urban and rural areas, there are other indications that updated planning tools and strategies are needed to help the state address economic development, growth and related land-use issues:

- seventy-eight of Nebraska's 93 counties were listed among the areas nationwide as having prime agricultural land that is most vulnerable to loss from development;[10]
- seventy percent of the state's native vegetation has been lost or severely degraded and approximately one-third of both the 631 wildlife species and 1,600 plant species in the state are of concern because their populations are rare, declining or at risk;[11]
- thirty-six percent of renters in the state pay more than 30 percent of their total annual income in housing costs;[12]
- slightly more than $6 per capita of the state's federal funds were used to expand bicycle, pedestrian and transit-oriented transportation options between 1990 and 1999, or about one-third of the national per capita average for the same period; [13] and
- the state's economy is divided, according to Gov. Mike Johanns, between "the prosperous urban economy of twenty to thirty counties and the struggling rural economy of sixty to seventy counties."[14]

Although the state legislature and Gov. Johanns have yet to embrace comprehensive planning reform and smart growth measures as a way to address these issues, the state is beginning to take some steps in this direction. For instance, last July Gov. Johanns announced "a massive, statewide housing rehabilitation effort."[15] The initiative involves using $5.6 million in federal Community Development block grant funds to shore up 281 owner-occupied homes in villages and cities.

Also in 2001, state legislators extended the Affordable Housing Trust Fund for another year, approving $3.2 million in Fiscal Year 2003. Other measures taken up last year but not approved by

9 Id., p. 37.
10 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.
11 Flora and Fauna Inventory Chart. "A Conservation Needs Assessment for Nebraska." Nebraska Game and Parks Commission, March 1999, p. 1; See: www.ngpc.state.ne.us/wildlife/wdlfi/assess.html.
12 "Out of Reach: America's Growing Wage-Rent Disparity." National Low Income Housing Coalition, September 2001, p. 223.
13 *Changing Direction: Federal Transportation Spending in the 1990s*. Surface Transportation Policy Project, March 2000, p.15. The 1990-1999 national average was $17.26 per capita; See: http://www.transact.org/reports/cd/execsummary.htm.
14 State of the State speech, Gov. Mike Johanns, Jan. 11, 2001.
15 Gov. Johanns announcement, July 2001. See: http://gov.nol.org/Johanns/News/july01/07055.7mhousing.htm.

the legislature involved two bills, each known as the "Neighborhood Development Act."[16] The proposals sought to strengthen neighborhoods and small communities by enhancing their ability to create community development plans; better coordinate the use of existing programs and funds; revitalize declining neighborhoods; and maintain the integrity of stable, viable neighborhoods.

Although local jurisdictions are not currently allowed to establish urban growth boundaries or to use purchase or transfer of development rights to protect farmland from commercial and residential development, state statutes do allow local governments to use agricultural protection zoning.[17] State statutes also restrict new villages from incorporating if they are within five miles of any incorporated village or city.[18]

In addition, municipalities can extend their planning and zoning authority, including subdivision control, between one and three miles beyond their borders, depending on the municipal classification. These provisions are designed to ensure that new subdivisions locating near existing cities are compatible with the neighboring jurisdiction's planning and zoning requirements. This also discourages scattered development from locating outside of existing urban areas unless such development could eventually become an independent incorporated village.

Work also continues to expand the network of bicycle and recreational trails in the state. When finished, the Cowboy Recreation and Nature Trail, which follows the historic Chicago and Northwestern Railroad right-of-way, will extend 321 miles between Norfolk in the east and Chadron in the west. A hiking, biking and equestrian trail, it will be the longest rail-to-trail conversion in the nation. Other trails are being developed in Lincoln and Omaha, including a bridge for pedestrians and bicyclists that will cross the Missouri River and connect Omaha with Council Bluffs, Iowa.

These and other measures are a beginning. The next step involves assessing the state's comprehensive planning statutes to determine what changes should be made to ensure Nebraska's communities have the means to manage future growth and development while also protecting their quality of life.

The 2001 Nebraska state legislators extended the Affordable Housing Trust Fund for another year, approving $3.2 million for Fiscal Year 2003.

16 L.B. 742 and L.B. 323, 2001.
17 "Table 1.1: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.
18 LB 726, Sec. 7 (1993); now Nebraska Revised State Statutes Chp. 17, Sec. 201.

NEVADA

Since World War II, Nevada's population has climbed from less than 100,000 to more than 2 million, making Nevada the country's fastest-growing state. During the 1990s alone, its population climbed 66 percent. And according to the U.S. Census Bureau's first post-2000 population count, the state continued to outpace the nation by growing at a rate five times the national average.[1]

Las Vegas—the nation's fastest-growing metropolitan area—has 1.5 million citizens and faces new, significant challenges related to this accelerated growth and development. At the same time Reno, Washoe County and Lake Tahoe also have witnessed rapid growth.

To address the resulting development pressures, state legislators have responded with regional approaches instead of implementing broad, statewide comprehensive planning reforms. Since 1985 the legislature has authorized a six-member committee with oversight responsibilities for the Tahoe Regional Planning Compact and Tahoe Regional Planning Agency. The committee has assumed legislative oversight responsibilities for a broad range of programs and activities in the Lake Tahoe Basin.

In addition, local activists from both the environmental and business communities in the Reno-Washoe County-Lake Tahoe area have developed one of the country's leading quality-of-life and sustainability indicator projects to help monitor changes stemming from population growth and development.

The legislature also established, in 1997, the 21-member Southern Nevada Strategic Planning Authority. The group was given two years to report on economic development, education, environment, housing, zoning, parks, public safety, transportation, water, sewage and sanitation issues in the Las Vegas region.[2]

In order to continue the coordinated planning efforts begun by the authority after it completed its report, the Southern Nevada Regional Planning Coalition was formed in 1999. The coalition includes representatives from Clark County, Las Vegas, North Las Vegas, Henderson, Boulder City and the Clark County School District.

Also in 1999 legislation passed that provides for coordinated planning among various jurisdictions with respect to air pollution, land use and transportation. Other amendments were made to zoning procedures, and notice and disclosure

1 According to the Census Bureau, Nevada grew 5.4 percent compared to the national average of 1.2 percent since Census 2000. "U.S. Adds 3.4 Million People Since Census 2000." U.S. Census Bureau, December 2001.

2 Salkin, Patricia. "Reform Proposals by the Thousand." *Planning Communities for the 21st Century*. American Planning Association, December 1999, p. 95.

requirements involving proposed zoning changes,[3] but not to statutes authorizing comprehensive planning. As a result, little has been done to modernize the 1920s model legislation upon which local comprehensive planning requirements in the state are copied.[4]

During the state's 71st legislative session last year, 18 planning-related measures were approved. One bill authorizes placing a statewide bond issue on the ballot in November that, if approved by voters, would provide up to $200 million for urban parks, open space plans, bicycle and recreational trails, and wildlife habitat.[5] Other significant proposals were enacted that:

- require cities or counties in the state to pay compensation or authorize an alternative location for certain nonconforming, outdoor advertising structures;[6]
- revise provisions governing maintenance of trails, parks and open space in subdivisions and planned unit developments;[7]
- expand the number of elements to be included in the master plan of Clark County, the state's most-populous county;[8]
- add fire stations, park projects and police stations to the list of capital improvements for which impact fees can be imposed;[9] and
- establish planning commissions in counties with populations of 40,000 or more and governing boards for regional planning in counties with populations between 100,000 and 400,000.[10]

A bond issue, if approved in November by voters, could provide up to $200 million for parks, open space, trails and wildlife habitat.

Nevada is well along in its development of innovative and cooperative state-enabled planning approaches for use at the local level. These planning reforms and smart growth practices are providing Nevada's fast-growing communities with guidance and strategies to maintain their quality of life at the same time they attract new tourists, residents and businesses.

3 Id.
4 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
5 Assembly Bill No. 9. For more about this and other measures enacted in 2001, see: www.leg.state.nv.us.
6 Senate Bill No. 265.
7 Assembly Bill No. 63.
8 Assembly Bill No. 182.
9 Assembly Bill No. 458.
10 Assembly Bill No. 650.

NEW HAMPSHIRE

Since moderately updating its state comprehensive planning statutes[1] in 1983 when various planning and zoning laws were recodified, New Hampshire continues to make changes at the state and local levels to encourage more comprehensive planning and smart growth measures.

After receiving recommendations from the New Hampshire Council on Resources and Development in December 1999,[2] Gov. Jeanne Shaheen called on all state agencies to incorporate smart growth into their decision making. In her 2000 state of the state address, she acknowledged, "State government should serve as a role model for smart growth." She then directed the Office of State Planning to examine the effects of sprawl and to make recommendations for local, regional and state growth management initiatives.

In support of the governor's directive, the New Hampshire General Court passed smart growth legislation in 2000.[3] The new act established a coordinated and comprehensive effort by state economic growth, resources protection and planning policy agencies to encourage smart growth. The measure directs the Office of State Planning to provide technical assistance to cities and towns attempting to guide growth, and to take a leadership role in encouraging smart growth and preservation of farmland, open space and traditional village centers.

Two other growth-related bills were enacted in 2000. The Land and Community Heritage Investment Program[4] made $3 million available for matching grants to preserve the state's open space, historic sites and cultural resources. The Brownfields Revolving Loan Fund[5] was created to allow the state to participate in a federally funded brownfields cleanup program.

In December 2000, New Hampshire's Office of State Planning and Growth Management Advisory Committee issued a report[6] that recommended updating and revising the New Hampshire Planning Statute; establishing and coordinating state development goals and policies; coordinating regional land use with state transportation programs; and strengthening and supporting the role of regional planning agencies.

Two months later, Gov. Shaheen announced "Grow Smart NH, an initiative aimed at helping New Hampshire combat sprawl and effectively manage growth."[7] Through executive authority and new legislation, Grow Smart NH mandates

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 "Report to Governor Shaheen on Sprawl," http://www.state.nh.us/governor/sprawl.html
3 H.B. 1259 (2000). See: http://www.gencourt.state.nh.us/legislation/2000/HB1259.html
4 S.B. 401 (2000). See: http://www.gencourt.state.nh.us/legislation/2000/SB0401.html
5 H.B. 1416 (2000). See: http://www.state.nh.us/osp/planning/GMReport/TOC.html
6 "Managing Growth in New Hampshire: Changes and Challenges," New Hampshire Office of State Planning, December 2000, http://www.state.nh.us./osp/planning/gmreport/gmreport.pdf
7 See: http://www.state.nh.us/osp/SMTGRWTH_survey2001.doc.

that state agencies consider a project's contribution to sprawl when distributing grants, building new roads or constructing state buildings. The initiative also encourages brownfield redevelopment, supports regional planning agencies through grants for innovative projects that help revitalize downtowns and encourage compact development, and strengthens master planning requirements for communities in order to encourage smart growth and better integrate local land-use planning and zoning processes.

Last August, the Office of State Planning asked all state agencies to respond to a survey concerning smart growth policies.[8] The survey asks whether office-siting procedures support downtown revitalization efforts, whether the agency's mission statement or rules or both affect the state's policy on smart growth, and whether through grants or technical assistance the agency gives priority to projects that strengthen village centers and downtown areas.

During its 2001 session, the state's general court created a number of study commissions to help resolve a number of planning-related issues. One commission was charged with development of legislative recommendations to "reduce regulatory barriers to and possible incentives for the creation of affordable housing in order to encourage the development of such housing."[9] The committee filed an interim report last November and planned to submit a final report in January 2002.

Another commission was convened to study methods of "strengthening and clarifying the comprehensive shoreland protection act and its application."[10] The commission's report was due last November. A third bill established "a task force to conduct an ongoing study of the feasibility of re-establishing" rail service between Lawrence, Mass., and Manchester, N.H., and between Concord and Lebanon.[11] Its first report was due last month.

A transportation bill signed by the governor last year authorizes the commissioner of the Department of Transportation to enter into joint, private- and publicly funded transportation projects.[12] Legislation also was enacted expanding the responsibilities of the Council on Resources and Development so it can resolve conflicts involving smart growth measures taken by state agencies and ensure state actions are consistent with New Hampshire's growth policies.[13]

Planning reform and smart growth bills still pending before the state legislature include a revised uniform state building code;[14] amendments to master plan requirements and optional elements;[15] and changes facilitating better coordination and consistency in the structure of master plans developed at the local, regional and state levels.[16]

8 See: http://www.state.nh.us/osp/SMTGRWTH_survey001.doc.
9 S.B. 21 (2001). See: http://www.gencourt.state.nh.us/legislation/2001/SB0021.html.
10 S.B. 89 (2001). See: http://www.gencourt.state.nh.us/legislation/2001/SB0089.html.
11 H.B. 258 (2001). See: http://www.gencourt.state.nh.us/legislation/2001/HB0258.html.
12 H.B. 634 (2001).
13 H.B. 585 (2001). See: http://www.gencourt.state.nh.us/legislation/2001/HB0585.html.
14 H.B. 285 (Reps. Clegg and Francoeur, 2001).
15 H.B. 650 (Rep. Clark, 2001).
16 H.B. 712 (Rep. Melcher, 2001).

NEW JERSEY

Last year's abrupt shift to a new governor did little to change the Garden State's commitment to its 1985 State Planning Act, which substantially updated the state's planning laws.[1] Following departure of former Gov. Christine Whitman, an outspoken proponent of smart growth and open space preservation who became head of the U.S. Environmental Protection Agency early in 2001, Donald DiFrancesco became New Jersey's acting governor.

Like his predecessor, the acting governor is a strong advocate of smart growth. After just a year in office, he already has signed into law several smart growth measures expanding upon the state's already strong record of planning reform and managed growth accomplishments.

Last March, the State Planning Commission adopted a revised State Development and Redevelopment Plan.[2] According to the Office of State Planning, more than 250 of the 566 municipalities in the state have volunteered to be part of the cross-acceptance process, reviewing their local plans and negotiating with the state to ensure plans are consistent at the state and local levels.[3]

The state's Smart Growth Planning Grants program announced awards of $1.7 million in October 2001 for plan development or implementation.[4] Since the program begin in 1999, New Jersey has awarded $6.7 million to smart growth planning projects in 248 municipalities.

Prior to leaving office, former Gov. Whitman issued an executive order directing the Department of Environmental Protection to require comprehensive impact assessments for all new and expanded wastewater systems.[5] She also signed three bills into law, making more than $14 million in appropriations from the Garden State Farmland Preservation Trust Fund for county and municipal farmland preservation.[6] Acting Gov. DiFrancesco also supports farmland preservation. Last June he signed three bills appropriating almost $30 million for the purchase of development easements,[7] and $11.8 million for farmland preservation grants.[8]

In November 2000, New Jersey voters approved a constitutional amendment doubling the portion of the state's gas sales tax used for trans-

1 Finucan, Karen. "Profiles—New Jersey." *Planning Communities for the 21st Century*, American Planning Association, December 1999, p. 37.
2 "The New Jersey State Development and Redevelopment Plan," New Jersey Office of State Planning, 2001. See: http://www.state.nj.us/osp/ospplan2.htm.
3 "State Planning Year in Review, Fiscal Year 1999 and 2000 Annual Report," New Jersey Office of State Planning, 2000. See: http://www.state.nj.us/osp.
4 See: http://www.state.nj.us/osp/newsmain.htm.
5 Executive Order 109 (2000).
6 S. B. 1711 (2001), S.B. 1712 (2000), S.B. 1713 (2000).
7 S.B. 1712 (2000), S.B. 1713 (2000).
8 S.B. 1714 (2001).

portation projects. The vote was mandated in a $3.75 billion, four-year Transportation Fund bill in order to make the tax reallocation permanent. The legislation calls for the constitutional dedication of two sources of existing tax revenue to support the Trust Fund: one from the petroleum products receipts tax and one from sales tax revenue on new motor vehicles. The bill did not impose any new tax or increase any existing tax.

Acting Gov. DiFrancesco announced in May 2001 "the most significant, far-reaching comprehensive proposal ever offered for revitalizing a New Jersey city."[9] The $150 million initiative calls for a partnership of state and county governments to attract stable businesses, address capital needs, provide job training, rebuild neighborhoods and improve schools.

School design and its relationship to smart growth has been an emphasis of the Office of State Planning. Last June, the department released a 25-page report, "Creating Communities of Learning: Schools and Smart Growth in New Jersey."[10] According to Jane M. Kenny, commissioner of the Department of Community Affairs, "The three Rs will always be important in developing smart students, but it's the three Cs—communication, collaboration and concentration—that are critical to developing smarter schools."

Since 1999, New Jersey has awarded $6.7 million to smart growth planning projects in 248 municipalities.

9 "Governors' Smart Growth Initiatives," The Northeast-Midwest Institute, July 2001.
10 See: http://www.state.nj.us/osp/news/n060601.htm.

NEW MEXICO

While numerous changes have been made to New Mexico's planning and zoning laws since 1967, none of the amendments or new laws modernized the state's comprehensive planning statutes, which remain similar to the 1920s model legislation upon which they are based.[1]

Although the 2001 state legislative session was particularly active concerning smart growth and planning reform, ultimately no new measures were adopted. Consequently, reform advocates do not expect any comprehensive planning or smart growth measures to be approved until 2003 at the earliest since this year the legislature meets only for a 30-day budget session. Planning advocates also are looking to the gubernatorial race this fall as another opportunity to call attention to needed reforms.

One particularly significant measure last year would have required municipal comprehensive plans to be consistent with local land-use regulations.[2] The proposal included up to $3 million in grants to municipalities to develop consistent comprehensive plans and revised regulations.[3] The legislation had bipartisan support, but eventually was defeated by opponents with the majority leadership. Helping to draft and support the bill were the New Mexico Chapter of APA and the New Mexico Coalition for a Livable Future.

Other pieces of legislation not passing last year included proposals authorizing transfer of development rights[4] and strengthening the New Mexico Subdivision Act. The latter measure would have allowed counties to merge contiguous parcels under common ownership if certain procedures were followed, and would have given some discretion in selecting what exemptions to make available in local subdivision regulations.[5] Also, planning and smart growth advocates successfully defeated a regulatory takings proposal.

Joint memorials were passed by both the House and Senate requesting that New Mexico's universities develop outreach programs to provide land-use planning and zoning assistance to local governments;[6] to request the Municipal League and Association of Counties to study the need for uniformity in zoning classification nomenclature;[7] and to request that the Local Government Division inventory cities' and counties' land-use planning procedures and enforcement capabilities, and document problems in implementing sound land-use policies.[8]

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 H.B. 464 (Rep. Trujillo-Knauer, 2001).
3 Id.
4 H.B. 363 (Rep. Gubbels, 2001).
5 S.B. 157 (Sen. Feldman). The New Mexico Chapter of the American Planning Association submitted this bill in response to H.B. 77 (Rep. Taylor), which would have weakened the subdivision act.
6 H.J.M. 15 (Rep. Gubbels).
7 H.J.M. 19 (Rep. Taylor).
8 H.J.M. 41 (Rep. Gubbels).

The lawmakers opted to continue an interim legislative land-use committee previously established to examine planning issues in the state.[9] While this marked a small victory for reform advocates, most observers believe the committee thus far has been ineffective.

The first major change to statutes authorizing local planning in New Mexico involved the Regional Planning Act of 1967. This was followed by a series of measures enacted in 1993, 1994 and 1995 that respectively addressed development fees, regional housing and subdivisions. In 1996, the legislature enacted Senate Joint Memorial 34, which requested the Local Government Division to conduct a comprehensive study of the costs and benefits of growth and the evaluation of growth management alternatives.[10]

Reform advocates do not expect any comprehensive planning or smart growth measures to be adopted until 2003 at the earliest.

Also in 1996 the report, *Growth in New Mexico: Impacts and Options*, was issued.[11] Although no recommendations were made in the study, it provided a comprehensive analysis of issues and options for statewide growth management. The report also offered 35 policy options that could be pursued at the state and local levels.[12]

Among those options were: streamlining state and local permitting; reforming the state zoning code; requiring consistency between adopted plans and local decisions; creating a growth management consensus project; establishing a statewide task force on growth; requiring coordinated planning; establishing a regional review and permitting process; developing growth management joint powers agreements; focusing limited government funds into public investment areas; and incorporating economic development into any growth management package.[13]

The following year the legislature passed a bill that was signed into law addressing economic development plans. In 1999 other planning laws were enacted in the state addressing the subdivision approval process,[14] regulation of manufactured homes,[15] and extraterritorial planning authority of jurisdictions involved with subdivision and zoning matters in areas beyond a jurisdiction's boundaries.[16]

9 S.J.M. 6 (Sen. Smith).
10 Senate Joint Memorial 34 (1996).
11 Hughes, Ken. *Growth in New Mexico: Impacts and Options*, New Mexico Local Government Division, 1996.
12 *Id.* at 99-112.
13 *Id.*
14 S.B. 721 (signed April 5, 1999).
15 S.B. 330 (signed April 5, 1999).
16 S.B. 513 (signed April 1, 1999).

NEW YORK

Although a series of planning reforms were adopted in the 1990s, including changes that slightly updated[1] laws authorizing comprehensive planning in the Empire State, the most recent efforts to make additional planning law reforms and pass several smart growth proposals have not succeeded.

Legislation introduced in 2001 included measures to: establish a Smart Growth and Economic Competitiveness Task Force and a Smart Growth Local Assistance Office within the state Department of State;[2] establish the New York State Smart Growth Compact, which would include creation of a Smart Growth Compact Council and criteria to be added to inter-municipal compact plans;[3] create local smart growth commissions to develop joint, smart-growth plans;[4] establish a smart growth board to review and certify proposed smart-growth plans;[5] and create a New York state smart growth revolving loan fund.[6]

Other bills introduced last year were the Quality Communities Planning Act,[7] and Gov. George Pataki's program bill, the Quality Communities Act of 2001.[8]

Although recent planning legislation has been stymied in the legislature, Gov. Pataki has successfully advanced his version of reform activity. In January 2000, he created the Quality Communities Interagency Task Force and charged the group with inventorying key local, state and federal programs that affect community development, preservation and revitalization goals.[9]

In addition, the interagency task force was directed to make recommendations that would: strengthen local governments' capacity to develop and implement planning and community development strategies; promote inter-municipal cooperation; and enhance community choices in land development, preservation and rehabilitation.[10] Chaired by Lt. Governor Mary Donohue, the task force issued its final report last January, offering more than 40 recommendations.[11] Yet a year after the report's release, many of the recommendations still have not been addressed.

Many of the task force's recommendation sought to improve upon the more than 30 planning-related proposals[12] enacted since 1990, largely as a result of efforts by the New York State

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 A.B. 6807 (Assemblyman Hoyt, 2001).
3 A.B. 1710A (Assemblyman Brodsky, 2001).
4 A.B. 423 (Assemblyman Hoyt, 2001).
5 S.B.5575/A. 8800 (Sen. Lavalle/Assemblyman DiNapoli, the Smart Growth for a New Century Act, 2001).
6 Id.
7 S.B. 5527 (Sen. Rath, 2001).
8 S.B. 5560 (Introduced Sen. Rath at the request of the governor).
9 Exec. Order 102, signed Jan. 21, 2000.
10 Id.
11 Quality Communities Interagency Task Force, State and Local Partnering for a Better New York, January 2001.
12 See: NYS Legislative Commission on Rural Resources, Land Use Planning & Regulations in New York State Municipalities: A Survey (1999).

Legislative Commission on Rural Resources and its Land Use Advisory Committee.

Among the amendments already adopted are changes that define in the state statutes what a comprehensive plan contains;[13] establish a statutory procedure for preparing and adopting local comprehensive plans;[14] encourage coordinated planning between local jurisdictions and the state agricultural districts;[15] provide a statutory framework for inter-municipal cooperation in planning;[16] and allow local governments to use incentive zoning so credits or bonuses can be awarded to developers who provide communities with qualifying benefits.[17]

Other planning-related initiatives in the state, such as the Quality Communities program, seek to make state agencies and programs more responsive to local communities. In 2000, the program awarded 28 grants totaling more than $1.4 million for demonstration projects involving approximately 100 local governments.[18] Whether these demonstration projects continue is uncertain since additional funding has not been approved.

Designation of major heritage area corridors, such as the Erie Canal and Hudson River Valley Greenway, is another impetus for neighboring communities to work together on regional plans. For example, 20 communities in the Hudson Valley's Dutchess County are part of an approved compact. Similar efforts also are occurring in Westchester, Albany and Rockland counties.

Another innovative program is providing stronger links between transportation planning and planning for development in important transportation corridors. Through the New York Metropolitan Transportation Council, a regional planning organization, three sustainable development pilot studies are underway in Rockland, Westchester and Suffolk counties.

The studies are bringing local officials, residents and businesses from neighboring communities together with state, regional and county transportation agencies to plan joint transportation solutions and development futures. Community visioning techniques will be used to develop and test various development/transportation alternatives.

Designation of heritage area corridors is another impetus for neighboring communities to work together on regional plans.

13 Chap. 209 of the N.Y. Laws of 1993.
14 Chap. 418 of the N.Y. Laws of 1995.
15 Chap. 534 of the N.Y. Laws of 1992.
16 Chap. 724 of the N.Y. Laws of 1992.
17 Chap. 629 of the N.Y. Laws of 1992.
18 See: http://www.dos.state.ny.us/qcp/qcpawards.html.

NORTH CAROLINA

During the 1990s, North Carolina emerged as the 11th fastest-growing state in the country in terms of population change, rising 37 percent from 1980 to 2000. Most of this growth was concentrated in three metropolitan areas—Research Triangle Park comprised of Raleigh, Durham and Chapel Hill; Charlotte; and the "Triad" made up of Greensboro, Winston-Salem and High Point.

North Carolina's growth, however, is not based just on population. During the same period the state's economy was dramatically transformed, shifting from tobacco and textiles to one of the world's leading centers for the banking, transportation and technology industries. The past two decades of continuous growth and development have had corresponding implications for land use, housing, transportation and environmental quality, and have challenged planners in the state to kept pace with the rapid changes.

In response, the general assembly and governor turned their attention during the past several years to smart growth proposals and planning reform. Some progress has been made, but attempts to make substantial changes have been stymied by development interests and local control groups. As a result, the state's comprehensive planning statutes for local jurisdictions remain essentially the same as the 1920s model legislation upon which they were originally based.[1]

To date, the state has focused on studying legislative reform options, embracing incentive-based approaches, and building upon momentum generated from the popularity of protecting open space. As impacts of growth continue to multiply in the state's fastest-growing suburban and metropolitan areas, planning-reform advocates believe new opportunities will be available to press for continued action and more aggressive reform.

During the 2001 legislative session, a proposal was introduced to ensure that developments of regional impact, and regional and extra-jurisdictional impacts and interests, are identified and addressed.[2] The proposal outlined an inter-governmental review procedure to ensure public participation in the process, and that impacts from development would be reviewed in accordance with state policies on urban sprawl, environmental quality, balance of jobs and housing, housing affordability and adequate public infrastructure.[3] The bill was not approved, however.

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 H.B. 1344 (Rep. Joe Hackney, 2001).
3 Id.

Also the reports and recommendations of the Commission to Address Smart Growth, Growth Management and Development Issues, formed by the general assembly, were issued last November.[4] Although there was not enough time for state lawmakers to adopt any of the recommendations, the commission's eight major goals are to:

- require planning and to establish minimum level of planning for all communities;
- provide fiscal and technical assistance resources to support smart growth activities in all counties and municipalities;
- enhance the smart growth tool box at the local level;
- establish "Research North Carolina," a network of North Carolina-based researchers and organizations to compile and initiate research on growth and development patterns;
- ensure coordination of local plans with neighboring jurisdictions and regional strategies;
- strengthen regional coordination and cooperation;
- develop a state smart growth framework including a vision, goals and principles;
- create a state smart growth policy commission to provide oversight and advice; and
- make state investments consistent with adopted local and regional plans.[5]

A state Growth Strategies Oversight Committee, chaired by Rep. Joe Hackney and Sen. Daniel Clodfelter, is expected to review the commission's recommendations and develop specific bills for consideration by the state general assembly and senate.

As impacts of growth continue to multiply...new opportunities will be available to press for more aggressive reform.

Smart growth measures undertaken in 2000 included then-Gov. James B. Hunt Jr. announcing his "One-Million-Acre Initiative." His goal was to preserve one million acres of open space land by the end of 2009 through a combination of conservation easements and other farmland protection programs.[6] The initiative seeks to permanently protect agricultural lands through voluntary fee acquisition or conservation easements, whether through federal, state or local programs, or private, non-profit land trust organizations.[7]

Six months after the initiative was announced,

4 See: http://www.nclcg.net/.
5 Id.
6 North Carolina Million Acre Plan. See: http://www.enr.state.nc.us/docs/millionsummary.pdf.
7 Id.

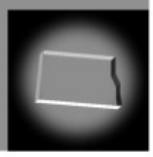
The state has set a goal of preserving one million acres of land by 2009.

the state general assembly passed a recommendation of the Environmental Review Commission to preserve one million acres of land by Dec. 31, 2009. Subsequently a bill was enacted adding an article to the state's laws entitled "Conservation, Farmland, and Open Space Protection and Coordination."[8] Also in 2000 funding for the state's clean water trust fund was increased $10 million—an encouraging sign since other environmental programs, considered by some to be non-essential, were being reduced in light of shortages from various state revenue sources.

The state Board of Transportation also responded to the former governor's smart growth agenda by issuing in August 2000 street design guidelines to help "promote managed growth and establish communities where walking and biking are safe and enjoyable ways to get to schools, shops and playgrounds."[9] Planners add that the state is expected to increase funding for transit during the next several years, shifting up to $300 million from the state's highway trust fund for public transportation needs.

8 S.B. 1328/H.B. 1633; enacted June 28, 2000.
9 See: http://www.sustainable.state.fl.us/fdi/fscc/news/world/0009.nedot.htm.

NORTH DAKOTA



Even though the pace of smart growth challenges has been relatively slower here compared to other states, communities in North Dakota are facing numerous planning and land-use issues.

The state is struggling to address growth from its urban centers pressing into adjacent rural areas, the loss of population in many rural areas, and on-going economic transitions in agriculture.[1] Each of these trends has led to increased planning problems in unincorporated areas and growing awareness about the need for improved, multi-jurisdictional cooperation.

While minor planning and zoning amendments were made in 1955 and 1999,[2] none of these changes amended the master or comprehensive plan requirements, which contain the same provisions that have been on the books since 1929.[3]

Problems arising from growth in unincorporated areas did lead the state to adopt its first extraterritorial zoning legislation in 1976. The law, which allows municipalities to extend zoning and subdivision authority outside their boundaries, was amended in 1997 in an effort to promote greater regional cooperation in planning and to allow cities experiencing growth to plan adequately for future expansion. The law allows cities, depending on their size, to expand their jurisdictional control up to four miles beyond their borders.

The amended law, however, has not gone far enough to address the issue. Some criticize that stronger representation from the surrounding area is needed on city planning commissions making extraterritorial zoning decisions. Also, the law does not provide for direct coordination of planning among cities, counties and townships.

Additional difficulties result from local government budget limitations and a shortage of professional planners to serve rural areas. Further complicating coordination issues are the lack of comprehensive planning by many tribal governments, and discussions between tribal areas and surrounding jurisdictions on planning and land-use matters.

Although affordable housing is often thought to be an urban issue, affordability of housing is a major concern in outlying areas as well. In addition to problems with aging housing stock, there are few multi-family or rental housing opportunities in the state's rural areas. The combination of aging housing stock, low wages and, in many outlying areas a lack of jobs altogether, means that

1 "Township 'Hot Topics'." North Dakota Township Officers Association. Presented to the North Dakota Planning Association Annual Conference, November 2001.
2 Chp. 111 of the S.L. of 1999 (authorizing emergency management as part of the comprehensive plan).
3 See: Municipal Government Chap. 40-48. Also, Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.

There is growing awareness in the state about the need for improved, multi-jurisdictional cooperation.

the creation and maintenance of any form of housing is difficult at best. Even though rents are low in North Dakota, the low wages result in too many tenants being rent-burdened. Recent studies show 32 percent of renters in the state pay more than one-third of their total annual income in housing costs.[4]

Economic pressures and changes in the agricultural economy have led to more people moving from rural areas to regional population centers. This shift is an important planning issue in larger population centers because of the pressures of expanding municipal services, increased transportation and water infrastructure demands, and additional strains on local tax bases.

Problems also result in smaller communities where the tax base is reduced even though there may be a decline in the demand for services. Schools closely mirror the migration trends and problems. Fewer students mean smaller state aid payments, fewer subjects and teachers, and hence fewer opportunities. The Department of Public Instruction is encouraging school consolidations—clustering school services among two or more towns and, in the process, enlarging the perceived community.[5]

In recognition of these and other challenges, there is growing activity by organizations representing local governments, planners and others to address planning reform in the state. The statewide planning association also has begun efforts to encourage thoughtful and thorough revision of the state's planning and land-use enabling legislation.

One sign that planning reforms and related issues are beginning to be considered is a study, called for by a legislative resolution, now underway to examine conservation easements as a way to protect farmland and other recreational lands threatened by development.[6]

Currently the only way to safeguard farmland is through locally administered agricultural protection zoning.[7] A 1997 study by the American Farmland Trust included 35 counties from North Dakota on a list of areas nationwide where prime farmland is most vulnerable to loss through development.[8]

4 "Out of Reach: America's Growing Wage-Rent Disparity." National Low Income Housing Coalition, 2001, p. 265.
5 Decker, Tom. State of Public Education presentation at the Interim Education Committee meeting, Oct. 31- Nov 1, 2001.
6 H.C.R. 3023 (enacted 2001).
7 "Table 1.1: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.
8 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.

OHIO

Several attempts to jump start planning reform in Ohio have been made during the past quarter century. These efforts, however, have fallen short of securing major changes to comprehensive planning laws enacted by the state in the 1930s and 1940s and last amended in 1957.[1]

In 1977 a report by the Ohio Land Use Review Committee, created by the state General Assembly, led to omnibus legislation being introduced in order to improve and enhance planning efforts at the local, regional and state levels. The proposed bill, however, lacked sufficient political support for passage.[2]

Twenty years later another bill was introduced to enact several recommendations from the Ohio Farmland Preservation Task Force, which had been formed in 1996 by former Gov. George Voinovich. The legislative proposal included a provision encouraging local governments, on a voluntary basis, to prepare county-wide comprehensive plans. Efforts to pass the measure also proved unsuccessful.[3]

While attention to comprehensive planning reforms has been eclipsed by other issues in the state, including school funding reform, there have been some smaller planning advances. Currently pending before the Ohio General Assembly is a proposal that would create agricultural security areas.[4] Despite having undergone extensive review, the bill is still encountering resistance. Supporters, however, are optimistic that the proposal will be taken up by the state senate this year.

Legislation opening the way for more aggressive farmland preservation was signed into law Jan. 4, 1999 by former Gov. Nancy P. Hollister.[5] The bill, S.B. 223, enables state and local governments to acquire agricultural easements through a purchase of development rights program. As of last year, the state received five agricultural easements[6] and 59 counties completed farmland preservation plans.[7]

To help cities gain jobs, clean up brownfields and redevelop older neighborhoods, in June 2000 Gov. Bob Taft created the Office of Urban Development at the Department of Development.[8] The new urban development office was one recommendation of the Urban Revitalization Task Force, created in 1999 by Gov. Taft and composed of 16 mayors and other members. The task force recommendations addressed a host of issues

1 Meck, Stuart and Jason Wittenberg. "A Smart Growth Agenda for Ohio." A special report prepared by EcoCity Cleveland and the American Planning Association, October 1998. See: http://www.ecocleveland.org/archive/html/oct1998/index.htm.
2 Id., p. 4.
3 Id., p. 5.
4 HB. 367, (2001).
5 "Governor Hollister Signs Farmland Protection Bill." Office of the Governor press release, Jan. 4, 1999.
6 "First Agricultural Easement in Central Ohio Donated to ODA." Ohio Department of Agriculture press release, May 18, 2001.
7 Dailey, Fred L. "Purchase of Development Rights Program—Key to Ohio's Agricultural Future." Ohio Department of Agriculture op-ed article, Nov. 2, 2001.
8 "Taft Creates Urban Development Office: Will Ask Assembly for Other Revitalization Tools," July 17, 2000. See: http://www.greenlink.org/public/hotissues/utrfoec.html.

Now pending before the Ohio General Assembly is a proposal to create agricultural security areas.

including housing, neighborhoods, transportation, infrastructure, workforce development and education.[9]

In November 2000, farmland preservation and urban revitalization received further support when Ohio voters approved State Issue I, a 10-year, $4 billion bond fund, by a 57-percent-to-42-percent margin. Legislation (H.B.3) authorizing the $400 million-a-year program, known as 'Clean Ohio,' was enacted in July 2001.[10] According to the new law, $200 million will be allocated from the fund each year for urban brownfields revitalization; $150 million a year for conservation projects; $25 million a year for statewide recreational trails; and $25 million a year for farmland preservation.[11]

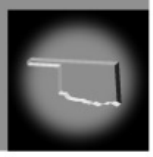
The most recent study underscoring the need for better integration of economic, environmental and social impacts with state and local land-use plans, as well as to incorporate "balanced growth" principles in local planning decisions, was released Sept. 7, 2000.[12] Titled the "Lake Erie Protection and Restoration Plan," it was prepared by the Ohio Lake Erie Commission and offers 84 specific recommendations aimed at improving the environment, recreational opportunities and economy of the lake and its watershed.

"Too often," the report stated, "our land use and development decisions have accelerated erosion and nonpoint pollution, urban sprawl, abandonment of central cities, congestion of streets and highways, the loss of natural habitat and farmland, and degraded the health and diversity of plant and animal communities."[13]

The goals of the Lake Erie plan echo similar objectives outlined in an October 1998 report, "A Smart Growth Agenda for Ohio," by the American Planning Association and EcoCity Cleveland. In order to pursue a balanced development policy, the report recommended creation of a high-level, state government planning organization to coordinate planning decisions between state departments and agencies; draft a cross-cutting development, redevelopment and natural resource conservation goals document for the state; and develop an incentive-based program that targets state growth-related expenditures to locally designated growth areas.[14]

9 Ohio Urban Revitalization Task Force, Policy Agenda and Task Force Report (2000).
10 "Taft signs Bill to Create $400 Million Clean Ohio Fund: Fund Will Revitalize Cities and Preserve Farmland, Green Space, Clean Water," news release, July 26, 2001. See: http://www2.state.oh.us/gov/releases/7262001681.htm.
11 Id.
12 *Lake Erie Protection and Restoration Plan*. Ohio Lake Erie Commission, September 2000. See: http://www.epa.state.oh.us/oleo/.
13 Executive Summary, *Lake Erie Protection and Restoration Plan*, Ohio Lake Erie Commission, September 2000, pp. 6-7.
14 Meck, Stuart and Jason Wittenberg, "A Smart Growth, Agenda for Ohio." A special report prepared by EcoCity Cleveland and the American Planning Association, October 1998; pp. 25-27. See: http://www.ecocleveland.org/archive/html/oct1998/index.htm.

OKLAHOMA



Compared to the accelerated population growth in several nearby states—Arizona's 40 percent, Texas's 22.8 percent and New Mexico's 20.1 percent[1]—Oklahoma's population grew slightly less than 10 percent between 1990 and 2000.[2] The slower rate has raised a number of concerns, not the least of which was the state losing one of its six congressional seats because of redistricting based on the 2000 population figures.

And unlike some of its neighbors—such as Colorado, New Mexico and Arkansas where discussions and efforts to secure planning law reforms and smart growth measures are well underway—beyond discussions among a handful of professional organizations including the Oklahoma Chapter of APA, similar developments have not occurred in the Sooner State.

Oklahoma is one of about a dozen states that have yet to modernized their statutes that enable local governments to do comprehensive planning. Such laws in Oklahoma remain virtually identical to the original measures adopted in 1947, which were based largely on model legislation developed in the 1920s.[3]

Currently the state's comprehensive planning requirements do not address protection of threatened or endangered species;[4] protection of historic and cultural resources; enhancement of community appearance; or affordable housing needs. In addition, zoning decisions are not required to be based on a long-range plan or vision. Also, because comprehensive plans are not required to be followed or regularly updated, many cities have plans that are 20- to 25-years-old.

Although there have been no major revisions to the state's planning laws, there have been several amendments over the years. These changes have resulted in a complex and confusing set of laws that has created numerous obstacles for smart growth to occur in the state. For example:

- nothing requires comprehensive plans to be updated or used, although the plans are required;
- differing sets of planning rules apply depending upon the size of a community;
- zoning decisions are not required to be based on, or consistent with, a long-range plan or vision;
- zoning rules are administered inconsistently, creating confusion among staff, elected leaders, developers and the public at large; and
- annexation laws are confusing and vague.

1 "Population Change and Distribution 1990 to 2000." *Census 2000 Brief*. U.S. Census Bureau, April 2001, p. 2.
2 Id; (9.7 percent increase).
3 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
4 *State Endangered Species Acts: Past, Present and Future*. Defenders of Wildlife and Center for Wildlife Law. February 1998, p. 14.

Nothing in Oklahoma's state laws call for comprehensive plans to be updated or used, although the plans are required.

In 2000, a proposal was made to form a planning and land-use legislative study commission.[5] The study commission was to be charged with evaluating the effectiveness of current state, regional and local planning and land-use laws, and proposing innovative and cooperative planning and land-use approaches in order to effectively guide growth and development. The bill, however, was not approved.

Since then, no major planning reform proposals or smart growth legislation have been introduced in the state legislature, nor have there been any related initiatives or actions by Gov. Frank Keating. Nonetheless, there are numerous indications such proposals could benefit the state.

A 1997 American Farmland Trust study identifying those areas nationwide where prime agricultural land is most vulnerable to loss from development included all 77 counties in Oklahoma on the list.[6] Currently the state has a right-to-farm law and differential tax assessment rates for agricultural land, but no state or local authorizing statutes to protect farmland through transfer of development rights, agricultural protection zoning or other methods.[7]

Development to date, however, does not appear to be threatening in any way the federal funds the agricultural industry in the state receives. Between 1996 and 2000, 70,000-plus farm operations received more than $1.7 billion in federal subsidies.

The majority of the subsidies went to larger landowners: just 6 percent of the farm operations in the state received 50 percent of the monies. Most of the payments were made as part of the 1996 Freedom to Farm bill that was actually aimed at weaning farmers off of federal subsidies. Since payments were made based on a farmer's previous history, landowners were paid whether they planted a crop or not.[8]

There also appears to be little change underway

5 S.B. 1151, sponsored by Sen. Mike Morgan (2000).
6 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.
7 "Table 1.1: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.
8 "In Farm Subsidies, The Rich Get Richer." *The Daily Oklahoman*. Jan. 13, 2001, p. 1-A.

in order to provide alternative methods of transportation in the state. A report by the Surface Transportation Policy Project, *Changing Direction: Federal Transportation Spending in the 1990s*, ranked Oklahoma among 14 states in the country showing "a weak commitment" to expanding transportation choices.[9] Between 1990 and 1999, for instance, the state spent less than $5 per capita of its federal funds to expand bicycle, pedestrian and transit-oriented transportation options. The national average for the same period was $17.26 per capita.[10]

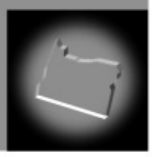
There also appears to be a need for more affordable housing, another important planning issue, in the state. Recent studies show 40 percent of renters in the state pay more than 30 percent of their total annual income in housing costs.[11]

Planners point out that it is in the long-term interest of Oklahoma's cities, suburbs, small towns and rural communities to be able to support healthy development patterns and direct growth in a way that minimizes damage to the environment, reduces "sprawl" in urban centers and scattered development in outlying areas, and improves the livability of towns and cities. Reforming the state's comprehensive planning authorizing statutes is the first step to be able to steer growth and development in that direction.

Oklahoma is one of about a dozen states that have yet to modernize their statutes that enable local governments to do comprehensive planning.

9 *Changing Direction: Federal Transportation Spending in the 1990s*. Surface Transportation Policy Project, March 2000, p. 7. See: http://www.transact.org/reports/cd/execsummary.htm.
10 Id., p. 15.
11 "Out of Reach: America's Growing Wage-Rent Disparity." National Low Income Housing Coalition, September 2001, p. 279.

OREGON



A ballot measure that would effectively halt further implementation and enforcement of Oregon's landmark 1973 planning program[1] won voter approval in November 2000,[2] but was declared unconstitutional by a trial court several months later.[3] Passed by a 53-47 percent margin, so-called 'Measure 7' would require payment to landowners for most reductions in property values caused by state or local government regulations.

The trial court decision declaring the ballot provision unconstitutional has been appealed to the state supreme court, which heard arguments last September. The state's highest court is expected to rule in early 2002.[4] In declaring the ballot measure unconstitutional, Marion County Circuit Court Judge Paul Lipscomb noted that Measure 7 was presented to voters out of context—that voters should have had access to the relevant section of the state constitution that was to be modified.[5] He also noted that the measure contained multiple constitutional amendments that should have been voted upon separately.

A legislative proposal to accomplish what Measure 7 had been unable to do,[6] as well as several efforts to compromise the compensation issue, remained in committee at the end of the Oregon Legislative Assembly's 2001 regular session. The bill had been referred to the committee on Land Use and Regulatory Fairness, which held three public hearings on the proposal last May and June.[7]

Planners and other opponents of the measure believe local governments would not be able to afford to adopt, amend or enforce their plans and programs given the required landowner payments, which some estimate topping $5 billion or the size of the state's general fund budget for an entire year.

Despite the potential setback to the state's substantially updated planning laws[8] posed by Measure 7, Oregon Gov. John Kitzhaber continues to promote smart growth and community sustainability. In May 2000, the governor issued an executive order[9] directing state government to become a leader in sustainable practices and to

1 Johnson, Denny. "Profiles – Oregon." Planning Communities for the 21st Century." American Planning Association, December 1999, p. 47.
2 Oregon Ballot Measure 7, November 2000.
3 *McCall et al. v. Kitzhaber*, Marion County Circuit Court, before Judge Paul Lipscomb (2001).
4 See: http://www.friends.org/issues/m7.html.
5 See: http://www.friends.org/issues/rel_m7.html.
6 H.B.3998 (2001).
7 See: http://www.leg.state.or.us/cgi-bin/searchMeas.pl.
8 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
9 Executive Order 00-07. See: http://www.oregonsolutions.net/execOrder/sustain_eo.cfm.

become environmentally sustainable by 2025.

The executive order also created a sustainability work group comprised of members of the legislative assembly and state, as well as business and community leaders. The group was to help improve the efficiency and effectiveness of state efforts, and to recommend options for additional steps the state might take.

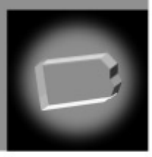
At the end of 2000, the Governor's Work Group on Sustainability filed an initial report.[10] The governor then accepted 10 objectives[11] recommended by the group in the areas of economics, community and environment. Among the objectives are that state operations and purchases help maintain vital and active downtown areas, and that agency operations reflect partnerships with communities and businesses.

In July 2001, the governor signed legislation requiring local comprehensive land-use plans to address school facility planning just as they would planning for other public facilities.[12] A month later, Gov. Kitzhaber signed a bill[13] authorizing the City of Portland, Multnomah County and municipalities within the metropolitan area's urban growth boundary to offer landowners property tax incentives to do stream restoration and maintenance on their property.

Local comprehensive plans must now address school facilities just as they would planning for other public facilities.

10 See: http://www.oregonsolutions.net/govt/group.cfm.
11 See: http://www.oregonsolutions.net/govt/govt_operations.cfm.
12 H.B. 3045 (2001).
13 H.B. 3002 (2001).

PENNSYLVANIA



Progress continues to be made on smart growth and planning reform issues in the state under former Gov. Tom Ridge's initiatives, "Growing Greener" launched in 1999,[1] and "Growing Smarter" launched in 2000. The former governor's 2001-2002 budget called for nearly $140 million for the third year of "Growing Greener" and $4.6 million to fund the first full year of "Growing Smarter."[2]

During his 2000-2001 budget presentation the former governor, who now is in charge of U.S. Homeland Security, announced plans to preserve 100 farms in 100 days as part of "Growing Greener."[3] Of the $135 million allocated for the program, $20 million went to preserve 10,000 acres of farmland; more than $50 million was earmarked for watershed protection and restoration; and $32.5 million was used for infrastructure improvements and the development of trails and greenways.[3]

Another $3.6 million was allocated for local land-use planning and assistance—marking the first time a land-use line item has appeared in a Pennsylvania governor's budget.[3]

Also last year House Bill 101 was signed into law. The law amends the state's Agricultural Security Area Law to allow counties to preserve tracts of farmland that extend into adjoining counties.[4] The bill also eliminated the $10,000-per-acre cap on state funds for the purchase of agricultural conservation easements.

The Pennsylvania Municipalities Planning Code, adopted in 1968, set the historical framework for local comprehensive planning in the state.[5] Only a few amendments to the state's planning laws were made beyond the moderate changes made by Act 170 of 1988—most notably the addition of impact fees in 1990.[6]

Also in the early 1990s Pennsylvania lawmakers attempted to pass comprehensive planning law amendments,[7] forming numerous legislative commissions to study the issue and holding several public hearings. Various recommendations were made and, in some instances, legislation was proposed. Still, no new statutes were enacted.

Land-use and planning reform issues resurfaced in 1997 when former Gov. Tom Ridge established the 21st Century Environmental Commission, a panel of 40 cabinet members, legislators, business leaders, environmentalists and planners.[8] The panel, after identifying sprawl development as its biggest concern, issued 240 recommendations in September 1998, including a

1 See: http://www.smartgrowth.org/news/article.asp?art=473.html.
2 See: http://papress.state.pa.us/cto/data/20000208.005.htm, p. 6.
3 See: http://papress.state.pa.us/cto/data/20000208.005.htm, p. 2.
4 See: http://papress.state.pa.us/cto/data/20010530.003.htm.
5 See: State Planning Code, http://www.planningpa.org/planning.html.
6 Municipalities Planning Code 1990 – 2000, A Decade of Amendments to the Pennsylvania Municipalities Planning Code (Act 247 of 1968 as reenacted and amended by Act 170 of 1988), Local Government Commission, General Assembly of the Commonwealth of Pennsylvania, September 2000.
7 Salkin, Patricia. "Statewide Comprehensive Planning: The Next Wave." *State and Regional Comprehensive Planning*, American Bar Association, 1993.
8 Pennsylvania Exec. Order No. 1997-4 (1997).

comprehensive revision of the planning and zoning enabling statutes.[9] The commission also recommended urban growth boundaries as one tool to discourage suburban sprawl.

On Jan. 7, 1999, the former governor issued an executive order[10] to guide all commonwealth agencies when making decisions that impact the use of land. To accomplish his goals, the Center for Local Government Services was designated the lead state agency responsible for land-use assistance and monitoring.[11] The Governor's Green Government Council was directed to ensure that state agencies act consistently with the goals of the executive order, and that the Department of Environmental Protection establish a statewide, geo-spatial data clearinghouse.[12]

Also in 1999, the state House of Representatives considered but did not approve H.B. 1866, which would have established a process to ensure consistency between an adopted comprehensive plan and local development regulations and land-use decisions. The bill incorporated language from the APA's Growing Smart® *Legislative Guidebook*.

The following year the former governor announced that the state must "Grow Smarter"[13] as well as grow greener. As part of his "Growing Smarter" legislative agenda, the former governor supported legislation to amend the Municipal Planning Code proposed in the House and Senate by Rep. David Steil and Sen. James Gerlach, respectively. Following extensive debate and compromise in the general assembly, these planning bills were enacted as Acts 67 and 68 in June 2000.[14] The new laws were designed to provide counties and municipalities with the tools necessary to plan for healthy economic growth and development, and to conserve urban and rural resources while protecting private property rights.[15]

The 2000–2001 state budget allocated $3.6 million for local land-use planning and assistance.

Taken as a package, these acts clarify the authority of counties and municipalities to create "Locally Designated Growth Areas" as part of their comprehensive land-use plans. They encourage and enhance "Transferable Development Rights" as a tool to preserve open space and farmland.

The new laws also direct that state agencies shall

9 See: *Smart Growth Network Progress Report: Moving Smart Growth from Theory to Policy & Practice*, ICMA/EPA/ULI (1998).
10 Executive Order No. 1999-1 (1999; Governor's Land Use Announcement 1-7-99, press release and executive order.)
11 Specifically, the executive order charges the Center with developing an inventory of sound land-use practices and making it readily available; providing technical assistance and education to localities in implementing the objectives of the executive order; encouraging inter-municipal cooperation in planning and zoning; working with other state agencies to develop strategies to advance the agenda; working to help incorporate the statewide greenway plan into local and regional planning strategies; creating an advisory committee; and reporting to the governor, including the submission of recommendations in further support of the goals.
12 Executive Order No. 1999-1 (1999).
13 "Governors' Smart Growth Initiatives," The Northeast-Midwest Institute, July 2001, p. 16.
14 H.B. 14 (Act 67 of 2000) and S.B. 300 (Act 68 of 2000).
15 "Governor Ridge Signs 'Growing Smarter' Land-Use Bills into Law," The Resource, The Pennsylvania Department of Environmental Conservation and Natural Resources, July 2000. See: http://www.dcnr.state.pa.us/polycomm/res2000/landusebill0700.htm.

To encourage infill development, the state provides performance-based loans for cleanups of non-hazardous waste sites including brownfields.

consider and may rely on local land-use plans or ordinances when reviewing applications for funding or permitting to avoid conflicts with local planning decisions. The laws give local governments greater ability to withstand legal challenges while effectively planning for growth and facilitating consistent planning at the local, county and regional levels.

Another measure, Act 127, was signed by former Gov. Ridge on Dec. 22, 2000 in order to clarify some of the changes made by Acts 67 and 68.

Another part of the former governor's "Growing Smarter" initiative involved enacting the Downtown Location Law[16] in June 2000. The new statute requires the Department of General Services to set guidelines for locating state agencies in central business districts. The department considered factors such as transit availability, local character, public safety and economic impact in drafting its guidelines.

To encourage infill, the Pennsylvania General Assembly in 2000 amended the Industrial Sites Environmental Assessment Act[17] to provide performance-based loans to businesses and communities for remediation and cleanup of non-hazardous wastes, including waste tires at abandoned industrial sites or brownfields.

Pennsylvania communities cannot impose building moratoria while they work on comprehensive zoning or growth management plans.[18] A year after hearing arguments, the state Supreme Court ruled[19] 6-1 in June 2001 that the Municipalities Planning Code Act of 1968, as reenacted and amended, does not grant a municipality the power to invoke a moratorium on new construction.

16 P.L. 318 (2000).

17 H.B. 2057 (2000).

18 Municipalities can take a 180-day "pause for planning" by declaring their zoning ordinance or a portion thereof invalid in order to draft a "self cure" to correct the deficiency (sec. 609.2 of the Municipalities Planning Code).

19 *Irvin S. Naylor, Harry H. Fox, Jr., and Valley acres, Inc. v. The Township of Hellam* and The Board of Supervisors of The Township of Hellam, argued May 1, 2000, decided June 20, 2001. See: http://www.courts.state.pa.us/opposting/supreme/out/j-66-2000mo.pdf.

RHODE ISLAND

Since passage of one of the country's best state planning laws, the Comprehensive Planning and Land Use Regulation Act in 1988,[1] Rhode Island has continued to strengthen and expand its collection of planning statutes and practices in order to better address the full spectrum of growth management and related issues facing communities in the Ocean State.

A Growth Planning Council, including representatives from the public, private and nonprofit sectors, was created by a February 2000 executive order[2] signed by Rhode Island Gov. Lincoln Almond. He charged the council with examining economic, environmental and social impacts of development in the state; inventorying existing state programs, policies and expenditures, and evaluating their effect on sustainable development; and recommending legislative and regulatory changes. Included in that review is the 1988 Comprehensive Planning and Land-Use Regulation Act.

In its first annual report,[3] released last August,[4] the 30-member council recommended an increased focus on government investment in urban communities; the use of incentives to channel growth to areas that can accommodate sustainable development; and increased support for local planning processes. Additionally, the council plans to establish a planning institute,[5] a permanent, nonprofit corporation to improve planning capacity in areas where it needs improvement or where planning resources are lacking.

The same month the governor was signing his executive order, the Statewide Planning Program released its telephone survey of 452 Rhode Islanders on issues pertaining to growth.[6] Chief among residents' concerns for the next five years were protecting drinking water, cleaning Narragansett Bay, keeping property taxes low, and improving quality of life. The report looked at Rhode Islanders' land-use priorities, what they thought was best and worst about their state, and what factors influenced their choice of where to live.

The general assembly passed three growth-related bills in 2000. A joint resolution[7] created a special legislative commission to study the concept of sustainability as it could be encouraged by state government. A report was due in January 2002.

The general assembly also directed the Department of Administration to assign necessary staff

1 Finucan, Karen. "Rhode Island." *Planning Communities for the 21st Century*. American Planning Association, December 1999; p. 59.
2 Executive Order 00-2 (February 2, 2000).
3 See: http://www.state.ri.us/dem/pubs/growth1.pdf.
4 See: http://www.governor.state.ri.us/News%20Releases/smart%20growth_01%20rel.html.
5 See: http://www.state.ri.us/dem/pubs/growth1.pdf.
6 "Rhode Island Growth Priorities for 2000 and Beyond," Statewide Planning Program, February 2000. Report prepared as part of the program, "Growth Challenges for the New Millennium—Balancing the Options," produced by the University of Rhode Island and broadcast live February 28, 2000.
7 S. 2854 (2000); See: http://www.rilin.state.ri.us/PublicLaws/law00/res00/res00249.htm.

Revisions to the state's multi-modal plan strengthen commitments to pedestrian transportation, social equity and environmental stewardship.

to perform the functions required by the Comprehensive Planning and Land Use Regulation Act to help address sprawl, urban revitalization and inter-municipal coordination.[8] Legislators approved the Development Impact Fee Act[9] to help local governments ensure that adequate public facilities are available to serve new growth.

Rhode Island voters also approved two bond issues in November 2000 to help combat sprawl. Gov. Almond's 10-year, Open Space 2000 Campaign called for $34 million to protect the state's "unique natural heritage."[10] The Department of Environmental Management was to use $10.8 million to purchase land or development rights.[11] Last December, the governor used $6.5 million of the bond issue to provide matching grants to local communities to protect more than 100 acres of urban playgrounds, recreational fields, trails, beachfront and other sites.[12]

Voters in 2000 also endorsed $62.5 million in general obligation bonds to match federal funds and finance improvements to the state's highways, roads and bridges, and to purchase buses for the Rhode Island Public Transit Authority's fleet. About $23 million was earmarked to relocate Route 195 through Providence—a key component of a plan to revitalize the city's waterfront.

In 2001, Gov. Almond joined Massachusetts Gov. Jane Swift in announcing a five-year extension of commercial rail service between Providence and Boston. The extension, from 2004-2009, includes expanding service from eight to 11 daily round trips.[13]

Local governments have until August 2002 to bring the transportation component of their comprehensive plans into accordance with the State's 2001 triennial update of the "Ground Transportation Plan."[14] Revisions to the state's multi-modal plan for the movement of people and goods strengthen commitments to pedestrian transportation, social equity and environmental stewardship.

Last March the Department of Environmental Management announced a regional planning effort in the Blackstone Valley.[15] A coalition of

8 H. 8071 (2000); See: http://www.rilin.state.ri.us/BillText/BillText00/HouseText00/H8071.htm.
9 H. 7308 (2000); See: http://www.rilin.state.ri.us/BillText/BillText00/HouseText00/H7308.htm.
10 See: http://www.state.ri.us/dem/programs/bpoladm/plandev/landacq/rios2000.htm.
11 Jones, Brian C. "Election 2000—Voters approve highway, open space referendums." *The Providence Journal*, November 8, 2000, p. A-05.
12 See: www.governor.state.ri.us/News%20Releases/bond%20awards%20rel.html.
13 "Governors' Smart Growth Initiatives," The Northeast-Midwest Institute, July 2001, p. 17.
14 "E-newsletter," Statewide Planning Program, November 2001; See: http://www.planning.state.ri.us.
15 See: http://www.state.ri.us/dem/news/2001/pr/030101L.htm.

local, state and federal agencies were to develop a comprehensive, bi-state build-out analysis of the valley. According to the department, "This study is vital to understanding the region's future as it illustrates the maximum development permissible under current zoning." The Statewide Planning Program will use the analysis to help towns as they complete revisions and updates of their comprehensive plans.

The department also convened a Waste Permit Streamlining Task Force in early 2001 to "discuss to what extend statutory, regulatory, policy or administrative changes are necessary to streamline the regulatory process without compromising our environmental mandate, and especially to expedite the cleanup and reuse of contaminated properties."[16]

Last June, members of the State House created its own Brownfields Commission.[17] The group of 19 legislators, appointed by the Speaker of the House, are to develop legislative recommendations that would complement and strengthen existing brownfields programs and that would increase public awareness about brownfields remediation and reuse. The recommendations were due by the start of the legislative session last month.

Also approved in 2001 was a bill making tax credits available to individuals or organizations that renovate historic buildings for residential or business use.[18] Up to 30 percent of the rehabilitation costs of projects involving certified historic structures qualify for credit. The legislation took effect Jan. 1, 2002. The tax credits, coupled with a new state rehabilitation building code expected to be implemented in early 2002, should make the climate for urban reinvestment in Rhode Island one of the most favorable in the nation.

Tax credits and a new state rehabilitation building code should make the climate for urban reinvestment in Rhode Island one of the most favorable in the nation.

Another proposal[19] passed in 2001 allows business improvement districts in Providence. The bill enables businesses in the state's largest city to come together in a district sanctioned by city leaders and to tax themselves in order to supplement city services. "Anything that can be done to help market downtowns and make them spiffier and more economically viable would be good,"[20] said the executive director of Grow Smart Rhode Island.

16 See: http://www.state.ri.us/dem/programs/ombuds/pstream/waste/index.htm.
17 H. 6559 (2001); See: http://www.rilin.state.ri.us/BillText/BillText01/HouseText01/H6559.htm.
18 H. 5547 (2001); See: http://www.rilin.state.ri.us/BillText/BillText01/HouseText01/H5547htm.
19 H. 6088 Substitute A, as amended (2001); H. 6559 (2001);
See: http://www.rilin.state.ri.us/BillText/BillText01/HouseText01/H6088Aaa.htm.
20 Smith, Gregory. "A city within a city' plan in place." *The Providence Journal*, August 8, 2001, p. C-01.

SOUTH CAROLINA

During the past three years planning reform advocates continued to press for legislation opening the way for South Carolina communities to adopt stronger comprehensive planning and growth management measures. Although none of the proposals they supported were enacted, a number of smaller steps were taken addressing several specific planning issues in the state.

The Comprehensive Infrastructure and Sustainable Development Act was introduced in 2000.[1] The proposal would have significantly updated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994[2] and the 1976 Comprehensive Infrastructure Development Act, which made moderate and the most recent changes to the state's planning statutes.[3]

The infrastructure and sustainable development bill would have defined local and regional sustainable development planning; provided plans, programs, development incentives, regulations and studies to promote sustainable development planning; established advisory recommendations and standards for sustainable development practices; and provided technical assistance and funding.[4]

In 2001, the Farm and Forest Lands Protection Act was introduced to protect priority agricultural land.[5] The legislation would have authorized the purchase of agricultural conservation easements and created a State Priority Agricultural Land Board within the Department of Natural Resources to administer the agricultural land programs.

Another proposal introduced last year, and that came close to passage, was the South Carolina Conservation Bank Bill (H.3462) introduced by Rep. Chip Campsen. A companion proposal in the state Senate (S.297) had been approved last April, but tactical delays by opponents and the addition of more than 60 amendments to the bill prevented the House from acting on the measure before the general assembly adjourned.[6]

The proposal would have provided $10 million from deed recording fees to protect significant natural areas, wildlife habitat and historical sites through land and conservation easements. The general assembly was expected to take up the bill again in early 2002.[7]

South Carolina has a statewide right-to-farm law and differential tax assessment rates for agricultural land, however, there are no state or local authorizing statutes to protect farms or require urban growth boundaries.[8] Still, 13 South Carolina counties were included in a 1997 American Farm-

1 G.B. 945 (Sen. Leventis, 2000).
2 South Carolina Code of Laws, Title 6, Chapter 29. See: http://www.scstatehouse.net/code/t06c029.htm.
3 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
4 Id.
5 H.B. 3111 (Rep. Sharpe, 2000/2001) and S.B. 156 (Sen. Leventis, 2000/2001).
6 "2001 Legislative Year in Review." South Carolina Coastal Conservation League. See: http://capwiz.com/scccl/issues/alert/?alertid=45577.
7 "Our Best Chance to Preserve Natural SC." South Carolina Coastal Conservation League, Action Alert, 2001. See: http://capwiz.com/scco/issues/alert/?alertid=15811.
8 "Table 11: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.

land Trust nationwide study identifying areas where prime agricultural land is most vulnerable to loss from development.[9] Currently Beaufort County is the only local jurisdiction in the state with purchase of development rights or other measures designed to protect agriculture land.[10]

Two property rights bills also were introduced in 2001. One of the proposals would have required landowners to be compensated when a regulation causes a "substantial diminution" in property value as well as requiring local officials to assess the impact of proposed new land-use regulations that affect property values.[11] The second bill would compensate landowners when government action inordinately burdened a use of property.[12]

Planners and other government officials raised doubts that the bills, if enacted, could place a huge financial burden on taxpayers. Other concerns involved whether local governments would be prevented from using zoning and other regulations to protect real estate values because the costs of compensating property owners in certain cases could be prohibitive.[13]

The general assembly did pass two bills in 2000, including a proposal establishing a voluntary cleanup program in order to restore and redevelop "brownfields" or contaminated industrial and commercial properties. The other measure provided tax advantages to property owners who donate conservation easements to protect natural resources.[14]

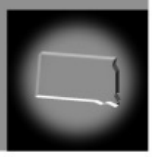
Gov. James Hodges hosted in March 2000 the "Governor's Summit on Growth," which attracted approximately 400 business and government leaders.[15] A month earlier the governor established the Task Force on Historic Preservation and Heritage Tourism, asking that the group determine how to improve state and local government policies so as to not impede historic preservation.[16]

The governor also signed several growth management-related executive orders. On Feb. 4, 1999 he established the Interagency Council on Natural Resources Policy, charging the council to develop for consideration action plans addressing major environmental problems, issues or needs in the state.[17] In April 2001 he signed executive orders that established an affordable housing task force[18] and imposed a moratorium on constructing or expanding swine facilities, or approving waste management plans for such facilities.[19]

At the local level, Charleston County voters narrowly defeated (50.5 percent against versus 49.5 percent in favor) a 2000 ballot initiative that would have funded through a ½-cent, 25-year sales tax mass transit improvements, new parks, farmland protection and conservation of other land.[20]

9 Sorensen, Ann, et al. *Farming on the Edge.* American Farmland Trust, 1997.
10 "How to Keep the Country in the Lowcountry." The Greenbelt Education Project.
See: http://www.charleston.net/org/greenbelt/tools.html.
11 S.B. 88 (2001).
12 H.B. 3110 (2001).
13 Legislative Alert, Municipal Association of South Carolina, Jan. 25, 2001. See: http://www.masc.state.sc.us.
14 Accomplishments of the 2000 Legislative Session. Governor's Office, 2001. See: http://www.state.sc.us/governor/legacycomp2000.html.
15 See: http://www.state.sc.us/governor/growthsummit.html.
16 Executive Order 2000-08. Governor's Office, Feb. 3, 2000. See: http://www.state.sc.us/governor/2000-08.html.
17 "Accomplishments of the 1999 Legislative Session." Governor's Office, 2001. See: http://www.state.sc.us/governor/legacycomp1999.html.
18 Executive Order 2001-09. Governor's Office, April 5, 2001. See: http://www.state.sc.us/governor/2001-09.html.
19 Executive Order 2001-11. Governor's Office, April 23, 2001. See: http://www.state.sc.us/governor/2001-11.html.
20 Myers, Phyllis and Robert Puentes. "Growth at the Ballot Box: Electing the Shape of Communities in November 2000." The Brookings Institution, Center on Urban and Metropolitan Policy, February 2001.

SOUTH DAKOTA



Like all of its neighboring states except Minnesota, South Dakota's comprehensive planning statutes remain virtually the same as the circa 1920s laws upon which they're based.[1] What minor changes were made in 1966 and 1976 did not amend sections of the statutes addressing comprehensive planning.

Predominately an agricultural state, what surfaces when planning law reform is mentioned are concerns about protecting landowners' property rights and maintaining local governmental control and flexibility over land-use decisions. It should come as no surprise, then, to learn that the state legislature takes a "hands-off" approach to most planning and land-use issues.

However, certain clarifications and provisions are needed in the state planning statutes to address such things as joint jurisdictional planning in extraterritorial areas or places that are adjacent to, but outside of, a municipality's borders. Other changes planners in the state say are needed include incentives that encourage small, independent-yet-neighboring communities to work together towards common economic or redevelopment goals, and ways to reverse the trend of younger residents moving from rural communities to larger cities—or other states.

Planners also note the challenge of working with outlying counties near Rapid City, Sioux Falls or other metropolitan areas to recognize the long-term problems associated with scattered housing development that incrementally is destroying highly productive farmland. A 1997 report by American Farmland Trust underscores the seriousness of the issue, noting that 39 of the state's 66 counties are among the areas nationwide where prime agricultural land is most vulnerable to loss from development.[2]

Currently there are no state or local statutes allowing communities to protect agricultural land through transfer of development rights, purchase of development rights or similar approaches. South Dakota does have a statewide right-to-farm law and differential tax assessment rates for agricultural land. At the local level, county or other governmental units have the authority to guard farmland from development through agricultural protection zoning.[3]

One program that is helping build greater trust and cooperation between state and local governments is "Spruce Up South Dakota" announced by Gov. Bill Janklow during his 2000 state of the state

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.
3 "Table 11: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.

address.[4] This voluntary, clean-up initiative encourages local and state offices to form partnerships in order to remove vacant and dilapidated buildings, abandoned vehicles, tires and batteries, white goods (freezers, washers, dryers, stoves, etc.), pesticides and abandoned underground fuel tanks.

In some of the state's larger and growing cities, such as Sioux Falls where the population increased 23,000 between 1990 and 2000, strong planning measures are helping the community direct development into areas designated for growth. The city also is making headway in expanding the number of transportation options for residents, such as including more bicycle paths.

While Sioux Falls and a few other cities are using planning to enhance their quality of life, many communities in the state are reluctant to consider anything beyond basic planning and zoning practices. An indicator that the state could follow Sioux Falls' lead in expanding transportation alternatives is the Surface Transportation Policy Project's report, *Changing Direction: Federal Transportation Spending in the 1990s*. South Dakota was among 14 states characterized as showing a "weak commitment" to improving travel choices,[5] based on its $5.66 per capita state spending of federal funds between 1990 and 1999 to expand bicycle, pedestrian and transit-oriented transportation options. The national per capita state average was $17.26.[6]

Incentives are needed that encourage small, independent-yet-neighboring communities to work together towards common economic or redevelopment goals.

Another important planning issue where there already is a state-government commitment for making improvements is affordable housing. The South Dakota Housing Development Authority is responsible for increasing the number of affordable single-family homes in the state and has made that goal its highest priority.[7] During the past decade, South Dakota's total number of housing units increased 10.3 percent compared to the national average of 13.3 percent. The 2000 homeownership rate for the state was 68.2 percent—two percentage points higher than the national average.[8]

4 See: http://www.spruceupsd.com

5 *Changing Direction: Federal Transportation Spending in the 1990s*. Surface Transportation Policy Project, March 2000, p.32.
See: http://www.transact.org/Reports/Cd/execsummary.htm.

6 Id., p. 15.

7 South Dakota 2002 Consolidated Plan Update. South Dakota Housing Development Authority, Oct. 15, 2001, p. 14.

8 Table 1. State and National Housing Statistics, 1990 and 2000. *U.S. Housing Market Conditions Summary*. U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Summer 2001.
See: http://www.huduser.org/periodicals/ushmc/summer2001/summary-2.html

TENNESSEE

Following passage of its landmark 1998 Growth Policy Law,[1] Tennessee has spent the last two years focusing on implementation of the new law, which significantly updates the state's comprehensive planning statutes. The law, which was enacted with the help of the Tennessee chapter of APA, incorporated language from APA's Growing Smart℠ *Legislative Guidebook*.

Of the 92 non-metropolitan counties in the state, 74 secured approval of their mandated growth plans by the June 30, 2000 deadline.[2] In 17 counties, county commissions and municipal governing bodies were unable to reach agreement on the countywide plans by the deadline. Seven counties submitted plans between July 1, 2000 and June 30, 2001 and eight counties officially moved to impasse and requested mediation of their disputes by the Secretary of State's office. That office has facilitated agreements in all but two of the counties.

Two state agencies announced policies to reward counties and municipalities with approved growth plans and, beginning in Fiscal Year 2002, to impose sanctions against those without such plans. The Department of Economic and Community Development awards additional points on grant applications from counties and municipalities with approved plans.[3] As of July 1, 2001, communities and counties without approved growth plans were, with a few exceptions, unable to apply for grants.

The Tennessee Housing Development Authority also has a reward system with additional points being given to grant applications when growth plans have been approved. As of July 1, 2001, the agency no longer offered federal Home Investment Partnership Program (HOME) grants to any county or municipality without an approved plan.[4] HOME is the federal government's largest block grant available to state and local governments to provide low-income households with affordable housing.[5]

A white paper[6] issued by the Tennessee Advisory Commission on Intergovernmental Relations last January examined the rural areas component of the mandated growth plans and found it lack-

1 Public Chapter 1101 (1998).

2 "Implementation of Tennessee's Growth Policy Act in CY 2000: A Year of Progress," Tennessee Advisory Commission on Intergovernmental Relations, January 2001, p.iii. See: http://www.state.tn.us/tacir/Portal/Reports.htm.

3 "Tennessee's Growth Policy Act: A Vision for the Future," Tennessee Advisory Commission on Intergovernmental Relations, April 2000, p. 3. See: http://www.state.tn.us/tacir/Portal/Reports.htm.

4 "Implementation of Tennessee's Growth Policy Act in CY 2000: A Year of Progress," Tennessee Advisory Commission on Intergovernmental Relations, January 2001, p.6. See: http://www.state.tn.us/tacir/Portal/Reports.htm.

5 Home Investment Partnership Program (HOME). U.S. Department of Housing and Urban Development, program description. See: http://www.hud.gov:80/progdesc/home1a.html.

6 "Planning for Rural Areas in Tennessee Under PC 1101," Tennessee Advisory Commission on Intergovernmental Relations, January 2001. See: http://www.state.tn.us/tacir/Portal/Reports.htm.

ing. The paper notes that "urban growth boundaries are not enough," and suggested a number of techniques and strategies—in the areas of regulations, public infrastructure, public costs and revenue, and public and private investments in open land—that the state could use to strengthen the rural areas component.

By executive order in January 2000,[7] Gov. Don Sundquist created the Tennessee Strategically Targeted Areas of Redevelopment or the TN S.T.A.R. community redevelopment committee. The committee helps facilitate urban area revitalization and redevelopment efforts. It also assists community-based organizations, community development centers and local leadership with creating, implementing and supporting strategic programs aimed at improving economic development opportunities.

Last July, the state's General Assembly passed legislation[8] to expedite brownfield cleanups and reuse across the state. Last October Gov. Sundquist announced that Memphis was the first municipality to identify a brownfield site for reuse under the Brownfield Redevelopent Amendment. The site, a former screen door manufacturing operation, eventually will be home to a residential neighborhood.

Last July the Tennessee General Assembly passed legislation to expedite brownfield cleanups and reuse across the state.

7 See: http://www.state.tn.us/governor/jan2000/tnstar.htm.
8 S.B.1889/H.B. 1916 (2001).

TEXAS

Although it is the second-most populous state in the nation[1] and more than 80 percent of its residents live in metropolitan areas,[2] long-standing values of self-reliance and local self-determination continue to flavor the approaches the Lone Star state takes to planning and other public policy issues.

The ability of most cities to manage growth and development is based on the Texas constitution's home-rule provision.[3] Cities are allowed to amend charters and pass ordinances as long as they do not conflict with the constitution or general laws enacted by the state legislature. This 'bottom-up' approach means that each home-rule city can make its own decisions about what planning tools and techniques are most appropriate to its situation unless those tools have been proscribed by the Texas legislature.

As a result, innovative approaches to growth and development issues, including partnerships with non-governmental entities, lead to longer-lasting solutions because they are crafted locally in response to local needs.

With rapid growth expected to continue in the state, especially in urban and suburban communities,[4] the most-pressing planning-related issues in Texas are increasing funding for local and regional planning initiatives (all of which currently comes from local jurisdictions) and ensuring that the tools and techniques available to cities are not limited further by legislative action.

During the 2001 legislative session, a bill was approved that severely restricts planning moratoria for residential projects. Cities had used the tool to preserve the status quo while evaluating new plans and ordinances. Signed by the governor,[5] the measure prescribes stringent procedures before a facilities moratorium for residential uses can be enacted. Also, the new law limits these moratoria to 120 days.

Legislators in 2001 also amended the state's impact fee law.[6] Provisions were added requiring an offsetting credit for ad valorem taxes or user fees that finance infrastructure improvements. The changes will reduce the maximum impact fees cities typically can charge for infrastructure to 50 percent of the actual cost.

Other attempts to restrict or eliminate planning tools were proposed but defeated in 2001. One bill would have removed the municipal exemption from the requirements of the property rights preservation act, which would have required a 'takings assessment' on all municipal actions.[7] Another proposal would have exempted religious organizations from subdivision plan-

1 "Population Change and Distribution 1990 to 2000." *Census 2000 Brief.* U.S. Census Bureau, April 2001, p. 3.
2 Eighty-three percent. U.S. Census Bureau, 2000.
3 Texas Constitution, Article 11, Section 5. Applicable to cities with more than 5,000 population.
4 Of the population increase from 1990 to 2000, 91 percent was in metropolitan areas.
5 S.B. 980, signed May 26, 2001.
6 S.B. 243, signed May 26, 2001.
7 H.B. 25, 2001.

ning requirements had it been approved.[8] A bill that would have restricted cities' ability to regulate the location of manufactured housing also was stopped.[9] Most significant, however, was the near-approval of a measure requiring compensation to landowners affected by downzoning or changes in zoning ordinances that reduced the amount of development allowed on their property.[10]

Texas, like many states, adopted the Standard Zoning Enabling Act during the 1920s. The state also adopted the subdivision portion—but not the comprehensive planning section—of the Standard City Planning Enabling Act in 1927. While municipalities in the state governed by home rule could adopt their own procedures and tools to manage growth and development, tools available to them began to change in the 1980s and 1990s when the Texas legislature began to place restrictions on what home-rule governments could do and set new, specific procedures to be followed by municipalities. Often, such legislative action was in response to concerns raised by the development industry about reported misuse of authority and perceived infringement of property rights by one or a few cities.

Legislation was adopted in 1987 to establish consistent procedures for the use of impact fees, including the development of 'land-use assumptions' that require analysis of future land-use development patterns and the resulting demand for infrastructure. Also in 1987 a vesting statute was enacted requiring development proposals to be evaluated solely on the basis of regulations in effect at the time of filing for the first of a series of required project permits.

This statute subsequently was amended in 1995 to add limited exemptions and prohibit additions of new expiration dates for approved permits. After it was accidentally repealed in 1997, the legislature re-enacted it in 1999, making it retroactive for projects commenced after 1987 and limiting its applicability to local instead of state government.

The state enacted a statute enabling comprehensive planning by both general law and home rule local governments in 1997.[11] While the law provides only a general description of what comprehensive plans should contain instead of including specific plan elements, it did clarify that cities can make the linkage between comprehensive plans and their zoning and facilities, otherwise known as "concurrency."

In 1999, approximately a dozen laws were enacted addressing land use including subdivisions,[12] property rights,[13] impact fees,[14] public notice as it relates to the regulation of adult uses[15] and affordable housing.[16] Also that year the state legislators strengthened county subdivision authority and

8 H.B. 984, 2001.
9 H.B. 3439, 2001.
10 S.B. 1398, 2001.
11 Texas Local Government Code, Chapter 213. The legislation does not mandate a comprehensive plan, but enables cities to adopt comprehensive plans, allows them to develop their own definitions of a comprehensive plan and consistency requirement, and specifies procedures for adoption.
12 H.B. 3746, signed June 19, 1999.
13 S.B. 1443, signed June 18, 1999.
14 S.B. 1277, signed June 19, 1999.
15 H.B. 3598, signed June 19, 1999.
16 H.B. 313, enacted May 29, 1999, allows local jurisdictions to create "neighborhood empowerment zones" and to defer taxes to improve housing. H.B. 1413, enacted May 21, 1999, grants cities the right to transfer property with delinquent taxes to nonprofits to build low-income housing.

the power to regulate manufactured home rental communities. In order to protect water resources in one county experiencing widespread septic failures, the legislature gave the jurisdiction special authority for issuing development permits.

Not enacted in 1999, however, were laws authorizing agricultural protection zoning or transfer of development rights provisions to safeguard farmland vulnerable to development.[17] A study in 1997 by the American Farmland Trust found areas of the Texas Blackland Prairie in the east and Lower Rio Grande Plain in the south to be among the top 21 percent of places in the U.S. that are losing prime agricultural land to development. At the same time, the study included another 217 Texas counties on the list of areas nationwide where prime farmland is most vulnerable to loss from development.[18]

More recently, the legislature has adopted additional tools to address the needs of rural areas facing urban growth and development pressures. County subdivision laws were further strengthened last year in response to rapid rural growth rates adjacent to metropolitan areas. Also in 2001, Speaker of the House Pete Laney was instrumental in the creation of a new state agency, the Office of Rural Community Affairs, which is intended to focus on rural community issues.

Legislators also passed H.B. 3451 last year, which extends the Texas State Affordable Housing Corporation through 2003. Among other things, the housing law addresses manufactured housing and preservation of affordable housing units.[19] Although median home prices in major Texas cities are well below those in other regions of the country,[20] statistics show the number of families facing worst-case housing needs is growing three times faster in the state than decent, affordable housing is being created.[21]

As in other developed cities nationwide, some of the older neighborhoods in Texas cities have lost affordable housing units because of gentrification, conversion to commercial uses and arson. Since most urban development in Texas has occurred more recently than in other regions of the country, these issues affect a smaller portion of the urban housing stock in Texas than elsewhere. Unless there is a commitment to replace affordable housing within existing areas, locating replacement housing in new subdivisions where streets, utilities, schools and other public services also must be provided can be inefficient, costly[22] and a source of urban sprawl.

Absent any additional legislation placing further limitations on the planning and smart growth tools and provisions afforded local governments, Texas cities will likely manage growth by using strategies that make redevelopment

17 "Table 1.1: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.

18 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.

19 Memo, Texas Low-Income Information Service, 2001. See: http://www.texashousing.org/txlihis/2001legislation.html#Anchor-Texas-37516.

20 National Association of Realtors, 2002. Median home prices for the Census-defined metropolitan statistical area (MSA) including this central city and its surrounding communities. The median home price in the first quarter of 2001 was $118,300 in Houston, compared to $235,700 in Seattle and $345,100 in Boston.

21 "Introduction." *Housing in Texas: A Living Crisis—Texas Solutions*. Texas Low Income Housing Information Service, 2000. See: http://www.texashousing.org/txlihis/livingcrisis/livingcrisis/contents/index.html.

22 "Neighborhood Deterioration." *Housing in Texas: A Living Crisis—Texas Solutions*. Texas Low Income Housing Information Service, 2000. See: http://www.texashousing.org/txlihis/livingcrisis/livingcrisis/contents/index.html.

more attractive; carry out local plans that balance development and infrastructure with preservation of historic and environmental assets; and build regional coalitions to address regional issues.

Cities that are leading the way include Dallas, which has a nationally recognized brownfields program that is transforming abandoned properties into new, mixed-use areas. Galveston, Fort Worth, San Antonio and other places are using the character of historic downtown and neighborhood areas to attract residents and businesses. El Paso, Houston and Dallas are among the cities using tax increment financing districts to assist the private sector in abating environmental hazards and revitalizing older buildings.

Many suburban and rural cities—those that were originally rural communities and now are part of metropolitan areas—are using local planning, zoning, development incentives and other techniques to retain their distinctive main streets and 'small town' characters. Examples include Lewisville, Kerrville, Tyler and Granbury. Cities also are using a variety of approaches to manage growth. Collaborations among jurisdictions within urban areas—as well as private and non-profit entities—are increasingly used to address the regional implications of planning, environmental and transportation issues.

In the Dallas-Fort Worth metroplex, such regional coalitions have led the way for a regional plan to address air quality and recreational trails that will extend as far as the Oklahoma border. A multi-city agency, Dallas Area Rapid Transit or DART, operates one of the most successful new light rail systems in the nation.

Last year the 23-mile light rail system had 11.5 million passenger trips. Expansions underway will add more than 30 miles of light rail track during the next two years.[23] Economic development benefits as a result of the system are clear. More than $1 billion in private development has been spent along existing and future light rail lines since the system opened in 1996, which has created $3.7 billion in projected regional economic benefits through 2003.[24]

Local and regional smart growth initiatives also are being used to help shape the future of Austin, Dallas, Houston, Denton and other cities. Meanwhile, the North Central Texas Council of Governments established a Center for Development Excellence to examine best practices and to make such approaches available to area communities. The council's metropolitan planning organization also is involved, providing transportation funding incentives to communities that implement sustainable development principles.

23 For more information about DART, see: www.dart.org.
24 "The Initial Economic Impacts of the DART LRT System," University of North Texas.

UTAH

Progress continues to be made on several planning fronts by the state's Quality Growth Commission, formed by the "Quality Growth Act of 1999,"[1] which encourages cities and counties on a voluntary basis to support critical land conservation, affordable home ownership, housing availability, efficient development of infrastructure and efficient use of land.

Through January 2001 the commission had established six Quality Growth Principles that call on the state to provide local governments with planning assistance. The principles also encourage local jurisdictions to not only take responsibility for planning and land-use decisions in their areas, but to coordinate such decisions in cooperation with other governmental entities.[2]

The commission also has awarded 34 local planning grants amounting to $400,000 and, through its administration of the LeRay McAllister Fund, has preserved or restored 9,416 acres of critical land in the state.[3]

Utah's comprehensive planning laws go back to the 1920s,[4] although modest changes were made in 1991 with the passage of the Municipal Land Use Development Act and the County Land Use Development and Management Act, and amendments that followed in 1992.[5] While the state legislature has not addressed smart growth and planning reform together, various related proposals have been taken up individually.

The most important bill adopted during the 2001 interim session amends the state code regarding annexations. The change is expected to have a major effect on the way communities grow in Utah. Under the new law, municipalities will be required to prepare an annexation policy plan, which describes the areas a municipality anticipates will be added to its borders in the future.

The new law makes a significant policy statement in that new growth should take place only in areas where there is infrastructure for providing urban services. Except for Salt Lake County, most county governments in the state are not designed to efficiently provide such services.

As part of an on-going effort for the past eight years, the state approved for the current fiscal year (2001-02) another $100,000 to the Office of Planning and Budget for use by counties and other local governments to develop and implement land-use plans, according to state Rep. Stephen H. Urquhart.[6] It is believed, however, that this source of funds may not continue beyond fiscal year 2000-2001.[7]

1 H.B. 119 (signed March 11, 1999).
2 "Utah's Guiding Principles for Quality Growth." *Utah Planner*, July 2000, p. 10.
3 Quality Growth Commission summary of accomplishments, January 2001. See: http://www.governor.state.ut.us/quality/.
4 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
5 See, Dalebout, Richard S., "Utah Zoning Law and Proposals for Legislative Change," 9 B.Y.U. Pub. L. 1 (1994).
6 H.B. 71 (2001).
7 Sommerkorn, Will. Memo from Utah Chapter of APA to APA Washington, D.C. office, Jan. 8, 2002.

Utah's new annexation law makes a significant policy statement in that new growth should take place only where there is infrastructure for providing urban services.

In addition, separate bills were introduced but not approved to exempt telecommunications facilities from local subdivision regulations,[8] and to require local governments to treat manufactured home subdivisions in the same way as conventional subdivisions.[9]

During the 2000 legislative session several land-use laws were enacted including measures addressing annexations by municipalities and annexation of unincorporated areas; transportation corridor preservation; and subdivisions of land. Proposals that failed in 2000 included a Quality Growth Bill; a land-use planning appropriation; and an optional county affordable housing act.[10]

To help protect agricultural land from being lost to development, a statewide law authorizing the creation of agricultural districts has been enacted. Also, local jurisdictions have the option of adopting their own protective agricultural zoning and transfer of development rights programs to protect farms from being developed.[11]

According to a 1997 report by American Farmland Trust, 29 of the state's counties are among the areas nationwide where prime agricultural land is most vulnerable to loss from development.[12]

At the local level, voters have passed ballot initiatives addressing various growth issues. In 1998, voters in Park City approved a $10 million bond to acquire open space[13] while in 2000 voters from Davis, Weber and Salt Lake counties agreed to a $^{3}/_{4}$-cent sales tax increase to fund commuter rail service between Ogden and Salt Lake City.[14]

Looking ahead to next year, the Quality Growth Commission is developing an implementation program for Quality Growth Areas that, when adopted, would represent a significant change in the way planning is done in the state. The proposal is not expected to be taken up by state lawmakers before 2003.[15]

8 S.B. 98 (2001).
9 S.B. 158 (2001).
10 Summerkorn, Will. "The 2000 Utah Legislature." *Utah Planner*, March 2000, p. 8.
11 "Table 1.1: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.
12 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.
13 November 1998 Open Space Acquisition Ballot Measures. Land Trust Alliance, Nov. 20, 1998.
See: http://www.lta.org/publicpolicy/referenda.html.
14 Myers, Phyllis and Robert Puentes. "Growth at the Ballot Box: Electing the Shape of Communities in November 2000." The Brookings Institution, Center on Urban and Metropolitan Policy, February 2001.
15 Sommerkorn, Will. Memo from Utah Chapter of AIPA to AIPA Washington, D.C. office, Jan. 8, 2002.

VERMONT

Act 250, Vermont's 25-year-old, landmark development review law, came under fire during the 2001 legislative session. That law, along with Act 200—the Growth Management Act of 1988—provide the Green Mountain State with some of the most progressive and up-to-date planning laws in the nation.[1]

After efforts in 2000 to streamline Act 250 failed, the state house held hearings in early 2001. There was a consensus at the hearings that changes to Act 250 were needed,[2] but few were in agreement as to what should be done. While some urged a tightening of the law—asking that residents be allowed to appeal an Act 250 permit to the state supreme court and that the position of public advocate be established to advise citizens on the permitting process—others railed against the act, claiming it contributes to sprawl and blaming it for the state's affordable housing crunch.

In the end, Vermont legislators approved a bill[3] that establishes three pilot projects designed to test a process for streamlining Act 250 appeals. One of the pilot programs allows initial district commission hearings to be held on the record in order to form a legal basis upon which the Environmental Board can rely in case of appeal.[4] The Environmental Board would then consider an appeal based on the record rather than conducting another full hearing, as was the practice. This procedure is limited to 12 occurrences across the state.

The legislation also established a facilitator pilot project. An employee will be assigned to help persons complete small project applications and "otherwise preparing for their participation in proceedings under Act 250." The employee also will assist parties who are not applicants in preparing for their participation in proceedings under Act 250, as well as facilitating the exchange of information among parties.

A mediator pilot project also will be conducted. This project allows the Environmental Board to contract for no-cost mediation services to Act 250 parties. Interim and final reports on each of the pilots are mandated, and each of the projects expire Sept. 1, 2004.

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 Eckel, Mike. Associated Press. "Act 250 panned and praised at hearing." *Rutland Herald*, Feb. 9, 2001; See: http://rutlandherald.nybor.com/News/State/Story/19953.html.
3 H. 475 (2001), Act No. 40; See: http://www.leg.state.vt.us/docs/2002/acts/ACT040.SUM.
4 "Gutting Act 250," editorial, *Rutland Herald*, March 17, 2000; See: http://rutlandherald.nybor.com/To_Print/5220.html.

The Development Cabinet is responsible for assuring collaboration among state agencies so as to support economic development, traditional settlement patterns, strong communities and a healthy environment.

In addition, a land-use permitting process study commission was established as a result of the bill. The group was to examine the current permitting process and make recommendations for future changes.

Another study commission focusing on affordable housing was created by the legislature.[5] The commission is charged with studying the Municipal and Regional Planning Act, and proposing changes designed to facilitate and motivate the development and appropriate distribution of affordable housing throughout Vermont while preserving municipalities' control of land use. The commission was expected to report to the general assembly by Jan. 15, 2002.

The same legislation establishes a separate task force on downtown redevelopment. The 15-member task force is to recommend statutory, regulatory and policy reforms "to encourage the redevelopment of second and third stories in historic downtown buildings and the development of housing and mixed-use development in municipal centers."

The general assembly also amended the law encouraging development of contaminated property. The deadline for applications to participate in the program was extended to July 1, 2006 from July 1, 2000.

Following Gov. Howard Dean's executive order[6] creating a Development Cabinet, the general assembly passed legislation[7] that accomplishes the same thing. Under the bill, the Development Cabinet is responsible for assuring collaboration among state agencies so as to support economic development, traditional settlement patterns, the working and rural landscape, strong communities, and a healthy environment. The cabinet is required to provide an annual report on the activities of the regional commissions council.

5 H. 483 (2001), Act. No 62; See: http://www.leg.state.vt.us/docs/2002/acts/ACT062.SUM.
6 Executive Order 01-00 (February 9, 2000).
7 H. 209 (2000); See: http://www.leg.state.vt.us/docs/2000/acts/ACT112.SUM.

VIRGINIA

During the 2001 session the Virginia General Assembly continued its old practice of considering land-use and planning-related legislation on a piecemeal basis. However, because of disagreements between development interests and local governments in the state, no controversial bills were approved.

What did come out of the assembly was creation of a joint study group, the Commission on Growth and Economic Development.[1] The commission was charged with studying current revenue resources to meet existing and future infrastructure needs; revitalization of inner-city areas and older suburbs; development of abandoned, unused or contaminated industrial sites, commonly known as brownfields; and ways to preserve both open space and individual property rights as well as to fund land preservation goals.[2]

The Virginia Chapter of APA and the Virginia Society of the American Institute of Architects issued recommendations to the commission suggesting that it take a broad perspective and address the condition of land use and planning legislation in the Commonwealth. Given the state is facing severe budget constraints, it was understood that no new planning-related initiatives would be introduced during the 2002 legislative session. However, the commission did recommend that its term be extended this year so its work could continue.

While studies, public hearings and debates have been the main outcomes of growth management discussions in the state since 1990, a few limited proposals have been approved. In 1996 the general assembly approved the Regional Competitiveness Act. The law authorized the use of "incentive payments" to encourage regional partnerships that would promote economic competitiveness and encourage voluntary, intermunicipal cooperation.

Four years later the Virginia Agricultural Vitality Program was created to help localities underwrite purchase of development rights programs in order to protect farmland and agricultural businesses.[3] To promote urban revitalization, the Urban Public-Private Partnership Redevelopment Fund also was started in 2000. The fund was designed to help local governments finance rede-

1 H.J. 671, Feb. 24, 2001.
2 Id.
3 See: http://www.savefarms.com/question2.htm.

velopment of building sites, including costs for planning, clearing and remediation.[4]

Other approved measures in 2000 addressed implementation issues, such as removing derelict structures and urban revitalization. Also, an Office of Farmland Preservation was created during the 2001 session. Unfortunately, insufficient funding has thwarted effective implementation of these programs.

The last serious effort in the Commonwealth to address land use and planning-related issues was the Commission on Population Growth and Development, created in 1989. The commission's charge was to study the updating of Virginia's statewide and regional planning laws, which have not been substantially changed since reforms in the 1960s. Those amendments focused mostly on state and regional planning, not local planning[6] or the state's comprehensive planning enabling laws, which are based upon 1920s model legislation.[6]

The population and development commission was given a broad charge to study and evaluate the consequences of present and anticipated changes in population and patterns of development on the state's economy and environment. Other responsibilities included developing initiatives to ensure adequate planning, coordination and data dissemination at all levels of government; recommending funding sources for infrastructure improvements and conservation efforts; proposing innovative and cooperative land management techniques; and examining and evaluating ways to coordinate general assembly and state agency activities.[7]

In 1998, another study commission was formed to find ways to reduce sprawl, trim infrastructure costs and revitalize older cities through the use of state infrastructure funds in designated "smart growth areas."[8] The subcommittee's work led to more than a dozen growth-related bills being introduced the following year, although only two of the proposals were enacted—one addressing special use permits[9] and the other zoning violations.[10] The measures not approved were reconsidered during the 2000-2001 legislative session, but developer-local government disagreements stymied any progress from being made.

Looking ahead to the next several years Virginia's new governor, Mark R. Warner, is expected to be more supportive of planning than the previous two administrations. One sign that planning-related advancements may be in the offing was the recent appointment of Taylor Murphy as Secretary of Natural Resources. A former state delegate, Murphy was a proponent of the 1990 Commission on Growth, Population and Development, and the legislative advocate credited with developing the state's Chesapeake Bay Preservation Act.

4 H.B. 1232; Chp. 757, signed April 8, 2000.
5 Commission on Population Growth and Change, Regionalism: Shared Decisionmaking, A Background Reader (July 1994), Part II, A History of Planning in Virginia.
6 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
7 1990 Virginia Acts, chp. 893.
8 S.J. Res. 177, Sen. Mary-Margaret Whipple, 1998.
9 H.B. 2324, signed May 7, 1999.
10 H.B. 2532, signed March 28, 1999.

WASHINGTON

Cities and counties across Washington began updating their comprehensive plans and development regulations in 2001 in preparation for the state's five-year review and update process.[1] Many communities are considering inclusion of science-based performance standards in the plans to protect critical and sensitive environmental resources including wetlands, streams, underground water aquifers, unstable slopes, and fish and wildlife habitat areas. The state's Growth Management Act requires that these first-ever reviews be completed by Sept. 1, 2002.

It's been 11 years since Washington enacted its Growth Management Act, one of the most comprehensive and modern planning statutes in the country.[2] While there is consensus that the law is slowing sprawl and guiding growth out of rural lands and into urban growth areas, each year different interest groups offer changes to the 1990 law. More than a dozen growth- and planning-related bills were introduced during 2001 with fewer than half of them passing. Highlights of legislation that passed include:

A bill[3] directing the state Office of Financial Management to assist natural resource-related agencies in developing "outcome-focused performance measures" in determining eligibility for natural resource and environmental grants and loans. The new law resulted from a legislative audit[4] evaluating the state's effectiveness in administering this environmental program.

A measure[5] establishing three pilot projects in order to evaluate streamlining environmental permit decision making for significant, statewide transportation projects. The trial program is designed to "maximize environmental benefits through coordinated investment strategies" and to eliminate duplicative permit and compliance activities by state and federal agencies.

A law[6] requiring local governments to establish time periods for actions on specific, land-use project permit applications including timely and predictable procedures to determine whether a completed permit application meets development requirements.

Also enacted was a statute requiring each city and county fully planning under the Growth Management Act to establish a process for identifying and siting "secure community transition facili-

1 Growth Management Act (1990), RCW 36.70A.130.
2 Johnson, Denny. "Profiles—Washington." *Planning Communities for the 21st Century*. American Planning Association, December 1999, p. 77.
3 H.B. 1785 (2001).
4 "Investing in the Environment: Environmental Quality Grant and Loan Programs," Report 01-1, State of Washington Joint Legislative Audit and Review Committee, Jan. 22, 2001.
5 S.B. 6188 (2001).
6 H.B. 1458 (2001).

ties" for high-risk sex offenders that have completed their sentences. There is concern that the state needs to address appropriate housing for, and reintegration of, persons released from civil commitment. In addition, concerns have been raised about how the state handles appropriate sentencing of sex offenders in a comprehensive manner so that both civil and criminal processes effectively protect the community at the same time allowing the state to meet its constitutional and statutory duties. Local governments are required to adopt and amend their development regulations as necessary in order to allow for the siting of secure community transition facilities for persons conditionally released.[7]

Other measures aimed at strengthening the Growth Management Act that were not adopted last year but that may be taken up during the legislature's 60-day 2002 session include proposals to:

- coordinate planning under the growth act with the state shoreline management act[8];
- require additional parks, school and law enforcement needs to be addressed in growth-management comprehensive plans and development regulations[9];
- allow tax-increment financing[10]; and
- expand affordable housing opportunities.[11]

The addition of science-based performance standards to comprehensive plans is being considered by many Washington communities in order to protect critical and sensitive environmental resources.

7 Second Extended Session S.B. 6151 (2001).
8 H.B. 1561 (2001), H.B. 1964 (2001), S.B. 5458 (2001), S.B. 6208 (2001).
9 H.B. 1815 (2001), H.B. 2278 (2001).
10 H.B. 1115 (2001).
11 S.B. 6026 (2001).

WEST VIRGINIA

Except for minor amendments in the 1960s, state-level comprehensive planning statutes in the Mountain State remain virtually identical to the 1920s legislation upon which they were originally modeled.[1] There has been little discussion at either the executive or legislative levels about updating these statutes or implementing state growth management laws.

At the same time, there have been no ballot or bond initiatives in 1998,[2] 1999[3] or 2000,[4] whether statewide or locally, addressing growth management, open space, farmland protection or similar issues.

While West Virginia has a statewide right-to-farm law, differential tax assessment rates for agricultural land, and a conservation and preservation easement act that was adopted in 1995,[5] there are no state or local authorizing statutes to protect farms or require urban growth boundaries.[6] Yet 25 West Virginia counties were included in a 1997 American Farmland Trust study identifying those areas nationwide where prime agricultural land is most vulnerable to loss from development.[7]

In addition West Virginia, as well as Utah and Wyoming, have not enacted legislation separate from non-game programs to protect state endangered plant or animal species or critical habitat for these species.[8] According to a July 2000 survey by the West Virginia Nongame Wildlife and Natural Heritage Program, there are 803 rare, threatened and endangered species in the state.[9]

One sign that leaders in the state are open to a new approach to land use occurred last February when Gov. Bob Wise, delivering his first state of the state address,[10] called upon residents to move beyond the long-held belief "that economic growth carries the price of environmental sacrifice." He stressed his goal of ending "the era of divisiveness on the issue of West Virginia envi-

1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.
2 Myers, Phyllis. "Livability at the Ballot Box: State and Local Referenda on Parks, Conservation and Smarter Growth, Election Day 1998." The Brookings Institution, Center on Urban and Metropolitan Policy, January 1999.
3 Slee, Kendall, et al. "Voters Invest in Open Space: 1999 Referenda Results." Land Trust Alliance, 2000.
4 Myers, Phyllis and Robert Puentes. "Growth at the Ballot Box: Electing the Shape of Communities in November 2000." The Brookings Institution, Center on Urban and Metropolitan Policy, February 2001.
5 West Virginia Code Sec. 20-12-1 to 8.
6 "Table 11: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.
7 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.
8 *State Endangered Species Acts: Past, Present and Future*. Defenders of Wildlife and Center for Wildlife Law. February 1998, p. 28.
9 "Rare, Threatened and Endangered Species in West Virginia." West Virginia Division of Natural Resources, Nongame Wildlife and Natural Heritage Program, July 2000. See: http://www.dnr.state.wv.us/wvwildlife/species_checklist.htm.
10 February 14, 2001; See: http://www.state.wv.us/governor/sos.htm.

ronment," and asked state lawmakers to elevate the Director of the Division of Environmental Protection to the post of secretary in the governor's cabinet. The legislature complied.[11]

Also in 2001 the West Virginia legislature enacted a bill pertaining to surface mining reclamation plan reviews.[12] As a result, local economic or redevelopment authorities are now charged with reviewing surface mining reclamation plans and making recommendations to the Office of Coal Field Community Development. That office may then prepare a master land-use plan for inclusion into the appropriately reviewed reclamation plan.[13]

Recent legislative initiatives introduced in the state senate to address municipal and county planning commissions,[14] and cooperation between regional council and agencies in planning and development,[15] failed to make it out of committee. Last year the West Virginia Chapter of APA developed a series of proposed reforms to the state planning code that, among other things, would strengthen the definition of a comprehensive plan.[16]

A series of reforms to the state planning code, including a stronger definition for comprehensive plans, have been proposed by the West Virginia Chapter of APA.

11 H.B. 2218 (2001).
12 S.B. 603 (2001); Chapter 62.
13 "From the Director's Office: Highlights of the 2001 Regular Legislative Session," *Miner Details*, Volume 6 Issue 3, June 2001, p. 1.
14 S. 597.
15 S. 627.
16 See: http://www.wvplanning.com/chapter24.htm.

WISCONSIN

Since enacting moderate revisions to its planning statutes and passing a major growth management law in 1999,[1] the state has provided $3.5 million in funds to help local governments develop comprehensive land-use plans. Communities with populations of 12,500 or more people had until Jan. 1, 2002 to adopt a model zoning ordinance to provide for traditional, compact neighborhoods; rural areas were to encourage conservation with subdivisions having compact lots and common open space.

The new state law, which used language from the American Planning Association's Growing Smart™ *Legislative Guidebook* in the description of the elements of a local comprehensive plan, requires every community to adopt a comprehensive plan by 2010. Wisconsin's current biennial budget[2] provides $3 million a year in grants[3] to help jurisdictions complete their plans.

Starting in 2005 an as-yet undefined Smart Growth Dividend will be available from the state. Municipalities and counties that adopt plans meeting state standards, and that enact zoning and subdivision ordinances consistent with their plans, will qualify for the dividend. The program also will reward communities that increase compact development and moderately priced housing[4] within their borders.

The Working Group on Tax Incremental Financing, organized by former Gov. Tommy Thompson, issued a report[5] in December 2000. The group was established after Thompson, now secretary of the U.S. Department of Health and Human Services, vetoed two tax increment financing measures contained in the 1999 state budget bill.

Tax increment financing is a tool local governments and other jurisdictions can use to finance the cost of redeveloping depressed areas; to construct low-and moderate-income housing; or to provide publicly funded improvements to industrial, commercial and residential projects.[6] The former governor's working group's made 32 recommendations in 27 topic areas, although observers doubt any of the proposals will be implemented.

A second report on tax increment financing was released in January 2001 by the Wisconsin Legislative Fiscal Bureau.[7] Titled "Informational Paper #17," the report explores the history of Wisconsin's tax increment financing law, passed in 1975, and details the statutory provisions.

Despite the two reports, and that the working group convened by former Gov. Thompson included several state lawmakers, no tax increment legislation passed during the 2001 legislative session.

1 A.B. 133, the state budget bill (1999).
2 S.B. 55, the state budget bill, Act 16 (2001). See: http://www.legis.state.wi.us/2001/data/acts/01Act16.pdf.
3 "Frequently Asked Questions: 2002 Comprehensive Planning Grant," Department of Administration (2001).
4 "Smart Growth Initiative," Milwaukee Journal Sentinel Online.
See: http://www.jsonline.com/news/state/jan00/smartgrowth013000.asp.
5 See: http://www.dor.state.wi.us/html/tifreprt.pdf.
6 Davidson, Michael and Fay Dolnick. *A Glossary of Zoning, Development, and Planning Terms.* American Planning Association, December 1999, p. 230.
7 See: http://www.legis.state.wi.us/lfb/Informationalpapers/2001/17.pdf.

Another report, released in December 2000, identified more than 30 issues related to the reclamation and reuse of brownfields.[8] Many of the issues discussed in the report, prepared by the 2000 Brownfields Study Group, were the result of improvements, statutory changes and new brownfields programs included in the 1999-2001 state budget.[9] The report contained more than 70 proposals.

A provision in the 2001-2003 budget bill[10] allows small business startups that take over vacant storefronts in rural downtowns to be eligible for loans up to $750,000 from the Wisconsin Housing and Economic Development Authority.[11] Another item in the budget bill created the Milwaukee Development Opportunity Zone.[12]

Part of a $32-million revitalization package for the city's downtown, any corporation conducting economic activity in the designated zone will receive a package of tax and investment credits and incentives. The special zone will remain in existence for seven years.

Another planning issue brought before state lawmakers involved wetlands. Last May Gov. Scott McCallum called a special session[13] of the Wisconsin legislature to adopt a new wetlands protection law.[14] The governor's decision was prompted by a U.S. Supreme Court ruling last January that, in effect, narrowed the water and wetland areas subject to federal regulation and, according to Gov. McCallum, potentially left "vast portions of Wisconsin's wetlands unprotected."[15]

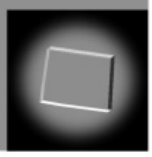
To expand transportation alternatives in the state, in 2001 the Wisconsin Department of Transportation announced a multi-party agreement allowing passenger rail service between Milwaukee and Madison. Service is scheduled to begin in late 2003 with six daily, round-trip trains provided federal funds are available. After 2005, when train service is expected to begin to St. Paul, Minn., 10 daily round-trips are proposed between Milwaukee and the state capitol.

Also, Milwaukee and Madison continue to investigate light rail options.[16] A 7.5-mile light rail line in Milwaukee, which is considering electric buses and other alternatives, would cost $326 million; a 12.5-mile system would cost $498 million. A proposed 33-mile commuter rail system in Madison would cost $275 million. In both cases financing is a concern.

Gaining approval for light rail in Milwaukee, which has put $91.5 million together for its system, faces an additional hurdle. The 2001-2003 state budget requires a binding, county-wide referendum to be held before construct can begin. Voter support at this time is uncertain. Such a vote is not required to approve an electric bus system in Milwaukee, or to build light rail in Madison.

8 "Brownfields Study Group Final Report," December 2000. See: http://www.dnr.state.wi.us/org/aw/rr/archives/pubs/RR655.pdf.
9 Act 9 (1999).
10 S.B. 55, the state budget bill, Act 16 (2001). See: http://www.legis.state.wi.us/2001/data/acts/01Act16.pdf.
11 "Governor Announces Help for Rural Downtown Businesses," Governor's Press Release, November 6, 2001. See: http://www.wisgov.state.wi.us/news_detail.asp?prid=687.
12 "Governor Announces Plan to Help Revitalize Milwaukee Downtown," Governor's Press Release, March 28, 2001; See: http://www.wisgov.state.wi.us/news_detail.asp?prid=479.
13 Executive Order No. 7.
14 LRB-3093/8.
15 "Governor Calls Special Session on Wetlands Legislation," press release, May 1, 2001. See: http://www.wisgov.state.wi.us/news_detail.asp?prid=515.
16 Sandler, Larry. "Madison refocuses on light rail system plans; Milwaukee considers employing electric buses as a cheaper alternative," *Milwaukee Journal Sentinel*, Aug. 30, 2001. See: http://www.jsonline.com/Traffic/news/aug01/train30083001a.asp?format=print.

WYOMING



While changes were made to the state's planning and zoning laws with the Wyoming Land Use Planning Act of 1975,[1] statutes governing comprehensive planning by local communities were not amended, leaving them essentially the same as the 1920s model legislation upon which they are based.[2] As a result, communities in the state do not have the authority to use more modern and up-to-date planning strategies for managing growth and development.

Approximately 49 percent of the land in Wyoming is federally owned, 5 percent state owned, and 46 percent is privately owned.[3] As part of Gov. Jim Geringer's open spaces initiative, a 1995 statewide conference, "The Wyoming Partnership: Natural Resources for Today and Tomorrow," focused on land conservation initiatives. Among other things, a guidebook was produced for landowners and local government officials on land-use planning, zoning and other legal tools to preserve open space.[4] Also, various land trusts and organizations, such as The Nature Conservancy, are playing a greater role in the state to acquire conservation easements in order to protect ranch lands and critical wildlife habitat.

Despite the conference and the governor expressing interest in requiring counties to develop land-use plans in conjunction with agricultural land protection measures,[5] to date no significant planning reform or growth management measures have been approved by the state legislature.

In his 2001 state of the state address, Gov. Geringer raised concerns about unplanned growth in Wyoming, noting that the state's population had increase nearly 9 percent in the last decade. "Wyoming may be the least populated state, but we have the greatest opportunity to control our growth and to guide our future....The challenge will be to keep enough of each to sustain the kind of growth we desire."[6]

1 Wyo. Statute, Secs. 9-849 to 9-862 (1975). For a history on the adoption of planning and zoning legislation in Wyoming, see, Stephen Allers, "Accommodation or Preemption? State and Federal Control of Private Coal Lands in Wyoming," 12 Land & Water L. Rev. 73 at 89-94 (1977).

2 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning," *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.

3 Wyoming, Like No Place on Earth: Ways to Conserve Wyoming's Wonderful Open Lands, A Guide Book. Available at: http://www.state.wy.us/governor/openspace/openspaces.htm.

4 Id.

5 Wells, Barbara. "Governors' Smart Growth Initiatives." Northeast-Midwest Institute, July 2001, p. 18.

6 Id.

A bill that would allow transfer of development rights[7] to be used to protect agricultural land came under pressure from development interests and was not approved. The governor had shown some interest in the bill, but wanted a provision stipulating that county commissioners develop countywide land-use plans before implementing the option of development rights transfers.[8]

Only locally administered agricultural protection programs are in place in the state, where 20 counties were included in a 1997 American Farmland Trust study listing those areas nationwide where prime farmland is most vulnerable to loss from development.[9]

Another bill that did not pass would have earmarked a percentage of state agencies' budgets for beautification efforts.[10] Two other bills were enacted, however, including a measure that clarifies the legal definition of a subdivision[11] as any division of land, rather than the division of land into three or more lots. The other bill changed requirements for municipal annexations,[12] including removal of the exception to file the required annexation report.

Although Gov. Jim Geringer has raised concerns about unplanned growth in the state, the legislature has yet to adopt planning reforms.

7 H.B. 251 (2001).
8 Wells, Barbara. "Governors' Smart Growth Initiatives." Northeast-Midwest Institute, July 2001, p. 18.
9 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.
10 H.B. 288 (2001).
11 S.F. 157 (2001).
12 S.F. 152 (2001).

III ADDITIONAL RESOURCES

ADDITIONAL RESOURCES

Growing Smart℠ Program

Begun in 1994, the Growing Smart℠ Program is an initiative of APA and its chapters to help states modernize statutes addressing planning and the management of change. In 2002 the program released its *Legislative Guidebook: Model Statutes for Planning and the Management of Change* and the accompanying *Growing Smart℠ User Manual*. Many of the comprehensive planning statutes still in use today have not been amended or revised since they were adopted during the 1920s and 1930s.

The *Growing Smart℠ Legislative Guidebook 2002 Edition* provides background information, describes pros and cons of legislative alternatives, and makes suggestions concerning implementation. A unique feature of the *Legislative Guidebook 2002 Edition* is the variety of options provided for statutory reform instead of a monolithic, one-size-fits-all approach.

The guidebook contains 15 chapters including model planning statutes on zoning, subdivisions, traditional neighborhood development, impact fees, adequate public facilities, uniform development permit reviews, redevelopment incentives, transfer of development rights and transportation demand management.

Also available is the *Growing Smart℠ User Manual*, a 71-page overview of the *Legislative Guidebook 2002 Edition*. Included are a general discussion about initiating planning law reform, user needs checklists, summaries of each *Legislative Guidebook* chapter, and examples describing how provisions in the *Guidebook* might be used.

Copies of the *Growing Smart℠ Legislative Guidebook 2002 Edition* and *Growing Smart℠ User Manual* may be downloaded free (PDF format) from APA's web site at www.planning.org. A bound version of the *Growing Smart℠ User Manual* and three-ring notebook and CD-ROM versions of the *Legislative Guidebook* can be ordered through APA's Planners Book Service online at www.planning.org or by calling 312-786-6344.

For an overview of the Growing Smart℠ program and a summary of accomplishments to date, see APA's web site at www.planning.org.

APA Planning Advisory Service (PAS) Reports

The following reports address some of the more common planning-related issues associated with managed growth and may be ordered through APA's Planners Book Service online at www.planning.org or by calling 312-786-6344:

Adams, Bill with Bill Lennertz, Sumner Sharpe, Tom Armstrong, Doug Zenn, Ben Schonberger, Ed Starkey and C. 'Rick' Chellman, P.E. *The Principles of Smart Development*. PAS Report No. 479, September 1998.

Arendt, Randall. *Crossroads, Hamlet, Village, Town: Design Characteristics of Traditional Neighborhoods, Old and New*. PAS Report Nos. 487-88, September 1999.

Baggett, Sharon A., Nancy J. Chapman and Deborah A. Howe. *Planning for an Aging Society*. PAS Report No. 451, April 1994.

Bendavid-Val, Avrom. *Local Economic Development Planning: From Goals to Projects*. PAS Report No. 353, September 1980.

Bishop, Kirk R. *Designing Urban Corridors*. PAS Report No. 418, September 1989.

Burke, David G., Erik J. Meyers, Ralph W. Tiner, Jr., and Hazel Groman. *Protecting Nontidal Wetlands*. PAS Report Nos. 412/413, December 1988.

Casella, Sam. *Tax Increment Financing*. PAS Report No. 389, December 1984.

Cooper, Connie B. *Transportation Impact Fees and Excise Taxes: A Survey of 16 Jurisdictions*. PAS Report No. 493, July 2000.

Coughlin, Robert E. *State and Local Regulations for Reducing Agricultural Erosion*. PAS Report No. 386, September 1984.

Crompton, John L. *Parks and Economic Development*. PAS Report No. 502, November 2001.

Duerksen, Christopher J. and R. Matthew Goebel. *Aesthetics, Community Character, and the Law*. PAS Report Nos. 489-90, December 1999.

Duerksen, Christopher J. *Aesthetics and Land-Use Controls: Beyond Ecology and Economics*. PAS Report No. 399, December 1986.

Duerksen, Christopher J., with Donald L. Elliott, N. Thompson Hobbs, Erin Johnson and James R. Miller. *Habitat Protection Planning: Where the Wild Things Are*. PAS Report Nos. 470-71, May 1997.

Easley, Gail V. *Staying Inside the Lines: Urban Growth Boundaries*. PAS Report No. 440, November 1992.

Ferguson, Erik. *Transportation Demand Management*. PAS Report No. 477, March 1998.

APA Planning Advisory Service (PAS) Reports (continued)

Fishman, Mary, et al. *Converting Storefronts to Housing*. PAS Report No. 472, July 1997.

Fulton, William. *Reaching Consensus in Land-Use Negotiations*. PAS Report No 417, July 1989.

Garvin, Alexander. *Parks, Recreation, and Opens Spaces: An Agenda for the 21st Century*. PAS Report Nos. 497-98, December 2000.

Hecimovich, James, ed. *The Growing Smart Working Papers, Volume 1*. PAS Report Nos. 462-63, March 1996.

Hecimovich, James, ed. *The Growing Smart Working Papers, Volume 2*. PAS Report Nos. 480-81, September 1998.

Hendler, Bruce. *Caring for the Land: Environmental Principles for Site Design and Review*. PAS Report No. 328, July 1977.

Heyer, Fred. *Preserving Rural Character*. PAS Report. No. 429, December 1990.

Jeer, Sanjay with Megan Lewis, Stuart Meck, Jon Witten and Michelle Zimet. *Nonpoint Source Pollution: A Handbook for Local Governments*. PAS Report No. 476, December 1997.

Kendig, Lane. *New Standards for Nonresidential Uses*. PAS Report No. 405, December 1987.

Kendig, Lane and Stephen Tocknell. *Traffic Sheds, Rural Highway Capacity, and Growth Management*. PAS Report No. 485, March 1999.

Krizek, Kevin J. and Joe Power. *A Planners Guide to Sustainable Development*. PAS Report No. 467, December 1996.

Moore, Terry and Paul Thorsnes. *The Transportation-Land Use Connection: A Framework for Practical Policy*. PAS Report Nos. 448-49, January 1994.

Morris, Marya, ed. *Creating Transit-Supportive Land-use Regulations*. PAS Report No. 468, December 1996.

Morris, Marya. *Incentive Zoning: Meeting Urban Design and Affordable Housing Objectives*. PAS Report No. 494, September 2000.

Morris, Marya. *Innovative Tools for Historic Preservation*. PAS Report No. 438, September 1992.

Netter, Edith and John Vranicar. *Linking Plans and Regulations: Local Responses to Consistency Laws in California and Florida*. PAS Report No. 363, September 1981.

Nicholas, James C. *The Calculation of Proportionate-Share Impact Fees*. PAS Report No. 408, July 1988.

Pinsof, Suzan Anderson and Terri Musser. *Bicycle Facility Planning*. PAS Report No. 459, October 1995.

Porter, Douglas R., ed. *Performance Standards for Growth Management*. PAS Report No. 461, February 1996.

Roddewig, Richard J. and Cheryl A. Inghram. *Transferable Development Rights Programs*. PAS Report No. 401, May 1987.

Rosen, David. *Housing Trust Funds*. PAS Report No. 406, December 1987.

Roudebush, Janice and Leslie J. Wells. *Low- and Moderate-Income Housing, Part I. Increasing the Supply and Accessibility*. PAS Report No. 350, May 1980.

Roudebush, Janice and Leslie J. Wells. *Low- and Moderate-Income Housing, Part II. Conserving What We Have*. PAS Report No. 351, June 1980.

Sanders, Welford with Judith Getzels, David Mosena and JoAnn Butler. *Affordable Single-Family Housing, A Review of Development Standards*. PAS Report No. 385, August 1984.

Sanders, Welford. *The Cluster Subdivision: A Cost-Effective Approach*. PAS Report No. 356, December 1980.

Sanders, Welford. *Manufactured Housing: Regulations, Design Innovations, and Development Options*. PAS Report No. 478, July 1998.

Sanders, Welford. *Manufactured Housing Site Development Guide*. PAS Report No. 445, April 1993.

Sanders, Welford. *Regulating Manufactured Housing*. PAS Report No. 398, December 1986.

Schwab, Jim. *Planning for Post-Disaster Recovery and Reconstruction*. PAS Report Nos. 483/484, December 1998.

Schwab, Jim. *Planning and Zoning for Concentrated Animal Feeding Operations*. PAS Report No. 482, December 1998.

Sutro, Suzanne. *Reinventing the Village: Planning, Zoning, and Design Strategies*. PAS Report No. 430, December 1990.

White, Bradford and Richard Roddewig. *Preparing a Historic Preservation Plan*. PAS Report No. 450, March 1994.

White, Mark S. *Adequate Public Facilities Ordinances and Transportation Management*. PAS Report No. 465, August 1996.

White, Mark S. *Affordable Housing: Proactive and Reactive Planning Strategies*. PAS Report No. 441, December 1992.

Wunder, Charles. *Regulating Home-Based Businesses in the Twenty-First Century*. PAS Report No. 499, December 2000.

APA Planners Press Books

The following books also relate to managed growth issues and may be ordered through APA's Planners Book Service online at www.planning.org or by calling 312-786-6344:

Allor, David J. *The Planning Commissioners Guide.* APA Planners Press, 1984.

Arendt, Randall. *Growing Greener.* APA Planners Press, American Society of Landscape Architects, Island Press and Natural Lands Trust, 1999.

Arendt, Randall. *Rural by Design: Maintaining Small Town Character.* APA Planners Press, 1994.

Campoli, Julie, Elizabeth Humstone and Alex MacLean. *Above and Beyond, Visualizing change in small towns and rural areas.* APA Planners Press, 2002.

Davies, Stephen, ed. *Managing Downtown Public Spaces.* Project for Public Spaces, Inc., and APA Planners Press, 1984.

DeGrove, John M. *Land Growth & Politics.* APA Planners Press, 1984.

Ewing, Reid. *Best Development Practices.* APA Planners Press and the Urban Land Institute, 1996.

Ewing, Reid. *Transportation & Land Use Innovations, When You Can't Pave Your Way Out of Congestion.* APA Planners Press, 1997.

Ford, Kristina with James Lopach and Dennis O'Donnell. *Planning Small Town America.* APA Planners Press, 1990.

Frank, James E. and Robert M. Rhodes, eds. *Development Exactions.* APA Planners Press, 1987.

Kemp, Roger L., ed. *Strategic Planning in Local Government: A Casebook.* APA Planners Press, 1992.

Kendig, Lane with Susan Connor, Cranston Byrd and Judy Heyman. *Performance Zoning.* APA Planners Press, 1980.

McLean, Mary L. and Kenneth P. Voytek. *Understanding Your Economy.* APA Planners Press, 1992.

Nelson, Arthur C. *Development Impact Fees, Policy Rationale, Practice, Theory, and Issues.* APA Planners Press, 1988.

Nelson, Arthur C. and James B. Duncan. *Growth Management Principles and Practices.* APA Planners Press, 1995.

Nicholas, James C., Arthur C. Nelson and Julian C. Juergensmeyer. *A Practitioner's Guide to Development Impact Fees.* APA Planners Press, 1991.

Smith, Herbert H. *Planning America's Communities: Paradise Found? Paradise Lost?* APA Planners Press, 1991.

So, Frank S., et al., eds. *The Practice of State and Regional Planning*. APA Planners Press in cooperation with the International City/County Management Association, 1988.

Weitz, Jerry. *Sprawl Busting: State Programs to Guide Growth*. APA Planners Press, 1999.

Zelinka, Al and Dean Brennan. *SafeScape: Creating Safer, More Livable Communities Through Planning and Design*. APA Planners Press, 2001.

Other APA Periodicals and Reports

The following publications also have articles and information concerning managed growth and planning law reform. Unless otherwise noted, publications may be ordered through APA Planners Book Service online at www.planning.org or by calling 312-786-6344.

From Washington—A newsletter from APA's Washington, D.C., Policy Department that provides regular updates about federal policies and developments affecting smart growth. Available free via e-mail; sign up on APA's web site at www.planning.org/legislation.

Journal of the American Planning Association, a quarterly publication of APA that focuses on policies, techniques and plans and provides diverse perspectives on the planning discipline.

Land Use Law & Zoning Digest, published monthly by APA. Covers litigation and recently enacted state legislation; also provides abstracts of recent local, state and federal court decisions and recently adopted legislation as well as articles containing analysis and commentary. Fully indexed.

PAS Memo, a monthly publication for subscribers to APA's Planning Advisory Service (PAS), which provides planners with a one-stop source for all types of planning information—from customized internet searches to zoning ordinances. PAS subscribers have access by telephone to a research service and receive eight comprehensive PAS Reports a year.

Planning, APA's monthly magazine devoted exclusively to planning. Covers news about the latest developments in the field and profession, innovations, step-by-step guides for professional planners, reviews as well as important state, regional and national developments and trends.

Planning Communities for the 21st Century, A Special Report of the American Planning Association's Growing Smart℠ Project, December 1999. Out of print, although copies can be downloaded free (PDF format) from APA's web site, www.planning.org/growingsmart/guidebooks.htm.

The Commissioner, a quarterly newsletter by APA for planning commissioners and elected officials.

Zoning News, a monthly newsletter by APA covering all aspects and trends of zoning and related issues. Includes ordinance excerpts, case studies, feature articles, reviews and brief updates.

State and Regional Chapters of APA

Additional help and information is available through the state and regional chapters of APA. For further information about the chapter where you live, visit its respective World Wide Web site (not all chapters have a web site, however).

Alabama—www.alaapa.org
Arizona—www.azplanning.org
Arkansas—www.arkansasapa.org
California—www.calapa.org
Colorado—www.apacolorado.org
Connecticut—www.ccapa.org
Delaware—www.ipa.udel.edu/delapa/
Florida—www.floridaplanning.org
Georgia—www.georgiaplanning.org
Hawaii—http://parking.lava.net/~apahi/
Illinois—www.ilapa.org
Indiana—www.indianaplanning.org
Iowa—www.iowa-apa.org
Kansas—http://www-personal.ksu.edu/~jwkrcp/ksapa.html
Kentucky—www.kapa.org
Louisiana—www.louisiana-apa.org
Maryland—www.marylandapa.org
Massachusetts—www.massapa.org
Michigan—www.planningmi.org
Minnesota—www.mnapa.com
Missouri—www.mo-apa.org
National Capital Area (Washington, D.C. metropolitan area)—www.ncac-apa.org
Nevada—www.nvapa.org
New Jersey—www.njapa.org
New Mexico—www.nmapa.org
New York Metro—www.nyplanning.org

New York Upstate—www.nyupstateplanning.org
North Carolina—www.nc-apa.org
Northern New England (Maine, New Hampshire, Vermont)—www.apanewhampshire.org
Ohio—www.ohioplanning.org
Oregon—www.oregonapa.org
Pennsylvania—www.planningpa.org
Rhode Island—www.riapa.org
South Carolina—www.scapa.org
Tennessee—www.tnapa.org
Texas—www.texasapa.org
Utah—www.utah-apa.org
Virginia—www.vaplanning.org
Washington—www.washington-apa.org
West Virginia—www.wvplanning.com
Wisconsin—www.uwm.edu/org/wapa

Other Organizations

The following organizations also address smart growth and planning-related issues:

American Farmland Trust—www.farmland.org
American Institute of Architects Center for Livable Communities—www.aia.org/gov/livable/
American Society of Landscape Architects—www.asla.org
The Brookings Institution Center on Urban and Metropolitan Policy— www.brook.edu/urban
Center for Neighborhood Technology—www.cnt.org
Congress for the New Urbanism—www.cnu.org
Defenders of Wildlife—www.defenders.org
Enterprise Foundation—www.enterprisefoundation.org
Funders Network for Smart Growth and Livable Communities—www.fundersnetwork.org
Growth Management Leadership Alliance—www.gmla.org
International City/County Management Association—www.icma.org
Joint Center for Sustainable Communities—www.mayors.org/USCM/sustainable (sponsored by the National Association of Counties, www.naco.org, and the U.S. Conference of Mayors, www.mayors.org)
Knowledgeplex—www.knowledgeplex.org (sponsored by the Fannie Mae Foundation, www.fanniemaefoundation.org)
Local Government Commission—www.lgc.org
NAHB Smart Growth—www.nahb.com (National Association of Home Builders)

Other Organizations (continued)

National Association of Realtors—http://nar.realtors.com
National Association of Regional Councils—www.narc.org
National League of Cities—www.nlc.org
National Neighborhood Coalition—www.neighborhoodcoalition.org
Natural Resources Defense Council—www.nrdc.org
National Trust for Historic Preservation—www.nationaltrust.org
National Wildlife Federation—www.nwf.org
Smart Growth America—www.smartgrowthamerica.com
Smart Growth Business Partnership—www.nalgep.org (sponsored by the National Association of Local Government Environmental Professionals)
Smart Growth Network—www.smartgrowth.org
PolicyLink—www.policylink.org
Scenic America—www.scenic.org
Sierra Club—www.sierraclub.org
Sprawl Watch Clearinghouse—www.sprawlwatch.org
Surface Transportation Policy Project—www.transact.org
Trust for Public Land—www.tpl.org
Urban Land Institute—www.uli.org

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SMART GROWTH
NETWORK

STATEMENT OF DEBORAH ANDERSON, DIRECTOR WOOD PARTNERS, LLC

Chairman Jeffords, Senator Smith, and distinguished Members of the Environment and Public Works Committee, my name is Deborah Anderson. I am a Director of Wood Partners a multifamily real estate development firm located in Durham, North Carolina. I am here today on behalf of the National Multi Housing Council and the National Apartment Association, trade associations representing the nation's multifamily property developers, owners, managers and financiers.

NMHC and NAA commend the members of the committee for their work on the important issue of strengthening America's communities. As I am sure you already know, in recent years the concept of "smart growth" has taken the country by storm. In November 2000, more than 200 ballot initiatives were passed on suburban sprawl and open space preservation. While this is largely a State and local issue, there is also an important role for the Federal Government. We believe that the Community Character Act under consideration today fits that role by providing the funding and incentives needed to help State and local governments develop sound and comprehensive land use plans.

Tired of struggling with traffic, pollution, long commutes and overcrowded schools, Americans are calling for more livable communities. They are looking for pedestrian friendly neighborhoods with more open space and better traffic flow. They are seeking communities with walkable distances between homes and nearby shopping, schools and entertainment.

Understanding that growth is inevitable, many State and local policymakers are searching for ways to expand without sacrificing quality of life. I know from my own experience in dealing with land use policymakers on the State and local levels that they face complex decisions as they endeavor to integrate all of the ingredients of successful communities into specific land use decisions. Increasingly, these decision-makers are coming to appreciate that smart planning will require new ways of thinking and new regional approaches.

Many are expanding their community development toolboxes to include important, but often overlooked, assets, such as higher density housing. As a developer of high quality apartment homes, I believe that apartments are an integral piece of the smart growth solution. Apartments conserve land to help preserve open space and create pedestrian-friendly neighborhoods. They also use municipal infrastructure more efficiently. For example, apartment households generate 30 to 40 percent fewer vehicle trips than single-family homes. Apartments place less burden on local schools and regional transportation systems. They are an important driver of economic development. They help revitalize neglected neighborhoods, create new jobs and provide local, State and Federal tax revenues. Apartment homes are increasingly becoming the housing type of choice for the new demographic representing both the aging of our population and the boom in younger households for the first time in 20 years.

Despite the newfound appreciation of apartment living among consumers, many local governments still have barriers in place to higher density housing, such as zoning programs that do not permit compact development. Some rules require housing and non-housing uses to be separated. The end result is that apartment developers, like myself, eager to design and deliver the new pedestrian-friendly neighborhoods citizens are calling for, are often blocked from doing so.

This is where Congress can play a role. NMHC and NAA support S. 975's creation of a Federal grant program to provide States with the additional financial resources they may need to support and encourage local authorities to update their land use planning activities. The bill wisely relies on incentive-based measures, rather than command and control systems.

The bill also properly recognizes the need to explore regional land use planning. Smart growth issues often span the jurisdictional coverage of several communities, particularly in the areas of transportation and economic development. While the need for regional planning is almost universally recognized, there are few effective models. S. 975 specifically states that multi-state land use planning should be facilitated through the grant program. This incentive will go a long way to jump-starting a fresh approach to regional planning.

S. 975 also strikes an important note with its recognition that economic development is an important consideration in land use planning. According to an Urban Land Institute study, real estate capital represents approximately 20 percent of the nation's total gross domestic product. On the local level, real property taxes constitute approximately 70 percent of all tax revenue. These facts support the idea that the economic consideration posed by development are properly considered in land use planning.

NMHC and NAA also strongly support the legislation's direction that "a range of affordable housing options" be included as a requirement by States before receiving Federal moneys (Sec. 4(b)(1)(F)). Communities that exclude apartments and other affordable housing jeopardize their own continued prosperity. In doing so, they squeeze out a segment of the population that is vital to local businesses as both customers and employees. Communities that offer a diversified work force and a wide range of housing options are more likely to attract and retain top employers. An adequate supply of affordable housing, therefore, can be essential to a municipality's economic growth. The fact that S. 975 encourages consideration of affordable housing options will encourage communities to take a fresh look at their approach to this issue and consider ways they can support more affordable housing. This is particularly important in high cost areas where the cost of land and associated development costs have diminished the ability of the private market to create affordable housing on its own.

NMHC and NAA also support the legislation's position that the States, and not the Federal Government, are responsible for choosing how the grant money is to be used (Sec. 4(c)). We believe that land use is, and should remain, a local decision. Each unique jurisdiction has its own goals and priorities, and land use planning should reflect that.

As a developer, I have worked with local planning boards and town councils in several States. While our discussions often focus on common elements—roads, schools, playgrounds and water treatment facilities—the answers to those questions vary with each locale. There is simply no "one-size-fits-all" approach to land use planning.

NMHC and NAA support the Community Character Act with the understanding that the bill does not endorse, by oblique reference, any one particular land use-planning standard. We are specifically concerned that the American Planning Association's (APA) recent publication, Growing Smart Legislative Guidebook not be viewed as the definitive land use guide. APA's Guidebook contains many sound provisions, but it does not enjoy universal support among stakeholders. Dissenting comments pointing out where the book is unbalanced in its approach are attached to this testimony for your review. The important principle here is that we believe State and local jurisdictions must be free to study and employ a variety of planning tools, as they deem appropriate. The Federal Government should encourage land use planning, but it should not specify the plan. Land use decisions should properly remain the precinct of the local jurisdiction.

We applaud the fact that S. 975 allows grant funds to be used for education and consultation with policymakers (Sec. 4(d)). We believe there is need for greater dialog and information sharing between academicians, policymakers and the public on matters such as infrastructure needs; economic sustainability; and how growth policies affect the ability of the private market to provide affordable housing.

We believe the provision to encourage Pilot Projects of new land use planning activities developed by local policymakers will help create smarter, answers to our nation's growth challenges. We also endorse the use of funds to develop voluntary educational programs, new technologies and new electronic data bases to support land use planning (Sec. 5(b)) to support local policymakers who do not always have access to these resources.

In summary, NMHC and NAA believe the role of the Federal Government in land use planning should be limited to funding through grants. As the distinguished Senator from Rhode Island aptly stated when introducing the bill, "[t]hrough enactment of transportation, housing, environmental, energy, and economic development laws and requirements, Congress has created a demand for State and local planning. In fact, the Community Character Act should be viewed as providing the Federal payment for an unfunded mandate whose account is overdue."

As the Nation moves forward to strengthen its communities and accommodate changing demographics, local land use statutes will need to be responsive to community needs. This bill is intended to provide support for State and local land use planning activities without undermining local land use controls. Thank you.

ATTACHMENT: Dissenting Comments on the APA Growing Smart Legislative Guidebook

Comments of Paul S. Barru on Behalf of the American Road and Transportation Builders Association; International Council of Shopping Centers; National Apartment Association; National Association of Home Builders; National Association of Industrial and Office Properties; National Association of Realtors; National Multi Housing Council; and Self Storage Association

PREFACE

As the member of the Growing Smart Directorate representing the "built environment", I speak for the citizens who own land and who, in any proposed use of such land, would be subject to the rules and processes proposed in the Guidebook if adopted by States, regions, counties, or municipalities. I submit this on behalf of the homebuilders, office and industrial developers, real estate agents, general contractors, road builders, engineers, architects, and others who are generally classed as the built environment.

Clearly, I will not presume to comment on the whole of this monumental work, but only briefly on three things: (1) assumptions that either do or should underlay the process; (2) a major disappointment in the Guidebook; and (3) a selected group of specific issues of such major import to the whole enterprise of Smart Growth and its twin, Smart Process, that if not implemented and managed properly, have the potential to undermine much of the value that has been achieved.

ASSUMPTIONS

Smart Growth means planning for growth, not slowing growth or no growth. The Guidebook is successful in reaching its objective of Smart Growth and its twin, Smart Process, in some specific areas. However, on the whole, it falls far short of what might have been achieved. This is hardly a surprise when you consider the current state of growth management and the constant battleground it has become. I feel the process began to come undone as it moved ahead with a broad vision of Smart Growth, because working assumptions and definitions were not constantly revisited to see if they had continuing validity. In the end, the process sought to satisfy two or more visions, often imposed from outside of the staff and Directorate, by presenting alternatives rather than doing the harder job of reaching consensus on a common vision. Alternative *choices* for managing growth—within a common vision of Smart Growth that means planning for growth as needed, not stopping it—are what is needed to meet the needs of divergent communities.

Any approach to Smart Growth must be comprehensive. This means that it must include concerns for the environment, the economy, and social equity or justice. These three elements must be balanced. Like a three-legged stool, if the legs are not the same length, it will not provide a solid base to stand on; and if one leg is too long, the stool will tip over.

The natural environment needs strong protection, but protection comes in many forms. Some lands need to be preserved in public ownership, while others are best protected by environmentally sensitive development. Still other lands are suitable for intense development to allow a community to accommodate its projected development needs. The Guidebook falls short in identifying various types of land that require protection and criteria to judge the best protection techniques. While limited in scope, the Guidebook focuses on limiting development in "sensitive areas" with little guidance on defining what they are and the best ways to protect them.

The absence of an economist on the Directorate or of any significant economic or tax studies is an indication that the economics of Smart Growth were only peripherally addressed. When essential economic issues began to emerge, there was little willingness to indicate at the very least that they were important and needed to be considered, even if they were not included in any depth within the Guidebook. To deal with the economy seriously, beyond the Guidebook's modest efforts, you must include a consideration of economic development and job generation, especially how they interact in creating land use demand. Other related topics that need to be understood include how taxation policy drives land use decisions, favoring job generation without always addressing the provision of adequate housing to match those jobs; how housing, commercial, and retail markets interact in creating growth pressure; how you plan for, build, and finance infrastructure in a timely and cost-effective manner; among many other items that affect the economy.

In the simplest terms, social equity is concerned with how well people can live in a community on the wages they are able to earn in jobs created by economic de-

velopment and the degree to which growth benefits all segments of society. The Guidebook gives considerable protection from the adverse consequences of growth but does not adequately address the equity issues inherent in a community's failure to ensure that affordable housing for all income segments is available. The inclusions in the Guidebook are not sufficient.

To judge APA adversely for not having predicted that "comprehensive planning" for Smart Growth included such a broad array of issues is unfair. This is an area of inquiry that grows as the interrelatedness of many issues and their importance to the whole emerges. While it might have been impossible to include all of these within the scope of the original enterprise, the work suffers by not indicating that these gaps exist. I hope that if the Guidebook undergoes revisions in future years, the APA will consider analyzing some of these areas and that broad advisory input from affected interest groups will be incorporated in such revisions. In the meantime, the absence of these issues in this Guidebook compromises its goal of providing pathways for Growing Smart.

Growing Smart requires a blueprint or comprehensive plan that, when adopted, becomes public policy.—The process for developing any effective public policy must be inclusive, deliberate, and, to the greatest degree possible, achieved by consensus. It cannot be a top-down process, with public officials and staff driving and controlling the process. Rather, they need to enable the broadest possible community of voices and viewpoints to be heard and to participate. This should also include private sector business people, who are often excluded from the public debates. After all, they are the ones who take many of the risks involved in implementing the growth plan. The goal is to achieve a community vision that balances as many needs and desires of the community as possible. This vision takes tangible form as public policy known as an adopted comprehensive plan. Elected officials then need to legislate the most effective structure for the efficient, timely, and cost-effective implementation of this public policy.

Smart growth requires a smart process to fully implement what the community seeks from its smart growth public policy. When a landowner or any other citizen seeks to use their land or any other outcome in strict conformity to the provisions of the master plan/public policy, they have a right to expect a process that allows only directly and significantly affected parties to participate. Unforeseen and unexpected negative consequences of the proposed implementation need to be dealt with equitably. The benefits to the community and the applicant will be fidelity to the community's growth vision, the elimination of unnecessary risk and time, and significant cost savings to all parties, not the least being for taxpayers/consumers.

A basic philosophical premise of smart growth should be that comprehensive plans be implemented, not nullified in piecemeal fashion through the development review process. Issues settled during the comprehensive plan debate should not be reopened for a period of time following adoption if the plan and the process are to be meaningful.

MAJOR DISAPPOINTMENT

At best, this is a complex document that requires a good deal of knowledge to even begin to use. A solid index is only a partial and incomplete solution. The cross-referencing list now included at the beginning of each chapter is a good start, but to make this work truly useful requires extensive cross-referencing within the text itself, section-by-section, subsection-by-subsection. This is a major but absolutely essential task for effective and complete use.

SPECIFIC ISSUES IN THE GUIDEBOOK

My objections and recommendations relate to the eight most critical areas of concern: standing and reopening of settled issues, supplementation of the record, sanctions on local government for failure to update plans, exhaustion of remedies, moratoria, vested rights, third-party initiated zoning petitions, and designation of critical and sensitive areas.

Standing and Reopening of Settled Issues

After embracing the traditional standard of "aggrievement" as the basis for standing to petition for judicial review of a land use decision (September 2001 Draft of the Guidebook, hereinafter "September 2001 Draft"), the most recent draft (hereinafter, the "October 2001 Draft") inexplicably dilutes the definition of "aggrieved" and adds other options that effectively allow any person with any ax to grind to pursue a court challenge, whether or not he or she will actually suffer any special harm or injury, has appeared at or offered evidence during a public hearing, or even lives in the impacted community. This expansive approach to standing fundamentally al-

ters the system now in place across the Nation, which requires a party challenging a land use decision to take part in the approval process and offer comments, to actually live in the community in question, and to demonstrate that the proposed use will cause special injury or harm to them over and above its impact upon the public generally. These liberal standing provisions will increase the amount of litigation that communities will face and it is more likely the government will be sued rather than a developer.

The objectionable provisions of the Guidebook with respect to issues of standing seem to be motivated by a desire to be inclusive, that is, to apply a liberal standard that is easily met. Section 10–607(4) no longer includes an aggrievement test when determining who can petition the courts on a land use matter, and Section 10–607(5) is acknowledged in the commentary to afford standing to persons who haven't even participated in the agency's hearings. Perhaps this approach follows from the current trend of greater public participation in planning. I wholeheartedly support the idea of extensive public participation in planning. However, it does not follow from this that broad public participation in development review or in judicial review of site-specific development proposals is a good thing. On the contrary, such participation would be detrimental and open the door to undermining the work of the greater citizenry that helped to produce and articulate the broad public policy themes of the comprehensive plan. Liberal standards of public involvement are appropriate at the level of planning, policy, and broad regulatory enactments such as comprehensive zoning and zoning ordinance text amendments. But the standards should become stricter as we move down to levels of post-zoning implementation, such as site-specific project review, and judicial review.

The public generally shares this view as evidenced by the overwhelming rejection of Amendment 24 in Colorado and of Proposition 202 in Arizona in the November 2000, elections. A specific development proposal that is consistent with the comprehensive plan and development regulations is also consistent with the greater public's "vision" for the future. It does violence to this vision when we open the appeal process liberally to active special interests, no matter how well intentioned, and permit them to derail worthy projects that do not comport with their particular vision. A community cannot achieve its vision of "smart growth" without a smart process that preserves and protects its adopted vision from naysayers in the community.

Major issues decided at the comprehensive planning and zoning stage, such as use, density or intensity, should not be revisited in the post-zoning site-specific proceeding unless the application does not comply with these decisions. It is critical that this principle be recognized in the Guidebook. Otherwise, there will be no protection or political cover for decisionmakers from the onslaught of entrenched growth opponents who reside in areas planned for growth. They could stop the proposed growth allowed in the Master Plan, oppose adopted public policy and create costly delays.

LEGAL ANALYSIS OF THE GUIDEBOOK'S APPROACH TO STANDING

• After previously acknowledging that "aggrieved" status (with the twin elements of special harm or injury distinct from any harm or injury caused to the public generally) should be the primary criterion in determining one's standing to petition for judicial review of a land use decision, the final draft Guidebook guts any such requirement. First, the definition of "aggrieved" in Section 10–101 has been revised to make both "special" and "distinct from any harm or injury caused to the public generally" optional. The principal definition now requires merely an undefined generalized showing of "harm or injury" in order for one to have standing. (This is similar to the discredited "may be prejudiced" test advanced in prior drafts, and is also contrary to the understandings reached at the Directorate's final meetings on September 23–24, 2001.)

• Second, Section 10–607(4) now broadly allows "all other persons" who participated by right in an administrative review or who were "parties to a record" to seek judicial review without any showing of aggrieved status. This appears to be based upon comments by the Staff in an October 12, 2001, Memorandum to Directorate members suggesting that a showing of aggrievement on judicial review is unnecessary in a record appeal when the challenger has already been deemed to be aggrieved by the local government agency (October 12, 2001, Memorandum, p. 5). This view is contrary to established legal precedent, since it is within the purview of the court (not the administrative agency whose decision is under review (to determine whether or not the challenger is aggrieved. The court's authority cannot be usurped by an agency determination regarding aggrieved status. See, e.g., *Sugarloaf Citizens Assn.* v. *Department of Environment,* 686 A.2d 605 (Md. 1996), discussing the difference between administrative standing before an agency and the requirement for

standing to challenge the agency's decision in court. While the former rule is not very strict, "judicial review standing" requires that one be both a party before the agency and "aggrieved" by the agency's final decision (i.e., specifically affected in a way different from the public at large). Determination of judicial review standing is exclusively a judicial function and the court need give no deference to the agency's finding in this regard. Id. Section 10–607(4) is a legally flawed criterion, which effectively allows the administrative agency whose decision is under review to determine who shall be "aggrieved."

• Third, Section 10–607(5) allows "any other person," including persons who have skipped the agency proceedings altogether, to seek judicial review merely upon a showing that they are "aggrieved" under the expansive new definition of that term in Section 10–101.

• Treatise writers favor the traditional aggrievement standard. As can be seen from the following examples, the views expressed herein regarding Sections 10–101 and 10–607 (4) and (5) are shared almost universally by treatise writers and courts.

- "Almost all State statutes contain the 'person aggrieved' provision but only a minority extend standing to taxpayers . . . Under the usual formulation of the rule, third-party standing requires 'special' damage to an interest or property right that is different from the damage the general public suffers from a zoning restriction. Competitive injury, for example, is not enough. This rule reflects the nuisance basis of zoning, which protects property owners only from damage caused by adjacent incompatible uses. Although the special damage rule is well entrenched in zoning law, a few courts have modified it. New Jersey has adopted a liberal third-party standing rule that requires only a showing of "a sufficient stake and real adverseness." Daniel M. Mandelker, Land Use Law § 8.02 at 337 (4th ed. 1997) (emphasis added) (citations omitted).
- The requirement that a person must be 'aggrieved' in order to appeal from the board of adjustment to a court of record was originally included in the Standard State Zoning Enabling Act and has been adopted by most of the States. See Kenneth H. Young, Anderson's American Law of Zoning § 27.09 (4th ed. 1997).
- "To be a person aggrieved by administrative conduct, it is necessary to have a more specific and pecuniary interest in the decision of which review is sought. A Connecticut court said that in order to appeal, plaintiffs are required to establish that they were aggrieved by showing that they had a specific, personal and legal interest in the subject matter of the decision as distinguished from a general interest such as is the concern of all members of the community and that they were specially and injuriously affected in their property or other legal rights." Id., § 27.10 at 523–24 (Citations omitted.) (Emphasis added.)

• Case law in many jurisdictions is in accord with the special injury rule. See, e.g., *Hall* v. *Planning Comm'n of Ledyard*, 435 A.2d 975 (Conn. 1980); *DeKalb* v. *Wapensky*, 315 S.E.2d 873 (Ga. 1984); *East Diamond Head Ass'n* v. *Zoning Bd. Of Appeals of City and County of Honolulu*, 479 P.2d 796 (Haw. 1971); *Sugarloaf Citizens Ass'n* v. *Department of Env't*, 686 A.2d 605 (Md. 1996); *Bell* v. *Zoning Appeals of Gloucester*, 709 N.E.2d 815 (Mass. 1999); and *Copple* v. *City of Lincoln*, 315 N.W.2d 628 (Neb. 1982).

• In view of these and other long established precedents for establishing aggrievement as the standard for participating in the proceedings of local government agencies and thereafter, for challenging their decisions in court, it is disappointing that gaping loopholes have been inserted in the Guidebook that (a) allow persons who are not aggrieved to gain standing before agencies and thereafter in court to contest an agency decision (§ 10–607(4)), and (b) allow other persons, including adjacent residents (thus prima facia aggrieved (to bypass the agency proceeding altogether and hold their challenge for court (§ 10–607(5)).

RECOMMENDED SOLUTION

Avoiding Reopening of Settled Issues

To avoid reopening issues settled in the adoption of a comprehensive plan, a ninth item should be added to Section 10–207 (Record Hearings) to state that when any site specific development application is submitted for review under this section within 6 years of the adoption or amendment of the plan, major issues such as land use, density or intensity shall not be reargued or reconsidered. The only limited exceptions to this prohibition should be if the proposed use of the site is not in accordance with the plan, or if the density or intensity proposed for the site exceeds that in the plan and applicable zone.

This is based on the sound premise that the site-specific proceeding should not become a forum to reopen debate on the community's already decided broad land use and growth policies. See J. Tryniecki, Land Use Regulation: A Legal Analysis and Practical Application of Land Use Law 323 (American Bar Assn. 1998).

Standing to Seek Judicial Review

Items (4) and (5) of Section 10–607 (Standing and Intervention) should be deleted and new Sections 10–607 (4) and (5) should be added to provide that only those persons who both participated in the record hearing and are aggrieved (i.e., will suffer special harm or injury distinct from that caused to the public generally) by the land use decision has standing to intervene in the land use decision.

Supplementation of the Record

In a proposal that closely mirrors expanded standing, an optional provision in the Guidebook would allow for expansion of the record by the court that hears a land use challenge. Parties would be able to introduce new studies, new testimony and new exhibits that were never made available to the local jurisdiction that issued the land use decision in the first place. Neither would the applicant have had an opportunity to challenge, verify, or modify them in a deliberative process. Such a proposal would turn courts into planning and zoning appeals boards, allowing them not only to second guess a local decision, but to make a decision entirely on their own with no deference to local concerns.

In the final meeting of the Directorate, it was my understanding that the commentary would be modified to include a statement that remand is preferable to supplementation where the evidentiary record is inadequate. The statement added to the October 2001 Draft of the Guidebook leaves the issue ambiguous and open to interpretation that is destructively broad.

Section 10–613 and the commentary preceding it address the pros and cons of courts supplementing the record. The commentary mentions such factors as time, fairness, cost, experience, etc. that should be weighed but neglects one very important consideration that I believe may override the others. That is the importance of maintaining a separation of power between the legislature and the judiciary. It is acknowledged that local legislative bodies may be subject to political pressure, but that is the essence of representative democracy. In our system of government, it is the job of legislative bodies to debate public policy and in the end to make decisions that reflect the dominant view. In contrast, the job of the judiciary in record appeals from decisions of local government legislative and administrative bodies is to review the decisionmaking process to ensure fairness, to see that the decision is in accordance with the law, and to review the record based upon a reasonableness standard (i.e. substantial evidence/nor clearly erroneous), but not to substitute its judgment for that of the local government decisionmaker.

I believe subsections 10–613(1)(d) and 10–613(2) blur the distinction between the acts of local government legislatures and administrative bodies on the one hand and the judiciary on the other and permit the judiciary to usurp the proper role and powers of these bodies. Land use decisions are by nature political decisions, thus the proper places for the resolution of competing views are the local legislature, planning board, or board of appeals, not the courtroom. If, upon review of the record, it is found that the decisionmaker did not consider essential information, the judge should remand the case back to it with instructions to consider the missing information and then make the decision. In our view judges should strongly resist the urge to rule on the substantive merits of a land use controversy. Unlike other cases that come before a judge, there may be no "right" or "wrong" in land use. Instead, the question is likely to be, "what decision provides the greatest good for the greatest number?" and that is the business of the local legislative body.

LEGAL ANALYSIS OF SUPPLEMENTATION ISSUES

• Courts conducting "record reviews" of land use decisions should exercise judicial restraint, particularly with respect to agency findings of fact on evidentiary matters, and should not allow the record to be supplemented with additional substantive evidence on appeal, or take other actions that would usurp the traditional authority of local government in the land use approval process. The Guidebook would broadly allow supplementation of the record by reviewing courts, a dangerous precedent as it would make the court—not the local government—the final decisionmaker in land use cases.?

• The most objectionable provision is Optional Section 10–613(1)(d), which states that a reviewing court "may supplement the record with additional evidence" if it relates to "matters indispensable to the equitable disposition of the appeal." This is an open-ended invitation to abuse.

• Treatise writers and court decisions have narrowly construed the role of courts on judicial review.

- "The local government, not the court, should be the final decisionmaker in land use cases. Generally, the judge's role in land use litigation is "to provide a forum for serious and disinterested review of the issues, sharply limited in scope but independent of the immediate pressures which often play upon the legislative and administrative decisionmaking processes." Williams, American Land Planning Law § 4.05 at 100 (1988 Revision) (emphasis added).
- Historically, reviewing courts have emulated the Uniform Administrative Procedure Act by limiting their review of an agency action to the question of whether that action was arbitrary, capricious, unreasonable or illegal. Where the agency record is inadequate to support its action, the proper practice is to remand the matter to the agency for rehearing and redetermination. *Carbone* v. *Weehawken Township Planning Bd.*, 421 A.2d 144 (N.J. Super. 1980). See also, Yokely's Law of Subdivisions § 69(c) (2d ed. 1981). See also, Kenneth H. Young, Anderson's American Law of Zoning § 27.29 at 605 (4th ed. 1997): ("Reviewing courts say they are not superzoning boards and that they will not weigh the evidence.")

• These authorities and numerous other reported cases reflect the overwhelming consensus that an appellate court or a trial court should not be second-guessing an administrative finding.

- *Federal Circuit.—SFK USA Inc.* v. *United States*, No. 00–1305, 2001 WL 567509 (Fed. Cir. May 25, 2001) (Where an administrative agency defends its decision before reviewing court on the grounds it previously articulated, the court's obligation is clear: it reviews the agency's decision under Administrative Procedure Act (APA) and any other applicable law, and based on its decision on the merits, it affirms or reverses, with or without a remand. 5 U.S.C.A. § 551 et seq.);
- *State Courts.*—Numerous State courts, including courts in California, Connecticut, Maryland and Pennsylvania, hold that the scope of judicial review is narrow; that remand is the appropriate remedy when an agency has applied the wrong legal standard; and that the court should not substitute its judgment for that of the agency.

Recommended Solution.—Delete optional § 10–613(1)(d) and § 10–613(2) as authority for a court to supplement the record.

Sanctions for Inconsistency and Lack of Periodic Review

The desire for some "stick" to compel local governments to comply with State statutes regarding consistency of regulations with plans and for periodic reviews of plans and regulations is understandable. However, I have made known my opinion on several occasions that the sticks proposed—voiding and loss of the presumption of reasonableness of local land development regulations—are poor ones. This approach unfairly jeopardizes the status of development approvals already issued or under review, threatens the stability of the land development process, and introduces unacceptable risk into development financing.

LEGAL ANALYSIS OF SANCTION PROVISIONS

• Unwise sanctions are imposed for failure of local governments to timely meet statutory milestones, i.e., failure to:

adopt regulations consistent with the comprehensive plan (§ 8–104);
review development regulations (§ 8–107);
update development standards (§ 8–401); and
record the comprehensive plan and regulations in the GIS Index (§ 15–202).

• Missing these milestones has the effect of making local government regulations or comprehensive plans "void," "voidable," "not effective;" or subject to losing their "presumption of reasonableness." These are strong terms with serious legal implications that can place the regulatory framework in legal limbo and undermine the process by which land development is reviewed and financed. The following statements illustrate why.

- "We recognize the uncertainty and possible chaos that might accompany invalidation of the County's existing zoning scheme." *Pennington County* v. *Moore*, 525 N.W.2d 257, 260, n.3 (S.D. 1994).
- Void conditions are subject to collateral attack at any time. *Elkhart County Bd. of Zoning Appeals* v. *Earthmovers, Inc.*, 631 N.E.2d 927, 931 (Ind. Ct.

App. 1994); *Sitkowski* v. Zoning Bd. of Adjustment of Borough of Lavalette, 569 A.2d 837 (N.J. Super. Ct. App. Div. 1990).

- Avoidable provision is "valid until annulled and is "capable of being affirmed or rejected at the option of one of the parties." Black's Law Dictionary 1569 (1979).
- "The importance of the presumption [of validity] is that it formally fixes the responsibility for planning policy in the legislature, and prompts a reviewing court to exercise restraint. Anderson's American Law of Zoning § 3.13 at 117 (4th ed. 1996).
- *Ching* v. *San Francisco Bd. of Permit Appeals (Harsch Inv. Corp.),* 60 Cal. App. 4th 888 (Cal. Ct. App. 1998) (statute imposed 90-day limitations period for attacking a local zoning decision).

  "The clear legislative intent of this statute is to establish a short limitations period in order to give governmental zoning decisions certainty, permitting them to take effect quickly and giving property owners the necessary confidence to proceed with approved projects." Id. at 893. (Emphasis added.)

• The October 2001 Draft has addressed these concerns with respect to Section 8–107. However, the same defects in Sections 8–104, 8–401, and 15–202 remain unaddressed.

Recommended Solution: The section entitled Consistency of Land Development Regulations with Local Comprehensive Plan states that actions not consistent with the comprehensive plan shall be voidable. This section should not provide that a failure to comply with timeframes for updating comprehensive plans will affect the validity of any land development regulation or land use action of the local government.

The Section on Uniform Development Standards should not provide that the failure of State planning agencies to conduct a timely general review and report of uniform development standards will result in the standards loosing their presumption reasonableness. This section should state that failure to file a timely report as required by this section shall not affect the validity or presumption of reasonableness of existing uniform development standards, nor of permits issued pursuant to such standards.

Section 15–202 (Recordation Requirements) should not suggest that the failure to comply with recording requirements will render comprehensive plan, subplans, and land development regulations "not effective." Instead, this section should state that the failure to comply with the recording requirements of this Chapter shall not affect the validity, effectiveness or presumption of correctness of any plan or land development regulation.

Exhaustion of Remedies

An essential element of smart process is a means of establishing when the approval process has run its full course and a land development decision is final. If the decision process is open-ended and lacks closure, then it is also unpredictable. Unpredictability adds delay and risk, and the costs associated with risk and delay are ultimately paid by consumers as well as by taxpayers.

I applaud the authors of the Guidebook for the needed and progressive reform proposed in Section 10–603 on the finality of land use decisions. Unfortunately, this important reform is contradicted and negated by the provisions of Section 10–604, Exhaustion of Remedies. To support the provisions on finality the Guidebook should have provided here for streamlined qualification for appeals and made clear that in normal circumstances an applicant need only apply for remedies that are actually available. The Guidebook also fails to consider and include among its criteria for finality important guidelines from the Supreme Court's recent decision in *Palazzolo* v. *Rhode Island.*

LEGAL ANALYSIS OF ADMINISTRATIVE EXHAUSTION

• *The well-conceived ripeness reforms (§§ 10–201, 10–202, 10–203, 10–210, and 10–603) may have been undone by overly complex requirements for exhaustion of remedies.* The Model requires an applicant to exhaust three additional remedies after the initial agency decision before seeking judicial review (§ 10–604). (This has always been a "ripe" area for abuse of process.)

- Unless the administrative remedy is futile or inadequate, applicants must:
  appeal for administrative review (§ 10–209);
  apply for a conditional use (§ 10–502); and
  seek a variance (§ 10–503).

- Exhaustion of these "remedies" could add years to the review process and effectively gut the ripeness reforms. This, on top of a growing trend in State courts to apply the draconian ripeness standards used in Federal courts. See Daniel R. Mandelker, Land Use Law § 8.08.10 (4th ed. & Supp. 2000). Professor Mandelker, although a self-described "regulatory hawk", has long been a critic of abusive practices in agencies and courts regarding the finality doctrine as espoused in *Williamson County Regional Planning Commission* v. *Hamilton Bank*, 473 U.S. 172 (1985). See Testimony of Daniel R. Mandelker regarding H.R. 1534 before the House Judiciary Committee, Subcommittee on Courts and Intellectual Property, September 25, 1997. See also Amicus Brief of the *American Planning Association in Suitum* v. *Tahoe Regional Planning Agency*, 117 S. Ct. 1659 (1997). This portion of APA's brief was later "repudiated" by APA in its testimony to Congress opposing H.R. 1534. See letter of September 16, 1997, from APA President, Eric Damian Kelly, to the Honorable Henry J. Hyde, Chair, House Judiciary Committee. These practices have made it virtually impossible for Fifth Amendment Takings claimants to gain access to Federal courts. See J. Delaney and D. Desiderio, Who Will Clean Up The Ripeness Mess? A Call for Reform so Takings Plaintiffs Can Enter the Federal Courthouse, 13 Urb. Law. 195 (1999).

  Public agency abuse of the land use review process has long been a concern. An excellent discussion and compilation of some of the numerous commentaries on this serious problem may be found in the June 2001 issue of Zoning and Planning Law Report. See Rodney L. Cobb, Land Use Law: Marred by Public Agency Abuse, Zoning and Planning Law Report, Vol. 24, No. 6.

- *Palazzolo*: The Supreme Court's Latest Statement on Ripeness

In *Palazzolo* v. *Rhode Island*, 121 S.Ct. 2448 (2001), which is not mentioned in the October 2001 Draft's commentary on Section 10–604, six members of the U.S. Supreme Court provided important direction on the issue of ripeness. The Court stated:

> "While a landowner must give a land-use authority an opportunity to exercise its discretion, once it becomes clear that the agency lacks the discretion to permit any development, or the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened."

Recommended Solution.—At the final meeting of the Directorate, I understood that the final draft would be amended to add that an applicant should not have to seek approval of a conditional use when such a use would not be practical for the applicant. Instead, Section 10–604(1) uses the more ambiguous term "applicable" regarding both conditional uses and variances. The explanatory language states that "if there is no conditional use provision applicable to the property" as zoned, the applicant does not have to seek a conditional use before commencing judicial review. This is not the problem I was concerned about. For example, an applicant seeking approval of a 10-lot residential subdivision would not be interested in having to file for a group home or medical clinic—even if available in the zoning ordinance. To avoid abuse and unnecessary filing of applications, as discussed in Palazzolo, Section 10–604(1) should be revised to *delete* the requirement to seek approval of a conditional use (as provided in § 10–502) and to limit the exhaustion requirement to a practical remedy, which might be either an appeal for administrative review (§ 10–209) or filing for a variance (§ 10–503).

Moratoria

Moratoria are indicators of planning failure. Clearly, absent some catastrophe or unforeseeable event, a reasonable planning process should not lead to a pass where growth is brought to a stop by fiat. But, catastrophes and unforeseen events do occur from time to time, and the law in most States allows for temporary moratoria to protect public health and safety. However, when the difficulty arises because of a failure to plan or inadequate planning, those responsible should not escape the consequences of their failure. Nor should the building industry and housing consumers suffer from the failure of others to do their jobs properly.

It is recognized that local communities are often challenged by the impacts of growth, particularly impacts on infrastructure. That is why it is so important to plan for infrastructure at the same time the community is planning for the expansion of population, jobs, and housing. While it is one thing to create a plan for the provision of public facilities, it is another thing to finance and implement that plan. Not every community does a good job getting infrastructure built. Other spending priorities and pressure to keep taxes low make it difficult to keep up with infra-

structure demands. Nonetheless, getting infrastructure built is a public sector responsibility. It is too easy to use moratoria to escape this responsibility.

The October 2001 draft deletes the provisions in the Guidebook that would have permitted moratoria to be imposed on the grounds of "any significant threat to the . . . environment," and in lieu thereof inserts protection of the "general welfare" as an additional ground for imposing moratoria. While "general welfare" is an improvement over singling out "the environment" as one element of public policy that should be allowed to trump other pressing public needs, such as affordable housing and jobs, it is a broad standard that can be used to allow moratoria to be imposed for virtually any reason. At the final Directorate meeting, it was agreed that the "or the environment" standard would be excised wherever it appeared in the Guidebook. This has apparently not been done. See, e.g., optional § 8–604(4), which was the section under discussion, let alone other possible sections in the Guidebook.

The Guidebook also permits moratoria while the government prepares, adopts or amends comprehensive plans, historic preservation plans or land development regulations, absent any looming threat to public health or safety (Section 8–604 (3)(b) and (c)). The provisions for potentially indefinite, open-ended moratoria (see for e.g., Sections 8–604(3)(b) under Alternative 2, 8–604(8) and 8–604(10)) are inappropriate. Moratoria should be for a definite, fixed period, in no case to exceed 1 year.

Moratoria are serious, last-resort measures that should be judiciously applied. When the legal criteria for moratoria are difficult to satisfy, an incentive is created to plan more carefully. The whole point of the Growing Smart exercise is to change and improve the level of planning, and incentives have a role in bringing that about.

Accordingly, a strict standard of "danger to public health and safety" that must be established before a moratorium may be declared would be fitting. This standard, observed by several States, reflects a public policy that moratoria are serious matters not to be used as a convenience, but as a last resort. While a moratorium may stop the issuance of development permits, it has no effect on housing demand. Its effect may thus be to direct growth outside the boundaries of the government that declared the moratorium and thereby contribute to sprawl. For this reason, States may wish to limit local governments' power to use this tool by adopting a strict standard. In addition, States may wish to adopt a strict standard to ensure that local governments take seriously their responsibility to plan for and build infrastructure. If the standards for use of moratoria are set too low, then there is less incentive to do a good job of planning. With proper planning, most conditions that might give rise to use of moratoria should be avoidable. In rare cases, where even good planning cannot prevent an unforeseen danger to public health and safety, the statutory language in this alternative would permit limited use of a moratorium.

LEGAL ANALYSIS OF MORATORIA PROVISIONS

The Guidebook authorizes moratoria on a virtual open-ended basis (up to 1.5 years or more), and "planning moratoria" (up to 2 years or more) are also authorized (§ 8–604). In addition, no meaningful restrictions on moratoria are provided in designated growth areas.

- In designated Smart Growth areas, moratoria should be:

  limited to circumstances in which a serious threat to public health or safety exists;

  limited as to duration; and

  the government entity imposing the moratorium should be required to immediately address and resolve the problems giving rise to the moratorium. *See Westwood Forest Estates* v. *Village of S. Nyack*, 244 N.E.2d 700 (N.Y. 1969).

- Moratoria are not part of the planning and zoning process. Rather, they are often the result of a failure to properly plan.

- "Planning moratoria" should generally be prohibited or severely limited.

  "Even construing the provisions of the [enabling act] liberally, we find that the power to enact a zoning ordinance, for whatever purpose, does not necessarily include the power to suspend a valid zoning ordinance to the prejudice of a land owner . . . More significantly, the power to suspend land development has historically been viewed in this Commonwealth as a power distinct from and not incidental to any power to regulate land development. Accordingly, as the [enabling act] is silent regarding land planning through the temporary suspension of development, we decline to condone a municipality's exercise of such power." *Naylor* v. *Township of Hellam*, 773 A.2d 770 (Pa. 2001) (emphasis added).

- Moratoria raise takings issues as well. See D.R. Mandelker and J.M. Payne, Planning and Control of Development, Cases and Materials 642 (5th ed. 2001).

• Significantly, on June 28, 2001, the U.S. Supreme Court granted certiorari in the case of *Tahoe-Sierra Preservation Council* v. *Tahoe Regional Planning Agency,* 228 F.3d 998 (9th Cir. 2000), cert. granted, 121 S.Ct. 2859, 150 L. Ed. 2d 749 (U.S. June 28, 2001). Certiorari was granted on the question "[w]hether the Court of Appeals properly determined that a temporary moratorium on land development does not a constitute a taking of property requiring compensation under the takings clause of the United States Constitution."

Recommended Solution.— Delete Alternative 1 in § 8–604(3), as it would authorize moratoria to be imposed for virtually any reason.

Delete Alternative 2 in § 8–604(3), particularly §§ 8–604(3)(b) and (c), allowing planning moratoria of 2 years (or more). Planning moratoria should not be allowed, and if allowed, should never exceed 6 months.

Revise § 8–604(8) to limit extensions of moratoria (other than planning moratoria, which should not be extended (to not more than one 6-month period, and only upon a finding of "compelling need" as defined in § 8–604 Alternatives (2)(d) and (3)(b).

Delete § 8–604(10)(a) and (b) which allow State or local governments to impose additional "temporary moratoria" upon already issued permits or to adopt "temporary policies" against approving zoning map amendments. Alternatively, these additional restrictions should only be imposed upon a finding of "compelling need" as defined in §§ 8–604(2)(d) and (3)(b).

Vested Right to Develop

Traditional late vesting rules in effect in most States are out of date and unfair. These require issuance of a building permit and commencement of construction (or other acts of reliance) in order for rights to vest. Late vesting rules do not recognize the complexity of the modern regulatory environment, or the difference between a single building project on the one hand, and long-term land development or multi-building projects on the other. Statutory reform is urgently needed in this area and the Guidebook has taken steps to provide it. Vesting of development rights should be recognized earlier in the process, such as at the time of subdivision or site plan approval, or at the time of filing of a complete application for subdivision/site plan approval.

A legally vested right to develop land is essential to the stability of development processes and real estate markets. The Guidebook, in Section 8–501, provides two alternatives. The first alternative is a vesting model that establishes a vested right to develop (which includes design, planning and preparation of the land for development, as well as construction) as soon as a complete development application is filed. The second alternative has been modified from the previous second alternative that required the issuance of a permit and "substantial and visible construction" to one that allows vesting based upon "significant and ascertainable development" pursuant to a development permit. This is much more equitable than the original second alternative since it appears to recognize expenditures (and other acts of reliance) based on the development of the property, rather than merely on construction of one or more buildings. The development process, from design to approval to construction, is significantly more complex today than it was 50 years ago.

Although the proposed first alternative allowing vesting to occur upon submission of a complete application is laudable and is recognized in some States, it may be more reform than some other States are willing to undertake. Thus, the second alternative proposed in the October 2001 Draft is also appropriate if it is interpreted as recognizing vested rights based upon development work pursuant to appropriate approvals, rather than upon construction of a building or buildings pursuant to a building permit. (See Legal Analysis.)

LEGAL ANALYSIS OF VESTING PROVISIONS

• In today's world, the land use regulatory process has become increasingly elongated and complex, with environmental permitting often overlaying the traditional review process, regulations proliferating, more reviewing agencies in the mix, and more public hearings. All of these factors, and the increasing uncertainty that accompanies them, have led to a serious problem, particularly for long-term, multi-building projects, which must receive many development approvals before the first building permit is obtained. The design and approval phases of any development, particularly one which involves multiple buildings, is time consuming and expensive. Before a single footing is poured, architects and experts must be hired, attorneys retained, engineering started, a series of regulatory systems navigated, equipment leased, materials ordered, financing arranged and site development work commenced. Thus, it is appropriate that "development" activity pursuant to government approvals, and not merely "construction" of a building or buildings pursuant to a building permit, be the criterion for recognizing vested rights.

• However, it must be noted that the Guidebook's definition of "development permit" lists a number of approvals, including a "building permit" (§ 10–101), could be interpreted to apply solely to a building permit. If this were to be the interpretation, the language would have the exact opposite effect of what was intended, which was to suggest an early vesting rule that recognizes the huge expense and commitments required to prepare a development plan and proposal. Thus, the revised second alternative in Section 8–501, if it were to be interpreted to be applicable only to a building permit, could also be construed as authorizing a late vesting rule (similar to the common law vesting rule in effect in approximately 30 States (that would not confer vested status on a project until after a building permit has been issued and significant and ascertainable construction thereunder has occurred. This would be a draconian imposition of the rule in today's multi-layered regulatory environment because it ignores the often numerous development approvals that a project may have previously received and implemented. If applied in this manner, the revised section relating vested status to significant and ascertainable development pursuant to a development permit would not affect meaningful reform and instead would only embalm the status quo. (Unfortunately, the Guidebook's definition of "development permit" does *not* include preliminary subdivision plans.)

• Approximately 12 States have enacted vesting laws, several of which recognize one's right to proceed with development under the law in effect at the time of approval of a site-specific application, such as a preliminary subdivision plan. Other States' laws (e.g., Connecticut) allow vesting even earlier, such as at the time of submission of the initial development application. Both of these approaches are reasonable.

• Maryland is cited in the Guidebook as a primary source of the late vesting rule, which is as it should be, since Maryland's "very late" vesting rule is among the most inflexible in the country. Indeed, Maryland courts have not recognized vested rights under this rule even in circumstances where the landowner's failure to acquire the requisite building permit and commence construction is the result of previously adjudicated or acknowledged unlawful conduct of the government. See, e.g., *Sycamore Realty Co. Inc.* v. *People's Counsel of Baltimore County*, 684 A.2d 1331 (Md. 1996); *Rockville Fuel & Feed Co.* v. *Board of Appeals*, 291 A.2d 672 (Md. 1972).

Recommended Solution.—Retain Alternative 1 and revise Alternative 2 to clarify that vesting upon commencement of ascertainable development does not require that the project must have received a building permit. Amend the definition of "development permit" in Section 10–101 to include preliminary subdivision plans or plats. Commonly, most of the detailed (and expensive) engineering design work must be accomplished in preparation at the preliminary plat stage.

Third-party Initiated Zoning Petitions

I strongly object to subsections 8–103(1)(d) and (e), which allow new land development regulations (and zoning changes) to be initiated either by petition of owners of record lots constituting "51 percent of the area that is to be the subject of the proposed ordinance," or by petition of a stated minimum number of "bona fide adult residents of the local government [sic]." At the final Directorate meeting, it was indicated that the text would include a statement that petitions of this nature should be disfavored.

The language that has been added does not adequately convey that the initiative process is extremely destabilizing to orderly planning and social equity and undermines settled planning and zoning decisions. It is all the more so when it can be accomplished by a mere plebiscite of a neighborhood. Neighborhood plebiscites to effect zoning changes are unlawful in many States. See, for example, *Benner* v. *Tribbit*, 57 A.2d 346 (Md. 1948). There is an excellent discussion of this problem in the case of *Township of Sparta* v. *Spillane*, 312 A.2d 154 (N.J. Super. 1973). The fact that a minority of States authorizes the initiative process through their constitutions or State enabling laws by no means establishes the wisdom of this process, or its value in achieving the goals of Smart Growth. It is helpful that the final draft has been amended to recognize this point.

LEGAL ANALYSIS OF THIRD PARTY ZONING PETITIONS

• The Guidebook acknowledges that some States authorize land development regulations to be initiated:

- By 51 percent or more of record lot owners "in the area that is to be the subject of the proposed ordinance" (§ 8–103(1)(d)), or
- By "petition of a minimum percentage of bona fide adult residents" of the jurisdiction (§ 8–103(1)(e)).

Allowing local land use regulations to be enacted via voter initiative or by a neighborhood plebiscite can completely destabilize the land use regulatory process and promote exclusionary zoning. The fact that the local legislative body would make the final decision regarding enactment of the proposed legislation does not ameliorate the mob hysteria that often accompanies such initiatives. See, e.g., *City of Eastlake* v. *Forest City Enterprises*, 426 U.S. 668 (1976), *United States* v. *City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), cert den., 422 U.S. 1042 (1975). Neighborhood plebiscites are often used to affect the civil rights or property rights of others.

• Of course, initiatives that are authorized by State Constitutions are likely beyond the reach of remedial legislation. However, the Model should not encourage the use of initiatives as they have been almost universally criticized as antithetical to good governance and good planning. *See, e.g.*, David Broder, Democracy Derailed—Initiative Campaigns and the Power of Money (Harcourt) (author is a senior columnist for the Washington Post).

• Criticism of the initiative as a tool for planning and zoning has been particularly harsh and widespread. *See, e.g.*, Nicholas M. Kublicki, Land Use by, for, and of the People: Problems with the Application of Initiatives and Referenda to the Zoning Process, 19 Pepp. L. Rev. 99, at 104, 105, 155, 157–158 (1991).

• Courts have been equally suspicious of the initiative and referendum. See, for example:

> *Township of Sparta* v. *Spillane*, 321 A.2d 154, 157 (N.J. Super. 1973) ("Among other things, the social, economic, and physical characteristics of the community should be considered. The achievement of these goals might well be jeopardized by piecemeal attacks on the zoning ordinances if referenda were permissible for review of any amendment. Sporadic attacks on a municipality's comprehensive plan would tend to fragment zoning without any overriding concept."). To the same effect are: *Benner* v. *Tribbit*, 57 A.2d 346, 353 (Md. 1948); *Leonard* v. *City of Bothell*, 557 P.2d 1306, 1309–10 (Wash. 1976); *City of Scottsdale* v. *Superior Court*, 439 P.2d 290, 293 (Ariz. 1968).

Recommended Solution.—Delete § 8–103(1)(d) authorizing ordinance text and map amendments to be "initiated" by 51 percent of the owners of lots of record in "the area" that is to be the subject of the proposed ordinance, and replace it with a new § 8–103(1)(d), which would allow owners of lots of record to apply to the local government legislature for regulatory relief in situations affecting their property or the general community. The local government would retain the discretion whether to accept or consider the amendment application.

Of course, a landowner's right to seek redress of a site-specific problem through legislation (such as a zoning text amendment) would not absolve the local government from evaluating the proposed amendment on the basis of whether it would promote the health, safety, and welfare of the general public.

Similarly, optional Section 8–103(1)(e), authorizing a specified percentage of adult residents of the local government to petition for ordinance amendments, should be deleted. If a single category, or a group of citizens, have a meritorious case for amending an ordinance, they can pursue it under §§ 8–103(1)(a), (b) and (c) by convincing their legislative body or planning agency of the merits of their proposal. If they are dissatisfied with the outcome, they can voice their displeasure in the next election.

Designation of Critical and Sensitive Areas

The Guidebook defines "critical and sensitive areas" as those areas that contain or constitute natural resources sensitive to excessive or inappropriate development. (Section 9–101(3)(c)). This definition is extremely broad. All areas can contain or constitute some natural resource. Certainly, any undeveloped property could easily be categorized as containing or constituting a "natural resource." In fact, no definition of "natural resource is provided within the text. Furthermore, the Guidebook definition refers to "excessive or inappropriate development" but does not attempt to define what these terms mean. Without a clear, concise definition, any development could be identified as "excessive or inappropriate." Such lack of clarity or of any definition altogether could easily allow a local government to restrict any type of development in any area.

The Guidebook language provides that local governments can opt out of adopting regulations for critical/sensitive areas if all critical/sensitive areas in their jurisdiction are designated as areas of "state" critical concern (Section 9–101(1)). However, just as importantly, the local government should be able to avoid adopting regulations for critical/ sensitive areas that have been designated as "critical" by the Federal Government. For example, the U.S. Endangered Species Act of 1973 (ESA) requires the Federal Government to designate "critical habitat" for endangered or threatened species. The ESA provides extensive protection of "critical habitat." The

ESA requires an applicant to apply for a permit from the Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) if their action will likely impact an endangered or threatened species (which would likely occur in an area designated as critical habitat). The Act also requires projects within critical habitat, needing a Federal permit, approval or funding to go through a consultation process with FWS or NMFS. If the outcome of the consultation determines that the activity will likely adversely affect the survival and recovery of the species, the applicant will be required to minimize or mitigate the impacts of the activity.

Recommended Solution.—Provide a definition for "natural resources" similar to the following: natural resources are plants, animals, or useful minerals indigenous to a specific site that provide benefits not only to the owner of the site but to the public generally and that the exploitation of which would have a detrimental effect on the public welfare.

Amend the definition of "critical and sensitive areas" to include: lands and/or water bodies containing natural resources and/or which are themselves natural resources the exploitation of which would cause a threat to the public health, safety, or welfare.

Provide a definition for "excessive or inappropriate development" similar to the following: excessive or inappropriate development is grading, construction, or site disturbance that is unlawful or not in compliance with duly adopted regulations or not in compliance with duly issued permits.

Provide in Section 9–101(1) and/or in Section 7–202 (5) an opt-out provision for lands designated as "critical" by the Federal Government.

CONCLUSION

While many of my comments have been frankly critical, hopefully they will be perceived as constructive in their intent. Stuart Meck, his able staff, and important outside consultants have produced an impressive and very useful piece of work. The thoughtful and diligent work of a dedicated Directorate who read and commented extensively and constructively on literally thousands of pages of text is not to be overlooked. That the Guidebook can and should be made better is not a detraction of the work as it stands, but rather on the broad scope and great complexity of the undertaking. I consider it a privilege and a great learning opportunity to have been allowed to work on the Growing Smart Directorate.

STATEMENT OF DON CHEN, EXECUTIVE DIRECTOR, SMART GROWTH AMERICA

Mr. Chairman, Ranking Member Smith, and Members of the Senate Committee on Environment and Public Works, thank you for holding today's hearing on Smart Growth.

I am the Executive Director of Smart Growth America, a nationwide coalition of more than 70 organizations, including the Enterprise Foundation, the League of Women Voters for Smart Growth, American Farmland Trust, Natural Resources Defense Council, and the National Low-Income Housing Coalition. Together, we promote smart growth, a strategy of development that makes efficient use of natural resources and infrastructure, revitalizes neighborhoods, keeps housing affordable, protects farmland and open space, and provides people with more transportation choices.

Smart Growth is a local issue that is driven by decisions made by individuals and families. These include everything from a developer's decision to build a variety of residential, commercial and retail buildings near a transit station to a farmer or rancher's decision to sell development rights to boost the viability of working his land.

Land use decisions are made locally, so many people naturally ask the question, is there a Federal role in smart growth? The answer—unequivocally—is yes. Local and individual land use decisions are influenced by incentives and policies that have been made at the local, State and Federal levels. The Federal Government has had an enormous impact on development patterns for decades, if not centuries. A 1999 Fannie Mae Foundation survey of leading urban scholars found the Interstate Highway System and the Federal Housing Administration's home mortgage insurance program to be ranked as the top two influences in shaping American cities and metropolitan development during the past half century.

The Federal Government has affected development patterns in the past, and will continue to do so in the future. The real question is, what is the appropriate role? There are four functions.

First, the Federal Government should share information about best practices, decisionmaking tools, and research. State and local governments do not have the ca-

pacity to identify, analyze or develop tools, such as complex predictive computer models or urban planning software, nor should they need to reinvent the wheel in search of practices and policies that will allow them to use their economic and natural resources more efficiently.

Federal agencies can assist States and communities by disseminating information such as the Department of Housing and Urban Development's new report on modern rehabilitation codes, entitled *Smart Codes in Your Community: A Guide to Building Rehabilitation Codes* (August 2001). The report identifies and analyzes State innovations that have yielded substantial smart growth benefits. For example, in 1997 the State of New Jersey worked with developers, firefighters, building inspectors and environmental groups to adopt a ground-breaking rehabilitation code to encourage the renovation of decaying buildings. This new code was necessary because in the past, rehabilitation codes were mainly derived from inflexible new construction standards, which often required unreasonable overhauls of older buildings. Within a year after these new codes were adopted, rehabilitation investment statewide rose by 8 percent. In the cities of Newark, Jersey City and Trenton, spending increased by 60 percent, 83 percent and 40 percent, respectively. Gains in Newark totaled $41 million. The strategy was so successful that other States, such as Maryland, are following suit. The HUD report catalogues these emerging building rehabilitation codes to help other States and localities address the widespread problem of decaying or abandoned properties, a top priority for HUD Secretary Mel Martinez.

Rehabilitation codes and other smart growth tools are already being used nationwide to help communities make decisions on how their communities can grow. For instance, PLACE^{3}S (Planning for Community, Energy, Economic, and Environmental Sustainability) is a set of predictive computer models developed by the Department of Energy that helps communities understand how their growth and development decisions can lead to better economic, community, and environmental outcomes. It integrates planning, design, and quantitative measurement into a public involvement process that is appropriate for both regional and neighborhood-scale planning. PLACE^{3}S evaluates how efficiently a community integrates land uses, provides housing and jobs, transports people and materials, allocates public infrastructure improvements, and uses other resources. It has proven to be an invaluable component of many recent transportation and land-use planning projects across the U.S. and is increasingly in demand.

For example, the city of Salem, Oregon is creating a city-wide preferred growth strategy using the PLACE^{3}S model. The city held a series of workshops to apply three land use scenarios throughout Salem and analyze their impacts on nine neighborhoods. Workshop participants were asked to create a number of alternative land use scenarios that met a target range of housing and employment densities that matched the city's vision and principles for future population growth. The PLACE^{3}S model was used interactively to adjust the new scenarios in real time, compare them against existing land uses and current zoning for each geographic location, and then analyze the potential "livability" of a new land use alternative based on a predefined set of community indicators, such as jobs/housing balance, annual vehicle miles traveled (VMT) and air pollution costs.

In Lancaster County, Pennsylvania, several communities are currently engaged in a strategic community planning process to create a regional comprehensive plan that addresses the future of their communities. CommunityViz, a software tool developed by the Orton Family Foundation, allows planners, landowners, and interested citizens to create and manipulate a virtual representation of a town, and explore different land use scenarios and make informed decisions on issues that affect their quality of life.

Mr. Chairman, I understand that you are interested in developing legislation to catalogue community decisionmaking and visualization tools and provide assistance to communities wishing to employ such tools. Smart Growth America would welcome the opportunity to work with you in that effort.

Second, the Federal Government should provide financial assistance to States and localities to enable them to invest in practices and policies that they believe are in the best economic and environmental interest of their citizens. A tangible example of the Federal Government's valuable role was a recent grant that the EPA provided to the Envision Utah project, which enabled residents of the Greater Wasatch Area to deploy state-of-the-art demographic projection and land use mapping techniques to better plan for future growth. Using long-range planning and visioning tools, project leaders determined that continued sprawling, low-density development would result in a doubling of the Greater Wasatch Area's urbanized land area. They estimated that a smarter growth scenario featuring major investments in public transit would save 171 square miles of open space, reduce the amount of driving

by 2.4 million miles per day, decrease commute times by 5.2 percent, increase average speeds by 12.5 percent, and save the region $4.6 billion in infrastructure costs. Under the leadership of Governor Mike Leavitt, the region is now pursuing the attainment of these smart growth outcomes, which will likely include infrastructure savings for the Federal Government as well as broad environmental benefits.

Third, the Federal Government should support smart growth innovations that give local governments more flexibility in meeting Federal requirements. A great example that merits replication is the Atlantic Station development in Atlanta, Georgia, which applied smart growth principles to meet Federal air quality standards. To be built on the site of the old Atlantic Steelworks, this 138-acre mixed-use transit-oriented development project had the misfortune of requiring a small bridge to improve connectivity with the region's transit and road network at a time when Atlanta was under a federally mandated moratorium preventing investment in such infrastructure. The moratorium was the result of Atlanta's lapse in Federal air quality conformity-a necessary step to protect the public health. However, at the request of the developer, the EPA's technical staff determined that the site's new neighborhood would in fact reduce regional travel by 50 million miles per year because of its excellent public transit access, walkability, and compact street design. In addition to reduced traffic, the project is expected to decrease air pollution and its innovative stormwater management system will reduce the volume of polluted runoff. The project's smart growth benefits enabled the bridge construction to go forward and led to EPA's official guidance that allows smart growth developments to qualify as Transportation Control Measures under the Clean Air Act.

Fourth, the Federal Government should get its own house in order so that its activities support States and localities in their efforts to pursue smarter growth. The Federal Government has a major presence in communities all across America, and its daily operations should not interfere with State or local efforts to encourage smart growth. This ranges from the location and design of Federal facilities, including disposal of HUD foreclosed abandoned buildings, to offering Federal employees a choice to receive either pre-tax parking or public transit benefits at equal cash value. This committee has taken up the Federal facilities issue through its interest in the Downtown Equity Act, introduced by Senator Leahy in the 106th Congress, and which would require Federal offices to be located in existing business districts. We hope that it will be reintroduced and that progress is made on this important measure.

The Federal Government's role in supporting smart growth has become increasingly important, as rapid changes in development patterns overwhelm State and local governments trying to keep up with rising demands for public services, facilities and infrastructure. In particular, several trends underscore the need for Federal action.

First, housing affordability remains a dire and persistent problem for an astounding number of Americans. According to the congressionally established Millennial Housing Commission, 28 million Americans do not have access to decent, affordable housing. In 2000, the National Low-Income Housing Coalition reported that there was not a locale in the United States where a full-time minimum-wage earner could afford fair-market rent for a two-bedroom apartment. According to a new paper by Anthony Downs, Senior Fellow at the Brookings Institution, affordable housing too often exists in either declining neighborhoods that are geographically isolated from opportunities, or in fringe ex-urban areas and require residents to spend a large proportion of their income on car travel, which according to the Department of Commerce accounts for 40 percent of income for America's lowest-wage earners. Another new report from the Brookings Institution presents the academic evidence debunking the claim that smart growth and affordable housing are at odds. This paper shows that good growth management policies increase affordable housing opportunities even in communities that are in high demand.

Second, traffic problems are stifling the economies of regions all across America. Traffic congestion costs Americans $78 billion in lost time and wasted fuel, and the average person spends 36 hours per year stuck in traffic. What we once referred to as "rush hour" now lasts 3 hours and occurs twice a day. This hurts everyday commuters, but it is especially harmful for low-income workers, who face the unenviable choice between the costly ownership and operation of a car and public transportation services that are inadequately funded to meet the public's demands.

Third, consumer housing preferences are changing. According to a new study published by the Fannie Mae Foundation, aging baby boomers will constitute a growing proportion of homebuyers in the next decade, and many of them express a preference for compact, walkable neighborhoods over low-density conventional sprawl. The report's authors-two professors from the University of Southern California-estimate that between 31 and 55 percent of active homebuyers will prefer this type of

"smart growth" or "New Urban" development during the coming decade. Unfortunately, the report's authors are pessimistic about the ability of the market to meet this growing demand because of the rigid finance, insurance, planning and regulatory conventions that facilitate sprawl development to the exclusion of other development patterns. As a result, the construction or rehabilitation of compact, walkable communities is a commonly unpredictable challenge, introducing the potential for expensive delays resulting from approvals for zoning variances and neighborhood resistance.

As a response to these trends, Americans are increasingly concerned about urban sprawl and are seeking better choices for their communities. In the past 5 years, large majorities of voters have approved hundreds of measures to raise funds for open space and farmland preservation to protect valuable recreational areas, scenic vistas, and biologically important habitats. In 2000, the Pew Center for Civic Journalism released a report that found runaway sprawl and traffic congestion to be Americans' top local concern. A poll released by Smart Growth America later that year confirmed these conclusions, finding that large majorities of Americans are willing to support specific smart growth measures, ranging from affordable housing production to increased public transit funding. Even after the tragedies of September 11, voters from New Jersey to Colorado to California have indicated growth management to be a top local concern. This week, a poll by the University of Toledo will report that metro Toledans strongly support smart growth measures as well.

The bills being considered by this committee can offer better choices to communities that are grappling with these challenges. The Community Character Act, S. 975, and the Brownfield Site Redevelopment Assistance Act, S. 1079, are two proposals that will help communities respond to the impacts of rapid changes in growth patterns that have left some communities with dwindled populations and vacant buildings, and still others with overcrowded schools and overburdened infrastructure. These two bills provide valuable assistance to States and communities to address these issues in a manner that is appropriate for the Federal Government.

The Community Character Act offers assistance to State or tribal governments who have identified a need to develop or update land use planning legislation, but lack the capacity to do so. Appropriately, the Community Character Act does not impose a mandate on States to update their land use plans. Instead, it offers State and tribal governments financial assistance to help cover their costs of ensuring broad public participation, researching and developing land use plans, integrating State, regional, tribal or local plans with Federal land use plans, and acquiring technology to support their efforts.

S. 975 will help communities create a vision for the future, while leaving land use and development decisions to State and local governments. In many places, part of that vision for the future will include an effort to reinvest and encourage economic development in existing communities. This committee has already shown great leadership on this issue. Senator Chafee, I congratulate you and the entire committee on the passage of the Small Business Liability and Brownfields Revitalization Act. Smart Growth America was one of the first organizations to endorse S. 350, and we were delighted to see President Bush sign the final bill into law.

The Small Business Liability and Brownfields Revitalization Act will make a tremendous contribution to brownfield redevelopment by assisting in their clean-up and providing liability relief. However, many of these sites are located in communities that have experienced such widespread disinvestment that their recovery is dependent on additional economic stimulation. The Brownfield Site Redevelopment Assistance Act, S. 1079, complements the recently signed brownfields law by targeting assistance toward the development of public facilities and services, planning, training and technical assistance to help communities overcome the burdens of brownfield sites.

Smart Growth is about providing better choices for our communities. Across the Nation, families are demanding more convenient, affordable and safe transportation and housing options, communities want more tools for grappling with rapid change, and civic leaders wish to have greater predictability in the business of development and preparations for the future. The Federal Government has a responsibility to aide States and localities communities by sharing information on best practices, providing financial and technical support to help communities respond to changing growth patterns, and to be a good partner with State and local leaders. The Community Character Act and the Brownfields Site Redevelopment Assistance Act both advance these goals to improve the quality of life of all Americans. Smart Growth America supports both of these bills and looks forward to working with the committee to see their timely passage.

STATEMENT OF F. GARY GARCZYNSKI, PRESIDENT ON BEHALF OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

Chairman Jeffords and members of the Environment and Public Works Committee, I am pleased to appear before you today to share the views of the National Association of Home Builders concerning S. 975, the Community Character Act of 2001. My name is Gary Garczynski and I am the 2002 President of the National Association of Home Builders. I am a homebuilder and developer from Woodbridge, Virginia, and much of my business focuses on redevelopment of urban areas and the inner ring of older suburbs. I am a past president of the Northern Virginia Transportation Alliance and a founder of the Greater Washington Region Smart Growth Alliance.

BACKGROUND

While we appreciate the efforts of this committee to address growth issues, NAHB is opposed to the Community Character Act. This country will continue to grow and NAHB has been working for years on how to grow "smart." An emerging issue that goes hand in hand with smart growth is population pressure. Projections based on U.S. Census data show that the population segment between 25 to 64, the population segment that accounts for the most household formation, will increase by about 1.4 million per year over the next 10 years. Although every State will add people in this segment, the States of California, Florida, Georgia, North Carolina, Texas and Washington will account for half of the population growth. With the addition of approximately 800,000 immigrants per year, the number of households will increase about 1.3 million per year for the next 10 years. To satisfy this demand, and demand for the replacement of lost housing stock, home builders will have to provide approximately 1.6 million new homes a year. The option to halt future growth as a means of controlling present frustrations is unrealistic.

In an effort to address the short-term pressures of growth, the Community Character Act of 2001 provides funding incentives for Federal and State agencies to work together toward implementing State land use plans. Although the legislation acknowledges that land use planning is within the rightful jurisdiction of the State and local governments, there are a number of alarming elements found in the bill. There have been some modifications to the bill from its original form in the 106th Congress, such as the recognition of the need for a range of housing choices in land use planning. However, S. 975, taken in its totality, remains prescriptive and intrusive in character and for this reason unacceptable to the home building community.

CRITIQUE OF S. 975

NAHB's overall concern and objection to S. 975 is based upon an unwarranted Federal intrusion into the State and local land use process. Further, there is insufficient emphasis on the critical and appropriate role of local government in land use decisions. S. 975 emphasizes State land use plans, not just State support for local land use planning. This legislation implies that all planning should take place on a State or tribal government level, which is a top down approach to planning, and negates the critical role of local jurisdictions in planning, regulating and managing land resources. NAHB believes there needs to be adequate and improved coordination with local plans on all levels.

The Community Character Act authorizes the Secretary of Commerce, acting through the Assistant Secretary of Commerce for Economic Development, to create a Federal grant program to incentivize the updating of State land use planning. The legislation presumes that the Secretary of Commerce, and the Federal Government, has a better idea of the source of nationwide development pressures and the best way to solve those problems. NAHB strongly believes that local citizens and local governments are the best arbiters for what is the appropriate design for local land use plans. As a builder, I work on a day-to-day basis with local and State officials and community groups to plan development in a responsible and thoughtful manner.

Section 4(a)(3) of the Community Character Act authorizes the Secretary of Commerce to give preference to a State that has "inadequate or outmoded land use planning legislation" and "is experiencing significant growth." Unfortunately, the Secretary is authorized to make a subjective judgment in an area where the Secretary can claim no special expertise. In an effort to award these grants, the Secretary would presumably establish a Federal definition of what constitutes "inadequate or outmoded land use planning legislation" or a Federal definition for "significant growth" and somehow apply those Federal definitions to State and local situations.

The Secretary of Commerce can claim no particular expertise in the determination of "significant growth" when comparing two or more areas of the country.

Additionally, under Section 4(a)(3), the Secretary is required by the legislation to give favor to a State that will develop or revise their land use plan "consistent with updated land use planning legislation." I am fearful that this language authorizes the Federal Government to develop "updated land use planning legislation." Or perhaps the Secretary is authorized to endorse a particular State's land use legislation as guidance. Authorizing the Secretary to use a particularly proactive State's land use legislation as a standard that embodies the concept of "updated" could lead to the Federal endorsement of some land use plans that are both onerous and an ill-fit for other States. But, because of the allure of Federal money, States might be inclined to overlook the negative aspects of these onerous plans.

NAHB is pleased that S. 975 recognizes the need for a "range of affordable housing options" in any smart growth plan (Section 4(b)(1)(F)). Certainly, housing affordability should be one of the goals of any local government. As we have seen in many areas of the country, economic prosperity and job creation are often not accompanied by affordable housing opportunities. Without the availability of decent, affordable housing and the ability for citizens to live where they work, citizens are forced into longer commuting times and longer distances from goods and services.

Of particular concern to NAHB is the condition of grant eligibility found in Section 4(b)(6). Under this section, the Secretary of Commerce is required to favor grant applicants which include "approaches to land use planning that are consistent with established professional land use planning standards." Simply, this provision uses Federal dollars to incentivize State legislatures to adopt professional planning standards. While there are certainly many differing professional planning standards, given the very recent release of the American Planning Association's Growing Smart Legislative Guidebook, S. 975 appears to facilitate the adoption of the model statutes contained in the Legislative Guidebook. NAHB cannot support legislation that could be construed to impose a Federal model for land use planning on local governments. NAHB believes that the best way to promote "community character" is to let the community determine its own land use policies.

Another point of concern is the use of grant funds in the legislation. Specifically, Section 4(c)(1)(D) authorizes grant funding for the use of integrating "State, regional, tribal, or local land use plans with Federal land use plans." This top-down approach that is promoted by S. 975 concerns NAHB. If land use planning is "rightfully within the jurisdiction of State, tribal, and local government," as Section 2(2) of the legislation states, the Federal Government should be integrating with State and local plans, not the other way around as encouraged by the legislation.

The legislation raises potential constitutional questions under the Tenth Amendment, where powers not expressly granted to the Federal Government in the Constitution—like zoning and land use decisions—are reserved to the States and local governments. Just over a year ago, in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) ("*SWANCC*"), the Supreme Court demanded "heightened" scrutiny when statutes and regulations "alter[] the Federal-State framework by permitting Federal encroachment upon a traditional State power." In this regard, the Court ruled: "Regulation of land use [is] a function traditionally performed by local governments." By creating prescriptive criteria by which Federal grant money is awarded for State land use planning, the Community Character Act has the potential to upset the Federal-State balance that the Court cautioned against in *SWANCC*.

Finally, Section 5 of the bill authorizes $1 million a year for Economic Development Administration Technical Assistance. While the intent of Section 5 may be no more than the establishment of a Department of Commerce clearinghouse for planning ideas, the authority granted under this section underscores the Federal Government's opportunity to influence local planning decisions. Under Section 5, the Secretary of Commerce is authorized to provide technical assistance to planning officials after consultation with a myriad of Federal agencies: The Environmental Protection Agency; the Department of Transportation; the Department of Agriculture and any of the other Federal agencies. Finally, the Secretary of Commerce is expected to consult with "non profit organizations that promote land use planning." While there are many organizations who would qualify in this later category, it is logical to assume that the American Planning Association and the Legislative Guidebook could be the primary providers of the technical assistance and the information sharing promoted by the Commerce Department. Again, the Federal Government should not be in the business of promoting local land use planning.

CONCLUSION

The Community Character Act is an unnecessary interference by the Federal Government in traditionally and constitutionally protected rights of local governments. By offering Federal dollars to State legislators who have concerns about the increasing pressures of growth, the Community Character Act rewards States for solving problems in the manner the Federal Government would like it solved. This legislation implies that Washington knows best when is comes to controlling development pressures.

Rather than authorizing money to promote the Federalizing of the local land use process, I believe the government is best served by using its money to coordinate its own various land use authorities and the government's often contradicting policies. Simply, local planners would be better served by the streamlining or improved cross-department coordination of the Federal requirements and processes that contribute to the local and State land use plans. Our industry has struggled over the years with a myriad of overlapping regulations that inhibit responsible development.

Mr. Chairman, last year members of this committee, led by Senator Lincoln Chafee, spearheaded the passage and eventual enactment of Federal brownfields legislation. While NAHB maintains that the brownfields legislation could have gone further to truly address the entire universe of brownfields sites in this country, the legislation was a good first step in returning brownfields sites to productive use. In fact, NAHB's national smart growth policy recognizes the importance of brownfields redevelopment in the concept of smart growth.

I believe the new brownfields law represents the best avenue for future Federal involvement in local planning. By removing the barriers to the cleanup and redevelopment of brownfields, the Federal Government has given local governments another tool to effectively plan for and manage growth. I truly believe the best way for the Federal Government to aid in the management of growth is to reform Federal laws which inhibit local communities from using all of their growth management tools and let local communities plan the best education, transportation, housing plan that reflects their unique needs.

Additionally, Senator Levin's bill, S. 1079, the Brownfield Site Redevelopment Assistance Act of 2001, may further the ability of local communities to redevelop brownfield sites and return them to productive use. Grants provided under S. 1079 have the potential to complement the U.S. Environmental Protection Agency brownfields grant program recently enacted in the new brownfields law. However, I am concerned that grants under this program can be used for local planning and the criteria for awarding of those grants are subject to Federal interpretation and therefor open to Federal preferences for growth management.

Further, NAHB supports H.R. 2941, the Brownfields Redevelopment Enhancement Act of 2001. This legislation, sponsored by Representative Gary Miller of California and Representative Carolyn Maloney of New York, removes Federal barriers to brownfields redevelopment funds. The bill would eliminate the current requirement for local communities to leverage Department of Housing and Urban Development (HUD) brownfields grants with Community Development Block Grants (CDBG) funds. This requirement has served to stall brownfields redevelopment because communities are reluctant to tie up these critical funds. H.R. 2941 will provide local communities with greater flexibility without Federal prescriptions.

Another example of "smart growth" is looking at Federal initiatives that target population needs and help revitalize and redevelop communities. In the coming months, Senators Kerry and Santorum plan to introduce a homeownership tax credit that provides tax credits for the development or substantial redevelopment of homes for low to moderate-income buyers in census tracts with median incomes up to eighty percent of the State median. This tax credit illustrates a positive Federal role for the encouragement of smart growth.

Mr. Chairman, thank you for this opportunity to share the views of the National Association of Home Builders on this important issue. I look forward to any questions you of the members of the committee may have.

RESPONSES OF GARY GARCZYNSKI TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. A study in the current issue of Fannie Mae Foundation's Housing Policy Debate found that home buyers aged 45 and older, who prefer denser, more compact housing alternatives, will account for a third of total homeownership growth over the next 10 years. That is double the same segment's market share in the 1990's. Demographics are rewriting the assertion that people prefer single family,

detached lots in the suburbs. How do you propose we meet the preferences of these consumers?

Response. While NAHB survey data has shown that a vast majority of Americans still prefer single-family homes located in the suburbs, there does seem to be an increase in demand for high-density development. In fact, NAHB and U.S. Census data shows an increase over the last decade in the number of housing units, both single- and multi-family, built in city centers. As demand for high-density development increases, NAHB will continue to meet that demand as it has in the past: by working with local, State and Federal partners to provide opportunities and incentives for homeowners. Government must continue to provide efficient, modern infrastructure, effective crime prevention, quality school systems and homebuyer incentives as a means of keeping interest high and costs low.

Two good examples of the effectiveness of this homebuildergovernment partnership are the Building a Million Homes in America's Cities initiative and the recent enactment of the Federal brownfields law. In 1999, NAHB partnered with the Department of Housing and Urban Development (HUD) and the U.S. Conference of Mayors to construct one million homes in the nation's cities and inner-ring suburbs over the next 10 years. This effort will help curb urban sprawl as well as aid in the revitalization of America's cities. Further, NAHB has supported brownfields redevelopment as a means of turning unproductive former industrial land into viable economic opportunities. The new law will remove the threat of liability, provide funding for clean-ups and encourage private investment in the redevelopment of these sites.

The home building industry has been answering home buyers' and renters' demand and preferences for housing for as long as the industry has existed. The home building industry will respond to the location preferences of the next group of homebuyers and renters, just as it has in the past. Challenges will continue to exist wherever the next development is located. Infill development will present a different set of the challenges to the home builder. Home builders and local governments will have to work together to respond to consumer preferences for denser, more compact housing alternatives within the current housing patterns and zoning permissions. In many places, voters and their elected representatives will have to change existing land use rules before the building industry can respond to buyers and renters.

As we move forward from this time and preferences continue to change, home builders will continue to provide a range of safe, decent, affordable housing for all Americans where ever they choose to live.

Question 2. I understand that the National Association of Home Builders supports the Administration's proposal to increase homeownership in targeted neighborhoods by providing developers with tax credits to cover the difference between construction costs and land values in distressed neighborhoods. I would assert that this proposal is no different—and in fact may be more intrusive—than what is being contemplated at today's hearing. Please explain your interpretation of the difference.

Response. NAHB supports the Bush Administration's home buyer tax credit as a means of addressing home ownership in distressed areas and for households that would otherwise be unable to afford a home. NAHB also supports rational, local land planning in order to anticipate future housing and other development needs.

The Bush Administration's "Renewing the Dream" tax credit proposal provides an enhancement for the housing industry by providing the necessary infusion of capital to provide greater homeownership opportunities for minorities. While there are certain income and geographic eligibility requirements, the Federal Government is not mandating that a particular type of housing be built in a particular location. The tax credit is an incentive to builders who willingly comply with the program's requirements. Simply, without this type of program, homes cannot be built in these locations because of the increased cost to developers. Further, the program complements the concept of "smart growth" by providing an incentive to revitalize older neighborhoods. By utilizing an existing model of housing support, the Low-Income Housing Tax Credit, the Administration's proposal limits the need for additional Federal bureaucracy and complex administration.

In contrast to the "Renewing the Dream" tax credit, the Community Character Act rewards States for solving growth problems in the manner the Federal Government would like it solved. While the proposed tax credit provides an incentive to build affordable housing in economically disadvantaged areas, the Community Character Act creates an additional and unnecessary layer of bureaucracy. The Community Character Act does not provide an incentive for States to simply update their planning statutes, but rather makes Federal planning preferences a condition of Federal aid.

STATEMENT OF MARY LOU BENTLEY, EXECUTIVE DIRECTOR, WESTERN NEVADA DEVELOPMENT DISTRICT, ON BEHALF OF THE NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

Thank you, Mr. Chairman and members of the committee, for the opportunity to testify today on behalf of the National Association of Development Organizations (NADO) on the EDA Brownfield Site Redevelopment Assistance Act of 2001.

My name is Mary Lou Bentley and I am the Executive Director of the Western Nevada Development District, which is headquartered in Carson City and serves a seven-county region in Northwest Nevada. Incorporated in 1983, the organization is a designated and funded Economic Development District recognized by the US Economic Development Administration (EDA). As a locally controlled entity, the Western Nevada Development District is governed by a policy board consisting of county and city elected officials, business leaders and citizen representatives.

The National Association of Development Organizations (NADO) provides training, information and representation for regional development organizations serving the 82 million people living in small metropolitan and rural America. Founded in 1967 as a public interest group, NADO and its members are part of the intergovernmental partnership among Federal, State and local governments. Through its research foundation, NADO also provides research, education and training opportunities for community, economic and rural development practitioners and policymakers.

NADO's general members—known variously as councils of government, economic development districts, planning and development districts, regional planning commissions and regional councils—provide valuable professional and technical assistance to over 1,800 counties and 15,000 small cities and towns, many of which have little or no professional staff.

Members of NADO also deliver a myriad of Federal and State programs on a regional basis. Depending on local need, a regional development organization may administer and deliver aging, community and economic development, emergency management, environment, housing, small business development finance, transportation and work force development programs.

Another important function of the 325 regional development organizations who are designated by EDA as Economic Development Districts is to bring local communities together on a regional basis to develop Comprehensive Economic Development Strategies (CEDS). With EDA planning grant assistance, each regional organization formulates programs and strategies to create and retain quality jobs as well as build local institutional capacity in distressed areas.

Mr. Chairman, we strongly support the goals and intent of the EDA brownfields redevelopment legislation for three main reasons.

First, Mr. Chairman, the proposed EDA brownfields redevelopment program would significantly strengthen the current portfolio of Federal brownfields programs. While the Environment Protection Agency has an exceptionally effective and important brownfields program, it is targeted almost exclusively toward helping communities assess and cleanup brownfields. The EDA program would establish a unique and flexible set of tools to help local governments, regional development organizations and nonprofits redevelop and transform former brownfields sites into productive facilities.

As highlighted in two recent reports by the NADO Research Foundation, there have been a number of impediments historically to successful brownfields work in small metropolitan and rural areas. These include a lack of local professional staff expertise and time, limited project implementation funds, liability concerns and property ownership issues. In addition, redevelopment activities are very costly, with a typical project costing over $5 million. [Source: Reclaiming Rural America's Brownfields: Alternatives to Abandoned Property. NADO Research Foundation, April 2001.]

While the recently enacted EPA brownfields legislation aggressively addresses many of these impediments, such as liability concerns and funding for assessment and cleanup, there is still a significant void in funding for redevelopment activities, including planning and technical assistance. The proposed program would not only place a priority on brownfields redevelopment within EDA, but also raise awareness in local communities about the hundreds of thousands of sites scattered around the country.

More importantly, the creation of the EDA program would reinforce the concept that local organizations have options beyond cleaning up sites to preserve green space and curb sprawl. Local communities could now pursue strategies for taking previously productive industrial and commercial facilities and returning them to viable economic centers. This represents the best of both worlds: creating jobs and increasing local revenue, while also raising community pride and environmental

awareness, promoting positive land use, and encouraging reinvestments in older areas. Sites that once marred the landscape could be put back into productive use for the public and private sectors.

In studying existing brownfields efforts, the NADO Research Foundation found a host of good examples and best practices around the Nation. In Vermont, for example, local elected officials and community leaders within the area covered by the Southern Windsor County Regional Planning Commission teamed together to address six brownfields sites, including a former Goodyear plant and machine shop. Today, the adaptive reuse of the site is providing quality jobs and tax revenue to the community.

Located on a narrow strip of land between the Chesapeake Bay and the Atlantic Ocean, the town of Cape Charles and Northhampton County in Virginia also proved that redevelopment is possible, even in highly distressed areas. With assistance from EDA and others, the community now has the nation's first eco-industrial park, which features manufacturing space, conference facilities, restored wetlands, a nature trail, environmental education facility and a tertiary sewage treatment system. It even uses solar panels to cut energy costs.

Second, Mr. Chairman, the proposed EDA brownfields program would help regional development organizations and local governments incorporate redevelopment efforts into their comprehensive economic development strategies.

Acknowledging the presence of brownfields in a particular area is an important first step to considering redevelopment. Many organizations that are currently involved in brownfields work initially failed to recognize they had brownfields, but instead knew they had land that was abandoned and potentially contaminated. In many cases, this awareness coincided with the stark reality that land for development was unavailable. At this point, their sights often turn to vacant, abandoned pieces of land.

Along the shoreline of Lake Michigan, for example, the West Michigan Shoreline Regional Development Commission (RDC) is assisting 120 cities and towns and five counties in economic development activities including redeveloping brownfields sites. The West Michigan Shoreline RDC annually asks local governments to submit projects for its Comprehensive Economic Development Strategy. The suggested projects are then prioritized and sorted into EDA's main project categories.

Within the region, both the city and county of Muskegon are recognized as leaders in taking a proactive role in brownfields redevelopment. The city has established a Brownfields Redevelopment Authority to promote the revitalization of environmentally distressed properties within the city, while the county is transforming former foundries into recreational parks, industrial parks, shopping centers, restaurants and housing. The regional organization plays the key role of coordinator, making sure that the various levels of government are communicating and sharing information.

Currently, EDA provides seed funding for local communities, predominantly through the national network of 325 Economic Development Districts, to prepare comprehensive strategies that:

- promote economic development opportunities;
- foster effective transportation access;
- enhance and protect the environment; and
- balance resources through sound management of development.

While brownfields redevelopment and revitalization is consistent with the overall goal of the planning process, most small metropolitan and rural communities have been either reluctant to tackle the issue or were unaware of potential Federal assistance programs. Another major problem is the decline in the true purchasing power of the EDA planning grant program, making it difficult for most regions to add another element to the process.

While still an incredibly valuable and essential program for regions, the average district planning grant is currently about $54,000, the same average as in 1966. Adjusted for inflation, the value of a 2002 grant is less than $10,800 or 20 cents on the dollar. For districts to continue building on their successful track records, they need a well-deserved funding increase to remain on the cutting edge, informed and well versed in the latest planning issues.

We believe the legislation takes the right approach by providing supplemental planning assistance and calling for more coordination of brownfields redevelopment within the context of the existing strategy development process. It is also noteworthy that legislation specifically requires the Secretary of Commerce to be involved in coordinating efforts with other Federal agencies, State and local officials, Indian tribes and nonprofit organizations.

Brownfields redevelopment activities are complex, costly and time intensive, therefore, coordination is a major key to success. This includes dialog and partnerships among the various Federal agencies, as well as at the local level between local governments, nonprofits, the private sector and the public. It also involves open communications among the various levels of government.

Third, Mr. Chairman, the proposed legislation would allow EDA to continue its successful brownfields redevelopment work without depleting its resources for other equally important initiatives. Since 1997, EDA has invested more than $250 million in more than 250 brownfield redevelopment projects nationwide. However, there is little assurance currently that the agency can sustain this level of investment, especially within the existing appropriations and authorization caps.

By establishing a specific program for brownfields redevelopment, the agency would be given the stability and sustainability required to meet the growing needs. According to the US Conference of Mayors, the redevelopment of brownfields could generate more than 550,000 additional jobs and up to $2.4 billion in new tax revenue for major cities. This number is even greater when you add the hundreds of thousands of brownfield sites in small metropolitan and rural areas. A 1999 survey of regional development organizations found that millions of dollars could be generated annually through local taxes on redeveloped brownfields property.

In addition, the program is needed to help ensure that rural areas have an opportunity to obtain implementation, technical assistance and planning funds for brownfields activities. Within both the current EPA and EDA programs the limited budgets almost force the agencies to select high profile projects in major urban areas. This frustration with the lack of resources for less populated regions was constantly mentioned during the NADO Research Foundation studies.

By separating the program, the agency would also be better positioned to assist distressed communities with their other pressing needs, whether it is recovering from a natural disaster, responding to a plant closing or expanding existing businesses. While many of the nation's urban and suburban areas have enjoyed economic prosperity in recent years, there are still hundreds of small communities struggling to enter or re-enter the economic mainstream. Often times, EDA is the only Federal agency that can help these distressed rural and small metropolitan communities.

Over the past 35 years, Mr. Chairman, EDA has developed a successful track record in partnering with local communities—including regional development organizations—to revitalize, upgrade and expand former commercial sites into industrial facilities that help create quality jobs, expand the local tax base and improve the quality of life in the area. This includes making the necessary investments in infrastructure, as well as providing often overlooked planning and technical assistance.

In conclusion, we strongly believe that the expanded brownfields redevelopment program would be a valuable addition to the EDA toolbox. The legislation would significantly strengthen the current portfolio of Federal brownfields programs. It would help regional development organizations and their partners incorporate brownfields redevelopment efforts into their comprehensive economic development strategies. And, it would allow EDA to continue its brownfields work without depleting resources for its other job creation programs.

Mr. Chairman and members of the committee, thank you for the opportunity to testify today on behalf of NADO and I would welcome any questions.

STATEMENT OF THE NATIONAL ASSOCIATION OF REALTORS(®)

INTRODUCTION

Thank you for the opportunity to submit for the record the National Association of Realtors'(®) comments on S. 975, the Community Character Act; S. 1079, the Brownfield Site Redevelopment Act; and EPA Smart Growth Initiatives.

Land development and growth, and planning for this growth, is an issue facing many of our communities. We believe growth should be encouraged as it is a stimulus to the economy, increases the tax base, provides places to live and work, and offers opportunities that would not otherwise exist. We also realize the responsibility Realtors(®) have to educate and work with local, State, and Federal Government officials in developing responsible growth planning that is equitable and which considers the divergent needs of transportation, housing, agriculture, commercial, industrial, and environmental concerns.

In considering the issue of Smart Growth, the National Association of Realtors(®) identified five principles that we believe must be addressed in any Smart Growth policies:

1. *Provide Housing Opportunity and Choice.*—Despite the housing market's strength in recent years, and the achievement of an all-time-high 68 percent homeownership rate, both the supply of and the demand for affordable housing—in both the rental and sales markets, and in both existing homes and new development—remains a serious issue in communities throughout the Nation. Smart growth policies must foster a wide range of housing choices at all price levels to suit a diverse population. These objectives will have to be met primarily through market-driven approaches.

2. *Build Better Communities.*—Livable communities offer a variety of affordable housing choices in an environment with good schools, low crime, efficient transportation systems, ample recreation and park facilities, open space, a strong employment base, and an economically viable commercial real estate sector.

3. *Protect the Environment.*—Governments at all levels should consider policies and program that aid the control of pollution; provide for programs that encourage preservation of natural resources, significant land and properties of historic significance, and further encourage, through incentives, the protection of aquifers, rivers and streams, agricultural lands, wetlands, scenic vistas, natural areas, and open space. In adopting environmental protection policies, the Federal Government must recognize the importance of local decisionmaking.

4. *Protect Private Property Rights.*—Land use policies at all levels of government must recognize the importance of private property rights. Private property rights are fundamental to our free-market economic system and are protected by the 5th and 14th Amendments to the United States Constitution. The continued strength of our nation's economy depends on the preservation of the right to freely own, use and transfer real property.

5. *Implement Fair and Reasonable Public Sector Fiscal Measures.*—To support adequately the infrastructure needs of communities resulting from growth, governments at all levels should cooperate in the adoption of balanced, fair, equitable and incentive-based approaches to finance and pay for the development, expansion and maintenance of roads, schools, water and sewer facilities. Revenue and financing mechanisms established to pay for necessary infrastructure costs should be shared proportionately by those segments of the population that are served by the improvements.

S. 975, COMMUNITY CHARACTER ACT

The National Association of Realtors supports the Community Character Act, which would provide grants to States for land use planning. NAR supports this bill because the bill:

- Recognizes that land use planning is rightfully a State and local government function;
- Provides needed assistance to States and localities to better plan for inevitable growth;
- Requires that planning performed under this Act must provide for housing opportunity and choice and "provide for a range of affordable housing options;"
- Promotes improved quality of life, sustainable economic development, and protection of the environment

Additionally, we support the following specific elements of S. 975:

- The inclusion of education as an eligible use of the funds (Sec. 4(c)). We believe there is a need for citizens and policymakers to become more educated about infrastructure needs; about how growth policies affect the ability of the private market to provide affordable housing; and about the need for higher density development in appropriate places.
- The provisions for Pilot Projects for Local Governments (Sec. 4(d)), which would increase the capacity of local governments to plan for their futures.
- The use of these funds for improved technology and development of electronic data bases to support land use planning (as suggested in Sec. 5(b)).

We would like to stress that there is no "one-size-fits-all" approach to land use planning or State planning statutes. Professional planners, planning commissioners, elected officials, and citizens should study a wide variety of land use planning approaches before deciding what is best for their State or local community. Land use planning should remain a State and local government function, and neither the Federal Government nor any particular professional organization should impose its version of planning statutes on the States. We support the Community Character Act with the understanding that nothing in the Act would oblige a State to adopt any particular approach to land use planning or regulation.

S. 1079, BROWNFIELD SITE REDEVELOPMENT ASSISTANCE ACT OF 2001

NAR has been committed to brownfields reform for many years, and enactment of such legislation is our top environmental priority in the 107th Congress. We were strong advocates of the Small Business Liability Relief and Brownfields Revitalization Act, which was recently passed by Congress and signed into law by President Bush. By addressing brownfields liability and funding concerns, this new legislation provides the certainty necessary for the real estate industry to move forward and undertake redevelopment of brownfields sites throughout the country. Through a reinvigorated cooperative effort between government and private business interests, EPA's Brownfields Economic Redevelopment Initiative will successfully promote brownfields redevelopment for years to come.

In that same spirit, NAR supports S. 1079, the Brownfield Site Redevelopment Assistance Act. In accordance with its mission, the Economic Development Administration (EDA) works in partnership with State and local governments to help economically distressed communities attract private capital investment and create employment opportunities. EDA's support of brownfields redevelopment is an important complement to EPA's program. By providing grants to redevelop brownfields sites and put them to new and productive uses, S. 1079 will provide a cleaner and safer environment, increase the tax base and create jobs.

EPA SMART GROWTH INITIATIVES

We are pleased to be a partner with the U.S. Environmental Protection Agency in the Smart Growth Network. We support the two Smart Growth initiatives recently announced by the EPA Administrator, Governor Whitman: an EPA National Award for Smart Growth Achievement to recognize and publicize exemplary development; and a program to help local planners better integrate brownfields redevelopment and open space preservation through grants and technical assistance.

Thank you for the opportunity to express our views.

II

107TH CONGRESS
1ST SESSION

S. 975

To improve environmental policy by providing assistance for State and tribal land use planning, to promote improved quality of life, regionalism, and sustainable economic development, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2001

Mr. CHAFEE (for himself, Mr. BENNETT, Mr. JEFFORDS, Mr. LEVIN, Mr. SPECTER, Mr. BINGAMAN, Mr. CLELAND, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To improve environmental policy by providing assistance for State and tribal land use planning, to promote improved quality of life, regionalism, and sustainable economic development, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Community Character Act of 2001".

SEC. 2. FINDINGS.

Congress finds that—

(1) inadequate land use planning at the State and tribal levels contributes to—

(A) increased public and private capital costs for public works infrastructure development;

(B) environmental degradation;

(C) weakened regional economic development; and

(D) loss of community character;

(2) land use planning is rightfully within the jurisdiction of State, tribal, and local governments;

(3) comprehensive land use planning and community development should be supported by Federal, State, and tribal governments;

(4) States and tribal governments should provide a proper climate and context through legislation in order for comprehensive land use planning, community development, and environmental protection to occur;

(5)(A) many States and tribal governments have outmoded land use planning legislation; and

(B) many States and tribal governments are undertaking efforts to update and reform land use planning legislation;

(6) the Federal Government and States should support the efforts of tribal governments to develop and implement land use plans to improve environmental protection, housing opportunities, and socioeconomic conditions for Indian tribes; and

(7) the coordination of use of State and tribal resources with local land use plans requires additional planning at the State and tribal levels.

SEC. 3. DEFINITIONS.

In this Act:

(1) LAND USE PLAN.—The term ''land use plan'' means a plan for development of an area that recognizes the physical, environmental, economic, social, political, aesthetic, and related factors of the area.

(2) LAND USE PLANNING LEGISLATION.—The term ''land use planning legislation'' means a statute, regulation, executive order, or other action taken by a State or tribal government to guide, regulate, or assist in the planning, regulation, and management of—

(A) environmental resources;

(B) public works infrastructure;

(C) regional economic development;

(D) current and future development practices; and

(E) other activities related to the pattern and scope of future land use.

(3) SECRETARY.—The term "Secretary" means the Secretary of Commerce, acting through the Assistant Secretary of Commerce for Economic Development.

(4) STATE.—The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(5) TRIBAL GOVERNMENT.—The term "tribal government" means the tribal government of an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)).

SEC. 4. GRANTS TO STATES AND TRIBAL GOVERNMENTS TO UPDATE LAND USE PLANNING LEGISLATION.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a program to award grants to States and tribal governments eligible for funding under subsection (b) to

promote comprehensive land use planning at the State, tribal, and local levels.

(2) GRANT APPLICATIONS.—

(A) SUBMISSION.—A State or tribal government may submit to the Secretary, in such form as the Secretary may require, an application for a grant under this section to be used for 1 or more of the types of projects authorized by subsection (c).

(B) APPROVAL.—The Secretary shall—

(i) not less often than annually, complete a review of the applications for grants that are received under this section; and

(ii) award grants to States and tribal governments that the Secretary determines rank the highest using the ranking criteria specified in paragraph (3).

(3) RANKING CRITERIA.—In evaluating applications for grants from eligible States and tribal governments under this section, the Secretary shall consider the following criteria:

(A) As a fundamental priority, the extent to which a State or tribal government has in ef-

1 feet inadequate or outmoded land use planning
2 legislation.
3 (B) The extent to which a grant will facili-
4 tate development or revision of land use plans
5 consistent with updated land use planning legis-
6 lation.
7 (C) The extent to which development or re-
8 vision of land use plans will facilitate multistate
9 land use planning.
10 (D) The extent to which the area under
11 the jurisdiction of a State or tribal government
12 is experiencing significant growth.
13 (E) The extent to which the project to be
14 funded using a grant will protect the environ-
15 ment and promote economic development.
16 (F) The extent to which a State or tribal
17 government has committed financial resources
18 to comprehensive land use planning.
19 (b) ELIGIBILITY.—A State or tribal government shall
20 be eligible to receive a grant under subsection (a) if the
21 State or tribal government demonstrates that the project,
22 or the goal of the project, to be funded by the grant pro-
23 motes land use planning activities that—
24 (1) are comprehensive in nature and, to the
25 maximum extent practicable—

(A) promote environmental protection (including air and water quality);

(B) take into consideration—

(i) public works infrastructure in existence at the time at which the grant is to be made; and

(ii) future infrastructure needs, such as needs identified in—

(I) the needs assessments required under sections 516(2) and 518(b) of the Federal Water Pollution Control Act (33 U.S.C. 1375(2), 1377(b)) and subsections (h) and (i)(4) of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); and

(II) the State long-range transportation plan developed under section 135(e) of title 23, United States Code;

(C) promote sustainable economic development (including regional economic development) and social equity;

(D) enhance community character;

(E) conserve historic, scenic, natural, and cultural resources; and

(F) provide for a range of affordable housing options;

(2) promote land use plans that contain an implementation element that—

(A) includes a timetable for action and a definition of the respective roles and responsibilities of agencies, local governments, and other stakeholders;

(B) is consistent with the capital budget objectives of the State or tribal government; and

(C) provides a framework for decisions relating to the siting of infrastructure development, including development of utilities and utility distribution systems;

(3) result in multijurisdictional governmental cooperation, to the maximum extent practicable, particularly in the case of land use plans based on watershed boundaries;

(4) encourage the participation of the public in the development, adoption, and updating of land use plans;

(5) provide for the periodic updating of land use plans; and

(6) include approaches to land use planning that are consistent with established professional land use planning standards.

(c) USE OF GRANT FUNDS.—Grant funds received by a State or tribal government under subsection (a) may be used for a project—

(1) to carry out, or obtain technical assistance with which to carry out—

(A) development or revision of land use planning legislation;

(B) research and development relating to land use plans, and other activities relating to the development of State, tribal, or local land use plans, that result in long-term policy guidelines for growth and development;

(C) workshops, education of and consultation with policymakers, and participation of the public in the land use planning process; and

(D) integration of State, regional, tribal, or local land use plans with Federal land use plans;

(2) to provide funding to units of general purpose local government to carry out land use planning

activities consistent with land use planning legislation; or

(3) to acquire equipment or information technology to facilitate State, tribal, or local land use planning.

(d) PILOT PROJECTS FOR LOCAL GOVERNMENTS.—A State may include in its application for a grant under this section a request for additional grant funds with which to assist units of general purpose local government in carrying out pilot projects to carry out land use planning activities consistent with land use planning legislation.

(e) AMOUNT OF GRANTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amount of a grant to a State or tribal government under subsection (a) shall not exceed $1,000,000.

(2) ADDITIONAL AMOUNT.—The Secretary may award a State up to an additional $100,000 to fund pilot projects under subsection (d).

(f) COST SHARING.—

(1) IN GENERAL.—The Federal share of the cost of a project funded with a grant under subsection (a) shall not exceed 90 percent.

(2) GRANTS TO TRIBAL GOVERNMENTS.—The Secretary may increase the Federal share in the case of a grant to a tribal government if the Secretary determines that the tribal government does not have sufficient funds to pay the non-Federal share of the cost of the project.

(g) AUDITS.—

(1) IN GENERAL.—The Inspector General of the Department of Commerce may conduct an audit of a portion of the grants awarded under this section to ensure that the grant funds are used for the purposes specified in this section.

(2) USE OF AUDIT RESULTS.—The results of an audit conducted under paragraph (1) and any recommendations made in connection with the audit shall be taken into consideration in awarding any future grant under this section to a State or tribal government.

(3) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this Act, the Inspector General of the Department of Commerce shall submit to Congress a report that provides a description of the management of the program established under this section (including a description of

the allocation of grant funds awarded under this section).

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2002 through 2006.

(2) AVAILABILITY FOR TRIBAL GOVERNMENTS.—Of the amount made available under paragraph (1) for a fiscal year, not less than 5 percent shall be available to make grants to tribal governments to the extent that there are sufficient tribal governments that are eligible for funding under subsection (b) and that submit applications.

SEC. 5. ECONOMIC DEVELOPMENT ADMINISTRATION TECHNICAL ASSISTANCE.

(a) IN GENERAL.—The Secretary may develop voluntary educational and informational programs for the use of State, tribal, and local land use planning and zoning officials.

(b) TYPES OF PROGRAMS.—Programs developed under subsection (a) may include—

(1) exchange of technical land use planning information;

(2) electronic databases containing data relevant to land use planning;

(3) other technical land use planning assistance to facilitate access to, and use of, techniques and principles of land use planning; and

(4) such other types of programs as the Secretary determines to be appropriate.

(c) CONSULTATION AND COOPERATION.—The Secretary shall carry out subsection (a) in consultation and cooperation with—

(1) the Administrator of the Environmental Protection Agency;

(2) the Secretary of Transportation;

(3) the Secretary of Agriculture;

(4) the heads of other Federal agencies;

(5) State, tribal, and local governments; and

(6) nonprofit organizations that promote land use planning at the State, tribal, and local levels.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2002 through 2006.

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II

107TH CONGRESS
1ST SESSION

S. 1079

To amend the Public Works and Economic Development Act of 1965 to provide assistance to communities for the redevelopment of brownfield sites.

IN THE SENATE OF THE UNITED STATES

JUNE 21, 2001

Mr. LEVIN (for himself, Mr. JEFFORDS, Mr. BAUCUS, Mr. KENNEDY, Ms. STABENOW, Mr. REID, Mr. SCHUMER, Mr. LEAHY, Mr. CORZINE, Mr. SARBANES, and Mr. DAYTON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend the Public Works and Economic Development Act of 1965 to provide assistance to communities for the redevelopment of brownfield sites.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Brownfield Site Redevelopment Assistance Act of 2001".

SEC. 2. PURPOSES.

Consistent with section 2 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121), the purposes of this Act are—

(1) to provide targeted assistance, including planning assistance, for projects that promote the redevelopment, restoration, and economic recovery of brownfield sites; and

(2) through such assistance, to further the goals of restoring the employment and tax bases of, and bringing new income and private investment to, distressed communities that have not participated fully in the economic growth of the United States because of a lack of an adequate private sector tax base to support essential public services and facilities.

SEC. 3. DEFINITIONS.

Section 3 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3122) is amended—

(1) by redesignating paragraphs (1) through (10) as paragraphs (2) through (11), respectively;

(2) by inserting before paragraph (2) (as so redesignated) the following:

"(1) BROWNFIELD SITE.—

"(A) IN GENERAL.—The term 'brownfield site' means real property, the expansion, rede-

velopment, or reuse of which may be complicated by the presence or potential presence of—

"(i) a hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)); or

"(ii) any other pollutant or contaminant, as determined by the Secretary, in consultation with the Administrator of the Environmental Protection Agency.

"(B) EXCLUSIONS.—Except as provided in subparagraph (C), the term 'brownfield site' does not include—

"(i) a facility that is the subject of a planned or ongoing removal action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(ii) a facility that is listed on the National Priorities List, or is proposed for listing on that list, under that Act;

"(iii) a facility that is the subject of a unilateral administrative order, a court

order, an administrative order on consent, or a judicial consent decree that has been issued to or entered into by the parties under that Act;

"(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent, or a judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State, under—

"(I) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(II) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(III) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

"(IV) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

"(v) a facility—

"(I) that is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal

Act (42 U.S.C. 6924(u), 6928(h)); and

"(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

"(vi) a land disposal unit with respect to which—

"(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

"(II) closure requirements have been specified in a closure plan or permit;

"(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

"(viii) a portion of a facility—

"(I) at which there has been a release of polychlorinated biphenyls; and

"(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

"(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986.

"(C) SITE-BY-SITE INCLUSIONS.—The term 'brownfield site' includes a site referred to in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B), if, on a site-by-site basis, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, determines that use of the financial assistance at the site will—

"(i) protect human health and the environment; and

"(ii)(I) promote economic development; or

"(II) enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

"(D) ADDITIONAL INCLUSIONS.—The term 'brownfield site' includes a site that meets the definition of 'brownfield site' under subparagraphs (A) through (C) that—

"(i) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(ii)(I) is contaminated by petroleum or a petroleum product excluded from the definition of 'hazardous substance' under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601); and

"(II) is a site determined by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to be—

"(aa) of relatively low risk, as compared with other petroleum-only

sites in the State in which the site is located; and

"(bb) a site for which there is no viable responsible party and that will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

"(III) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

"(iii) is mine-scarred land."; and

(3) by adding at the end the following:

"(12) UNUSED LAND.—The term 'unused land' means any publicly-owned or privately-owned unused, underused, or abandoned land that is not contributing to the quality of life or economic well-being of the community in which the land is located.".

SEC. 4. COORDINATION.

Section 103 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3132) is amended—

(1) by inserting "(a) COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES.—" before "The Secretary"; and

(2) by adding at the end the following:

"(b) BROWNFIELD SITE REDEVELOPMENT.—The Secretary shall coordinate activities relating to the redevelopment of brownfield sites under this Act with other Federal agencies, States, local governments, consortia of local governments, Indian tribes, nonprofit organizations, and public-private partnerships.".

SEC. 5. GRANTS FOR BROWNFIELD SITE REDEVELOPMENT.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) is amended—

(1) by redesignating sections 210 through 213 as sections 211 through 214, respectively; and

(2) by inserting after section 209 the following:

"SEC. 210. GRANTS FOR BROWNFIELD SITE REDEVELOPMENT.

"(a) IN GENERAL.—On the application of an eligible recipient, the Secretary may make grants for projects to alleviate or prevent conditions of excessive unemployment, underemployment, blight, and infrastructure deterioration associated with brownfield sites, including projects consisting of—

"(1) development of public facilities;

"(2) development of public services;

"(3) business development (including funding of a revolving loan fund);

"(4) planning;

"(5) technical assistance; and

"(6) training.

"(b) CRITERIA FOR GRANTS.—The Secretary may provide a grant for a project under this section only if—

"(1) the Secretary determines that the project will assist the area where the project is or will be located to meet, directly or indirectly, a special need arising from—

"(A) a high level of unemployment or underemployment, or a high proportion of low-income households;

"(B) the existence of blight and infrastructure deterioration;

"(C) dislocations resulting from commercial or industrial restructuring;

"(D) outmigration and population loss, as indicated by—

"(i)(I) depletion of human capital (including young, skilled, or educated populations);

"(II) depletion of financial capital (including firms and investment); or

"(III) a shrinking tax base; and

"(ii) resulting—

"(I) fiscal pressure;

"(II) restricted access to markets; and

"(III) constrained local development potential; or

"(E) the closure or realignment of—

"(i) a military or Department of Energy installation; or

"(ii) any other Federal facility; and

"(2) except in the case of a project consisting of planning or technical assistance—

"(A) the Secretary has approved a comprehensive economic development strategy for the area where the project is or will be located; and

"(B) the project is consistent with the comprehensive economic development strategy.

"(c) PARTICULAR COMMUNITY ASSISTANCE.—Assistance under this section may include assistance provided for activities identified by a community, the economy of which is injured by the existence of 1 or more brownfield sites, to assist the community in—

"(1) revitalizing affected areas by—

"(A) diversifying the economy of the community; or

"(B) carrying out industrial or commercial (including mixed use) redevelopment projects on brownfield sites or sites adjacent to brownfield sites;

"(2) carrying out development that conserves environmental and agricultural resources by—

"(A) reusing existing facilities and infrastructure;

"(B) reclaiming unused land and abandoned buildings; or

"(C) creating publicly owned parks, playgrounds, recreational facilities, or cultural centers that contribute to the economic revitalization of a community; or

"(3) carrying out a collaborative economic development planning process, developed with broad-based and diverse community participation, that addresses the economic repercussions and opportunities posed by the existence of brownfield sites in an area.

"(d) DIRECT EXPENDITURE OR REDISTRIBUTION BY ELIGIBLE RECIPIENT.—

"(1) IN GENERAL.—Subject to paragraph (2), an eligible recipient of a grant under this section may directly expend the grant funds or may redistribute the funds to public and private entities in the

form of a grant, loan, loan guarantee, payment to reduce interest on a loan guarantee, or other appropriate assistance.

"(2) LIMITATION.—Under paragraph (1), an eligible recipient may not provide any grant to a private for-profit entity.".

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. prec. 3121) is amended by striking the items relating to sections 210 through 213 and inserting the following:

"Sec. 210. Grants for brownfield site redevelopment.
"Sec. 211. Changed project circumstances.
"Sec. 212. Use of funds in projects constructed under projected cost.
"Sec. 213. Reports by recipients.
"Sec. 214. Prohibition on use of funds for attorney's and consultant's fees.".

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Title VII of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3231 et seq.) is amended by adding at the end the following:

"SEC. 704. AUTHORIZATION OF APPROPRIATIONS FOR BROWNFIELD SITE REDEVELOPMENT.

"(a) IN GENERAL.—In addition to amounts made available under section 701, there is authorized to be appropriated to carry out section 210 $60,000,000 for each of fiscal years 2002 through 2006, to remain available until expended.

"(b) FEDERAL SHARE.—Notwithstanding section 204, subject to section 205, the Federal share of the cost of activities funded with amounts made available under subsection (a) shall be not more than 75 percent.".

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. prec. 3121) is amended by adding at the end of the items relating to title VII the following:

"Sec. 704. Authorization of appropriations for brownfield site redevelopment.".

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