



American Planning Association  
*Making Great Communities Happen*

PLANNING

FOR

SMART

GROWTH

2002 STATE OF THE STATES



PLANNING  
FOR  
SMART  
GROWTH  
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  
*Making Great Communities Happen*



February 2002

# APA, AICP, GROWING SMART<sup>SM</sup>

---



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 development 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<sup>SM</sup>, 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<sup>SM</sup> 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](mailto:govtaffairs@planning.org) or the Growing Smart<sup>SM</sup> program at tel. 312-431-9100 or by email to [growingSMART@planning.org](mailto:growingSMART@planning.org).

Funding assistance for printing this report was provided by the Smart Growth Network, which was formed in 1996 to encourage development that serves the economy, community and environment.



# APA, AICP LEADERSHIP

---

## **AMERICAN PLANNING ASSOCIATION BOARD OF DIRECTORS**

Bruce W. McClendon, FAICP, *President*  
Joanne E. Garnett, AICP, *Immediate Past President*  
Sam Casella, FAICP, *AICP President*  
Ralph R. Willmer, AICP, *Region I*  
R. Michael Chandler, *Region II*  
Robert B. Hunter, FAICP, *Region III*  
Bruce Knight, AICP, *Region IV*  
Sarah S. More, AICP, *Region V*  
Vivian Kahn, FAICP, *Region VI*  
Mary Kay Peck, AICP, *Director-at-large*  
David M. Siegel, AICP, *Director-at-large*  
Mitchell J. Silver, AICP, *Director-at-large*  
Carol L. Swayne, *Director-at-large*

## **AMERICAN PLANNING ASSOCIATION LEGISLATION AND POLICY COMMITTEE**

Vivian Kahn, FAICP, *Chair*  
Mitzi Barker, AICP  
R. Michael Chandler  
Adrian Freund, AICP  
Harrison T. Higgins, AICP  
Bruce Knight, AICP  
Chris McGetrick, AICP  
Sarah S. More, AICP  
Ramona Mullahey  
Steve A. Preston, FAICP  
David Siegel, AICP  
Steve Tocknell, AICP  
Brad Torgan, AICP  
Ralph Willmer, AICP

## **AMERICAN INSTITUTE OF CERTIFIED PLANNERS COMMISSION**

Sam Casella, FAICP, *AICP President*  
Norman Krumholz, AICP, *Immediate Past President*  
Robert P. Mitchell, AICP, *Region I*  
Sue Schwartz, AICP, *Region II*  
V. Gail Easley, FAICP, *Region III*  
Laurence C. Gerckens, FAICP, *Region IV*  
Sue E. Pratt, AICP, *Region V*  
Michael A. Harper, AICP, *Region VI*

## **AMERICAN PLANNING ASSOCIATION STAFF**

W. Paul Farmer, AICP, *Executive Director*  
Charlotte McCaskill, *Chief Operating Officer*  
Jeffrey L. Soule, FAICP, *Policy and Public Affairs Director*  
Peter Hawley, *Outreach Coordinator*  
Jason Jordan, *Government Affairs Coordinator*  
Denny Johnson, *Public Affairs Coordinator*

### **National Headquarters:**

1776 Massachusetts Ave. N.W., Suite 400  
Washington, DC 20036-1914  
Tel. 202/872-0611, Fax 202/872-0643

### **Chicago Office:**

122 S. Michigan Ave., Suite 1600  
Chicago, IL 60603-6107  
Tel. 312/431-9100, Fax 312/431-9985

# CREDITS, ACKNOWLEDGEMENTS

---

**Denny Johnson**, the general editor and a co-author of the report, is the APA Public Affairs Coordinator.

**Patricia E. Salkin**, Esq., a co-author of the report, is associate dean and director of the Government Law Center of Albany Law School in Albany, N.Y. Assisting her in preparing Section II of the report were students Adam Bear, Michael Kenneally, Amy Maggs and Sally Seitz.

**Jason Jordan**, a co-author of the report, is the APA Government Affairs Coordinator.

**Karen Finucan**, a co-author of Section II, is a free-lance author and former APA Public Information Coordinator.

In addition, preparation of this report would not have been possible without the insights and support of many other people. In particular, we would like to thank Bill Klein, APA Director of Research; Stuart Meck, FAICP, principal investigator for APA's *Growing Smart<sup>SM</sup>* program; Rodney Cobb, a former APA editor, staff attorney and member of the *Growing Smart<sup>SM</sup>* program; Devin Cahill, APA Government Affairs Associate; David Carrier, APA Program Associate for Outreach; Kim McKeggie, APA Public Affairs Associate; Marcella Bowie, APA Administrative staff member; and Adolfo Loeri, APA Administrative staff member.

We also would like to thank the APA Chapter Presidents and Legislative Liaisons for their valuable comments and insights.

APA wishes to thank the sponsors of the Growing Smart<sup>SM</sup> program for their ongoing funding and support. Sponsors of the program include the Henry M. Jackson Foundation, Seattle, Wash.; U.S. Department of Housing and Urban Development (lead federal agency); the Federal Highway Administration and Federal Transit Administration, U.S. Department of Transportation; the U.S. Environmental Protection Agency; the Federal Emergency Management Agency; the Rural Economic and Community Development Administration, U.S. Department of Agriculture; the Annie E Casey Foundation, Baltimore, Md.; the Siemens Corporation; and the members of APA. The substance and findings of this work are dedicated to the public.

*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<sup>SM</sup> program sponsor..*

Report cover and graphic design: James Pittman

Photograph on bottom of front cover, right-hand side by David B. Nance. Used by permission.

# TABLE OF CONTENTS

---

EXECUTIVE SUMMARY <i>by Jason Jordan and Denny Johnson</i> . . . . .	6
--	---

## I INTRODUCTION

<i>by Denny Johnson, Jason Jordan and Patricia Salkin</i> . . . . .	13
---	----

## II STATE LEGISLATIVE SUMMARIES

<i>by Denny Johnson, Patricia Salkin, Jason Jordan and Karen Finucan</i> . . . .	31
--	----

## III ADDITIONAL RESOURCES

. . . . .	139
-----------	-----

# EXECUTIVE SUMMARY

---

**T**he 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.



# EXECUTIVE SUMMARY

- *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<sup>SM</sup> project set out to help states and communities through the planning reform process.

The *Growing Smart<sup>SM</sup> Legislative Guidebook: Model Statutes for Planning and the Management of Change 2002 Edition* and accompanying *Growing Smart<sup>SM</sup> 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 approaches to planning reforms are as varied as the states themselves.

# EXECUTIVE SUMMARY

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 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<sup>SM</sup> 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.



# I INTRODUCTION

---

*by*

*Denny Johnson  
Jason Jordan  
Patricia Salkin*

**D**espite 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:

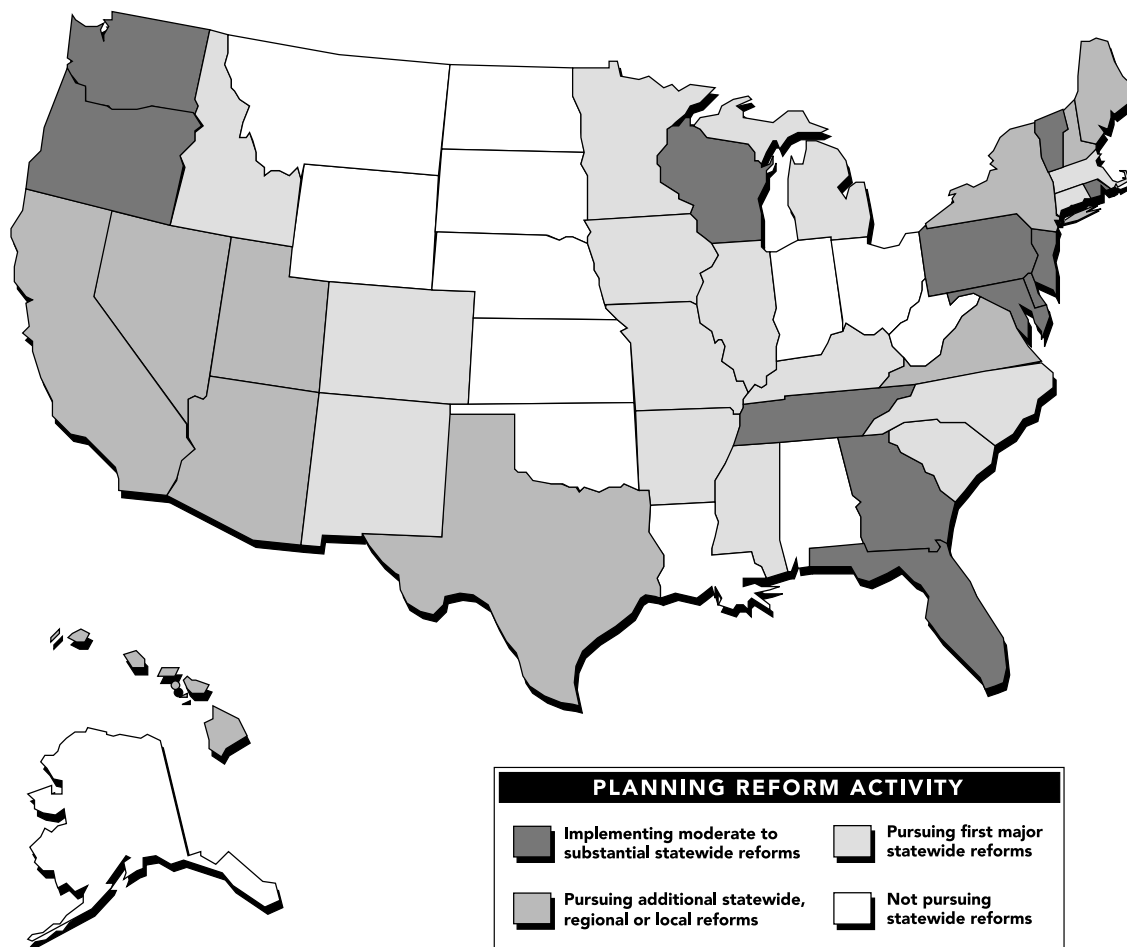
## Indicators of Activity

- 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.<sup>1</sup>
- 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

## 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.
- *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

- 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.

**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.
- *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.

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.”<sup>2</sup>
- 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.<sup>3</sup>
- 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.”<sup>4</sup>
- 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**

<b>Alabama</b>	Executive order creating the Alabama Commission on Environmental Initiatives; report Jan 2001
<b>Colorado</b>	Governor’s Commission on Saving Open Spaces, Farms and Ranches; 11 proposals Dec 2000
<b>Florida</b>	Executive Order No. 2000-196, creating the Growth Management Study Commission; report Feb 2001
<b>Illinois</b>	Executive Order No. 2000-8, creating Balanced Growth Cabinet; Legislature creates Illinois Growth Task Force; series of Task Force reports completed in 2000
<b>New York</b>	Executive Order 102, creating Quality Communities Interagency Task Force; report Jan 2001
<b>North Carolina</b>	General Assembly creates Commission to Address Smart Growth Management and Development Issues; report Nov 2001
<b>Rhode Island</b>	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<sup>SM</sup> 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](http://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](mailto: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/](http://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 home-builders 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.<sup>5</sup>

- 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.<sup>6</sup>

#### **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<sup>SM</sup> 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<sup>SM</sup> 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<sup>SM</sup> 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."<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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."<sup>10</sup>

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.<sup>11</sup>

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.

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.<sup>12</sup>
- 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,”<sup>13</sup> 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

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.



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.<sup>14</sup>

- 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.<sup>15</sup>
- 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> "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."<sup>19</sup>

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**

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

of rural governments, are currently engaged in comprehensive planning.<sup>20</sup>

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<sup>21</sup> 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.<sup>22</sup>

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<sup>SM</sup> 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.<sup>23</sup> 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.<sup>24</sup>

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.”<sup>25</sup>

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.<sup>26</sup>

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.”<sup>27</sup> 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).

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.<sup>28</sup> 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

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

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

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

\* 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<sup>SM</sup> 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](http://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](http://www.envisionutah.org).
- 14 Siemen, Larsen & Purdy; Rogers, Golden & Halpern, Inc.; and Hammer, Sile, 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](http://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*

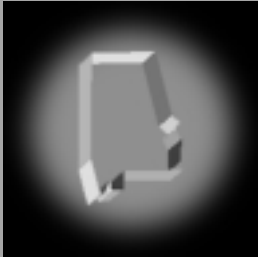
*Denny Johnson*

*Patricia Salkin*

*Jason Jordan*

*Karen Finucan*





**E**fforts in Alabama to reform significantly outdated state comprehensive planning laws, which date back to the 1920s,<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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."

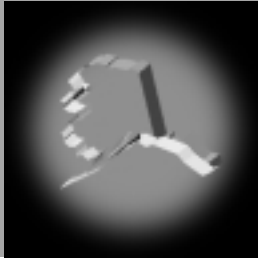
Nonetheless, signs that communities in the state face a range of urban sprawl and related issues continue to mount. For instance, a report in August from the U.S. Census Bureau<sup>4</sup> placed Alabama first in the nation in terms of the percentage of people who drive to work by themselves. The bureau 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/birmingham/Dec2000/7-e429051b.htm>

4 Johnson, Bob. "Ala. Leads Nation in Solo Commuters." Associated Press Online, Aug. 6, 2001.



**F**ew 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.<sup>1</sup> However, no significant amendments were made at that time to the comprehensive planning section of that statute.<sup>2</sup>

State law<sup>3</sup> 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 plan-

ning 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.<sup>4</sup>

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.”<sup>5</sup> 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/737132p-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 communica-

tions campaign.<sup>6</sup> 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.

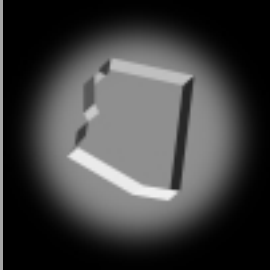
Similar efforts have emerged on the Kenai Peninsula. In Soldotna, citizens, businesses and natural resource interests worked together to decide how to use a state highway improvement project announced in 1994 to improve their community identity and protect nearby valuable natural features connected with 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.<sup>7</sup>

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.<sup>8</sup>

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.



**F**ew 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.<sup>1</sup>

Substantive statewide planning reform began in 1998 when the state legislature passed a statute authorizing municipalities to establish procedures for transfer of development rights<sup>2</sup> 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<sup>SM</sup> *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.<sup>3</sup> 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.<sup>4</sup> Among other things, this constitutional amendment would have required most cities and counties to adopt 10-year urban growth boundaries.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> Lawmakers did not approve the request, however.

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.

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.

3 "Smart Growth by State." Smart Growth Network, November 2000;

See: [http://www.smartgrowth.org/information/news\\_trends11-00.html](http://www.smartgrowth.org/information/news_trends11-00.html).

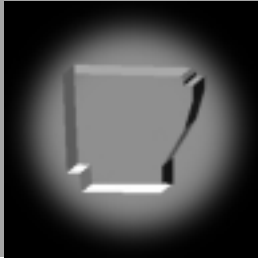
4 Id.

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>.



**M**any 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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> The other new law<sup>5</sup> 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.<sup>6</sup> 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,<sup>7</sup> 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,<sup>8</sup> 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/ftp/acts/2001/htm/act1198.pdf>.

5 Act 754 (H.B. 2025) signed March 13, 2001. See: <http://www.arkleg.state.ar.us/ftp/acts/2001/htm/act754.pdf>.

6 Act 1197 (H.B. 2415) signed March 27, 2001. See: <http://www.arkleg.state.ar.us/ftp/acts/2001/htm/act1197.pdf>.

7 S.B. 338, See: <http://www.arkleg.state.ar.us/ftp/bills/2001/htm/SB338.pdf>.

8 H.B. 2305, See: <http://www.arkleg.state.ar.us/ftp/bills/2001/htm/HB2305.pdf>; and H.B. 2343, See: <http://www.arkleg.state.ar.us/ftp/bills/2001/htm/HB2343.pdf>.



**L**ong 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,”<sup>1</sup> which required that land-use decisions be consistent with comprehensive plans.<sup>2</sup> 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.<sup>3</sup>

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.”<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

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.calfuture.org/resource/LUL/LUL\\_Mar01.html](http://www.calfuture.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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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;<sup>11</sup> funding a study that monitors and evaluates the fair share of housing starts, a requirement of a local plan's housing element;<sup>12</sup> 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;<sup>13</sup> and funding regional planning and general plan updates.<sup>14</sup>

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 includ-

ed 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.<sup>15</sup>

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 sug-

gested in APA's Growing Smart<sup>SM</sup> *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.

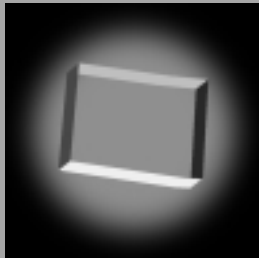
Previously, Gov. Davis established The Governor's Commission on Building for the 21st Century.<sup>16</sup> The commission issued two reports evaluating infrastructure deficits in the state and recommending solutions. As a result of the commission's work, the governor and state legislature have agreed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

15 See: [http://www.dot.ca.gov/dist07/route5/is5\\_mip.htm](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>.



**P**erhaps 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.<sup>1</sup>

Despite being at the top of the state's political agenda, planning reform and managed growth have generated more debate than legislation. Coloradans 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.<sup>2</sup>

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;<sup>3</sup> set forth procedures for municipalities to resolve conflicts;<sup>4</sup> alter the process for certain "flagpole" annexations;<sup>5</sup> and require certain counties and cities to adopt master plans.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup> The blue ribbon commission, established by the governor in May 2000, developed 11 proposals that were released in December 2000.<sup>9</sup>

One bill would have provided for a comprehensive growth plan,<sup>10</sup> 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.<sup>11</sup> Other bills not adopted last year included requirements that some counties and cities develop public works plans;<sup>12</sup> creation of a Denver regional planning agreement;<sup>13</sup> and authorization of grants to help local governments implement master plans.<sup>14</sup>

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;<sup>15</sup> a grant program that would have helped local governments develop master plans;<sup>16</sup> and formation of land-use courts that purported to provide efficiencies in the resolution of land use disputes.<sup>17</sup>

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,<sup>18</sup> 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](http://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-014 (2001).

17 S.B. 01S-014 (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 clean-up 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 coop-

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

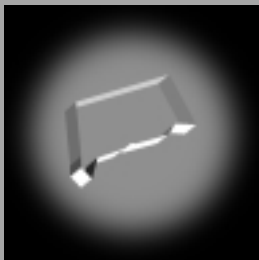
eration. The initiative<sup>19</sup> prompted much debate and led critics to spend several million dollars to campaign against the proposal,<sup>20</sup> which was defeated by a 40 percent margin (30 percent for, 70 percent against) during the November 2000 election.

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.<sup>21</sup>

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.



**M**odest 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,<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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."<sup>5</sup> 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"<sup>6</sup> and to establish a smart growth policy for economic development.<sup>7</sup>

A similar smart growth economic development act in 2000 also failed.<sup>8</sup>

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.<sup>9</sup>

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."<sup>10</sup>

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,<sup>11</sup> 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

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.

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."<sup>12</sup> 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.<sup>13</sup>

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

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.<sup>15</sup>

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<sup>16</sup> 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.<sup>17</sup> Such designation requires development of detailed management plans to protect each preserve's unique species and communities.

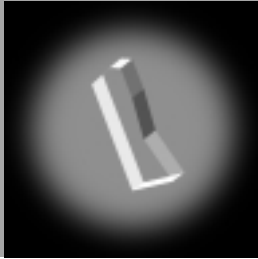
The general assembly also approved in 2001 legislation<sup>18</sup> requiring all municipalities to consider cluster development in their plans of conservation and development. Previously this requirement applied only to towns where more than 20 percent of the land was identified as undeveloped. Cluster 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-06716-PA.htm>.



**L**ead ing 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.<sup>1</sup>

Additional improvements were made last year with enactment of the governor’s “Livable Delaware” initiative, including legislation<sup>2</sup> 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<sup>3</sup> 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”<sup>4</sup> 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<sup>5</sup> 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*.<sup>6</sup>

And with creation of the Realty Transfer Tax for Conservation Trust Fund,<sup>7</sup> 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<sup>8</sup> 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](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<sup>9</sup> 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<sup>10</sup> 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."<sup>11</sup> The program reached the public and private sectors in an effort to develop a 25-year statewide vision.<sup>12</sup> Several major consequences of failing to coordi-

nate 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.<sup>13</sup> One important aspect of the program was public involvement.<sup>14</sup>

The following year the report, *Shaping Delaware's Future*, was released.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> That same month, the Shaping Delaware's Future Act was introduced and signed into law three months later.<sup>18</sup> The act requires, among other things, that the counties submit comprehensive land-use plans to the Office of State Planning Coordination.<sup>19</sup>

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.

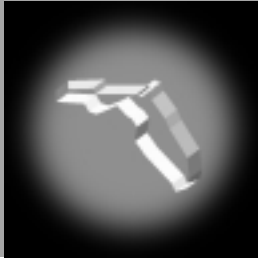
15 *Shaping Delaware's Future*, newsletter of the Delaware Cabinet Committee on State Planning Issues, April 1995.

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.*



**W**hen the Sunshine State overhauled its comprehensive planning and land-use statutes in 1985,<sup>1</sup> 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,<sup>2</sup> 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 comprehen-

sive 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.<sup>3</sup> 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.<sup>4</sup> Traffic congestion, urban sprawl, loss of wildlife habitat and limited water supplies were the most serious growth management problems noted.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

The following July Gov. Jeb Bush signed an executive order creating a state-level Growth Management Study Commission.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

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 be 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.

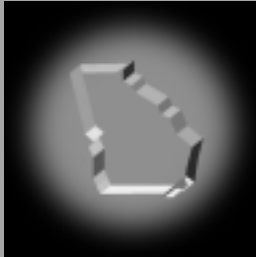
8 Exec. Order No. 2000-196, signed July 3, 2000.

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>.



**A**dozen years after substantially overhauling its state comprehensive planning laws<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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."<sup>8</sup>

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."<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup>

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](http://www.gagovernor.org/water_district.html).

14 See: [http://www.gagovernor.org/water\\_district.html](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>.



In 1961 Hawaii enacted and implemented the nation's first statewide planning system, commonly known as the state Land Use Law.<sup>1</sup> 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 exten-

sive 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>4</sup> and declare a temporary, four-year moratorium on reclassifying lands currently categorized as Agricultural, Conservation or Rural.<sup>5</sup>

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

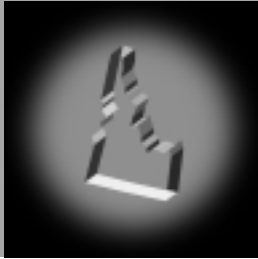
lands." The legislature has sponsored development of a Land Evaluation and Site Assessment system, but has yet to act on the mandate. Nor has the legislature approved other reform proposals, chief among them:

- 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.



**R**apid 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.<sup>1</sup>

In 1999 a bill was signed into law giving local jurisdictions the option to establish transfer of development rights programs.<sup>2</sup> Other legislation enacted in 1999 amended the state's 1975 Local

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

Land-use Planning Act,<sup>3</sup> 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<sup>4</sup> through the 1975 Local Land-Use Planning Act,<sup>5</sup> 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.<sup>6</sup>

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<sup>SM</sup> Project, May 1996.





**W**ill 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<sup>1</sup>—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 Chica-

go 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.<sup>2</sup>

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,<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> The task force continued its work in

Although studies, recommendations and reports abound, virtually all smart growth legislative proposals failed to win support.

2001, and a series of meetings were held throughout the state late last year.<sup>9</sup>

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;<sup>10</sup> 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](http://www.growingsensibly.org).

9 See: <http://dnr.state.il.us/orep/nrcc/igtft/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;<sup>11</sup> 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.<sup>12</sup>

Several bills that were introduced but not adopted by the legislature in 2001 were based on APA's Growing Smart<sup>SM</sup> 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 pub-

lic 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<sup>SM</sup> 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.

<sup>11</sup> H.B. 1085 (Rep. Slone, 2001).

<sup>12</sup> H.B. 942 (Rep. Moore, 2001).



**T**o date little has been done to overhaul Indiana's comprehensive planning statutes, which still closely resemble measures adopted in the 1920s.<sup>1</sup> 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,<sup>2</sup> 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,<sup>3</sup> 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,<sup>4</sup> which has been providing information, advice and educational and technical assistance to governmental units concerning land-use strategies and issues since 2000.<sup>5</sup> 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.<sup>6</sup>

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.

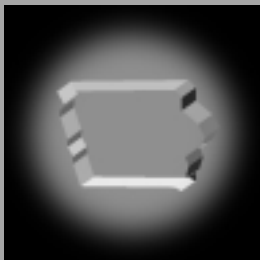
2 P.L. 216 (1999).

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](http://www.in.gov/oca/ilrc/reports/ILRC_report.pdf).

6 Executive Order creating the Indiana Land Use Forum, March 27, 2001.



**E**fforts 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<sup>1</sup> 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.<sup>2</sup>

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<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

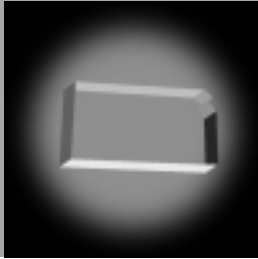
1 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.

2 S.J. 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.



**K**ansas is one of a score of states where portions of its planning and zoning laws were amended for counties in 1984<sup>1</sup> and cities in 1991,<sup>2</sup> but virtually no changes were made to the comprehensive planning elements of those laws, which date to the 1920s.<sup>3</sup> 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.<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup> Cities and municipalities—but not counties<sup>9</sup>—can use transfer of development rights to protect

1 Kansas Statute Chp.19, Article 29 Sections 56 through 66, 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=995485177296](http://kdoch.state.ks.us:82/ProgramApp/program_detail_display.jsp?RECNO=995485177296)

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 1.1: 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.<sup>10</sup> The state's planning laws, however, do not allow communities to establish urban growth boundaries.<sup>11</sup>

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 the park would cause additional traffic congestion and fuel more urban sprawl in the area.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

In 1998, 69 percent of the voters going to the polls in Johnson County approved a \$6 million bond initiative for acquiring park space.<sup>16</sup>

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.<sup>17</sup> Topeka, meanwhile, is embarking a 10-15 year downtown redevelopment plan in order to make the city more pedestrian friendly,<sup>18</sup> and Wichita is implementing smart building codes to encourage reuse of existing buildings.<sup>19</sup>

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.

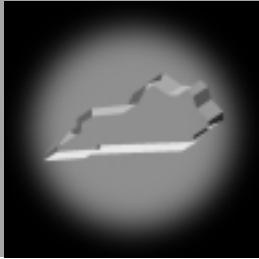
15 Associated Press. "Team tries to preserve prairie sites." Lawrence Journal-World, Nov. 24, 2001.

16 "November 1998 Open Space Acquisition Ballot Measures." Land Trust Alliance, Nov. 20, 1998. See <http://www.lta.org/refernda.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.



**A**fter 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.<sup>1</sup>

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.<sup>2</sup> Among other things, the task force held public forums throughout the state and conducted a thorough review of Kentucky's growth-related statutes, reg-

ulations and programs.

The task force's findings and recommendations, which were released last November,<sup>3</sup> 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.<sup>4</sup> The report also outlined 13 goals and numerous options to reach them.<sup>5</sup> 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<sup>6</sup> in 1966.<sup>7</sup> 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<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

Such items were to be subject to a compatibility review by the regional planning council<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> The impact fee provision was based on a model statute developed as part of APA's Growing Smart<sup>SM</sup> program. Rep. Wayne also proposed measures to protect farmland vulnerable to conversion from development<sup>15</sup> and to provide tax credits for restoring historic structures.<sup>16</sup>

Besides this ambitious legislation, Kentucky lawmakers considered a bill establishing a voluntary brownfields clean-up program<sup>17</sup> and a Joint Legislative Resolution establishing a Statewide Task Force on Smart Growth.<sup>18</sup> 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).



**C**omprehensive planning statutes in Louisiana remain virtually identical to the 1920s legislation upon which they are modeled.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

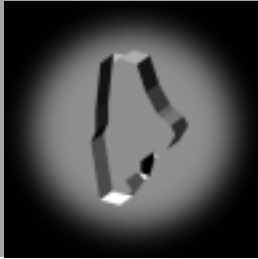
Concerns also have been raised about another planning-related issue—affordable housing for very-low-, low- and moderate-income households. Recent studies show nearly 50 percent of renters in the state pay more than 30 percent of their total annual income in housing costs.<sup>9</sup>

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.



**M**ore than a decade after significantly updating (1988), and then making the program voluntary and weakening financial support for its state planning laws<sup>1</sup> (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<sup>2</sup> 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.” Subsequent-

ly two bills were enacted later in 2000 by the Maine Legislature that augment the 1988 Comprehensive Planning and Land-Use Management Act.

One bill<sup>3</sup> 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.<sup>4</sup> 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<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.

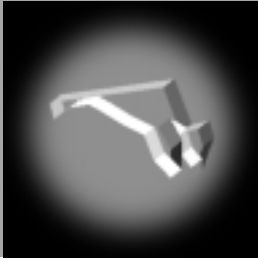
3 LR 3908 (2000).

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.



**U**nder 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,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> A law to encourage the rehabilitation of existing buildings through

"smart codes" passed,<sup>4</sup> 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.<sup>5</sup> Also, as part of the state's redevelopment programs, municipalities were authorized to grant property tax credits for rehabilitation.<sup>6</sup>

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.<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup>

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 (2007).

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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> Funded at \$35 million in Fiscal Year 2002,<sup>13</sup> 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.<sup>14</sup>

Also last May, Gov. Glendening signed a bill creating the Community Legacy Program.<sup>15</sup> 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

Maryland loses more than 12,000 acres of farmland a year, mostly as a result of lax zoning in several counties.

on comprehensive planning strategies and approaches to revitalization.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

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.

<sup>18</sup> Gordon, Adam. *Planning for Sprawl? A Look at Projected Residential Growth in the Baltimore Region*. Baltimore Regional Partnership, September 2001, p. 2.



**E**fforts to substantially improve moderate revisions to the state's comprehensive planning laws<sup>1</sup> 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.<sup>2</sup> 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 signifi-

cant 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."<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

6 Exec. Order 418 (Gov. Cellucci, 1/21/2000).

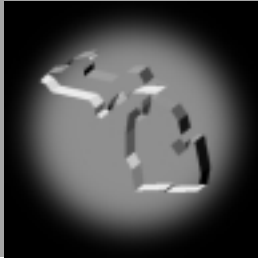
7 Id. See: <http://ci.lexington.ma.us/Planning/Documents/ComprehensivePlan/ExecOrder418.htm>.

8 Ch. 44B (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.



**L**ast 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.<sup>1</sup>

Known as the Community Planning Act, the bill was designed to unify and modernize four of the state's seven planning enabling acts,<sup>2</sup> some of which date to 1931.<sup>3</sup> Although the measure was not approved, last fall the state House<sup>4</sup> 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 adop-

tion. 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.<sup>5</sup> 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.<sup>6</sup>

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;<sup>7</sup> clarification of the role of the county board of zoning appeals;<sup>8</sup> clarification of the role of the township board of appeals;<sup>9</sup> and procedures for appeal in a city or village.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> The study led the Michigan Natural Resources Commission to create the Task Force on Integrated Land Use in 1994.<sup>16</sup> 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.<sup>17</sup>

The task force also recommended reforms in inter-governmental communication, urban revitalization, rural preservation and data dissemination.<sup>18</sup> 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.<sup>19</sup> Other recommendations included promotion of compact urban growth patterns, provisions for affordable housing, and natural resource protection.<sup>20</sup>

11 H.B. 5780 (Signed into law as Act No. 262, Sept. 26, 2000).

12 See: [http://www.michigan.gov/gov/1,1431,7-103-705-1933BM\\_2000\\_1,00.html](http://www.michigan.gov/gov/1,1431,7-103-705-1933BM_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.

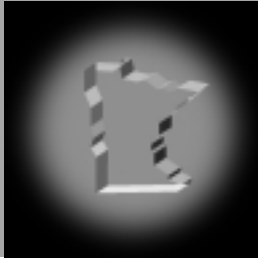
16 "Toward Integrated Land Use Planning." *Planning and Zoning News*, No. 5, March 1996, pp. 5-6.

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.



**D**uring 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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<sup>5</sup> 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.”<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

Also in 2000, Washington County became the first county in the state to adopt an ordinance establishing a purchase of development rights program.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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>.

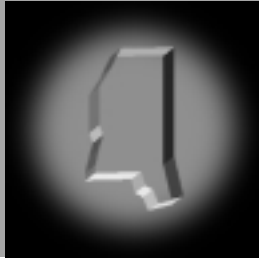
10 Harper, Jane. "Washington County Establishes Purchase of Development Rights Program." *Planning Minnesota*. Minnesota Chapter, APA, April 2000, p. 1.

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.



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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> The measure, however, was not enacted.

Although Mississippi's 10.5 percent increase<sup>4</sup> in population between 1990 and 2000 was below the 17.3 percent average for states in the South,<sup>5</sup> 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.<sup>6</sup>

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,<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

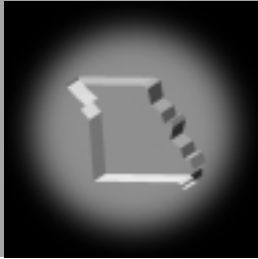
7 “Table 1.1: Farmland Activities By State.” *Saving American Farmland: What Works*. American Farmland Trust, 1997.

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.



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.<sup>1</sup> 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.<sup>2</sup>

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."<sup>3</sup>

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<sup>4</sup> established the Missouri Commission on Intergovernmental Cooperation to encourage state-local partnerships for problem solving and planning. The second,<sup>5</sup> 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.<sup>6</sup>

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](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](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.





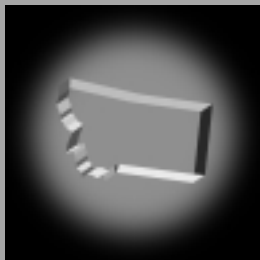
Earlier last year Gov. Holden issued two executive orders that promote collaboration and planning.

There was some progress in 2000, however, when the General Assembly passed the Neighborhood Preservation Act.<sup>7</sup> 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.

<sup>7</sup> S.B. 20 (2000).



**E**fforts 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.<sup>1</sup> The changes, however, did little to significantly change the state's authorizing statute, which is based on model legislation developed in the 1920s,<sup>2</sup> 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.<sup>3</sup>

Presented to the state's Growth Policy Forum<sup>4</sup>—a partnership of state agencies, local governments, realtors, developers and concerned citizens—the report engendered much discus-

sion. The report's analysis drew kudos from forum members, but reaction to the recommendations was mixed.<sup>5</sup> 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 it should be managed less.<sup>6</sup>

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,<sup>7</sup> approved by the legislature, called for an interim (2001-2002) study of annexation laws. The study, how-

Dozens of growth-related bills have flooded the state legislature during the past two years, but only a few have been enacted.

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.<sup>8</sup>

One of the legislative proposals<sup>9</sup> that was enacted last year authorizes local governments to adopt subdivision regulations promoting cluster development and open space preservation. Another proposal that passed<sup>10</sup> 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.”<sup>11</sup>

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;<sup>12</sup> implemented recommendations of the affordable housing and land-use initiative;<sup>13</sup> revised the laws relating to local planning and subdivision review;<sup>14</sup> and modified procedures for protesting changes to zoning regulations and for hearings on annexation in conjunction with a hearing on zoning.<sup>15</sup>

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://data.opi.state.mt.us/bills/2001/billhtml/HB0543.htm>.

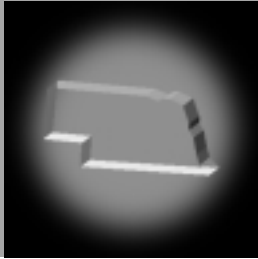
11 S.B. 97 (signed May 10, 1999).

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).



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.<sup>1</sup> 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.<sup>2</sup> 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,"<sup>3</sup> 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.<sup>4</sup>

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<sup>5</sup> or .5 percent ahead of the average population increase for the other states in the U.S. Census Bureau's Midwest region.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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).<sup>9</sup>

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;<sup>10</sup>
- seventy percent of the state's native vegetation has been lost or severely degraded and approx-

imately 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;<sup>11</sup>

- thirty-six percent of renters in the state pay more than 30 percent of their total annual income in housing costs;<sup>12</sup>
- 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;<sup>13</sup> 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."<sup>14</sup>

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."<sup>15</sup> 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

<sup>9</sup> Id., p. 37.

<sup>10</sup> Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.

<sup>11</sup> 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/wdfi/assess.html](http://www.ngpc.state.ne.us/wildlife/wdfi/assess.html).

<sup>12</sup> "Out of Reach: America's Growing Wage-Rent Disparity." National Low Income Housing Coalition, September 2001, p. 223.

<sup>13</sup> *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>.

<sup>14</sup> State of the State speech, Gov. Mike Johanns, Jan. 11, 2001.

<sup>15</sup> 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.”<sup>16</sup> 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.<sup>17</sup> State statutes also restrict new villages from incorporating if they are within five miles of any incorporated village or city.<sup>18</sup>

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,

The 2001 Nebraska state legislators extended the Affordable Housing Trust Fund for another year, approving \$3.2 million for Fiscal Year 2003.

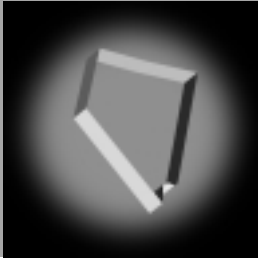
which follows the historic Chicago and Northwestern Railroad right-of-way, will extend 321 miles between Norfolk in the east and Chadron in the west. A hiking, biking and equestrian trail, it will be the longest rail-to-trail conversion in the nation. Other trails are being developed in Lincoln and Omaha, 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.

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.



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.<sup>1</sup>

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 responsi-

bilities 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.<sup>2</sup>

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,<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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;<sup>6</sup>
- revise provisions governing maintenance of trails, parks and open space in subdivisions and planned unit developments;<sup>7</sup>
- expand the number of elements to be included in the master plan of Clark County, the state's most-populous county;<sup>8</sup>
- add fire stations, park projects and police stations to the list of capital improvements for which impact fees can be imposed;<sup>9</sup> and
- establish planning commissions in counties with populations of 40,000 or more and govern-

A bond issue, if approved in November by voters, could provide up to \$200 million for parks, open space, trails and wildlife habitat.

ing boards for regional planning in counties with populations between 100,000 and 400,000.<sup>10</sup>

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](http://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.





Since moderately updating its state comprehensive planning statutes<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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<sup>4</sup> made \$3 million available for matching grants to preserve the state’s open space, historic sites and cultural resources. The Brownfields Revolving Loan Fund<sup>5</sup> 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<sup>6</sup> 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.”<sup>7</sup> 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](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.<sup>8</sup> 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."<sup>9</sup> The commit-

tee 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."<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

Planning reform and smart growth bills still pending before the state legislature include a revised uniform state building code;<sup>14</sup> amendments to master plan requirements and optional elements;<sup>15</sup> and changes facilitating better coordination and consistency in the structure of master plans developed at the local, regional and state levels.<sup>16</sup>

8 See: [http://www.state.nh.us/osp/SMTGRWTH\\_survey001.doc](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 Francouer, 2001).

15 H.B. 650 (Rep. Clark, 2001).

16 H.B. 712 (Rep. Melcher, 2001).



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.<sup>1</sup> 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 Rede-

velopment Plan.<sup>2</sup> 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.<sup>3</sup>

The state's Smart Growth Planning Grants program announced awards of \$1.7 million in October 2001 for plan development or implementation.<sup>4</sup> Since the program began 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.<sup>5</sup> 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.<sup>6</sup> Acting Gov. DiFrancesco also supports farmland preservation. Last June he signed three bills appropriating almost \$30 million for the purchase of development easements,<sup>7</sup> and \$11.8 million for farmland preservation grants.<sup>8</sup>

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.”<sup>9</sup> 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.

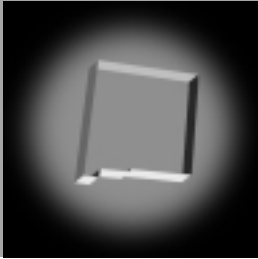
School design and its relationship to smart growth has been an emphasis of the Office of State Planning. Last June, the department released a 25-page report, “Creating Communities of Learning: Schools and Smart Growth in New Jersey.”<sup>10</sup> According to Jane M. Kenny, commissioner of the Department 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>.



**W**hile 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.<sup>1</sup>

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 regula-

tions.<sup>2</sup> The proposal included up to \$3 million in grants to municipalities to develop consistent comprehensive plans and revised regulations.<sup>3</sup> 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<sup>4</sup> 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.<sup>5</sup> 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;<sup>6</sup> to request the Municipal League and Association of Counties to study the need for uniformity in zoning classification nomenclature;<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

Also in 1996 the report, *Growth in New Mexico: Impacts and Options*, was issued.<sup>11</sup> 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.<sup>12</sup>

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

Reform advocates do not expect any comprehensive planning or smart growth measures to be adopted until 2003 at the earliest.

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.<sup>13</sup>

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,<sup>14</sup> regulation of manufactured homes,<sup>15</sup> and extraterritorial planning authority of jurisdictions involved with subdivision and zoning matters in areas beyond a jurisdiction's boundaries.<sup>16</sup>

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).



**A**lthough a series of planning reforms were adopted in the 1990s, including changes that slightly updated<sup>1</sup> 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;<sup>2</sup> 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;<sup>3</sup> create local smart growth commissions to develop joint, smart-growth plans;<sup>4</sup> establish a smart growth board to review and certify proposed smart-growth plans;<sup>5</sup> and create a New York state

smart growth revolving loan fund.<sup>6</sup>

Other bills introduced last year were the Quality Communities Planning Act,<sup>7</sup> and Gov. George Pataki's program bill, the Quality Communities Act of 2001.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup> Chaired by Lt. Governor Mary Donohue, the task force issued its final report last January, offering more than 40 recommendations.<sup>11</sup> 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<sup>12</sup> 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. Lavallo/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;<sup>13</sup> establish a statutory procedure for preparing and adopting local comprehensive plans;<sup>14</sup> encourage coordinated planning between local jurisdictions and the state agricultural districts;<sup>15</sup> provide a statutory framework for inter-municipal cooperation in planning;<sup>16</sup> and allow local governments to use incentive zoning so credits or bonuses can be awarded to developers who provide communities with qualifying benefits.<sup>17</sup>

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.<sup>18</sup> 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

Designation of heritage area corridors is another impetus for neighboring communities to work together on regional plans.

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.

13 Chap. 209 of the N.Y. Laws of 1993.

14 Chap. 418 of the N.Y. Laws of 1995.

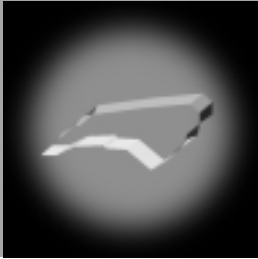
15 Chap. 534 of the N.Y. Laws of 1992.

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>.





**D**uring 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

A state Growth Strategies Oversight Committee, chaired by Rep. Joe Hackney and Sen. Daniel Clodfelter, is expected to review the commission's rec-

As impacts of growth continue to multiply...new opportunities will be available to press for more aggressive reform.

ommendations and develop specific bills for consideration by the state general assembly and senate.

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.<sup>6</sup> 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.<sup>7</sup>

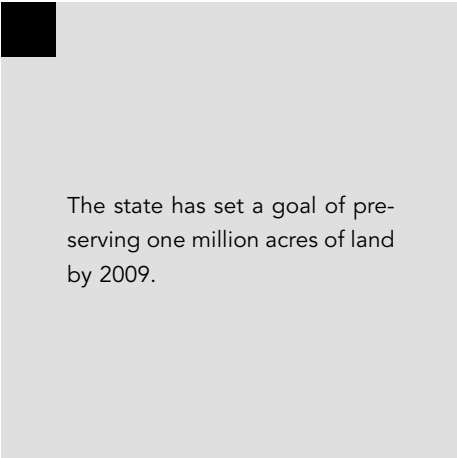
Six months after the initiative was announced,

<sup>4</sup> See: <http://www.ncleg.net/>.

<sup>5</sup> Id.

<sup>6</sup> North Carolina Million Acre Plan. See: <http://www.enr.state.nc.us/docs/millionsummary.pdf>.

<sup>7</sup> Id.



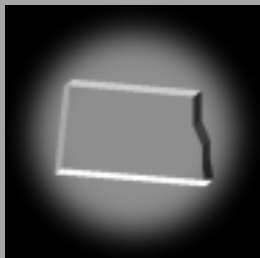
The state has set a goal of preserving one million acres of land by 2009.

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."<sup>8</sup> 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."<sup>9</sup> 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.

<sup>8</sup> S.B. 1328/H.B. 1633; enacted June 28, 2000.

<sup>9</sup> See: <http://www.sustainable.state.fl.us/fdi/fscc/news/world/0009.ncdot.htm>.



**E**ven 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.<sup>1</sup> 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,<sup>2</sup> none of these changes amended the master or comprehensive plan requirements, which contain the same provisions that have been on the books since 1929.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

Currently the only way to safeguard farmland is through locally administered agricultural protection zoning.<sup>7</sup> 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.<sup>8</sup>

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.



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.<sup>1</sup>

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.<sup>2</sup>

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 compre-

hensive plans. Efforts to pass the measure also proved unsuccessful.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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<sup>6</sup> and 59 counties completed farmland preservation plans.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

In November 2000, farmland preservation and urban revitalization received further support when Ohio voters approved State Issue 1, 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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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."<sup>13</sup>

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.<sup>14</sup>

9 Ohio Urban Revitalization Task Force, Policy Agenda and Task Force Report (2000).

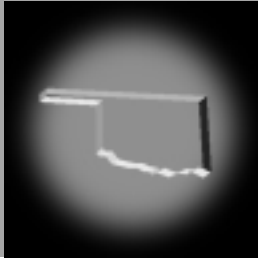
10 "Taft signs Bill to Create \$400 Million Clean Ohio Fund: Fund Will Revitalize Cities and Preserve Farmland, Green Space, Clean Water," news release, July 26, 2001. See: <http://www2.state.oh.us/gov/releases/72620017681.htm>.

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>.



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<sup>1</sup>—Oklahoma’s population grew slightly less than 10 percent between 1990 and 2000.<sup>2</sup> 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.<sup>3</sup>

Currently the state’s comprehensive planning requirements do not address protection of threatened or endangered species;<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

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.

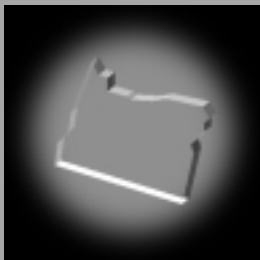
Oklahoma is one of about a dozen states that have yet to modernize their statutes that enable local governments to do comprehensive planning.

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.



**A** ballot measure that would effectively halt further implementation and enforcement of Oregon's landmark 1973 planning program<sup>1</sup> won voter approval in November 2000,<sup>2</sup> but was declared unconstitutional by a trial court several months later.<sup>3</sup> 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.<sup>4</sup> In declaring the ballot measure unconstitutional, Marion County Circuit Court Judge Paul Lipscomb noted that Measure 7 was presented to voters out of con-

text—that voters should have had access to the relevant section of the state constitution that was to be modified.<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup>

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<sup>8</sup> 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<sup>9</sup> 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](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](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.<sup>10</sup> The governor then accepted 10 objectives<sup>11</sup> 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.<sup>12</sup> A month later, Gov. Kitzhaber signed a bill<sup>13</sup> 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.

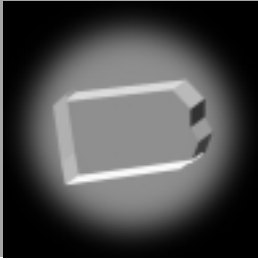
Local comprehensive plans must now address school facilities just as they would planning for other public facilities.

10 See: <http://www.oregonsolutions.net/govt/group.cfm>.

11 See: [http://www.oregonsolutions.net/govt/govt\\_operations.cfm](http://www.oregonsolutions.net/govt/govt_operations.cfm).

12 H.B. 3045 (2001).

13 H.B. 3002 (2001).



**P**rogress 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,<sup>1</sup> 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."

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." 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

Also in the early 1990s Pennsylvania lawmakers attempted to pass comprehensive planning law amendments,<sup>7</sup> 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.<sup>8</sup> 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/ctc/data/20000208.005.htm>, p. 6.

3 See: <http://papress.state.pa.us/ctc/data/20000208.005.htm>, p. 2.

4 See: <http://papress.state.pa.us/ctc/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.<sup>9</sup> 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<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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<sup>SM</sup> *Legislative Guidebook*.

The following year the former governor announced that the state must 'Grow Smarter'<sup>13</sup> 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 compro-

mise in the general assembly, these planning bills were enacted as Acts 67 and 68 in June 2000.<sup>14</sup> 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.<sup>15</sup>

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

The 2000–2001 state budget allocated \$3.6 million for local land-use planning and assistance.

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 for-

mer 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<sup>16</sup> 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<sup>17</sup> 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.

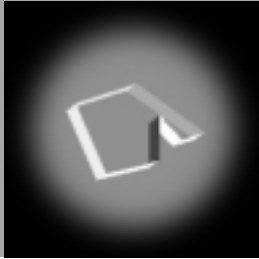
Pennsylvania communities cannot impose building moratoria while they work on comprehensive zoning or growth management plans.<sup>18</sup> A year after hearing arguments, the state Supreme Court ruled<sup>19</sup> 6-1 in June 2001 that the Municipalities Planning Code Act of 1968, as reenacted and amended, 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>.



Since passage of one of the country's best state planning laws, the Comprehensive Planning and Land Use Regulation Act in 1988,<sup>1</sup> 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<sup>2</sup> 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,<sup>3</sup> released last August,<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup> 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<sup>7</sup> 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](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.<sup>8</sup> Legislators approved the Development Impact Fee Act<sup>9</sup> 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."<sup>10</sup> The Department of Environmental Management was to use \$10.8 million to purchase land or development rights.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

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."<sup>14</sup> 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.<sup>15</sup> 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](http://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/0301011.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."<sup>16</sup>

Last June, members of the State House created its own Brownfields Commission.<sup>17</sup> 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.<sup>18</sup> Up to 30 percent of the rehabilitation costs of projects involving certified historic structures qualify for credit. The legislation took

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.

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.

Another proposal<sup>19</sup> 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,"<sup>20</sup> 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/H5547.htm>.

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.



**D**uring 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.<sup>1</sup> The proposal would have significantly updated the South Carolina Local Government Comprehensive Planning Enabling Act of 1994<sup>2</sup> and the 1976 Comprehensive Infrastructure Development Act, which made moderate and the most recent changes to the state's planning statutes.<sup>3</sup>

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.<sup>4</sup>

In 2001, the Farm and Forest Lands Protection Act was introduced to protect priority agricultural land.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup> 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/sccc/issues/alert/?alertid=15811>.

8 "Table 1.1: 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.<sup>9</sup> Currently Beaufort County is the only local jurisdiction in the state with purchase of development rights or other measures designed to protect agriculture land.<sup>10</sup>

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.<sup>11</sup> The second bill would compensate landowners when government action inordinately burdened a use of property.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup>

Gov. James Hodges hosted in March 2000 the “Governor’s Summit on Growth,” which attracted approximately 400 business and government leaders.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> In April 2001 he signed executive orders that established an affordable housing task force<sup>18</sup> and imposed a moratorium on constructing or expanding swine facilities, or approving waste management plans for such facilities.<sup>19</sup>

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 1/2-cent, 25-year sales tax mass transit improvements, new parks, farmland protection and conservation of other land.<sup>20</sup>

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/legacomp2000.html>.

15 See: <http://www.state.sc.us/governor/growthsummit.html>.

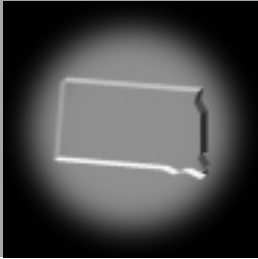
16 Executive Order 2000-08. Governor’s Office, Feb. 3, 2000. See: <http://www.state.sc.us/governor/2000-08.html>.

17 “Accomplishments of the 1999 Legislative Session.” Governor’s Office, 2001. See: <http://www.state.sc.us/governor/legacomp1999.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.



**L**ike 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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 1.1: Farmland Activities By State." *Saving American Farmland: What Works*. American Farmland Trust, 1997.

address.<sup>4</sup> 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,<sup>5</sup> 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 capi-

Incentives are needed that encourage small, independent-yet-neighboring communities to work together towards common economic or redevelopment goals.

ta state average was \$17.26.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

4 See: <http://www.spruceupsd.com>

5 *Changing Direction: Federal Transportation Spending in the 1990s*. Surface Transportation Policy Project, March 2000, p.32.

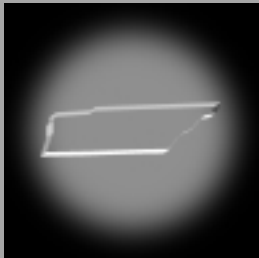
See: <http://www.transact.org/Reports/Cd/execsummary.htm>.

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>



**F**ollowing passage of its landmark 1998 Growth Policy Law,<sup>1</sup> 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<sup>SM</sup> *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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> HOME is the federal government's largest block grant available to state and local governments to provide low-income households with affordable housing.<sup>5</sup>

A white paper<sup>6</sup> 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,<sup>7</sup> 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.

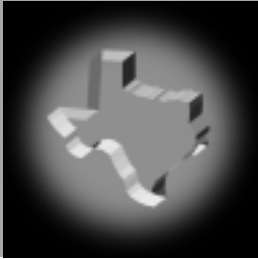
Last July, the state’s General Assembly passed legislation<sup>8</sup> to expedite brownfield cleanups and reuse across the state. Last October Gov. Sundquist announced that Memphis was the first municipality to identify a brownfield site for reuse under the Brownfield Redevelopment Amendment. The site, 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.

<sup>7</sup> See: <http://www.state.tn.us/governor/jan2000/tnstar.htm>.

<sup>8</sup> S.B.1889/H.B. 1916 (2001).





**A**lthough it is the second-most populous state in the nation<sup>1</sup> and more than 80 percent of its residents live in metropolitan areas,<sup>2</sup> 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.<sup>3</sup> 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,<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> A bill that would have restricted cities' ability to regulate the location of manufactured housing also was stopped.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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,<sup>12</sup> property rights,<sup>13</sup> impact fees,<sup>14</sup> public notice as it relates to the regulation of adult uses<sup>15</sup> and affordable housing.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> Although median home prices in major Texas cities are well below those in other regions of the country,<sup>20</sup> 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.<sup>21</sup>

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<sup>22</sup> 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.

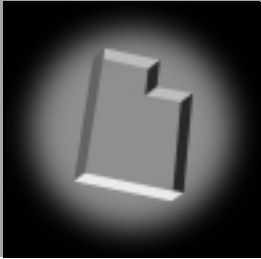
In the Dallas-Fort Worth metroplex, such regional coalitions have led the way for a regional plan to address air quality and recreational trails that will extend as far as the Oklahoma border. A multi-city agency, Dallas Area Rapid Transit or DART, operates one of the most successful new light rail systems 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.<sup>23</sup> 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.<sup>24</sup>

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](http://www.dart.org).

24 “The Initial Economic Impacts of the DART LRT System,” University of North Texas.



**P**rogress continues to be made on several planning fronts by the state's Quality Growth Commission, formed by the "Quality Growth Act of 1999,"<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

Utah's comprehensive planning laws go back to the 1920s,<sup>4</sup> 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.<sup>5</sup> 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. Urguhart.<sup>6</sup> It is believed, however, that this source of funds may not continue beyond fiscal year 2000-2001.<sup>7</sup>

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, Wilf. 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,<sup>8</sup> and to require local governments to treat manufactured home subdivisions in the same way as conventional subdivisions.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup>

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<sup>13</sup> while in 2000 voters from Davis, Weber and Salt Lake counties agreed to a 1/4-cent sales tax increase to fund commuter rail service between Ogden and Salt Lake City.<sup>14</sup>

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.<sup>15</sup>

8 S.B. 98 (2001).

9 S.B. 158 (2001).

10 Summerkorn, Wilf. "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.

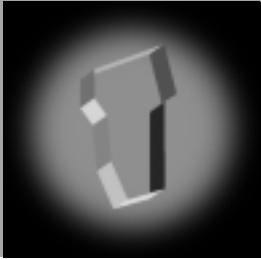
12 Sorensen, Ann, et al. *Farming on the Edge*. American Farmland Trust, 1997.

13 November 1998 Open Space Acquisition Ballot Measures. Land Trust Alliance, Nov. 20, 1998.

See: <http://www.lta.org/publicpolicy/refernda.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 Summerkorn, Wilf. Memo from Utah Chapter of APA to APA Washington, D.C. office, Jan. 8, 2002.



**A**ct 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.<sup>1</sup>

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,<sup>2</sup> 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<sup>3</sup> 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.<sup>4</sup> 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](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.<sup>5</sup> 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.

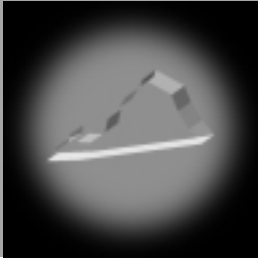
Following Gov. Howard Dean's executive order<sup>6</sup> creating a Development Cabinet, the general assembly passed legislation<sup>7</sup> that accomplishes the same thing. Under the bill, the Development Cabinet is responsible for assuring collaboration among state agencies so as to support economic 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>.





**D**uring 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.<sup>1</sup> 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.<sup>2</sup>

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, inter-municipal 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>5</sup> or the state's comprehensive planning enabling laws, which are based upon 1920s model legislation.<sup>6</sup>

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 infra-

structure improvements and conservation efforts; proposing innovative and cooperative land management techniques; and examining and evaluating ways to coordinate general assembly and state agency activities.<sup>7</sup>

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."<sup>8</sup> 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<sup>9</sup> and the other zoning violations.<sup>10</sup> 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.

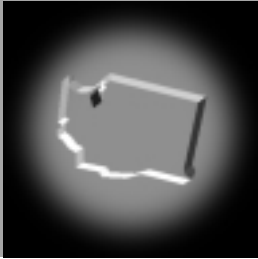
6 Cobb, Rodney. "Toward Modern Statutes, A Survey of State Laws on Local Land-Use Planning." *Growing Smart Working Papers Vol. 2*, American Planning Association, 1998.

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.



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.<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> 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<sup>4</sup> evaluating the state's effectiveness in administering this environmental program.

A measure<sup>5</sup> 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<sup>6</sup> 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.<sup>7</sup>

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<sup>8</sup>;
- require additional parks, school and law enforcement needs to be addressed in growth-management comprehensive plans and development regulations<sup>9</sup>;
- allow tax-increment financing<sup>10</sup>; and
- expand affordable housing opportunities.<sup>11</sup>

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).



**E**xcept 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.<sup>1</sup> 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,<sup>2</sup> 1999<sup>3</sup> or 2000,<sup>4</sup> 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,<sup>5</sup> there are no state or local authorizing statutes to protect farms or require urban growth boundaries.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

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,<sup>10</sup> 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 1.1: 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/vvwildlife/species\\_checklist.htm](http://www.dnr.state.wv.us/vvwildlife/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.<sup>11</sup>

Also in 2001 the West Virginia legislature enacted a bill pertaining to surface mining reclamation plan reviews.<sup>12</sup> 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.<sup>13</sup>

Recent legislative initiatives introduced in the state senate to address municipal and county planning commissions,<sup>14</sup> and cooperation between regional council and agencies in planning and development,<sup>15</sup> 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.<sup>16</sup>

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).

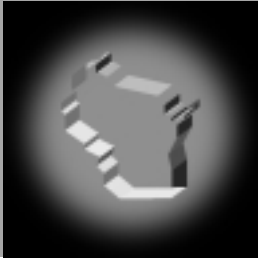
12 S.B. 603 (2001); Chapter 62.

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>.



Since enacting moderate revisions to its planning statutes and passing a major growth management law in 1999,<sup>1</sup> 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<sup>SM</sup> *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<sup>2</sup> provides \$3 million a year in grants<sup>3</sup> 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<sup>4</sup> within their borders.

The Working Group on Tax Incremental Financing, organized by former Gov. Tommy Thompson, issued a report<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> The report contained more than 70 proposals.

A provision in the 2001-2003 budget bill<sup>10</sup> 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.<sup>11</sup> Another item in the budget bill created the Milwaukee Development Opportunity Zone.<sup>12</sup>

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<sup>13</sup> of the Wisconsin legislature to adopt a new wetlands protection law.<sup>14</sup> 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."<sup>15</sup>

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.<sup>16</sup> 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](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](http://www.wisgov.state.wi.us/news_detail.asp?prid=479).

13 Executive Order No. 7.

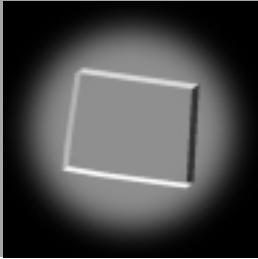
14 LRB-3093/8.

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](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/train31083001a.asp?format=print>.





**W**hile changes were made to the state's planning and zoning laws with the Wyoming Land Use Planning Act of 1975,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> As part of Gov. Jim Geringer's open spaces initiative, a 1995 statewide conference, "The Wyoming Part-

nership: 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.<sup>4</sup> 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,<sup>5</sup> 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."<sup>6</sup>

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 Alfors, "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<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

Another bill that did not pass would have earmarked a percentage of state agencies' budgets for beautification efforts.<sup>10</sup> Two other bills were enacted, however, including a measure that clarifies the legal definition of a subdivision<sup>11</sup> as any division of land, rather than the division of land into three or more lots. The other bill changed requirements for municipal annexations,<sup>12</sup> 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

## Growing Smart<sup>SM</sup> Program

Begun in 1994, the Growing Smart<sup>SM</sup> 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<sup>SM</sup> 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<sup>SM</sup> 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<sup>SM</sup> 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<sup>SM</sup> Legislative Guidebook 2002 Edition* and *Growing Smart<sup>SM</sup> User Manual* may be downloaded free (PDF format) from APA's web site at [www.planning.org](http://www.planning.org). A bound version of the *Growing Smart<sup>SM</sup> 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](http://www.planning.org) or by calling 312-786-6344.

For an overview of the Growing Smart<sup>SM</sup> program and a summary of accomplishments to date, see APA's web site at [www.planning.org](http://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](http://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](http://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](http://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](http://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<sup>SM</sup> 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](http://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](http://www.alaapa.org)

Arizona—[www.azplanning.org](http://www.azplanning.org)

Arkansas—[www.arkansasapa.org](http://www.arkansasapa.org)

California—[www.calapa.org](http://www.calapa.org)

Colorado—[www.apacolorado.org](http://www.apacolorado.org)

Connecticut—[www.ccapa.org](http://www.ccapa.org)

Delaware—[www.ipa.udel.edu/delapa/](http://www.ipa.udel.edu/delapa/)

Florida—[www.floridaplanning.org](http://www.floridaplanning.org)

Georgia—[www.georgiaplanning.org](http://www.georgiaplanning.org)

Hawaii—<http://parking.lava.net/~apahi/>

Illinois—[www.ilapa.org](http://www.ilapa.org)

Indiana—[www.indianaplanning.org](http://www.indianaplanning.org)

Iowa—[www.iowa-apa.org](http://www.iowa-apa.org)

Kansas—<http://www-personal.ksu.edu/~jwkrpc/ksapa.html>

Kentucky—[www.kapa.org](http://www.kapa.org)

Louisiana—[www.louisiana-apa.org](http://www.louisiana-apa.org)

Maryland—[www.marylandapa.org](http://www.marylandapa.org)

Massachusetts—[www.massapa.org](http://www.massapa.org)

Michigan—[www.planningmi.org](http://www.planningmi.org)

Minnesota—[www.mnapa.com](http://www.mnapa.com)

Missouri—[www.mo-apa.org](http://www.mo-apa.org)

National Capital Area (Washington, D.C. metropolitan area)—[www.ncac-apa.org](http://www.ncac-apa.org)

Nevada—[www.nvapa.org](http://www.nvapa.org)

New Jersey—[www.njapa.org](http://www.njapa.org)

New Mexico—[www.nmapa.org](http://www.nmapa.org)

New York Metro—[www.nyplanning.org](http://www.nyplanning.org)

New York Upstate—[www.nyupstateplanning.org](http://www.nyupstateplanning.org)  
North Carolina—[www.nc-apa.org](http://www.nc-apa.org)  
Northern New England (Maine, New Hampshire, Vermont)—[www.apanewhampshire.org](http://www.apanewhampshire.org)  
Ohio—[www.ohioplanning.org](http://www.ohioplanning.org)  
Oregon—[www.oregonapa.org](http://www.oregonapa.org)  
Pennsylvania—[www.planningpa.org](http://www.planningpa.org)  
Rhode Island—[www.riapa.org](http://www.riapa.org)  
South Carolina—[www.scapa.org](http://www.scapa.org)  
Tennessee—[www.tnapa.org](http://www.tnapa.org)  
Texas—[www.texasapa.org](http://www.texasapa.org)  
Utah—[www.utah-apa.org](http://www.utah-apa.org)  
Virginia—[www.vaplanning.org](http://www.vaplanning.org)  
Washington—[www.washington-apa.org](http://www.washington-apa.org)  
West Virginia—[www.wvplanning.com](http://www.wvplanning.com)  
Wisconsin—[www.uwm.edu/org/wapa](http://www.uwm.edu/org/wapa)

### Other Organizations

The following organizations also address smart growth and planning-related issues:

American Farmland Trust—[www.farmland.org](http://www.farmland.org)  
American Institute of Architects Center for Livable Communities—[www.aia.org/gov/livable/](http://www.aia.org/gov/livable/)  
American Society of Landscape Architects—[www.asla.org](http://www.asla.org)  
The Brookings Institution Center on Urban and Metropolitan Policy— [www.brook.edu/urban](http://www.brook.edu/urban)  
Center for Neighborhood Technology—[www.cnt.org](http://www.cnt.org)  
Congress for the New Urbanism—[www.cnu.org](http://www.cnu.org)  
Defenders of Wildlife—[www.defenders.org](http://www.defenders.org)  
Enterprise Foundation—[www.enterprisefoundation.org](http://www.enterprisefoundation.org)  
Funders Network for Smart Growth and Livable Communities—[www.fundersnetwork.org](http://www.fundersnetwork.org)  
Growth Management Leadership Alliance—[www.gmla.org](http://www.gmla.org)  
International City/County Management Association—[www.icma.org](http://www.icma.org)  
Joint Center for Sustainable Communities—[www.mayors.org/USCM/sustainable](http://www.mayors.org/USCM/sustainable) (sponsored by the National Association of Counties, [www.naco.org](http://www.naco.org), and the U.S. Conference of Mayors, [www.mayors.org](http://www.mayors.org))  
Knowledgeplex—[www.knowledgeplex.org](http://www.knowledgeplex.org) (sponsored by the Fannie Mae Foundation, [www.fanniemaefoundation.org](http://www.fanniemaefoundation.org))  
Local Government Commission—[www.lgc.org](http://www.lgc.org)  
NAHB Smart Growth—[www.nahb.com](http://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](http://www.narc.org)

National League of Cities—[www.nlc.org](http://www.nlc.org)

National Neighborhood Coalition—[www.neighborhoodcoalition.org](http://www.neighborhoodcoalition.org)

Natural Resources Defense Council—[www.nrdc.org](http://www.nrdc.org)

National Trust for Historic Preservation—[www.nationaltrust.org](http://www.nationaltrust.org)

National Wildlife Federation—[www.nwf.org](http://www.nwf.org)

Smart Growth America—[www.smartgrowthamerica.com](http://www.smartgrowthamerica.com)

Smart Growth Business Partnership—[www.nalgep.org](http://www.nalgep.org) (sponsored by the National Association of Local Government Environmental Professionals)

Smart Growth Network—[www.smartgrowth.org](http://www.smartgrowth.org)

PolicyLink—[www.policylink.org](http://www.policylink.org)

Scenic America—[www.scenic.org](http://www.scenic.org)

Sierra Club—[www.sierraclub.org](http://www.sierraclub.org)

Sprawl Watch Clearinghouse—[www.sprawlwatch.org](http://www.sprawlwatch.org)

Surface Transportation Policy Project—[www.transact.org](http://www.transact.org)

Trust for Public Land—[www.tpl.org](http://www.tpl.org)

Urban Land Institute—[www.uli.org](http://www.uli.org)



AMERICAN PLANNING ASSOCIATION  
1776 MASSACHUSETTS AVE., N.W., SUITE 400  
WASHINGTON, DC 20036-1914  
202-872-0611

122 S. MICHIGAN AVENUE, SUITE 1600  
CHICAGO, IL 60603-6107  
312-431-9100

[WWW.PLANNING.ORG](http://WWW.PLANNING.ORG)

