Legislative Council Staff Report on Mechanisms to Address the Issue of

Cumulative Growth

Pursuant to Sec. 11 of No. 40 of the Acts of 2001

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Legislative Council
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I. THE CHARGE TO STAFF.

Act 40 of the 2001 session of the General Assembly included a section that read as follows:

Sec. 11. LEGISLATIVE COUNCIL STUDY

Legislative council staff, in consultation with the house and senate committees on natural resources and energy, shall investigate mechanisms used by other governmental entities to address the issue of cumulative growth, with a particular focus upon approaches that might be adapted for use in Vermont, and shall report back to the committees with the results of that investigation.[1]

Staff views the goal, generally, as investigating for "approaches that might be adapted for use in Vermont." We see this as a broad mandate that asks us to use broad strokes to identify approaches that further study may move the members to pursue or reject for a host of reasons. We looked at laws passed by other entities, and we interviewed people who were knowledgeable about Vermont and who we thought might have ideas for legislative alternatives (or tweaks) that might be worthy of pursuit. Many of the alternatives pursued by other states involved state mandates that we do not believe would be likely to be enacted in Vermont, and we have not pursued those alternatives to a great extent. The appendices to this report include a National Conference of State Legislatures' document on State Incentive-Based Growth Management Laws; some brief characterizations of other state or local laws that were called to our attention; and extensive materials from Oregon, where they create urban growth boundaries, from Maryland, where they have pursued the "Smart growth approach," and from Lake Tahoe, where they award development-related points for desired behavior, and allow development if a sufficient number of points are obtained. The main body of the report, however, contains specific or general ideas for incremental alternatives that may be worth pursuing in Vermont. Some ideas may be highly attractive upon first blush; others may prove so unpopular they will never be mentioned again above a whisper. If the mere mention of some of the alternatives listed in this report gives the reader deep nausea, we apologize. However, we are going to do the brainstorming anyway, and caution the reader that some of the ideas may not be compatible with others. Bear in mind that there are two underlying issues that must be addressed before pursuing this issue much further.

Is cumulative growth such a problem that it merits legislative attention?

If the answer is no, then one need not read this document any further.
If the answer is yes, then there is a secondary question:

[1] Unfortunately, they chose not to adopt the version of the study preferred by staff, which read as follows: "Legislative council staff shall travel to highly scenic locations in various parts of the world, selected by staff in their sole discretion, and shall investigate why these places are so desirable, and how they manage to stay the way they are. This shall include a comparison of the tourist and recreational highlights and the best foods of the various locales, with a focus on the partying traditions of the various peoples, and how they manage to continue to party without ruining the environment."

Is cumulative growth such a problem that it might merit legislative action?

If the answer is no, then one need not read this document any further.
If the answer is yes, then one may choose to read on.

Here is where the body of the report commences, and it may help to list at this point what the report does not do. The legislature, by requiring the study, had already determined that the subject merits legislative attention, so we didn't address the issue of whether there is a problem. Nor did we list below particular approaches that already are being vigorously pursued by standing committees, such as the initiatives to encourage development in designated downtown areas. Established legislative initiatives will stand or fall on their own merits, without need for staff-flagging as a possible option for consideration by the body. Rather, this document lists options that, most likely, are not currently subject to serious legislative scrutiny. Whether or not these alternatives ought to stay off the table is a question we'll leave to the reader. Hopefully, this document will at least provide enough fuel for thought so that, when a future legislator comes to staff and asks what he or she might be able to do to address the issue of cumulative growth, staff will be able to say something more than "That's a good question."

II. CUMULATIVE GROWTH: WHAT ARE THE ISSUES OR PROBLEMS WE SHOULD BE TRYING TO ADDRESS?

A. Related to Act 250.

1. Since Act 250 addresses the impacts of a particular proposal, it may not be well-suited to address **the combined impacts of two or more proposals that are subject to Act 250 jurisdiction**. For example, if there is growth expected on two separate ski areas that are located 20 miles apart, there may be a synergistic combined effect that cannot be adequately addressed in either of the particular proceedings.

On this issue, environmental board staff maintains that district commissions, when determining traffic impact, for example, will ask for projections regarding anticipated traffic flow currently permitted, and maybe for projections regarding likely traffic increases over the next five years. But, they cannot consider future traffic another developer intends to ask for in the future.

2. Act 250 may not be well-suited to address the **combined impacts of any particular proposal when taken together with impacts of growth that is not subject to Act 250**, particularly with respect to issues that are not subject to separate regulatory programs.

There are inherent problems with the regulatory approach to cumulative growth: each applicant cannot present his or her project and all others. Failure to do planning at state, regional, and local level results in decisions on "undue impacts" being made locally at the district commission level. In the absence of Act 250 jurisdiction and local regulation, those decisions are business decisions by independent developers. Planning considers rates of growth, predicts the number of needed housing units, and tries to put it all together. Planners believe that one cannot make these decisions in response to applications for development; it must occur in an outside planning process.

3. The spin-off development created as a result of large projects may add to cumulative growth in a different town, and may or may not be subject to other regulation. (Others may call this "secondary growth.")

B. Non-Act 250 Problems.

The problem addressed under the heading "cumulative growth" may include the effects of development that is small enough to be beneath the jurisdictional threshold of Act 250.

This includes residential creep, when communities fail to identify and protect resources; an activity that, ideally, would take place on a regional basis.

Projects below Act 250 threshold may not be reviewed for habitat, historic sites (with no federal funds involved), space, traffic, water, air, sewage discharges, erosion, or for fiscal impacts on municipal and educational services.

C. General problem.

Infrastructure becomes overwhelmed.
Natural resources may become impaired: air, water, disappearing farmland, loss of wetlands, loss of habitat; traffic overload, ridge line development; loss of rural space.
Energy supply is a problem.

One observer breaks the problem into three categories:
1) Hot spots, where rapid development leads to a community form the residents do not want. The question is how to redirect the flow of capital to maximize the value to the community. It does not cost more to do it right; it costs less.
2) Strip development. It has a natural cycle, and, accordingly, one can spot the early stages and watch the progression:
(a) the average parcel size gets smaller;
(b) curb cuts increase, and there become more points where development accesses major roads;
(c) visual impediments appear along the strip.
Our decision-making is one lot and one permit at a time, and public policy frequently does not notice and arrest the trend toward strip development.
3) Parcelization of farms and agricultural land.

Vermont Law School Professor Richard O. Brooks has broken the growth problem into eleven different problems that affect different groups of stakeholders, that have different sets of major impacts, and that may be appropriately addressed by different regulatory tools:

1) Expansion and concentration of ski areas affect ski areas, nearby towns, and environmental groups, and may appropriately be the focus of Act 250;

2) Highway exit growth affects towns, landowners and developers at exits, the state transportation agency, and state tourism interests, and may be the focus of town zoning and Act 250;

3) Peripheral growth in large urban areas affects large towns and transportation interests, and may be the focus of local zoning;

4) Strip development along multi-town strips affects towns, state transportation, and major economic interests, and may be the focus of town zoning and state transportation agency approval;

5) Major new developments in rural areas affects towns, the transportation agency, developers, and environmentalists, and may be the focus of Act 250;

6) Secondary growth from large-scale commercial or industrial activities affects large developers, towns, and transportation systems, and may be the focus of local planning and zoning and Act 250;

7) Growth in and around major resource areas affects tourism developers, towns, transportation, and environmental and recreation interests, and may be the focus of large-scale recreation and environmental controls at the federal and state level (such as the Vermont byways program);

8) Large-scale housing developments affect potential homeowners, housing developments, towns, and environmental groups, and may be the focus of Act 250 and local planning and zoning;

9) Growth in town centers affects towns, local downtown businesses and downtown customers, and may be the focus of local zoning and state economic development policy;

10) Expansion of existing large-scale institutions affects the institutions, the towns, and the neighbors, and may be focus of Act 250 (for major physical additions) and local planning and zoning;

11) Growth in cities outside the state affects other states, outside cities, and other nations and neighboring areas, and may be the focus of bi-state or transnational agreements.

III. POSSIBLE TOOLS.

A. Act 250 tools.

1. Do resource capacity analysis upfront, then bring input to regulatory proceedings, resulting at least in conditions in Act 250 permits. This would include considering capacities regarding: stormwater, wastewater, transportation, and air pollution.

2. Require master planning in more situations (such as major public infrastructure, road, or sewer line extension; and growth of ski areas on state resources) under Act 250 (or otherwise), and make sure master planning is clearly authorized in other situations. Overview information of an entire project, or with respect to specified criteria, could be required up-front, perhaps with the first application. Development would then proceed in

phases, with a periodic evaluation and approval in phases, before allowing continuing with the later phases.

problem: who is party to the master plan application?

3. There may be a need for a greater ability to get testimony in Act 250 on other existing or potential growth. [The Home Depot decision reportedly says criterion 9(A)[2] analysis cannot consider future traffic another developer intends to ask for in the future.]

4. Appointments to board and district commissions could be adjusted in a way that gives the governor more direction in the appointment process.

5. The agency of natural resources (ANR) could be more willing and able to intervene on issues beyond its own permits. Also, expert state employees could be made more available to provide information to towns on issues such as the likely impact on a stream or on air quality. Often, a state employee may show up at a particular town to present useful information only if a resident or local board member knows the state employee personally, and asks him or her to attend.

6. In particular, ANR and the regional planning commissions could help applicants within development centers, process these applications faster, and provide particular help with housing projects. [This is not a new idea.]

7. Regional planning commissions should have sufficient staff, and reportedly could participate more in Act 250.

8. There could be guidelines for when off-site environmental mitigation is acceptable. If a natural resource located within the area to be developed is impaired, or if it is not likely to be useful after the development, and the resource is located where denser development would better fit local goals, it may make more sense to do long-term conservation of the resource elsewhere, hopefully nearby, maybe at a 2:1 ratio. But so far, in Vermont, we have not rationalized the mitigation process by which towns and the state use the Act 250 process to get a dedication of land for what they want (frequently, land is set aside, as part of the process.)

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[2] (9)(A) Impact of growth. In considering an application, the district commission or the board shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the district commission or the board shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.

9. Overlays could be developed, showing groundwater, water supplies, and other resources of particular concern under Act 250.

10. Authorize denial of an Act 250 permit, on the basis of criterion 5, relating to traffic[3]. Perhaps, major employers should be required to create an employee trip reduction plan, perhaps even with performance standards. (Maybe charge for parking, and pay each employee for not bringing a car to work.) Where appropriate, consider reducing peak hour traffic.

11. Ask developers to analyze what the capacity of the municipality and the region will be after their project is built.

12. Act 250 criterion 9(L)[4], relating to rural growth areas, is perceived by some as an underutilized tool that has a number of undefined concepts that could be fleshed out.

13. Act 250 may need the ability to look at several projects as part of one proceeding: in one situation that was reported to us, there were three different subdivision proposals on connected land, that, together, would cover 1,000 acres. If they could be considered together as part of one proceeding, better outcomes would be likely.

14. Train regulators regarding growth management.

15. Refocus Act 250 jurisdiction onto hotspots, especially hotspots located in towns that have no effective regulatory program in place. Forget about development in growth centers; focus on ridgelines, identify and protect truly critical farmlands, preferably by use of incentives, and establish or exercise jurisdiction over important resources that are being rapidly lost.

B. Act 200 and Chapter 117 Tools.

Background on the status quo.

1. Municipal planning is a local option, and some towns choose not to plan at all, or choose not to pursue the planning goals that appear in 24 V.S.A. § 4302. (Towns that do plan may plan to have strip development along all local roads.)

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[3] 10 V.S.A. § 6086(a)(5), reads:
(5) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.
And 10 V.S.A. § 6087(b) reads:
(b) A permit may not be denied solely for the reasons set forth in subdivisions (5), (6) and (7) of section 6086(a) of this title. However, reasonable conditions and requirements allowable in section 6086(c) of this title may be attached to alleviate the burdens created.

[4] 10 V.S.A. § 6086(a)(9)(L) reads: (L) Rural growth areas. A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.

2. State law does not force compliance with the planning goals, and regional planning commissions, who are given the task of reviewing the planning processes of the towns in the region and approving town plans of those who choose to submit a plan for review[5], are dependent on funding from the towns whose planning processes and plans they review, and, accordingly, are in a position where it is difficult not to confirm a town's planning process or approve a plan submitted by a member town. There do exist intercommunity differences within at least one region, as in the case cited by one interviewee in which one town wants to have a large road end at a place where the next community does not want a large road. The question is the extent to which these issues can be worked out by the regional planning commissions.

3. State regulations do not focus on cumulative growth: Act 250 takes projects one at a time; there is no state land use plan based upon carrying capacities of resources playing a prominent role; and Act 200 planning has been underfunded and under-implemented.

4. Large parts of the state's growth management scheme, as it exists in statute, are virtually ignored and have been for years, partly as a result of a staff allocation decision made several years ago within the Department of Housing and Community Affairs. The Council of Regional Commissions, the entity intended to review regional plans and state agency plans and to sit on appeals with respect to municipal planning efforts, last met in 1996.[6] It has no assigned staff. The Development Cabinet[7] process has replaced state agency Act 200 planning, although agency planning is still required by statute. In the absence of state agency planning, one of the major incentives for municipal Act 200 planning becomes meaningless. (Here, we are referring to the provision in 3 V.S.A. § 4020 that requires that state agency plans be compatible[8] with regional and approved

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[5] 24 V.S.A. § 4350(a) and (b) read:

(a) A regional planning commission shall consult with its municipalities with respect to the municipalities' planning efforts, ascertaining the municipalities' needs as individual municipalities and as neighbors in a region, and identifying the assistance that ought to be provided by the regional planning commission. As a part of this consultation, the regional planning commission, after public notice, shall review the planning process of its member municipalities at least twice during a five year period, or more frequently on request of the municipality, and shall so confirm when a municipality:

(1) is engaged in a continuing planning process that, within a reasonable time, will result in a plan which is consistent with the goals contained in section 4302 of this title; and

(2) is maintaining its efforts to provide local funds for municipal and regional planning purposes.

(b) As part of the consultation process, the commission shall consider whether a municipality has adopted a plan. In order to obtain or retain confirmation of the planning process after January 1, 1996, a municipality must have an approved plan. A regional planning commission shall review and approve plans of its member municipalities, when approval is requested and warranted. Each review shall include a public hearing which is noticed as provided in section 4447 of this title which notice shall also include publication in a newspaper or newspapers of general publication in the region affected. The commission shall approve a plan if it finds that the plan:

(1) is consistent with the goals established in section 4302 of this title;

(2) is compatible with its regional plan;

(3) is compatible with approved plans of other municipalities in the region; and

(4) contains all the elements included in subdivisions 4382(a)(1)-(10) of this title. ...

[6] Council of Regional Commissions' duties are established in 24 V.S.A. § 4305.

[7] The development cabinet is created under 3 V.S.A. § 2293.

[8] 24 V.S.A. § 4302(f)(2) provides: (2) As used in this chapter, for one plan to be "compatible with" another, the plan in question, as implemented, will not significantly reduce the desired effect of the implementation of the other plan. If a

municipal plans.) Agency representatives comment that requiring updating of state agency plans every two years was too often. On the other hand, Act 200 goals are perceived as good by planners, and are referred to often. We suggest that the legislature review the implementation of the state's current growth management scheme. For one reason, it is difficult for us to suggest possible statutory alternatives to the status quo, when numerous requirements of the law are unilaterally ignored.

But, beyond our current task, we have not been convinced that the basic approach of Act 200 is unsound or at odds with current values of a majority of Vermonters with respect to the role of the state and local governments. It seems to provide a defensible mix of local freedom of choice and helpful direction from the state, which is also committed on paper to keeping its own house in order. We characterize the essential Act 200 approach as the state saying: **These are the state's planning goals. State entities are going to act consistently with these goals. If towns choose to also pursue these goals, they will receive specified benefits.**[9] At the very least, state action should be evaluated so that it does not inadvertently induce behavior that is contrary to the goals. In addition, if the benefits to the towns are not enough to induce action, they could be increased.

Options.

1. Citizens who volunteer to participate in the planning process at the local level need to have the time to do so, and need to believe that their participation will make a difference. Businesses may have a more direct economic interest at stake than average citizens, and some fear that business interests may be overly represented among volunteers for local government offices, and that the local governments may become too attuned to the interests of businesses, to the detriment of the general citizenry. Others contend that the current system works wonderfully. One town reportedly thought of prohibiting realtors and developers from serving on local boards. Perhaps a range of occupations should be encouraged to be appointed.

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plan, as implemented, will significantly reduce the desired effect of the other plan, the plan may be considered compatible if it includes the following:

(A) a statement that identifies the ways that it will significantly reduce the desired effect of the other plan;

(B) an explanation of why any incompatible portion of the plan in question is essential to the desired effect of the plan as a whole,

(C) an explanation of why, with respect to any incompatible portion of the plan in question, there is no reasonable alternative way to achieve the desired effect of the plan, and

(D) an explanation of how any incompatible portion of the plan in question has been structured to mitigate its detrimental effects on the implementation of the other plan.

[9] 24 V.S.A. § 4350(e) provides:

(e) During the period of time when a municipal planning process is confirmed:

(1) The municipality's plan will not be subject to review by the commissioner of housing and community affairs under section 4351 of this title.

(2) State agency plans adopted under 3 V.S.A. chapter 67 shall be compatible with the municipality's approved plan. This provision shall not apply to plans that are conditionally approved under this chapter.

(3) The municipality may levy impact fees on new development within its borders, according to the provisions of chapter 131 of this title.

(4) The municipality shall be eligible to receive additional funds from the municipal and regional planning fund.

2. One commenter thought that regional planning commissions (RPCs) can make tough decisions if there is a backstop; i.e., you have a state presence and a system that provides that, if not decided locally, an issue will be resolved by the state. What form that backstop may take is another question.

3. RPCs could conduct a periodic review of the implementation of plans, and could be empowered to suggest that municipal plans, or implementing bylaws, or both, be updated. Under Act 200, plan approval requires "consistency with the goals" which "requires substantial progress toward attainment of the goals … unless the planning body determines that a particular goal is not relevant or attainable."[10] This was the way Act 200 of 1988 resolved the Senate's preference of focusing on the implementation of town plans, with the House's preferred approach of having town plans reviewed and subject to an approval process.

4. Address the problem caused by the fact that zoning and subdivision regulations are not always adopted so as to carry out the town plan. The statute seems to require this[11], but at least one judge does not think this is a requirement. But what should be the effect of failing to implement the plan? One option would be to take the approach used in the recent amendment to criterion 10[12], and to provide that bylaws are only enforceable to the extent they carry out the plan. But the consequences of this may be counter-productive: planners expect town plans to evolve over time, and a municipality must be given time to determine how to implement policy it decides to implement. A gentler option would be to give towns a reasonable amount of time after a plan has been updated to update its bylaws and, if the plans and bylaws are still far apart after a specified period of time, to encourage local comparison of plans and implementation measures, and encourage local efforts to bring them closer together. Of course, if a system is relying on incentives, there must actually be meaningful incentives.

5. Effective local planning depends heavily on untrained volunteers: give money for more professional staff and more training of citizen planning commission members. Consider providing funds to towns for adopting and updating plans and bylaws, and withdrawing it for failure to take these actions. The state could try to provide more planning and implementation assistance over the internet, but some individuals lack access to the internet.

6. Public capital investments must be considered with respect to where the state invests and how to allow access to infrastructure funded by the state [sewer extensions, curb cuts, access to gas lines, interchanges]. Some towns allocate infrastructure capacity first-come, first-served. Allocations may be designed so as to promote outcomes the town wants, such as to allow access only in growth centers.[13]

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[10] 24 V.S.A. § 4302(f)

[11] 24 V.S.A. § 4401(a)(1) provides, in part: "All such bylaws and the capital budget and program shall have the purpose of implementing the plan, and shall be in accord with the policies set forth therein."

[12] 10 V.S.A. § 6086(a)(10)

[13] In Williston, they have a sewer allocation ordinance.

7. Provide analysis at the state level regarding the impact of state expenditures. In the view of some, a state planning office may be required. Another option would be an office of smart growth, as in Maryland (MD), focusing on growth and its impact on resources, and coordinating the state response beyond the role of the Development Cabinet.[14] This could have an advocacy role, such as the department of public service, and could employ a planner, an economist, a wetlands specialist, and a hydrologist. The idea would be to make funding conditioned upon meeting performance standards on smart growth. For example, one commenter suggests that an office of smart growth could consider how a circumferential highway complies with local planning and zoning: VTrans allegedly is too busy to integrate all these issues. Some argue that the Development Cabinet only focuses on big reactions, and does not get down into all funding decisions, such as VTrans and Department of Education construction funding decisions.

8. Identify "base sector projects"; and study secondary impacts of them up front. [These were defined for us by one commenter as large manufacturing, recreation and tourism, higher education, and health care entities (they sell products outside region, and bring employees inside).] If a regional plan balances all sectors of the economy, and manufacturing capability is accompanied by adequate housing, retail opportunities, etc., any base sector project within the growth projection would be all right. If there is not a good regional planning base, you cannot bring about growth in tune with infrastructure and balanced between all sectors. As is, you push for base sector projects without looking at other factors. The state could make people aware of information, provide region with funds, and let locals figure what to allow.

9. Regionally-developed data could be made more accessible to locals. (But this may create a greater risk that data could be fiddled with.)

10. Some believe that Chapter 117 appeals take too long and are too unpredictable, and that the state may need judges rotating through the position.

11. Neither a municipal plan nor a regional plan is required to address "earth resources."

12. Chapter 117's goal regarding strip development could be strengthened: 24 V.S.A. § 4302(c)(1)(A), " ... strip development along highways should be ~~discouraged~~ prohibited".

Each year, the town evaluates available **capacity,** committed capacity, and uncommitted reserve. Of the capacity, they allocate for commercial-industrial uses; residential uses; and others. Each project must be within the annual allocation.

Regarding schools, recreation, and police, they allow development only by phases: after considering how rapidly they can grow, they set a maximum allowable growth target of no more than 80 housing units per year.

Transportation is tougher, because of pass-through traffic. MPO, the regional transportation entity, does regional modeling that looks at entire region, but accuracy is tough. Totally new projects, such as Husky, are very tough to predict impacts.

[14] The Development Cabinet is created under 3 V.S.A. § 2293.

13. Provide more funds for planning, at all three levels, and more incentives, and provide transition funds for those municipalities who want to plan, but who are not eligible for additional planning funds under 24 V.S.A. § 4350 because they have not recently been engaged in planning.

14. Remove regulations that create incentives to develop in the wrong place. Some would cite as an example the 10-acre exemption from subdivision rules, which serves as an incentive to create lots of 10.1 acres. Of course, this particular provision is intertwined with a number of issues regarding the on-site disposal of wastewater.

15. Transferrable Development Rights (TDRs)[15] need to be authorized over larger land areas than just one municipality, such as a countywide area: then, you have sending and receiving areas and enough property to have adequate markets. This would probably have to be accompanied by coordinated and carefully constructed zoning.

16. Start with an inventory of resources, determine what their capacities are, and then the governmental unit decides how to allocate within those capacities. RPC capacity studies would be a good idea. Carrying capacity for humans is a function of the amount of capital one is willing and able to invest. Where resource is near carrying capacity, new projects should be net enhancement. Encourage projects that free up capacity.

[At Lake Tahoe, they award points for desired behavior (creating riparian buffer, dedicating open space, providing on-site wastewater management, excellent stormwater management). With lots of points, project approval is certain; moderate amount of points may or may not lead to approval; few or no points means project is rejected.]

17. In Chapter 117, the planning sections, where the discussion is of growth trends, insert "resource capacity analysis"; thereby tying population projections to capacity of the land, thus addressing long-term cumulative impacts of growth.[16]

18. Stronger regional planning, as in Florida, would allow a better allocation of commercial and industrial growth, considering land capabilities.

19. GIS could be used more for planning; viewshed analysis by means of GIS can help target site visits.

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[15] 24 V.S.A. § 4407(16) authorizes use of transferable development rights, which is a system that allows denser development in a designated place where development is desired, if the person has first obtained a specified amount of conservation rights from a designated place where conservation is desired.

[16] Perhaps, a place to insert this concept might be 24 V.S.A. § 4382(c), which reads:

(c) Where appropriate, and to further the purposes of section 4302(b) of this title, a municipal plan shall be based upon inventories, studies, <u>resource capacity analyses,</u> and analyses of current trends and shall consider the probable social and economic consequences of the proposed plan. Such studies may consider or contain, but not be limited to:

(1) population characteristics and distribution, including income and employment;

(2) the existing and projected housing needs by amount, type, and location for all economic groups within the municipality and the region;

(3) existing and estimated patterns and rates of growth in the various land use classifications, and desired patterns and rates of growth in terms of the community's ability to finance and provide public facilities and services.

20. Chapter 117 could more clearly authorize towns to address "cumulative growth," perhaps in unspecified ways that empower towns to develop their own approaches.

21. Local Act 250 findings authorized under 24 V.S.A. § 4449[17] could allow towns to address more Act 250 issues; municipal findings could be given more weight in Act 250; and the process could be made easier to adopt.

22. Repeal provisions that allow five percent of citizens to require bylaw amendments be adopted by two-thirds majority.[18]

23. There could be an inventory of public and private conservation easements, the results of which would be linked into local and regional planning processes.

24. Informal growth control devices include failing to improve roads and failure to provide municipal wastewater treatment.

25. Planners should perform build-out analysis to see what it would be like if development occurred to the maximum extent allowed by the plan or proposal. The Ortons are working on a tool to help towns do this; perhaps VLCT could be helpful in helping towns perform this analysis.

26. Open space planning at local level can allow development, but in the most appropriate places for pods of development.

27. Open space planning, which rarely occurs in Vermont, would allow animal corridors to be protected. Now, the system may protect independent deer yards, but reportedly may fail to provide passages into and out of the yards.

28. Since most developers play by the rules, the rulemakers are responsible for the system's failure to assure that mixed uses are pursued. If redevelopment were tied to mixed use requirements, then it would happen.

29. A NEPA-type review may make sense in some situations where there are lots of independent projects with cumulative, but unknown, effects. This kind of review would look at the impacts on the natural environment stemming from the cumulative effects of growth from different projects. It is like an environmental impact disclosure act, there are no substantive criteria to be met, the idea being that better information will

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[17] 24 V.S.A. § 4449(c) restricts the scope of review as follows:

(c) In proceedings under this section, the applicant shall demonstrate that the proposed development or subdivision:

(1) Educational services. Will not cause an unreasonable burden on the ability of the municipality to provide educational services.

(2) Municipal services. Will not cause an unreasonable burden on the ability of the municipality to provide municipal or governmental services.

(3) Town plan. Is in conformance with the plan of the municipality adopted in accordance with this chapter.

[18] H.647, which has passed the House and is currently pending before the Senate, would make this change.

lead to better decisions. A good place to start would be with full analysis of state projects, what growth will follow, what impacts are likely to follow, and what would be the most appropriate conditions on the development to mitigate unacceptable impacts. (Massachusetts has a state baby NEPA. Maybe also New Jersey and Oregon or Washington.) State government may already have the staff and money to be able to do the analysis.

30. If there is any interest in increasing pressure on towns to plan, an interest which we have not heard in recent years, a default land use vision could be developed, probably at the state or regional level, which would be the source of evidence that could be presented to encourage development in population centers and protect important state resources, particularly in rural areas. This could provide input, in the absence of approved plans that have been implemented by zoning, on where development ought to go.

31. Development of downtowns could be made easier, and could be tied to the preservation of outlands, possibly by transferable development rights. An alternative would be to encourage citizens living in an area to voluntarily designate the area as a "rural heritage area," and to have certain benefits accompany the self-designation. The approach and brainstormed incentives for the preservation of "rural heritage areas" are established in the attached memo, located at Appendix A.

C. Transportation Issues.

1. Isolated developments add to transportation demand. Anything that encourages concentrated development, as opposed to sprawl, creates a smaller increment of transportation demand.

2. Link transportation to community planning and settlement patterns, and provide more mass transit. How to fund? Under existing law, if a state road is maxed out, new capacity is paid for by the state and federal government, so towns develop strips on state highways. One suggestion is to change the funding system so that local governments experiencing growth on state highways have to pay 20 percent of the costs of construction. If towns knew that growth would cause them these costs, they might plan differently.

3. There is no program funding local sidewalk development: federal strings on recreation paths make them expensive and inappropriate in some situations (width of path, incline limited to four percent, paving required). Provide funds for these purposes.

4. Substantial investment in roads should justify state input on strip development. Interchange access is a publicly-created value: some say the state should not have to pay to require conservation.

For example: Compare a highway system to the electric system. The public highway system is free to the user, generally constructed through funds gained through the gas tax. The electric system, however, establishes a charge for use of lines while wheeling (meaning transferring) power from a generator to a user. The transportation system does not charge for curb cuts, even though they: (1) add value for the owner; (2) degrade through traffic; and (3) force the public to expand the highway.

Possible response: Create a TDR system for curb cuts: (1) identify threatened strips of land; (2) allow construction, for example, of a commercial service node; (3) plan proactively where you want it; (4) give each landowner a fraction of total curb cut rights; and (5) require accumulation of a specified amount of curb cut rights before a curb cut may be authorized.

D. Act 60.

1. Without intending to get fully into the complexities of the educational funding issue, we received an anecdotal opinion that there is less competition between towns for development since Act 60.

[In Williston, they are assessing costs of providing services to different types of development. They found that residential development produces a slight surplus in terms of meeting the cost of municipal services, and that costs and benefits break even with respect to school costs. They also found that commercial development is neutral so far as school funding is involved, but, regarding the town portion, involving fire, police, and roads, commercial development costs more than it brings in. They found that no development pays its way.]

2. Perhaps the housing-growth town in a growing region faces costs that should be shared with other towns in the region. Towns that may not want as much development are not as intent on creating a huge industrial tax base.

E. Housing.

There may be a need for more state involvement in affordable housing, maybe a state Housing Development Authority, accompanied by more funding, and regulatory relief. (For example, Williston could provide quicker phasing-in of affordable housing, or allow more than expected annual amount of housing.)

F. Energy.

1. The regional Governors' group on global warming determined that slowing down the rate of global warming may require a 75 percent – 80 percent reduction in greenhouse gas emissions within the next 50 years.

2. Need funds for alternate energy projects, companies, or market infrastructure. Some suggest capitalizing this effort by funds from Vermont Yankee; others deny that funds for these purposes are not available.

3. MA has renewable energy portfolio requirements.

4. Make loans to clean energy companies, for public education, research, and business research – it is a form of economic development.

5. Concentrate growth near power sources (district heating); advertise reliable distributed power for new industrial uses.

6. Utilities have an obligation to serve, and costs of providing service are borne by all; perhaps it should reflect real cost of providing service. Existing line extension policy does entail growth paying for growth.

7. Provide financial incentives for the purchase of efficient cars; growth in use of solar energy may lead to even more dispersed settlement.

8. VT has lots of intellectual capital in alternative energy areas.

9. SUV mileage standards are perceived by some as being too lax.

10. District heating, as by the McNeil wood-fired plant, can be very efficient, and could be expanded.

11. Methane generation, to be economically viable, may require 300 cows; a fact that may require more combining of manure resources among the owners of smaller farms, if this form of local energy resource is to be more fully captured.

12. Expand the use of roundabouts, which are energy-efficient, friendlier, and safer.

13. In Aspen, they have a mitigation fee scheme: if a house has more than 5,000 sq. ft., or if it has a spa or pool, half the energy demands must be met by solar energy, or there is a $5,000 mitigation fee that goes to pay for energy conservation.

14. Except for transportation, building design is a critical factor concerning energy consumption. (It is tough to retrofit an existing building and thereby reduce energy consumption by 15 percent; with a new building, it is easy to save 50 percent, but there may be a cost in architectural preconceptions.) Also, no additional money is available to encourage a home owner to make a new home consume 50 percent less energy.

15. Consider requiring each major developer to audit emissions and develop a greenhouse gas reduction plan, through measures which may include building efficiency standards. Have them consult with Efficiency VT before going through Act 250.

16. Create a fund to pay for renewable resources research (such as a feasibility study of the use of windmills at ski areas), and to get individuals and businesses off the grid.

17. Consider easing aesthetics review of windmills, at least at built-up ski areas, and possibly in other situations, as defined by guidelines for encouragement of windpower, which should address where they should go and what kind of equipment is encouraged.

18. Global warming NE site: www.necci.sr.unh.edu\2001.nera-report.html

G. Agricultural and farmland preservation.

1. Protect working landscapes.

2. Help make farms viable.

3. Support long-term health of forest products industry.

4. Support Housing and Conservation board efforts, particularly when it assists both housing and conservation at the same time.

5. School cafeterias do not have staff to procure locally-grown food: use state seed money to link school cafeterias with local farms.

6. See rural heritage memo: Appendix A.

H. Other tools.

1. Authorize creation of **conservation districts** from the bottom up.
One analysis is that private property rights give the power to the individual owners and not to the community as a whole. Therefore, even though the residents may all agree that they want to retain the character of a neighborhood, any one of them retains the power to undo the arrangement. There is no easy way to get the outcome they all want. The idea is to create a system that enables neighbors to create a district in which they agree to bind themselves to a limit on development. Statutes would enable establishment of conservation districts, and create a public process for holding hearings, establishing boundaries and voting, with a supermajority required (perhaps requiring assent of 75 percent of the voters and owners of 75 percent of the land). Agreement could establish a transferable development rights scheme, or other method of controlling development location and rate of growth, such as one house per 30 acres. (Irrigation districts function similar to this.)

2. Provide that strip development on a state highway will be subject to state property tax increase.

3. Encourage formation of municipal conservation commissions: ANR has determined that natural resources protection works most effectively in municipalities that have these commissions.

4. Educate homeowners: (a) to have fewer yards, and (b) not to apply too much lawn fertilizer, which easily runs off the land into the waters of the state.

5. Remove the sales tax exemption on nonagricultural fertilizer.

6. Educate bulldozer operators regarding stormwater management techniques.

7. Use the resources of universities more, for technology transfer (such as the local roads program), as well as for other purposes. (Also, bear in mind that they may be adept at getting grants for joint projects.)

8. Regarding certain resources, some argue that the state needs a "no net loss" standard. Consider wetlands, especially outside growth centers, and certain crucial farmland.

9. Authorize creation of stormwater utilities as a vehicle for obtaining funding for reducing impervious cover, stormwater management, and to ease selection of the most cost-effective management techniques.[19]

[19] H.644, as enacted, authorized municipalities to manage stormwater as they do wastewater.

APPENDIX A

Vermont Legislative Council

115 State Street • Montpelier, VT 05633-5301 • (802) 828-2231 • Fax: (802) 828-2424

MEMORANDUM

To: Interested persons

From: Al Boright

Date: September 29, 1999

Subject: Rural Heritage Area Brainstorming Piece, Draft 2

I. General Provisions

A town with a confirmed planning process may designate itself, or a portion of itself, as a Rural Heritage Area.

Planning grants are available, on application, for towns considering self-designation.

A designation shall run for eight years, unless otherwise decided by legislature, although pilot projects may run for shorter periods of time.

Municipal designation to be made by municipal ordinance, under chapter 59 of Title 24 (act of local legislative body, subject to disapproval by voters).
//Option: individual landowners could be given choice to participate or not.//

Criteria for selection:
Area designated must be a substantial rural area, which may include a rural Village.
Town must specify whether designating as Level One or Level Two Rural Heritage Area.
Pilot projects may have additional criteria.
//Question: should there be other criteria?//

II. In a "Level One Rural Heritage Area,"

A. a **landowner** within a designated area:

* may claim property tax credit of 1 percent (up to $300) for 10 years' ownership of land that has not been subdivided.
  - If land is zoned, landowner eligible only if zoning allows subdivision.
  - Years included extend backwards up to two years prior to enactment.
* pays no property transfer tax if owner has not subdivided land (tax doubles if owner has)

* land gains tax runs twice as long, rate decreases half as fast.

B. a **municipality** containing a designated area becomes:
* eligible for grants for local enforcement of land use regulations.
* subject to limits on state agency funding of growth-inducing infrastructure, such as road upgrades and sewer lines.

III. In a "Level Two Rural Heritage Area" (includes all of Level One)

A. Level Two standard incentive package
* $300 annual property tax credit.
* $100 annual property tax credit per acre commercial hay or food product.
* $100 per acre annual property tax credit for trails open to the public on your property, and for waterfront property open to public passage, for up to 50 feet from lakes, ponds, or navigable streams.
* two percent automobile sales tax rebate, upon resident (not landowner) buying one car, EPA rated over 28 mpg.
* PILOT for lands subject to substantial conservation easements to qualified organizations, and for lands owned by the state (one-tenth of a cent per square foot).
* farmers get protection against unreasonable local regulations.
* farmers (including large farms only if large farm law is fully implemented) get protection against nuisance suits when acting in accordance with accepted agricultural practices.
* one-time property tax credit to owners granting substantial conservation easements to qualified organizations.
* farmers get assistance in paperwork involving state and federal programs.

* watercourse planning grant priority.
* water resources public access funding priority.
* basin planning priority.
* Youth Conservation Corps jobs priority allocation on trails and water accesses.
* priority consideration for existing funds for historic barns, buildings, and bridges.
* priority in Housing and Conservation Board funds for open land and rural housing.
* priority consideration within existing manure management assistance programs //Option: additional money for manure management//

B. Level Two special incentive pilot projects, as funds are available
* Upgrading of privately-owned, public water supply system, on application.
* Grants for upgrading, repairing, or replacing septic systems, particularly for low income persons and those in trailer parks (repayment schedule if land subdivided within 10 years).
* Funding for forest products conversion to low impact equipment.
* Rural transit access program

  Funds for trails and their intersections with roads and waters of the state.

  Rural transit innovative incentives, on approval of proposal.

Rural home health care transportation assistance, on approval of proposal.
* Junk car collection and reclamation, on application of landowner.
* Gas guzzling "clunker" purchase program for RHA residents.
* Reclamation program for junkyards located along RHA highways.
* Methane pilot project for multiple farms in a RHA.
* Funds to enable convenient public access to waters, trails, and other natural or historic attractions

C. Level Two Regulatory Protection

1. Act 250
* Jurisdiction over "subdivisions" triggered at 3 lots within 3 miles.
* Jurisdiction over "development" triggered at one-half acre.
* New Act 250 criteria: "no undue impact on character as rural heritage area."
* Cumulative impact review (S.33 of 1999 allowed the environmental board to adopt rules to address the cumulative effects of development).
* Notice and appeal times are extended to 40 days, all parties with an interest can appeal.
* Big box stores (over 40,000 sq. ft. retail space) would be prohibited in RHAs unless in a location identified in the regional plan, with location provision of regional plan subject to veto within 35 days of adoption by 1/3 of towns in the region
* Signs posted at development sites informing the public that an application for development on the posted property is pending, and explaining where the application may be inspected.

2. Subdivision regulations
   * no 10-acre exemption.
   * state jurisdiction invoked when a previously exempt septic system is replaced, but may require only up to best feasible fix.

3. Citizens' suits allowable by RHA residents to enforce environmental laws (see H.99 of 1999).

D. Level Two Optional Local Tools

1. Hilltop zoning option for town (S.64 of 1999).
2. River corridor protection, modeled on NH's (H.101 of 1999).
3. Forestry regulations, heavy cut jurisdiction may be invoked at 20 acres.
4. Curb cut restrictions.

   For undeveloped stretches of road, curb cuts may be limited and subject to transferable development rights (perhaps each abutting owner given proportional amounts of development rights, and any person wishing to build first must acquire specified amount of development right from others on road).
5. Option to designate RHA as not preferred as site for communications towers, a designation that state agencies will advocate to support.
6. Option for RHA's with villages to adopt "land value taxation," whereby open village land that the community wanted to develop is taxed at an increased rate and developed property is taxed at a decreased rate.

IV. Funding Options
1. General Appropriations
2. Gas tax increase of 3 cents brings in $10 million (designated to come from transportation fund).
3. Surcharge of $750 on certain new motor vehicles rated at 21 MPG, or less (see H.477 of 1999).
4. Rural heritage area voluntary income tax checkoff.
5. Special license plates
6. Act 250 Agricultural lands conversion mitigation fees.

V. Administration

Various state agencies should be involved: Agriculture, Commerce, Natural Resources, and Transportation

OTHER JURISDICTIONS

1. **Oregon,** in the 1970s, required communities to project needs over the next 20 years, including housing, natural resources, and economic development needs, to designate areas to accommodate growth for the next 20 years, and to limit growth outside those boundaries. A later appendix to this report contains a great deal of information about the Oregon approach.

2. **Maryland** has a detailed approach, called "smart growth," which focuses on the allocation of state resources and their land use impacts. An appendix to this report contains a great deal of information about the Maryland "smart growth" approach.

3. **New Jersey** has a system of "cross-acceptance", pursuant to which localities, regions, and the state review each other's plans and make adjustments to address concerns expressed.

4. Under the **Cape Cod regional commission**, critical resource areas are mapped; then projects of regional impact are regulated. They protect water supplies, and address traffic conditions.

5. **Rhode Island** has mapped important habitat areas and has tools to let towns see what build-out looks like, and effects on endangered species, forestry, and wetlands. They also have developed model ordinances.

6. **Florida** authorizes the state to designate a wide range of resources, both natural and manmade, as being "areas of critical concern." (If locals fail to protect, on recommendation by the state planning agency, a different agency can adopt binding requirements.)

There was a study on **"Growth in the Adirondack Park, Analysis of rates and patterns of development** (2001)."

Mission: relate the number of permits given for new buildings 1990-1999; the number of new residential parcels added to tax rolls in the 1990s; the total number of structures; the average rate of growth in terms of the number of new structures per year; the percent of new buildings regulated locally or by the park agency; and the percent of total development regulated locally or by the park agency.

Findings:

Towns are unevenly positioned to regulate development; development is heaviest along roadsides and lakeshores; development is lighter in nonindustrial Resource Management areas; weaknesses = (1) heaviest development has been channeled to lakeshores, (2) inability to limit sprawl and make it less visible, and there is no clustering policy; stable ownership patterns among forest owners have contributed significantly to park's open space landscape.

Recommendations:

(1) fund planning assistance with the goal of helping all towns develop land use programs – use professional circuit riders to educate and train locals in plan and code development and enforcement;

(2) provide funds and staff assistance to map all buildings and parcels, and allow completion and annual updating of computerized tax maps;

(3) develop a clustering policy for rural use and resource management areas; also develop a cumulative impact assessment policy for review of new projects, considering all development authorized by the park authority as well as by the towns; also develop guidelines for roadside development to aid local governments in controlling and making sprawl less visible;

(4) research and estimate the amount of increased nutrients each watershed can tolerate without impacting the water and its carrying capacity for new development; planning at the local level must incorporate these findings into local land use programs in order to prevent long-term degradation of each watershed;

(5) private owners keep large amounts of land open and undeveloped; (A) continue land acquisition and expand the purchase of conservation easements; and (B) give larger tax breaks to keep large tracts of land in open space or forestry;

(6) make more staff available to local boards to assist in project review.

APPENDIX D

Search Results

State Incentive-Based Growth Management Laws

Alabama

Citation:	Summary	Topic Areas
Ala. Code, § 35-18-1 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic, or open-space values of real property; assuring its availability for agricultural, silvicultural, forest, recreational, or open-space use; protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, paleontological, or cultural aspects of real property. The holder of an easement may be a governmental body, a charitable corporation or a land trust. The term of a conservation easement must be stated at the time it is established, or it becomes the lesser of 30 years or the life of the grantor.	[Conservation Easements] [Land Trusts] [Open Space]

Arizona

Citation:	Summary	Topic Areas
Laws of 1998, House Concurrent Resolution 2027	Passed by the electorate on the November 1998 ballot as Proposition 303, it appropriates $220 million in general fund revenue over 11 years to purchase state trust lands--or the development rights to such lands--to protect open space. The referendum requires local governments or nonprofit groups using state grants to purchase trust lands to provide a 50-50 match. It also precludes state mandates for local urban growth boundaries and growth management plans.	[Funding Sources] [Grants/Loans] [Open Space] [Purchase of Development Rights]
Ariz. Rev. Stat. Ann., § 33-271 et seq.	Authorizes the creation of a conservation easement that imposes limitations for conservation purposes to preserve the historical, architectural, archaeological or cultural aspects of real property. Conservation purposes include preserving land areas for outdoor recreation, natural habitat of fish or wildlife, or open space for scenic enjoyment of the general public. A governmental body or charitable land trust may hold an easement. Conservation easements are voluntary in nature and unlimited in duration unless stated otherwise at the time of creation.	[Conservation Easements] [Land Trusts] [Open Space]
Ariz. Rev. Stat. Ann., 11-1101 et seq.	Authorizes a county to assess impact fees against developers provided it has adopted an ordinance for the public facility for which the fee is collected. A public facility is defined to include capital improvements for roadways, wastewater and drinking water systems, and public parks. The amount of the fee must be "reasonably attributable or reasonably related to the service	[Impact Fees] [Land Use Planning] [Local Government]

	demands of the benefit area," and shall not exceed "a proportionate share of the costs incurred or to be incurred in providing a public facility."	
Laws of 1998, Chapter 204	The "Growing Smarter Act" amends existing local government planning law to require that municipal and county general plans include, among other components: (1) a land use element to promote infill and identify locations where development should be encouraged; (2) a growth area element to identify areas suitable for planned multimodal transportation, encourage mixed use development, conserve significant natural resources, and promote financially sound infrastructure expansion; and (3) a cost of development element to require developers to pay their fair share of the costs of providing necessary infrastructure. All zoning and rezoning must be consistent with and conform to the revised local government plans.	[Growth Management] [Land Use Planning] [Local Government] [Smart Growth] [Urban Revitalization]
2000 Senate Bill 1001, 4th Special Session (Enacted as Act 1)	Referred to as "Growing Smarter Plus," Senate Bill 1001 enacts several recommendations of the growth management task force created by 1998 Chapter 204. It requires municipalities of a specified size and growth rate to obtain voter approval of general plans before they go into effect. It authorizes municipalities and counties to establish infrastructure service area boundaries beyond which limitations may be established on publicly financed water, sewer and street improvements necessary to service new development. Municipalities may designate infill incentive districts to encourage redevelopment through expedited zoning procedures, expedited processing of plans and proposals, waivers of municipal fees, and relief from development standards. Counties may designate rural planning areas and assist landowners in developing plans that emphasize voluntary, nonregulatory incentives to encourage continuing traditional rural and agricultural activities. The act empowers counties to assess impact development fees to offset the capital costs of water, sewer, streets, parks and public safety facilities provided by the county to the development. It establishes the Development Rights Retirement Fund to provide grants to applicants to purchase, lease or transfer the development rights of private land. One provision will be referred to the electorate in November for approval: authorizing municipalities to nominate state trust lands for designation as Arizona Conservation Reserve Lands in order to protect cultural, historical, paleontological, natural resource or geologic features; nominated lands must be approved by the legislature or the electorate at the next general election.	[Growth Management] [Impact Fees] [Purchase of Development Rights] [Smart Growth] [Urban Revitalization]
2000 House Bill 2060 (Enacted as Chapter 267)	Authorizes taxpayers and corporations to include the amount deducted for conveying ownership or development rights for property to an agricultural preservation district for credit against their state income taxes. Applications must be made to the district to review and determine the qualification for, and amount of, the credit. The district will issue a certificate stating the appraisal amount and the amount of the tax credits per taxpayer or corporation, not to exceed $33,000 in any calendar year, and no more than $10 million in tax credits. If the allowable tax credit exceeds the taxes due on the claimant's income, the amount of the claim not used to offset taxes shall be refunded.	[Agricultural Land] [Income Taxes] [Tax Incentives]
2001 Senate Concurrent Resolution 1004 (Passed both Houses)	Refers a constitutional amendment to the ballot that would authorize the state to exchange trust lands for other lands if the purpose is to conserve open space on the trust lands offered by the state in the exchange.	[Open Space]
2002 House Bill 2104 (Passed both Houses)	Would authorize counties to purchase or lease development rights from private landowners to preserve open space, agricultural land, and land with archeological or historic significance.	[Agricultural Land] [Local Government] [Open Space] [Purchase of Development

		Rights]
2002 House Bill 2105 (Passed both Houses)	Would authorize counties to establish infill incentive districts in unincorporated areas of a county, and adopt infill incentive plans for each district. The plans could include provisions for expedited zoning and processing of development plans, and waiver of development fees and standards.	[Land Use Planning] [Local Government] [Smart Growth] [Urban Revitalization]

Arkansas

Citation:	Summary	Topic Areas
Ark. Stat. Ann., §15-20-401 et seq.	Authorizes any state agency, county, municipality or charitable organization to hold a conservation easement for the preservation of historical, architectural, archeological or cultural aspects of real property.	[Conservation Easements] [Land Trusts] [Local Government]

California

Citation:	Summary	Topic Areas
Cal. Civil Code, §815 et seq.	Permits the voluntary conveyance of perpetual easements to any nonprofit organization or state or local government entity to retain property in its natural, scenic, historical, agricultural, forested, or open-spaced condition.	[Conservation Easements] [Land Trusts] [Open Space]
Cal. Gov't Code, §66000 et seq.	Authorizes a local agency to assess a fee as a condition for approval of a development project, provided the agency identifies the purpose of the fee; identifies the use to which the fee will be put; determines how there is a reasonable relationship between the fee's use and the development project; determines how there is a reasonable relationship between the need for the public facility and the development project; and determines how there is a reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development project. Facilities for which fees may be assessed include schools and facilities for nonagricultural water, sewage disposal, stormwater and flood control, electricity generation and distribution of gas and electricity, transportation, and parks and recreation.	[Impact Fees] [Land Use Planning] [Local Government]
1999 Assembly Bill 1229 (Enacted as Chapter 503)	Expands the organizations eligible under the Agricultural Land Stewardship Program to hold conservation easements to include resource conservation districts and regional park or open space districts whose purposes include farmland preservation. Eligible districts can apply to the Department of Conservation for grant funds to purchase conservation easements.	[Agricultural Land] [Conservation Easements] [Open Space]
2000 Senate Bill 1647 (Enacted as Chapter 113)	Enacts the Natural Heritage Preservation Tax Credit Act whereby property may be contributed to the state, a local government or nonprofit organization designated by a local government to provide for the protection of wildlife habitat, open space and agricultural lands. The law authorizes an individual or corporate state income tax credit equal to 55 percent of the fair market value of any qualified contribution or property approved for acceptance by the Wildlife Conservation Board, made on or after January 1, 2000, and prior to December 31, 2005. The credit may be carried over to reduce the net tax in the following seven years. Total state income tax credits shall	[Agricultural Land] [Income Taxes] [Open Space] [Tax Incentives]

	not exceed $100 million.	
2001 Assembly Bill 924 (Passed Assembly; in Senate Committee)	Would authorize a county and the cities within the county to adopt a cooperative general plan in lieu of individual plans. A cooperative general plan may include tax-sharing agreements to balance the impacts of development and revenue generated from development.	[Growth Management] [Land Use Planning] [Local Government] [Tax Incentives]
2001 Assembly Constitutional Amendment 8 (Passed Assembly; in Senate Committee)	Would create in the state treasury the California Water and Land Protection Trust Fund for the purpose of acquiring, or making grants to local governments and nonprofit organizations to acquire title or conservation easements in land for fish and wildlife habitat, agricultural land, scenic open space, and parks and recreation areas.	[Agricultural Land] [Conservation Easements] [Funding Sources] [Grants/Loans] [Open Space]
2001 Senate Bill 221 (Enacted)	Prohibits the approval of a development agreement for subdivision containing more than 500 units unless the local government provides written verification from the relevant water supply agency that there is sufficient water either in place or planned to be in place prior to completion of the project. Sufficient water supply means water that would be available during normal and dry years over a 20-year period to meet the projected demand of the proposed subdivision.	[Growth Management] [Land Use Planning] [Local Government]
2001 Senate Bill 610 (Enacted)	Requires a city or county that determines that a development project is subject to the California Environmental Quality Act to conduct a water supply assessment for the proposed project in consultation a water supply agency if one is available. If the local government determines that there is insufficient water for the project, it must submit plans to acquire additional water supplies as a condition for project approval.	[Growth Management] [Land Use Planning] [Local Government]
2002 Assembly Bill 680 (passed Assembly; in Senate Committee)	Would establish a sales tax revenue sharing demonstration project in the six-county Sacramento area. Revenue shared would represent the growth in sales tax revenue over a base amount determined by the state Board of Equalization. It would be reallocated according to the following formula: (1) one-third of the growth would go to the jurisdiction assessing the tax; (2) one-third would be reallocated on a per capita basis to reflect growth in population within the area; and (3) one-third would be reallocated on the basis of housing eligibility (i.e., to jurisdictions that provide a certain percentage of low-income housing). If enacted, the revenue sharing program would not go into effect until January 1, 2004.	[Growth Management] [Local Government] [Sales Taxes]

Colorado

Citation:	Summary	Topic Areas
Colo. Rev. Stat., §36-1-107.5	Directs the state Land Board to establish a long-term stewardship trust of up to 300,000 acres of land. It authorizes the board to sell or lease conservation easements on state trust lands.	[Conservation Easements] [Land Trusts] [Open Space]
Colo. Rev. Stat., §29-21-101	Creates a conservation trust fund in the Division of Local Government in the Department of Local Affairs consisting of lottery proceeds. The Division of Local Government must distribute shares from the fund annually to eligible counties, municipalities and special districts for the acquisition, development and maintenance of new conservation sites, or for capital improvements or maintenance for recreational purposes on any public site.	[Conservation Easements] [Funding Sources] [Local Government]
Colo. Rev.	Authorizes any town to acquire, establish and maintain land or interest	[Conservation

State. §31-25-301	in land for the preservation or conservation of sites, scenes, open space, and vistas of recreational, scientific, historic, esthetic or other public interest.	Easements] [Local Government] [Open Space]
Colo. Const., Art. 27, §1 et seq.; Colo. Rev. Stat., §33-60-101 et seq.	Establishes the Great Outdoors Colorado Program to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage. The program provides grants on a matching basis to local governments and nonprofit land conservation organizations to acquire title and development rights to open space. The constitutional amendment creates the Great Outdoors Colorado Trust Fund comprised of dedicated proceeds from the state lottery to finance the grant program.	[Funding Sources] [Grants/Loans] [Open Space]
1999 House Bill 1155 (Enacted)	Provides a state income tax credit for the donation of a conservation easement to a governmental entity or a nonprofit organization. The amount of the tax credit is equal to the fair market value of the conservation easement, not to exceed $100,000 per donation. The bill allows the unused portion of the tax credit to be carried forward for 20 years. Implementation Notes: The bill's fiscal note estimates that the impact of the tax credit on the state's general fund is projected at $238,500 in FY 2000, $715,000 in FY 2001, $1.16 million in FY 2002, and $1.5 million in subsequent years.	[Conservation Easements] [Income Taxes] [Tax Incentives]
Colo. Rev. Stat., §29-1-801 et seq.	Authorizes a local government to assess a fee on a land development as a condition for permit approval in order to finance an improvement or facility necessitated by the land development that is directly related to a local government service. Land development includes a subdivision of land or a change in the use of land that results in an increase in the number of service units. The fee must be contained in a charter or general policy of the local government that is adopted by resolution or ordinance.	[Impact Fees] [Land Use Planning] [Local Government]
2000 House Bill 1348 (Enacted)	Authorizes a taxpayer who has donated a conservation easement on eligible land and has qualified for a state income tax credit, to receive a refund of the amount of the tax credit that exceeds his or her tax liability (in lieu of carrying over the excess amount to subsequent tax years). The amount of the refund and credit used to offset the tax liability may not exceed $20,000 in a tax year. The bill also would allow a taxpayer to transfer to another taxpayer all or a portion of the tax credit to apply to the transferee's tax liability. Implementation Notes: The bill's fiscal note estimates that the impact of the transferable or refunded tax credit on the state's general fund, above that authorized in 1999 House Bill 1155, is projected at $261,500 in FY 2000, $784,500 in FY 2001 and $1.34 million in FY 2002.	[Conservation Easements] [Income Taxes] [Tax Incentives]
2000 House Bill 1427 (Enacted)	Establishes an Office of Smart Growth in the Department of Local Affairs. The office would designate Colorado heritage communities and award grants to those communities to assist them in addressing critical planning issues and developing master plans. The bill also would create the Colorado Heritage Communities Fund from which grants would be made.	[Grants/Loans] [Growth Management] [Local Government] [Smart Growth]
2001 House Bill 1090 (Enacted)	As amended, the bill would increase the state income tax credit for donation of a conservation easement from a maximum amount of $100,000 to $260,000 per donation. The bill would also increase the maximum amount of the tax credit that is available for refund in a single year from $20,000 to $50,000 beginning in 2003. Implementation Notes: The bill's fiscal note estimates that the	[Conservation Easements] [Income Taxes] [Open Space] [Tax Incentives]

	decrease in state revenues beyond that incurred in 1999 House Bill 1155 and 2000 House Bill 1348 will be $1.5 million in FY2003, $4.5 million in FY2004, and $7.5 million in FY2005.	
2001 House Bill 1375 (Enacted)	Authorizes the Great Outdoors Colorado Trust Fund Board to issue bonds to acquire perpetual conservation easements for open space preservation. The act is contingent upon voter approval of a ballot measure in November 2001 issuing $115 million in bonds for such purposes.	[Bonds] [Conservation Easements] [Open Space]
2001 House Bill 01S2-1006 (Enacted)	Would require each county with a population of 10,000 or more and a population increase of 10 percent or more during the previous five years, and each county with a population of 100,000 or more to prepare a master plan within two years. Each municipality with a population of 2,000 or more located within a qualifying county also would have to prepare a master plan.	[Growth Management] [Land Use Planning] [Local Government]
2001 House Bill 01S2-1020 (Enacted)	Would establish a dispute resolution process between municipalities that disagree about the provisions of a master plan. As one option, disputing municipalities could petition the Department of Local Affairs to conduct a non-binding mediation process. Requesting mediation would be a prerequisite to filing a claim or cause of action in court related to a master-planning dispute.	[Growth Management] [Land Use Planning] [Local Government]
2001 Senate Bill 01S2-15 (Enacted)	Would authorize a municipality or a county to impose an impact fee to fund expenditures on capital facilities necessary to service new development as a condition for permit approval. The local government must first quantify the reasonable impacts of a proposed development on existing capital facilities and limit the amount of the fee to a level necessary to defray those impacts directly related to the proposed development.	[Funding Sources] [Impact Fees] [Local Government]

Connecticut

Citation:	Summary	Topic Areas
Conn. Gen. Stat. Ann., §7-131d	Establishes the Protected Open Space and Watershed Land Acquisition Grant Program to be administered by the Department of Environmental Protection to provide grants to municipalities and nonprofit land conservation organizations to acquire title or development rights to land for open space and watershed protection purposes, and to provide grants to water companies for improvements to protect and supply safe drinking water. Municipalities, nonprofit land conservation organizations and water companies must provide matching funds as a condition for grant receipt. A permanent conservation easement must be executed at the time of closing on any property purchased with grant funds to protect in perpetuity the natural and open space characteristics of the land. Prior to disposing of any watershed land, a water company must notify the municipality in which the land is located, and any private nonprofit land-holding organization that has requested notification of potential watershed land sales, of the availability of the land, and offer the municipality or the private nonprofit land-holding organization first right of refusal to acquire the land.	[Conservation Easements] [Grants/Loans] [Land Trusts] [Open Space] [Purchase of Development Rights]
1999 Senate Bill 1231 (Enacted as Public Act 99-235)	Stipulates that 21 percent of the state's land area shall be held as open space. The goal of the state's land acquisition program is to ensure that 10 percent of the state's land area is held by the state as open space, with not less than 11 percent of the state's land area to be held as open space by municipalities, water companies or nonprofit land conservation organizations. The act sets a strategy for land acquisition beginning with 3,000 acres in 1999, 4,000 acres each in 2000 and 2001, and 5,000 acres in 2002, to continue until the open space land acquisition goal is achieved. The	[Conservation Easements] [Land Trusts] [Local Government] [Open Space]

	state may not convey open space land to any person, organization or political subdivision of the state unless the recipient executes a conservation easement restricting development of the land.	
1999 Senate Bill 1 (Enacted as Public Act 99-173)	Section 47 of Public Act 99-173 authorizes a corporate business tax credit equal to 50 percent of the value of open space land donated to the state, a political subdivision of the state, or a nonprofit land conservation organization that is permanently preserved as protected open space.	[Conservation Easements] [Open Space] [Tax Incentives]
2000 House Bill 5883 (Enacted as Public Act 00-203)	Establishes the Charter Oak Open Space Trust Account and the Charter Oak Open Space Grant Program to provide grants authorized by the Commissioner of Environmental Protection to municipalities and nonprofit organizations to acquire interests in land for open space and watershed protection purposes. A permanent conservation easement must be executed for any grant-purchased property. The act also allows a taxpayer to carryover the unused portion of the corporate business tax credit for the donation of open space land for up to 10 years.	[Conservation Easements] [Grants/Loans] [Open Space] [Purchase of Development Rights] [Tax Incentives]

Delaware

Citation:	Summary	Topic Areas
Del. Code Ann., § 7-6901 et seq.	Authorizes the creation of a conservation easement to retain land or water areas predominantly in their natural, scenic, recreational or open condition, or in agricultural, farming, forest or open space use. Authorizes the creation of a preservation easement to preserve a structure or site historically significant for its architecture, archeology or associations. Governmental bodies or charitable trusts may acquire such easements. Easements may be released, in the same manner that the holder may dispose of real property, subject to conditions imposed at the time of creation of the easement.	[Conservation Easements] [Land Trusts] [Open Space]
1999 House Bill 413 (Enacted)	Would create a state income tax credit for permanent gifts of land or conservation easements to public agencies and qualified private nonprofit, charitable organizations. Eligible property must meet criteria for open space established by the Delaware Land Protection Act, consist of natural habitat for the protection of Delaware's unique and rare biological natural resources, or protect Delaware's important historic resources. The tax credit is based on 40 percent of the fair market value of the gift, but cannot exceed $50,000. In any one tax year, the credit claimed cannot exceed the tax due, but unused portions of the credit can carry forward for up to five consecutive years. The total amount of tax credits made by the state under this provision cannot exceed $1 million a year over a ten-year period for a total of $10 million.	[Conservation Easements] [Open Space] [Tax Incentives]
1999 Senate Bill 124 (Enacted)	Authorizes municipalities to enter into intergovernmental agreements with counties to permit the transfer of development rights between counties and municipalities. A transfer of development rights must be in accordance with the provisions of a municipality's comprehensive plan. The act encourages municipalities to provide incentives for the transfer of development rights, including bonuses for the use of transferred development rights.	[Local Government] [Open Space] [Transfer of Development Rights]
2001 House Bill 235 (Enacted)	Requires the Governor's Advisory Council on Planning and Coordination to develop a schedule of impact fees for development in environmentally sensitive developing areas, secondary developing areas and rural areas. The schedule of impact fees must be submitted to the legislature on or before January 15, 2002 for approval. The legislation also authorizes counties to assess impact fees for services provided in environmentally sensitive developing areas, secondary developing areas and rural areas. An impact fee is defined to mean a payment of money imposed on a developer as a of permit approval to cover the proportionate share of the infrastructure costs	[Funding Sources] [Impact Fees] [Local Government]

necessary to serve the new development.

Florida

Citation:	Summary	Topic Areas
Fla. Stat. Ann., §259.101, §375.045	Creates the Florida Preservation 2000 Program and the Florida Preservation 2000 Trust Fund to preserve natural areas that are subject to development pressures. The trust fund, administered by the Department of Environmental Protection, is comprised of state revenue bond proceeds to be used to acquire title or development rights to lands that protect valuable natural resources, provide open space for natural resource based recreation, recharge groundwater, serve as habitat for threatened or endangered species, or preserve important archeological or historical sites.	[Bonds] [Conservation Easements] [Funding Sources] [Open Space] [Purchase of Development Rights]
1998 Amendment No. 5 (Approved)	Among other provisions, this ballot measure authorizes the state to issue revenue bonds to finance the acquisition and improvement of land, water and related natural resources for conservation, outdoor recreation, water resources development, restoration of natural systems and historic preservation purposes.	[Bonds] [Funding Sources] [Open Space]
Fla. Stat. Ann., §704.06	Authorizes any governmental body or agency or a charitable corporation or trust whose purposes include protecting the natural, scenic or open space value of real property, assuring its availability for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving sites or properties of historical, architectural, archeological or cultural significance to acquire a conservation easement.	[Conservation Easements] [Land Trusts] [Open Space]
1999 Senate Bill 908 (Enacted as Chapter 99-247)	Creates the Florida Forever Program, a 10-year, $300 million annual bond-funded program designed to purchase environmentally significant lands and water resource development projects. Bond proceeds are to be deposited in the Florida Forever Trust Fund. Twenty-four percent of the proceeds--$72 million annually--is allocated to the Florida Communities Trust in the Department of Community Affairs for land acquisition and for grants to local governments and nonprofit environmental organizations for the purchase of community-based, urban open spaces, parks and greenways to implement local government comprehensive plans. Debt service on the bonds is to be paid from documentary stamp tax revenue.	[Bonds] [Funding Sources] [Local Government] [Open Space]
1999 Senate Bill 906 (Enacted as Chapter 99-246)	Creates the Florida Forever Trust Fund to be administered by the Department of Environmental Protection. The fund consists of state revenue bonds used for land acquisition under the Florida Forever Program. The fund's cap is $3 billion.	[Bonds] [Funding Sources] [Open Space]
1999 House Bill 17 (Enacted as Chapter 99-378)	Authorizes counties and municipalities to designate urban infill and redevelopment areas. Local government incentives to developers for new development, expansion of existing development or redevelopment within an urban infill and redevelopment area include waiver of license and permit fees, waiver of local option sales taxes, expedited permitting, lower transportation impact fees for development that encourages public transit, prioritized infrastructure financing, and absorption of developer's concurrency costs. State incentives for local governments that adopt urban infill and redevelopment plans include authority to issue community redevelopment revenue bonds, community redevelopment tax increment financing, and priority in the allocation of private activity bonds. The act also establishes a grant program for local government projects in urban infill and redevelopment areas, and amends the state's transportation concurrency requirements to encourage public transit facilities within urban	[Growth Management] [Local Government] [Smart Growth] [Tax Incentives] [Urban Revitalization]

infill and redevelopment areas.

Georgia

Citation:	Summary	Topic Areas
Ga. Code Ann., § 44-10-1 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of property for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of property. Governmental bodies or charitable land trusts may be holders of conservation easements. A conservation easement is unlimited in duration unless otherwise provided for at the time of creation.	[Conservation Easements] [Land Trusts] [Open Space]
Ga. Code Ann., §36-71-1 et seq.	Authorizes any municipality or county that has prepared a comprehensive plan containing a capital improvements element to adopt an ordinance imposing a development impact fee as a condition for approval of a proposed development. The fee may not exceed a proportionate share of the cost of system improvements, and is to be calculated on the basis of levels of service for public facilities applicable to existing development and new growth. Development impact fee revenue may be spent only for system improvements for which the fee was collected and only in service areas where the project is located. Before adopting a development impact fee ordinance, a municipality or county must establish a development impact fee advisory committee with at least 40 percent of the membership consisting of development interests.	[Growth Management] [Impact Fees] [Local Government]
2000 Senate Bill 399 (Enacted)	Creates the Georgia Greenspace Commission in the Department of Natural Resources and the Georgia Greenspace Trust Fund. Revenue in the fund is to be used for grants to counties having an approved greenspace program for purposes of acquiring greenspace or conservation easements. Eligible counties must provide in their greenspace program for permanent protection of greenspace constituting at least 20 percent of the county's geographic area. To qualify for a grant, a county must have a population of at least 60,000 and have experienced average population growth of at least 800 residents per year since 1990. The commission is responsible for approving all grant applications.	[Conservation Easements] [Funding Sources] [Grants/Loans] [Local Government] [Open Space]

Hawaii

Citation:	Summary	Topic Areas
2001 Senate Bill 1473 (Vetoed by Governor)	Would establish the director of planning as a special advisor for smart growth to work with state agencies, the Smart Growth Advisory Council, county and federal agencies, the private sector, community organizations and the public to establish smart growth strategies for the state. The bill also would create the Smart Growth Advisory Council in the Office of Planning to review and make recommendations for smart growth objectives and policies.	[Growth Management] [Land Use Planning] [Smart Growth]

Idaho

Citation:	Summary	Topic Areas
Idaho Code, § 55-2101 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property. The holder of an easement may be a governmental body or charitable land trust. A conservation easement is unlimited in duration unless otherwise stated at the time of its creation. The granting of a conservation easement shall not have an effect on the market value of property for the purpose of ad valorem tax assessment.	[Conservation Easements] [Land Trusts] [Open Space]
1999 House Bill 145 (Enacted as Chapter 125)	Authorizes counties to issue bonds to purchase open space or conservation easements for scenic and recreational purposes.	[Bonds] [Conservation Easements] [Local Government] [Open Space]

Illinois

Citation:	Summary	Topic Areas
1999 Senate Bill 1087 (Enacted as Public Act 91-220)	Establishes the Illinois Open Land Trust Program and the Illinois Open Land Trust Fund to be administered by the Department of Natural Resources. The program's purpose is to acquire real property or conservation easements for natural areas from willing sellers for conservation and recreational purposes. The department may make grants or loans to local governments from the fund to acquire open space and natural lands. Grantees and loan recipients must, as a condition of financial assistance, agree to convey to the state a conservation easement to land acquired with fund assistance.	[Conservation Easements] [Grants/Loans] [Open Space]
2001 House Bill 2054 (Passed House; Reported out of Senate Committee)	Would refer a ballot measure to the electorate in November 2002 requesting approval of an increase in the state sales tax of two-tenths of 1 percent to fund the acquisition of open space and farmland.	[Agricultural Land] [Open Space] [Sales Taxes]
2002 House Bill 4023 (Passed House; in Senate Committee)	Would authorize the Department of Commerce and Community Affairs to make grants to local governments to develop comprehensive plans. A comprehensive plan funded under the grant program must include the following components: land use and natural resources (including provision for the location, distribution and characteristics of future land uses over a 20-year period); transportation; community facilities; telecommunications infrastructure; housing (including affordable housing); economic development; and natural resources. Any local government that uses grant funds to prepare its comprehensive plan must ensure that all land use actions are consistent with the comprehensive plan for a five-year period after adoption of the plan.	[Funding Sources] [Grants/Loans] [Growth Management] [Land Use Planning] [Local Government]

Indiana

Citation:	Summary	Topic Areas
Ind. Code	Authorizes the creation of a conservation easement that imposes limitations on	[Conservation

Ann., § 32-5-2.6 et seq.	land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property. Governmental bodies or charitable land trusts may hold conservation easements. A conservation easement is unlimited in duration unless the instrument creating it provides otherwise. For the purposes of taxation, property subject to a conservation easement shall be assessed and taxed on a basis that reflects the easement.	Easements] [Land Trusts] [Open Space]

Iowa

Citation:	Summary	Topic Areas
2002 Senate File 2207 (Enacted)	Authorizes the Department of Cultural Affairs and the State Archaeologist, in addition to the Department of Natural Resources, to acquire conservation easements to lands for specific purposes. The bill expands the list of eligible purposes to include agricultural land and open space preservation, and strengthens the enforceability of a conservation easement.	[Agricultural Land] [Conservation Easements] [Open Space]

Kansas

Citation:	Summary	Topic Areas
Kan. Stat. Ann., § 58-3810 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property. The holder of an easement may be a governmental body or a charitable land trust. Unless otherwise stated at the time of the easement's creation, it is limited in duration to the lifetime of the grantor and may be revoked at the grantor's request. Easements may not impair the rights of a public utility, city or a watershed district with respect to the acquisition of rights-of-way, easements or other property rights upon which utilities or watershed structures are located.	[Conservation Easements] [Land Trusts] [Open Space]

Kentucky

Citation:	Summary	Topic Areas
Ky. Rev. Stat., § 382.800 et seq.	Authorizes the establishment of a conservation easement to impose limitations to protect natural, scenic, or open space values; assure its availability for agricultural, forest, recreational, or open space use; protect natural resources; maintain or enhance air or water quality; or preserve historical, architectural, archaeological, or cultural aspects of real property. Governmental bodies or charitable land trusts may hold conservation easements. The duration of a conservation easement is unlimited unless otherwise stated at the time the easement is created.	[Conservation Easements] [Land Trusts] [Open Space]

Maine

Citation:	Summary	Topic Areas
Me. Rev. Stat. Ann., 30-A §4354	Authorizes a municipality to enact an ordinance requiring a developer to construct off-site capital improvements or pay an impact fee. The fee may require the developer to pay the entire cost of infrastructure improvements for wastewater, drinking water, solid waste, fire protection, roads, and parks and open space. The fee amount must be reasonably related to the developer's share of the infrastructure's cost.	[Growth Management] [Impact Fees] [Local Government]
Me. Rev. Stat. Ann., 33 §476 et seq.	Authorizes the creation of a conservation easement that restricts the use of real property to protect natural, scenic or open space values; assure its availability for agricultural, forestry, recreational or open space use; protect natural resources; or maintain or enhance air or water quality. The holder of an easement may be a governmental body or a nonprofit corporation or charitable land trust. The easement's duration may be unlimited unless a lesser time is designated at the time it is created, or circumstances in the future have changed to render the easement no longer in the public interest.	[Conservation Easements] [Land Trusts] [Open Space]
Me. Rev. Stat. Ann., 5 §6200 et seq.	Establishes the Land for Maine's Future Fund to be administered by the Land for Maine Future's Board. The fund consists of proceeds from the sale of bonds and contributions from private and public sources. Revenue in the fund is to be distributed to state agencies and cooperating entities to purchase property or interests in property, including conservation easements, that qualifies as natural resource lands of state significance, including farmland and open space with conservation, wilderness or recreational values.	[Conservation Easements] [Funding Sources] [Open Space] [Purchase of Development Rights]
Legislative Document 2600 (Enacted as 2000 Chapter 776)	In an attempt to encourage smart growth planning at the local level, the act limits state 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. It also requires state agencies to give preference to municipalities that have adopted comprehensive plans consistent with state smart growth objectives when awarding grants or financial assistance for capital investments. The act establishes the Municipal Investment Trust Fund to provide loans to municipalities that undertake comprehensive downtown revitalization efforts. It requires the Department of Administrative and Financial Services to develop site selection criteria for state office buildings to encourage their location in service center downtowns, service center growth areas and downtowns, and growth areas outside of service center communities. The act also requires the State Board of Education to adopt rules to encourage the siting of new schools in locally designated growth areas.	[Grants/Loans] [Growth Management] [Local Government] [Smart Growth] [Urban Revitalization]
2002 LD 2049; HP 1546 (Enacted as Chapter 592)	Authorizes municipalities to establish policies and ordinances for transfer of development right programs.	[Growth Management] [Local Government] [Transfer of Development Rights]
2002 LD 2061; HP 1559 (Enacted as Chapter 621)	Directs the Land and Water Resource Council to establish a pilot project to provide financial incentives to local governments that engage in multi-municipal planning. The incentives include priority in receiving state transportation funding, growth management funding, municipal investment trust funds, and community development block grants.	[Funding Sources] [Grants/Loans] [Land Use Planning] [Local Government]
2002 LD 2070; HP 1565	Establishes the Community Preservation Advisory Commission to advise the governor, the legislature and the state planning office on an ongoing basis on matters related to community preservation, including growth	[Growth Management] [Land Use

(Enacted as Chapter 648)	management issues that contain fiscal, transportation and education policy components. The commission is comprised of the director of the state planning office, state legislators and members of the public.	Planning] [Smart Growth]
2002 LD 2094; HP 1588 (Enacted as Chapter 578)	Encourages the development and implementation of multi-municipal growth management programs as a state goal. Development of multi-municipal comprehensive plans requires adoption by each municipality participating in the planning process before going into effect. An important component of any multi-municipal plan includes a method for distributing the costs and benefits of regional land use, economic development, housing, transportation and infrastructure. The bill provides guidelines to municipalities within planning districts in developing multi-municipal plans, including designation of growth areas and rural areas, and transitional areas that may be appropriate for medium-density development. Another guideline includes encouraging the construction of affordable housing equal to at least 10 percent of new residential development.	[Growth Management] [Land Use Planning] [Local Government] [Rural Land] [Smart Growth]

Maryland

Citation:	Summary	Topic Areas
Md. Code Ann., SF §5-7B-01 et seq.	Establishes the Priority Funding Areas Program that designates the types of existing areas--primarily urban centers and areas proposed for revitalization--that are eligible for state economic development funds, and authorizes counties to designate priority funding areas that meet local guidelines for intended use and have sufficient infrastructure in place to make development viable. Beginning October 1, 1998, no state funding of growth related projects can occur unless the projects are located in a priority funding area. To receive funding, a local government must certify to the state Office of Planning that a project is within a designated area.	[Grants/Loans] [Growth Management] [Land Use Planning] [Smart Growth] [Urban Revitalization]
Md. Code Ann., NR §5-9A-01	Establishes the Rural Legacy Program to enhance the protection of natural resources while maintaining the viability of agricultural and forestry lands. It provides state funds to local governments and land trusts to purchase land and development rights from willing sellers. The primary funding sources are a portion of the state's property transfer tax, general obligation bonds and zero-coupon bonds. Implementation Notes: Since the inception of the Rural Legacy Program in FY 1998, $82 million in state grants has been approved to protect 38,481 acres of land. Since it typically takes 18-24 months after funds are made available to purchase the easements, not all the approved acreage has yet been preserved.	[Bonds] [Open Space] [Purchase of Development Rights] [Real Estate Transfer Taxes] [Rural Land]
Md. Tax-Property Code, §2-220	Authorizes the governing body of any county or municipality to grant a property tax credit against the county or municipal property tax imposed on any real property that is subject to a perpetual conservation easement donated to a qualified land trust.	[Conservation Easements] [Local Government] [Tax Incentives]
Md. Real Property Code, §2-118	Authorizes the creation and enforcement of conservation easements to prohibit the development or limit the use of water or land areas.	[Conservation Easements] [Open Space]
1999 House Bill 5 (Enacted as Chapter 304)	Establishes a Smart Growth Economic Development Infrastructure Fund in the Department of Business and Economic Development. The fund is to be used to make loans to economically distressed counties to finance economic development projects.	[Grants/Loans] [Smart Growth] [Urban Revitalization]
2001 Senate Bill 204 and	Establishes an Office of Smart Growth and the Special Secretary of Smart Growth in the executive branch. The special secretary shall	[Growth Management] [Smart

House Bill 302 (Enacted as Chapter 566)	advise the governor on smart growth policies and coordinate the activities of state agencies to ensure that smart growth objectives are met. Additionally, the special secretary shall work with the legislature, the private sector and members of the public to ensure that smart growth objectives are satisfied. The bill also establishes a Smart Growth Subcabinet composed of the directors of various state agencies to promote interdepartmental coordination of smart growth policies.	Growth]
2001 House Bill 681 and Senate Bill 459 (Enacted as Chapter 676)	Provides an individual a state income tax credit for the donation of a conservation easement to the Maryland Environmental Trust or the Maryland Agricultural Land Preservation Foundation to preserve open space, agricultural lands and other natural lands. The amount of the tax credit is equal to the difference between the fair market value of the land before the attachment of the conservation easement and its fair market value after the easement has been attached. The credit may not exceed the lesser of the individual's tax liability in a given year or $5,000. Any unused amount may be carried over for 15 years.	[Agricultural Land] [Conservation Easements] [Income Taxes] [Open Space] [Tax Incentives]

Massachusetts

Citation:	Summary	Topic Areas
2000 House Bill 4866 (Enacted as Chapter 267)	The Community Preservation Act establishes a program for municipalities to purchase interests in open space to meet a community's need for open space preservation, historic preservation and housing. The program is funded by a surcharge on property tax bills of up to three percent, and a fee on the registration of deeds of one percent, if approved by the electorate of the community. The state Executive Office of Environmental Affairs is authorized to establish a fund for matching grants comprised of a $10 increase in land conveyance fees. (Note: HB 4866 replaces HB 4863.)	[Grants/Loans] [Local Government] [Open Space] [Tax Incentives]
2001 Senate Bill 1084 (In Joint Committee)	Would establish an Open Space Acquisition Revolving Fund to be expended by the Department of Environmental Management for zero-interest loans to cities and towns for the purchase of open space.	[Funding Sources] [Local Government] [Open Space]

Minnesota

Citation:	Summary	Topic Areas
Minn. Stat. Ann., § 84C.01 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property. The holder of an easement may be a governmental body or a charitable land trust. A conservation easement is unlimited in duration unless the instrument creating it provides otherwise.	[Conservation Easements] [Land Trusts] [Open Space]
Minn. Const., Art. 11, §14	Establishes the Environment and Natural Resources Trust Fund. The legislature is responsible for appropriating revenue in the fund for projects that protect, conserve, preserve and enhance the state's air, water, land, fish, wildlife and other natural resources. The constitutional amendment credits not less than 40 percent of the net proceeds of the state lottery to the fund.	[Funding Sources] [Grants/Loans] [Open Space]

1999 House File 2420 (Enacted)	As part of the omnibus tax bill, article 5, sections 34, 35, 39, 40 and 41 authorize local governments to acquire development rights to property in the form of a conservation easement, and to issue bonds to purchase development rights.	[Bonds] Easements] [Local Government] [Purchase of Development Rights]

Mississippi

Citation:	Summary	Topic Areas
Miss. Code Ann., § 89-19-1 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property. A governmental body, nonprofit or charitable land or educational trust may hold an easement. A conservation easement is unlimited in duration unless otherwise provided for at the time of its creation.	[Conservation Easements] [Land Trusts] [Open Space]

Montana

Citation:	Summary	Topic Areas
2001 Senate Bill 303 (Enacted)	Exempts agricultural land and forestry land from additional property taxes assessed by a local government to repay the principal and interest on bonds issued to acquire open space.	[Bonds] [Open Space]
2001 Senate Bill 479 (Enacted)	Authorizes local governments to adopt subdivision regulations that promote cluster development and preserve open space.	[Growth Management] [Land Use Planning] [Local Government] [Open Space]

Nevada

Citation:	Summary	Topic Areas
Nev. Rev. Stat., § 111.390 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property. A governmental body or charitable land trust may hold a conservation easement. The duration of a conservation easement is unlimited unless otherwise provided for when it is created, or established by court order.	[Conservation Easements] [Land Trusts] [Open Space]
Nev. Rev. Stat., §278B.010 et seq.	Authorizes a local government to adopt an ordinance imposing an impact fee in a service area to cover the costs of constructing capital improvements attributable to new development. The local government must adopt a capital improvements plan by ordinance that contains land use assumptions within designated service areas where impact fees may be assessed. Impact fee revenue must be deposited in an interest-bearing account that clearly identifies the capital improvements within the service area for which the fee	[Growth Management] [Impact Fees] [Local Government]

was collected. Before imposing an impact fee, the local government must establish an advisory committee that includes at least one member of the development community.

New Hampshire

Citation:	Summary	Topic Areas
2000 House Bill 1259 (Enacted as Chapter 292)	Would establish a state policy that state agencies act in ways that encourage smart growth. State agencies would be required to consider smart growth principles when making funding decisions that affect infrastructure and location of public facilities. The bill would specifically charge the Office of State Planning with taking a leadership role in encouraging smart growth and preserving farmland, open space and traditional village centers.	[Grants/Loans] [Growth Management] [Land Use Planning] [Smart Growth]
2000 Senate Bill 401 (Enacted as Chapter 245)	Establishes the Land and Community Heritage Investment Program and the Land and Community Heritage Authority. The authority may provide 50-percent matching grants to eligible municipalities and nonprofit organizations for the acquisition of real property or easements in real property designated as resource assets, or for the restoration and rehabilitation of cultural and historical resources. Lands and easements acquired through the program shall be open to passive recreational purposes. The bill transfers $3 million from the Economic Development Fund to the Land and Community Heritage Investment Program Trust Fund.	[Conservation Easements] [Funding Sources] [Grants/Loans] [Purchase of Development Rights]

New Jersey

Citation:	Summary	Topic Areas
Laws of 1998, Senate Concurrent Resolution 66	Passed by the electorate on the November 1998 ballot as Public Question No. 1, the constitutional amendment dedicates $98 million annually from the state sales tax over 10 years to purchase land for recreation and conservation purposes, farmland preservation, and historic preservation. The constitutional amendment also sets aside $98 million annually for 20 years to repay up to $1 billion in bonds issued to finance open space.	[Agricultural Land] [Bonds] [Funding Sources] [Open Space] [Sales Taxes]
N.J. Stat. Ann., 40:55D-42	Authorizes a municipality to adopt an ordinance requiring a developer to pay the pro-rata share of the costs of providing reasonable and necessary street improvements and water, sewer and drainage facilities, that are located outside the development boundaries but necessitated by construction within the development boundaries. The impact fee may be assessed as a condition for approval of a subdivision or cite plan.	[Growth Management] [Impact Fees] [Local Government]
1999 Senate Bill 9 (Enacted as Chapter 152)	Establishes the Garden State Preservation Trust consisting of nine members--four state agency directors and five public members. The trust provides funding for the Department of Environmental Protection, the State Agriculture Development Committee and the New Jersey Historic Trust to cover the costs of projects undertaken by those entities and grant or loan recipients for recreation and conservation, farmland preservation and historic preservation purposes. The trust is empowered to issue bonds payable out of the revenues of the trust. From July 1, 1999 through June 30, 2009, the trust may issue bonds in an amount not to exceed $1 billion to purchase land or development rights in land for authorized purposes. From July 1, 2009 through June 30, 2029, the trust may issue bonds in an amount not to exceed $2 billion solely for bond-refunding purposes. The act also	[Agricultural Land] [Bonds] [Grants/Loans] [Open Space] [Sales Taxes]

	establishes the Garden State Preservation Trust Fund Account comprised of state general fund revenue collected from the state sales and use tax equal to $98 million annually for 30 years. For each of fiscal years 2000 through 2009, the trust shall transfer 60 percent of its revenue to the Garden State Green Acres Preservation Trust Fund; 40 percent to the Garden State Farmland Preservation Trust Fund; and $6 million to the Garden State Historic Preservation Trust Fund. Fifty percent of the revenue in the Green Acres program is allocated for open space acquisition and park development by the state; 40 percent for grants and low-interest loans to local governments for open space acquisition and park development; and 10 percent for grants to nonprofit organizations for open space acquisition and park development. Implementation Notes: The Garden State Preservation Trust approved on May 16, 2000, a funding package totaling $55.45 million: $36.1 million for conservation easement purchases on 12,650 acreas of farmland; $12 million to purchase title to farms for eventural resale with a conservation easement attached; and $7.35 million in grants to municipalities to implement farmland preservation programs. The package now goes to the legislature for approval.	
2000 Assembly Bill 990 (In Assembly Committee)	Would require that at least 25 percent of funds dedicated for recreation and conservation purposes, and farmland and historic preservation by the Garden State Preservation Trust be allocated for projects located in urban areas. The bill also would require that at least 20 percent of funds dedicated for recreation and conservation purposes, and farmland and historic preservation be allocated for recreation projects located anywhere in the state.	[Funding Sources] [Grants/Loans] [Open Space]
2000 Senate Bill 5 (Passed Senate; In Assembly Committee)	Would establish the Conservation Action Fund in the Department of Environmental Protection. Revenue in the fund would be used to purchase open space lands that are likely to be developed unless prompt action to acquire them is taken. The bill would transfer up to $5 million annually from the Garden State Green Acres Preservation Trust Fund into the Conservation Action Fund.	[Funding Sources] [Open Space]
2000 Senate Bill 649 (In Senate Committee)	Would establish a corporate business tax credit and a personal income tax credit for the donation of land used for conservation or recreation purposes. The amount of the credit would be between 30 percent and 50 percent of the cash equivalent value of the property interest, not to exceed $1 million per year. Any unused credit could be carried forward for use in future tax years.	[Income Taxes] [Open Space] [Tax Incentives]
2002 Assembly Bill 397; Senate Bill 154 (AB 397 in Assembly Committee; SB 154 in Senate Committee)	Would authorize counties to include in their master plans areas where proposed development would have an impact beyond a single municipality's boundary (an inter-municipal impact). Such developments would require review and cross-acceptance by an inter-municipal review board composed of members from the primary municipality, the primary county, and each of the affected municipalities and counties as a condition for approval. Any interested person could petition the county planning board in which a development with inter-municipal impact is proposed for a determination of inter-municipal impact.	[Growth Management] [Land Use Planning] [Local Government]
2002 AB 398, 618, 1354; SB 505 (AB 398, 618, 1354 in Assembly Committee; SB 505 in Senate Committee)	Would authorize municipalities to establish transfer of development right (TDR) programs. A municipality could purchase, sell or exchange development rights through a development transfer bank. A local development transfer bank could apply to the state development transfer bank for funds to help implement the local TDR program.	[Funding Sources] [Local Government] [Transfer of Development Rights]
AB 594; SB	Would authorize municipalities to impose development impact fees. The bill	[Funding

New Mexico

Citation:	Summary	Topic Areas
N.M. Stat. Ann., § 47-12-1 et seq.	Authorizes the creation of a land use easement to protect natural or open spaces, to assure availability of property for agricultural, forest, recreational or open space use, or to protect natural resources. The holder of an easement may be a nonprofit corporation, nonprofit association or nonprofit trust. The term of a land use easement must be stated in the terms of the easement.	[Conservation Easements] [Land Trusts] [Open Space]

New York

Citation:	Summary	Topic Areas
N.Y. Env. Con. Law, §49-0301 et seq.	Authorizes public bodies and nonprofit conservation organizations to acquire and hold any conservation easement for the purpose of preservation or maintaining the scenic, open, historic, archeological, architectural or natural condition, character, significance or amenities of real property.	[Conservation Easements] [Land Trusts] [Open Space]
2001 Assembly Bill 423 (In Assembly Committee)	Would enunciate general smart growth polices for the state. The bill would authorize a local government or two or more contiguous local governments to appoint a commission to prepare a smart growth plan. If adopted by the commission, the plan would be submitted to the local government for incorporation into a comprehensive land use plan. The Secretary of State would be responsible for reviewing local smart growth plans submitted to it for approval of benefits, including financial assistance in the preparation of a plan or to cover a portion of the costs of constructing projects to implement the plan. Once approved by the secretary, state agency actions that affect a local comprehensive land use plan must be consistent with the plan. The bill also would create a Task Force on Smart Growth consisting of various state agencies responsible for improving relationships between state agencies and local governments relating to smart growth planning.	[Grants/Loans] [Growth Management] [Land Use Planning] [Local Government] [Smart Growth]
2001 Assembly Bill 1710 (In Assembly Committee)	Would authorize the designation of smart growth compact areas comprised of at least two municipalities based on certain environmental, economic and social factors. Each compact area must establish a compact council responsible for preparing and implementing a smart growth compact plan. After certification by the state Smart Growth Review Board, each local government within the compact area must adopt or amend its land use regulations to conform to the compact plan. The compact council would be empowered to review and approve proposed development projects located outside of designated growth areas within the compact's jurisdiction. State incentives for participating communities within a compact area include priority funding for drinking water and clean water infrastructure projects.	[Grants/Loans] [Growth Management] [Land Use Planning] [Local Government] [Smart Growth]
2001 Assembly Bill 6807 (In Assembly Committee)	Would establish a Smart Growth Local Assistance Office to provide municipalities with technical and financial assistance for growth management projects. The office would administer the Smart Growth Revolving Loan Fund.	[Funding Sources] [Grants/Loans] [Growth Management] [Local Government] [Smart Growth]
2001 Assembly	Would establish the Municipal Open Space Assistance Fund in the	[Bonds]

2001 Assembly Bill 8684 (In Assembly Committee)	Would establish the Urban Open Space Program and the Urban Open Space Program Fund in the Office of Parks, Recreation and Historic Preservation. The program is designed to preserve open space in urban areas. Revenue in the fund would be used to purchase open space to enhance the urban environment.	[Funding Sources] [Open Space] [Urban Revitalization]
Assembly Bill 8800 and Senate Bill 5575 (AB 8800 in Assembly Committee; SB 5575 in Senate Committee)	Would establish a set of smart growth principles related to public investment in infrastructure, economic development, conservation of natural resources, coordination among state and local governments in land use planning, and community collaboration in land use planning. The bills would authorize a local government to submit a smart growth plan to the state Smart Growth Review Board for review and certification. Once a plan is certified, a local government would become eligible for low-interest loans from the New York State Smart Growth Revolving Loan Fund to finance projects contained in the plan.	[Grants/Loans] [Growth Management] [Land Use Planning] [Local Government] [Smart Growth]
2002 Assembly Bill 999 (In Assembly Committee)	Would require property from which a conservation easement is transferred to a nonprofit organization to be immediately reassessed to reflect its lower market value for tax purposes.	[Conservation Easements] [Land Trusts] [Tax Incentives]
2002 Assembly Bill 1708	Would deposit $162 million in real estate transfer tax revenue into the Environmental Protection Fund to purchase open space in place of bond proceeds.	[Funding Sources] [Open Space] [Real Estate Transfer Taxes]

North Carolina

Citation:	Summary	Topic Areas
N.C. Gen. Stat., §105-130.34, §105-151.12	Provides a state income tax credit for corporations and individuals that donate conservation lands to the state, local governments or nonprofit organizations. The tax credit is equal to 25 percent of the fair market value of the land, not to exceed $250,000. It may not exceed the amount of the tax imposed on the corporation or individual in the year it is claimed. Any unused portion of the credit may be carried over for the next five years.	[Conservation Easements] [Income Taxes] [Tax Incentives]
2000 Senate Bill 1328 (Enacted as Session law 2000-23)	Sets as a state goal the permanent protection of an additional one million acres of farmland, open space and conservation lands by December 31, 2009. Preservation would occur through the acquisition of land or the purchase of conservation easements. The bill charges the Secretary of Environment and Natural Resources to take the lead in coordinating the state's efforts and in working cooperatively with public and private organizations to achieve the state's objectives.	[Agricultural Land] [Conservation Easements] [Open Space] [Rural Land]

Ohio

Citation:	Summary	Topic Areas
2000 House Joint Resolution 15 (Enacted)	Would refer to the ballot in November 2000 a constitutional amendment to authorize the state to issue up to $200 million in general obligation bonds for purposes of conserving and preserving natural areas, open space and farmland. The resolution also would authorize the state to issue up to $200 million in non-general obligation bonds for the purposes of urban revitalization and cleanup of abandoned industrial and commercial sites--"brownfields." The bond proceeds could be used for state projects or to support efforts by local governments and non-	[Bonds] [Grants/Loans] [Open Space] [Purchase of Development Rights] [Urban Revitalization]

profit groups through grants, loans, or purchase of development rights.

Oklahoma

Citation:	Summary	Topic Areas
1999 Senate Bill 266 (Enacted as Chapter 384)	Authorizes the creation of a conservation easement that imposes limitations on land use for the purposes of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, silvicultural, forest, recreational or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, paleontological or cultural aspects of real property. The holder of an easement may be a governmental body, a charitable corporation or a land trust. The term of a conservation easement is that stated in the instrument creating it.	[Conservation Easements] [Land Trusts] [Open Space]

Oregon

Citation:	Summary	Topic Areas
1998 Measure No. 66 (Approved)	This ballot measure dedicates 15 percent of state lottery proceeds to a new fund for land conservation purposes. One-half of the revenue in the fund is to be used to create and maintain state parks, ocean shores, public beach access areas, historic sites and recreation areas. The other half of the fund's revenue to be used to protect salmon, wildlife habitat and watersheds.	[Funding Sources] [Open Space]

Pennsylvania

Citation:	Summary	Topic Areas
1999 Senate Bill 970 (Enacted as Act 15)	Among other provisions, Senate Bill 970 establishes a supplemental Agricultural Conservation Easement Purchase Program. Funds in the program are to be allocated by the State Agricultural Land Preservation Board to eligible counties for conservation easement purchase programs under the Agricultural Area Security Act; for technical assistance to eligible counties for long-term installment purchases of agricultural conservation easements; and to reimburse private land trusts for expenses incurred in acquiring agricultural conservation easements. The act also authorizes eligible counties to appropriate additional funds to purchase agricultural conservation easements. Implementation Notes: This legislation supplements Pennsylvania's existing farmland preservation program, which has preserved more than 1,090 farms and 136,000 acres in 46 counties since its inception in 1989. The effect of the legislation is to add an additional $43 million to the agricultural conservation easement purchase program.	[Agricultural Land] [Conservation Easements] [Funding Sources] [Land Trusts] [Local Government]
1999 House Bill 14 and Senate Bill 300 (HB 14 enacted as Act 67; SB 300 enacted as Act	Authorize municipalities to enter into intergovernmental cooperative agreements and cooperative implementation agreements for the purpose of developing and implementing a county or multimunicipal comprehensive plan. The comprehensive plan may designate growth areas, potential future growth areas and rural resource areas. All categories of land uses are not required in every municipality, provided	[Growth Management] [Impact Fees] [Land Use Planning] [Local Government]

68)	they are planned for within a reasonable geographic area. State agencies may give priority to applicants for financial assistance for projects that are consistent with the comprehensive plans. Municipalities that have entered into cooperative implementation agreements are authorized to share tax revenue and impact fees with other municipalities within the region, and to adopt transfer of development rights programs to enable the transfer of development rights from rural resource areas to designated growth areas.	[Transfer of Development Rights]
2001 House Bill 101 (Enacted as Act 14)	Establishes the Supplemental Agricultural Conservation Easement Purchase Program. Allocates up to $500,000 for technical assistance to counties regarding long-term installment purchases of agricultural conservation easements. Allocates up to $500,000 to reimburse private land trusts for transaction costs incurred in acquiring agricultural conservation easements.	[Agricultural Land] [Conservation Easements] [Funding Sources] [Land Trusts]
2001 House Bill 947 (Passed House; in Senate Committee)	Would refer a measure to the ballot requesting approval for the state to incur $150 million in debt to purchase agricultural conservation easements.	[Agricultural Land] [Bonds] [Conservation Easements]
2001 House Bill 705 (In House Committee)	Would authorize the issuance of $200 million in state bonds, subject to voter approval, for the purchase of agricultural conservation easements.	[Agricultural Land] [Bonds] [Conservation Easements]

Rhode Island

Citation:	Summary	Topic Areas
1998 Question No. 3	This ballot measure authorizes the state to issue general obligation bonds in an amount not to exceed $15 million for environmental and recreational purposes. One-third of that amount--$5 million--would be allocated to (1) the Department of Environmental Management to purchase land, development rights and conservation easements to protect natural and recreational resources, and to acquire greenways; and (2) to the Agricultural Land Preservation Commission to purchase development rights to farmland.	[Agricultural Land] [Bonds] [Conservation Easements] [Open Space] [Purchase of Development Rights]
2002 House Bill 6605 (In House Committee)	Would exempt from local impact development fees low- and moderate-income housing developments.	[Growth Management] [Impact Fees] [Local Government]
2002 House Bill 7106 (Passed House; in Senate Committee)	Would authorize any city or town to exempt from property taxes farmland, forest land or open space.	[Agricultural Land] [Local Government] [Open Space] [Tax Incentives]

South Carolina

Citation:	Summary	Topic Areas
S.C. Code Ann., § 27-8-10 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural,	[Conservation Easements] [Land Trusts] [Open Space]

	archaeological, or cultural aspects of real property. A governmental body, not-for-profit organization, educational corporation or charitable land trust may hold a conservation easement. It is limitless in duration unless otherwise designated at the time it is created. For ad valorem tax purposes, property must be assessed and taxed on a basis that reflects the easement.	
S.C. Code Ann., §49-29-100	Provides a personal income tax deduction to landowners that donate a perpetual easement to the state under the scenic rivers program. The deduction is equal to the fair market value of the easement.	[Conservation Easements] [Income Taxes] [Tax Incentives]
2000 House Bill 3782 (Enacted as Act 283)	Enacts the Conservation Incentives Act which provides a state income tax credit for landowners who voluntarily convey lands or conservation easements to qualified conservation organizations. The act allows for an income tax credit equal to 25 percent of the value of land donated for conservation, or for a qualified conservation contribution of a real property interest. The tax credit is a capped at $250 per acre, not to exceed $52,500 in any tax year. Any unused portion of the credit may be carried forward to subsequent tax years until it is completely used, or transferred. The act also establishes the Conservation Grant Fund to stimulate the use of conservation easements and fee simple gifts of land for conservation to qualified conservation organizations. Revenue in the fund shall be used primarily to defray the transaction costs of donating conservation easements for purposes of obtaining a tax credit. The fund may not be used to purchase land or interests in land.	[Conservation Easements] [Income Taxes] [Open Space] [Tax Incentives]

Tennessee

Citation:	Summary	Topic Areas
Tenn. Code Ann., §6-58-101 et seq.	Chapter 1101 of 1998 creates within each county a coordinating committee, and requires the committee to recommend a growth plan to the county legislative body and to the governing body of each municipality within the county for ratification no later than January 1, 2000. The plan must identify urban growth boundaries for each municipality, and planned growth areas and rural areas within the county. If the county or municipality rejects the plan, the Secretary of State may appoint a dispute resolution panel to resolve the differences. The ratified plan must be submitted to the local government planning advisory committee for approval. Once approved, all land use decisions made by a county or municipality must be consistent with the growth plan. After July 1, 2001, state economic development and infrastructure financial assistance will not be available to counties and municipalities that do not have approved growth plans.	[Growth Management] [Land Use Planning] [Local Government] [Smart Growth]

Texas

Citation:	Summary	Topic Areas
Tex., Natural Resources Code, § 183.001 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property. A governmental body or charitable land trust may hold a conservation easement. A conservation easement is unlimited in duration unless the instrument creating it makes some other provision. Once land is no longer subject to a conservation	[Conservation Easements] [Land Trusts] [Open Space]

easement, an additional tax is imposed on the land equal to the tax break received for the five years prior to termination of the easement plus 7 percent interest calculated on an annual basis.

Utah

Citation:	Summary	Topic Areas
1999 House Bill 119 (Enacted as Chapter 24)	Establishes a Quality Growth Commission and reestablishes the LeRoy McAllister Critical Land Conservation Fund. The commission is responsible for making recommendations to the legislature regarding what constitutes quality growth areas--areas where local governments have sufficient infrastructure in place to service growth--and what types of state revenue should be targeted to such areas. The commission also is charged with administering the land conservation fund. Revenue in the fund--initially a $3 million legislative appropriation--is to be used to acquire conservation easements to open space and agricultural lands.	[Conservation Easements] [Funding Sources] [Open Space] [Smart Growth]
2002 House Bill 127 (Enacted)	Authorizes counties to submit to the voters measures on the November 2002 ballot to increase property taxes to preserve agricultural land.	[Agricultural Land] [Funding Sources] [Local Government]

Vermont

Citation:	Summary	Topic Areas
Vt. Stat. Ann., §24-5200 et seq.	Authorizes a municipality to assess an impact fee on any new development provided it has adopted a capital budget and a capital program. The municipality also must develop a reasonable formula to be used in calculating the fee that reflects the level of services that will be provided for the project and a means of assessing the impact of the development for which the fee is levied. The municipality may require the proposed development to cover the entire cost of a capital project constructed to service the new development; where future development projects benefit from the services provided to the initial developer, the municipality may require the new developers to reimburse the initial developer for a portion of the impact fee.	[Growth Management] [Impact Fees] [Local Government]

Virginia

Citation:	Summary	Topic Areas
Va. Code, § 10.01-1009 et seq.	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property. The holder of an easement may be a charitable corporation, association or trust which is exempt from taxation. A conservation easement's duration is unlimited unless otherwise designated at the time it is created.	[Conservation Easements] [Land Trusts] [Open Space]
1999 House Bill 1752 (Enacted as	Provides a state income tax credit for individuals and corporations that donate land or development rights to land to a qualified public or private conservation agency for a conservation or preservation purpose, including	[Conservation Easements] [Income Taxes] [Tax

Chapter 983)	agricultural or forestry use, open space, natural resource or biodiversity conservation, or watershed or historic preservation. The tax credit is equal to 50 percent of the land's fair market value, not to exceed $50,000 in FY 2000, $75,000 in FY 2001, and $100,000 in FY 2002 and succeeding years. The credit may be carried over for a period of five years.	Incentives]
1999 House Bill 1747 (Enacted as Chapter 906)	Authorizes revenue in the Virginia Land Conservation Fund to be used for matching grants to local governments, public bodies and nonprofit organizations for purchasing title or development rights in land for the protection of ecological, cultural or historical resources; recreational purposes; threatened or endangered species; fish and wildlife habitat; natural areas; agricultural and forest lands; and open space.	[Agricultural Land] [Growth Management] [Open Space] [Purchase of Development Rights]
2000 House Bill 856 (Enacted as Chapter 747)	Authorizes community development authorities to purchase development rights that will be dedicated as easements for conservation, open space or other purposes under the Open Space Land Act.	[Conservation Easements] [Open Space] [Purchase of Development Rights]
2000 Senate Bill 256 (Enacted as Chapter 724)	Authorizes community development authorities to purchase development rights that will be dedicated as easements for conservation, open space or other purposes under the Open Space Land Act.	[Conservation Easements] [Open Space] [Purchase of Development Rights]
2000 House Bill 1324 (Enacted as Chapter 181)	Authorizes the Open Space Lands Preservation Trust Fund to make grants to local governments for open space easements (which are comparable to conservation easements held by private nonprofit organizations).	[Conservation Easements] [Funding Sources] [Local Government] [Open Space]

Washington

Citation:	Summary	Topic Areas
Wash. Rev. Code, §64.04.130 et seq.	Authorizes any state or federal agency, county, municipality, or nonprofit land conservation entity to hold a development right or easement to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land.	[Conservation Easements] [Land Trusts] [Local Government] [Purchase of Development Rights]
Wash. Rev. Code Ann., §82.02.050 et seq.	Authorizes a county, city or town that is required or chooses to prepare a comprehensive growth management plan to impose an impact fee on a development activity to finance public facilities, provided there is a balance between the impact fee and other sources of funding for the public facilities. An impact fee must be reasonably related to the proposed development; not exceed a proportionate share of the costs of system improvements that are reasonably related to the proposed development; and be used to reasonably benefit the proposed development. An impact fee may be assessed only for public facilities that are identified in the capital facilities plan of a local government's comprehensive growth management plan, and must be contained in an ordinance adopted by the local government. Allowable public facilities include roads, parks, open space and recreational facilities, schools, and fire protection facilities.	[Impact Fees] [Land Use Planning] [Local Government]

West Virginia

Citation:	Summary	Topic Areas
W. Va. Code, §20-12-1 et seq.	Authorizes any governmental body or qualified charitable tax exempt organization to hold a conservation easement. It defines a conservation easement as a nonpossessory interest in real property that imposes limitations or affirmative obligations to retain or protect for the public benefit the natural, scenic or open-space value of real property.	[Conservation Easements] [Land Trusts] [Local Government]
W. Va. Code, §7-20-1 et seq.	Authorizes counties to assess fees for any new development projects to cover the costs associated with necessary capital improvements or other services attributable to the development. The fees may not exceed a proportionate share of the costs required to service the development. The county must be able to demonstrate that the new development will realize a reasonable benefit from the capital improvement financed with the fee. Prior to assessing a fee, the county must meet certain criteria, including a demonstration of adequate population growth and adoption of a comprehensive plan.	[Growth Management] [Impact Fees] [Local Government]

Wisconsin

Citation:	Summary	Topic Areas
Wis. Stat. Ann., § 700.40	Authorizes the creation of a conservation easement that imposes limitations on land use for the purpose of retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property. A governmental body or charitable land trust may hold a conservation easement. It is unlimited in duration unless otherwise designated at the time of its creation.	[Conservation Easements] [Land Trusts] [Open Space]
Wis. Stat. Ann., §71.28, §71.57 et seq.	Provides an income tax credit to owners of farmland that is subject to a farmland preservation agreement restricting the land's use. The income tax credit is calculated against property taxes accrued in the preceding year. The maximum income tax credit is $4,200.	[Agricultural Land] [Income Taxes] [Tax Incentives]
1999 Act 9 (Enacted)	As part of the biennial state budget act, Act 9 includes provisions that establish uniform components for inclusion in local government comprehensive plans. These include issues and opportunities; housing, transportation; utilities and community facilities; agricultural, natural and cultural resources; economic development; intergovernmental cooperation; land use; and implementation. Beginning January 2010, all local government regulations must be consistent with the comprehensive plan. The act appropriates $1.5 million in FY 2001 for grants to local governments to assist in planning, with preference being given to those that identify smart growth areas where development occurs near existing infrastructure. The act also establishes a Smart Growth Dividend Aid Program for inclusion in the 2001-2003 budget to reward local governments that demonstrate increases in compact development and moderately priced housing.	[Growth Management] [Local Government] [Smart Growth]

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Vermont's Problem of Growth:
Growth Control in a
Historical Perspective

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<u>Discussion Draft</u>

Presentation to the Vermont League of Cities and Towns in October, 1998

The following draft is an amended summary of a 1996 presentation to the Vermont Environmental Board and District Commissions. It is based upon the author's 2-volume <u>Toward Sustainable Communities</u>.

VERMONT'S PROBLEM OF GROWTH: GROWTH CONTROL IN A HISTORICAL PERSPECTIVE

Vermont's Act 250 and other state and local land use laws have been in effect for almost 30 years, and Vermont has changed during that period. As a consequence, the Act -- as well as other Vermont laws -- might be usefully looked at in light of the quarter century history of Vermont. I contend that such a view suggests a different perspective than those ordinarily offered in the public discussions of these laws.

Vermont's Economy

When the Act was adopted in 1970, a substantial portion of Vermont's economy was a natural resource economy of farming, extractive industry, and forestry. Urbanization was limited to the immediate proximity of Burlington, whose size did not qualify it to be a metropolitan statistical area. The size of state government was limited and there was a limited bureaucracy devoted to environmental control. Although Vermont had a history of tourism, the ski industry was in its infancy. The per capita income and the educational level of the population was low. The nation had not yet adopted the array of environmental laws which came after 1970 and Earth Day. The nations' economy was beginning to transfer to a service economy within a world competition. The towns, even the larger ones, had limited professional staff. Land use planning was in its infancy, with Vermont towns not having benefitted from the federal largesse for local planning in the 1950's and 1960's. The thru-way had only recently been built. Act 250 was designed to reflect these circumstances. At the time, it could depend upon the working landscape of agriculture, forestry, and extraction in league with a cold climate and a small population to protect its resources. State planning appeared to make sense in light of the then current fad for state planning and the weakness of local planning in Vermont. Towns were still compact. Objectionable developments appeared few and far between, and were viewed as the product of "outsiders." Because of the relative poverty of the state, economic development was viewed as desirable and compatible with Vermont's environment with limited exceptions.

Four major changes have taken place since 1970. First, Vermont's natural resource economy, if not collapsing, has seriously shrunk. Second, a national and state service economy has arisen and manufacturing has declines as a relative share of the economy. Third, the state has urbanized and the wealth and education of the populace has dramatically increased. Fourth, a large state environmental bureaucracy has arisen, partly in response to federal laws; the larger and/or wealthier cities of the state have increased their technical competency to plan,(although not necessarily their political willingness). Each of these four fundamental changes have implications for the working of Act 250.

(1) *Vermont's natural resource economy.* We are witnessing the decline of the amount of land

devoted to the farm economy, a compression of the forest industry, and at most a weak fluctuation in the extraction industry. This means that the amount of open lands supported by traditional economic uses has declined. In short, we cannot look to farmers to preserve the beauty of Vermont. An inquiry into the kinds of private economic uses which can support open space is probably a desirable policy inquiry.

(2) *The new service economy.* The rise of the new service economy, including tourism, holds both promise and problems for achieving the goals of Vermont's Act 250.

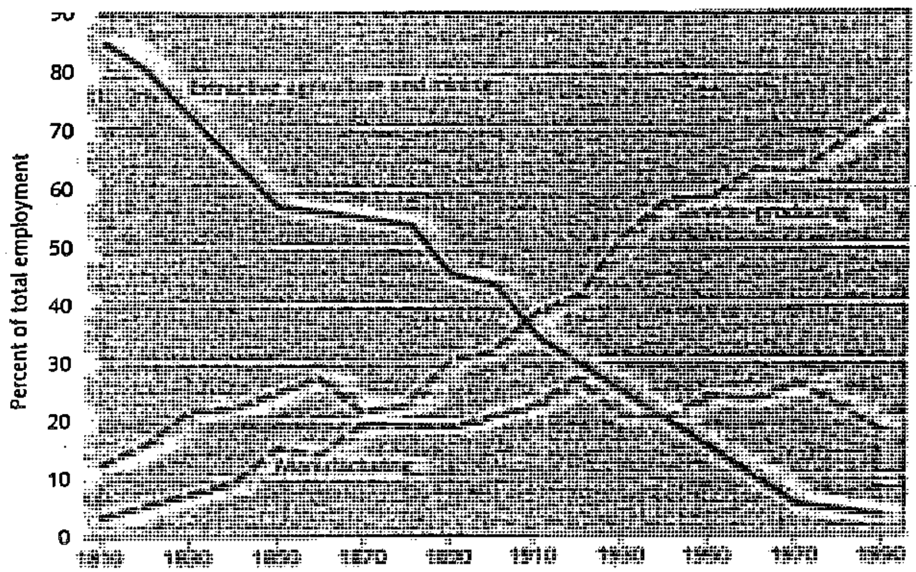

FIGURE 11-1. Changes in the relative economic importance of extraction, manufacturing, and services in the American economy since 1810. The rise in services and the decline in extractive activity is not a recent trend; it has coincided with the transformation of the American economy into a modern, affluent society. (*Data sources:* U.S. Bureau of the Census *Historical Statistics of the United States,* and BEA REIS.)

This service economy has immense implications, not only for land use, but for education, indeed for the very ways in which we think. The movement away from production in manufacturing and extractive industries to symbol "manipulation" and personal services will alter the way we think about our communities. On the one hand, destination resorts can, to some degree, preserve lands and related resources. Perhaps such resorts require an overall attractive ambience as well.

Yet there are problems such as excess water use, but that appears to be rectifiable, and the presence of such resorts, without rigid and detailed land planning and control of peripheral uses, (which Vermont does not have), means that growth is produced by such developments.

In addition, the service economy is characterized by extensive small business development, which often involves limited land development and limited capacity to cope with elaborate regulations. (Some studies of small business person's ideologies suggest that they may be the least sympathetic to environmental regulation). Ironically, the relative absence of large scale manufacturing facilities as part of the service economy, may diminish opposition to other less obnoxious kinds of development, lulling the population and making it less sensitive to gradual growth.

(3) *Urbanization*. Urbanization includes: 1) the overall population increase; 2) relative percentage of people in non-farm occupations; 3) density of population in some areas; 4) the diffusion of residences throughout an area; 5) strip development; 6) people with former urban "experiences" and outlooks; and 7) mass merchandising.

There is, however, a deeper meaning to urbanization, i.e., the multiplication of focal centers (other than the local community) for people's lives, and the transformation of the community into another item of consumption in our consumer society. Due to the revolution in communication and transportation, people are linked across space, and private and public institutions and groups (professional, voluntary, social), all of which may be spatially dispersed, may be important foci of people's lives. Allegiance to a multi-purpose local community is limited, and hence, the willingness to make substantial sacrifices to retain and restore it may be limited. This limited allegiance is reflected in the decline in the effectiveness of the town meeting, the channeling of participation into school-related issues and the frequent attitude of a consumer mentality towards life in small-town Vermont.

This urbanization has eroded the boundaries of many compact villages in Vermont, created new mini-growth centers, e.g. in proximity to larger cities, in and out of the state, near some highway exits, resulted in diffuse urban ills including overloading of infrastructure, traffic congestion and higher traffic volumes, ugly strip developments, tax imbalances, mass merchandising, and a variety of diffuse environmental problems. It would be a mistake, however to assume that Vermonters aren't willing to accept such a situation, at least in the short term. Act 250 has not stemmed the urbanization process, even if it has civilized it a bit. The deep concern over growth in Vermont has been, at best, sporadic, coming in times of prosperity, (1970, later 1980's), and disappearing like the Cheshire Cat's smile, in times of economic downturn.

(4) *The Growth of Federal, State and Local Bureaucracy.* There has been an immense growth of federal and state environmental control bureaucracy, which, along with Act 250 has successfully controlled many of the more egregious environmental abuses in the nation and state. On the other hand, this bureaucracy, like Act 250 without its state land use plan, has not had a discernible planned impact upon land use patterns in Vermont. Even transportation and sewer development, despite being prime growth

generators, until recently, has avoided linkage with meaningful land planning.

Although some municipalities have acquired technical planning capacity, either on their own or through regional planning, few have the political will to control the pressures of urbanization. Despite the recent adoption of up to 75 municipal plans under Act 200, there is little sign that these plans make the hard choices of allocating growth, nor adopting specific controls to implement such growth control policies. (Thus, depending upon delegation to the towns may ease the administrative load, but may not promote growth control).

<u>A New Model of Vermont</u>

These changes suggest that a new way is necessary in thinking about Vermont. The following is a list of its post-modern characteristics:

- The creation of many new jobs in relatively small businesses;
- The shift of jobs from goods production to services production;
- Overall, a substantial expansion in employment opportunity that has provided jobs to an increasing percentage of the adult population;
- The decentralization of economic activity toward areas where people choose to live;
- Improvements in transportation and communication that have reduced the isolation and costs associated with living away from large urban centers;
- The shift in public values toward environmental quality;
- The increased role of residential choice in determining the geographic distribution of economic activity;
- The rising importance of environmental amenities in determining where people live and where firms migrate;
- The increased importance of non-employment income and the locational choices of retired individuals in stabilizing local economies and determining the location of economic activity; and
- The growing role of nonmarket, noncommercial goods and services flowing from the natural environment, the local community, the nonprofit sector, and government agencies in determining local economic well being.

The following chart sets forth the work status of adults, revealing a significant proportion completely or partially outside the full-time work force and a significant proportion in non-profit, self-employed or small business.

Work Status of American Adults, 1990

	Number (millions)	% of Adult Population
Adult Population age 20+	178.0	100%
Age 55+ out of Labor Force	33.6	18.8
Age 20–54 out of Labor Force	23.2	13.0
Part-Time Age 20+ Wage and Salary Worker	17.4	9.8
Self-Employed	10.0	5.6
Nonprofit, Private	6.1	3.4
Government Employee (full time)	9.0	5.1
Small Firm, Full Time (<20 workers)	18.1	10.2
Medium Firm, Full Time (20–99 workers)	20.4	11.5
Military and Institutions	3.8	2.1
Unemployed, Age >19	5.8	3.3
Large Private Business	30.60	17.2

Source: Statistical Abstract of the United States, 1993.

These characteristics, mirrored by the Vermont population, suggest a very different portrait of Vermont, which in turn suggests very different ways of approaching the growth "problem."

What becomes of the traditional compact village, the hilltop farm, the pristine forests, etc.? These must all be reconsidered as aspects of the new economy and way of life. Support for them may come from different sources, such as our new tourist economy, the demand of residents for natural resource amenities, even the yearning of some (often ex-urbanite) for new place-based communities. In light of this, the planning notions of the more urban planning authors, such as Lewis Mumford and Ian McHarg are increasingly relevant to Vermont's environment. Put crudely, despite the Tunbridge Fair, Vermont is a post-modern city in green drag. Unfortunately, over the past twenty-five years, neither Act 250, Vermont's land use regulations, nor many Vermonters have adjusted to the "new model" of Vermont. For example, as indicated in the history of the changes in Act 250, almost no changes have addressed planning for the changed economy of Vermont. Most of the changes have simply responded to specific efforts of intereset groups to loosen control of the law.

The reason for the failure to adjust to the new Vermont is that many of us, with good reason, hold onto a nostalgic view of Vermont as a state of small towns, compact village centers, working farms and viable communities. This view is only in part true. The focus of our planning approach has been to try to weakly preserve this image at the expense of failing to cope with the forces of urbanization.

The Strategy for Approaching the Growth Problem

What then are the implications of these major forces for control of growth in Vermont? First, as stated above, it should be clearly recognized that residential and commercial growth is occurring at different places and hence requires different policy responses: 10 ski area villages;
2) peripheries of larger cities; 3) growth in cities outside the state; 4) highway exits; 5) multi-town strip developments; 6) proximity to major expanding existing institutions; 7) secondary growth from new major developments; 8) downtown development; 9) rural growth centers; 10) large-scale housing developments; and 11) growth peripheral to natural resource areas.

The following chart seeks to disaggregate the growth problem, identify the stakeholders, and the most relevant laws.

DISAGGREGATION OF GROWTH PROBLEM

1. Expansion & "concentration" of ski areas

Stakeholders:	Ski areas, nearby towns, environmental groups
Major impacts:	Transportation, environmental, economic
Regulatory focus:	Act 250
Example:	Killington Resort Village Master Plan

2. Highway Exit Growth

Stakeholders:	Towns, landowners and developers at exits State transportation dept. state tourism interests
Major impacts:	Visual, economic, transportation
Regulatory focus:	Town zoning, Act 250
Example:	Vermont Law School survey of exit characteristics

3. Peripheral Growth in Large Urban Areas

Stakeholders:	Large towns, transportation
Major impacts:	Problems of congestion
Regulatory focus:	Local zoning
Example:	Town Center Master Plan: Plan of Essex

4. Strip Development Along Multi-Town Strips

Stakeholders:	Towns, state transportation, major economic interests
Major impacts:	Aesthetic, transportation
Regulatory focus:	Town zoning, state transportation approval
Example:	Brooks & Henrie: "Growth in Vermont: Strip Development--Multi-Town Strips"

5. Major New Developments in Rural Areas

Stakeholders:	Towns, transp. agency, developers, environmentalists
Major impacts:	Transportation, economic, environmental
Regulatory focus:	Act 250
Example:	Humstone, "Growth Center Project Reports"

6. Secondary Growth From Large-Scale Commercial/ Industrial Activities

Stakeholders:	Large developers, towns, transportation
Major impacts:	Transportation, economic, environmental
Regulatory focus:	Local planning/zoning, Act 250
Example:	Henrie,"Large Development Meets Act 250: Does Phasing Make a Master or Tame It?"

7. Growth In and Around Major Resource Areas

Stakeholders:	Tourism developers, towns, environmental/recreation interests, transportation
Major impacts:	Environmental & recreational, transportation, economic
Regulatory focus:	Large-scale recreation & environmental controls at Fed & State level
Example:	Vermont By-Ways Program

8. Large-Scale Housing Developments

Stakeholders:	Potential homeowners, housing developments, towns, environmental groups
Major impacts:	Environmental, local transportation, infrastructure demands
Regulatory focus:	Act 250, local planning/zoning
Example:	VHBA "Building Affordable Housing in Vermont"

9. Growth in Town Centers

Stakeholders:	Towns, local downtown business, downtown customers
Major impacts:	Economic, transportation
Regulatory focus:	Local zoning, state economic development
Example:	VT Downtown Economic/Policy Study

10. Expansion of Existing Large-Scale Institutions

Stakeholders:	Institutions, town, neighbors
Major impacts:	Economic, environmental, transportation
Regulatory focus:	Act 250 (for major physical additions), local planning/zoning
Example:	UVM "Footprint" study

11. Growth in Cities Outside the State

Stakeholders:	Other states, outside cities, other nations, neighboring areas
Major impacts:	Transportation, economic, environmental
Regulatory focus:	Bi-state or transnational agreements
Example:	Lake Champlain program

It is not surprising that each kind of growth involves different stakeholders and different laws. This pluralism suggests that the uniform state laws adopted in the past to cope with growth problems are like the formations of British redcoats during the revolutionary period and equally effective!

Based upon the studies and other materials I have available, what can be concluded about a growth strategy?

First, it is clear that some problems – ski area growth, multi-town strips, highway exits, and large-scale rural developments are most important to the state as a whole in the immediate future, since such developments create significant new impacts upon many Vermonters and Vermont's visitors.

Second, of these "high priority" problems, ski area development and large-scale rural developments are best suited for review under existing regulations under Act 250 and its proposed master permits and fiscal impact analysis. On the other hand, highway exits, the incipient "new towns" on our highways, visible to every visitor to Vermont, are clearly an unresolved problem with no suitable existing mechanisms of control. Multi-town strips – Route 4, Route 100, the Barre-Montpelier Road and Route 7 are Vermont's "dirty little (not too little!) secrets." Neither problem is well handled by Act 250, nor local planning and zoning. Let me report what we have found in our reviews of these problems.

1. *The Ski Area Villages*

Vermont ski areas, as usual, are undergoing change. Ascutney, Bromley, Burke Mountain, Mount Snow, Okemo and Stowe are undertaking or proposing a variety of capital expenditures including lodge improvements, new condominia and other facilities. Sugarbush has undertaken its Grand Summit Resort Hotel and conference Center. The most ambitious proposal is the Killington Resort Village master Plan proposal which involves a village center, a new plan for the Killington Road, as well as an eventual "guest" carrying capacity of approximately 30,000 guests at the end of a three-phase development process [*nine years and beyond*].

Several of the ski areas have submitted master plans as part of the Act 250 approval process. Killington has submitted an elaborate three-phase plan, but is seeking approval only on phase one.

Given the present flat market in skier visits, the expansion and reorganization of the resorts could represent a zero-sum game. On the other hand, if Killington–among others–is successful in lengthening the stay at resorts while not increasing visits, the secondary transportation impacts may be minimized, but there could be economic impacts on peripheral areas. The environmental impacts of Killington (and perhaps other resorts) may be minimal. Killington has adopted a "McHargian approach" to the planning of its village, which seeks to account for environmental constraints, thus hopefully minimizing environmental impacts.

2. *Peripheries of Larger Cities*

The general residential and commercial growth around Burlington, Montpelier, and Brattleboro has not been effectively controlled. The problem is the failure of state and local land use regulatory tools to control such growth in the face of the short-term advantages of that growth.

Two efforts which have recently been made are the transportation efforts to spruce up Route 7 in South Burlington and the Town Center Master Plan for the Town of Essex. The former is an expensive and difficult effort to provide at least a minimum buffer area for part of the Route 7 corridor. The latter proposes a new town center contrasted with the surrounding area. To date, the center has been partially successful in spurring some downtown development and walking areas. However, zoning policies have been adopted which encourage growth in the surrounding areas, thus eroding the boundaries of the town center.

3. *Growth in Cities Outside the State*

Montreal, Keene, and Hanover in particular may have impact on land uses in Vermont. With the exception of natural resource protection organizations for Lake Champlain and the Connecticut River, there has been little in the way of bistate or transnational planning and control of land uses.

4. *Highway Exits*

Under my direction, law students Michele Henrie and Brice Simon have developed descriptions of each exit, and Brice has classified them. The first set of tables classifies all of Vermont's exits according to development pressures. Column A represents exits that remain scenic and relatively undeveloped, but are in danger of losing their unique characteristics. These exists are most in need of planning that discourages sprawl and encourages traditional growth patterns. Column B lists partially developed interchanges, some which contain scenery, primary agricultural soils, and waterways that will be spoiled if inappropriately developed. Column C shows those exits that have already been overrun by sprawling development. Columns D, E and F present those interchanges that are not threatened by sprawl.

Interchanges affected by sprawl

A	B	C
Undeveloped or scenic exits threatened by sprawl	Interchanges with limited sprawl	Interchanges dominated by sprawl
<u>I-91</u> Hartland/Exit 9 Bradford/Exit 16 Newbury/Exit 17 Barton/Exit 25 Barton-Irasberg/Exit 26 <u>I-89</u> Royalton/Exit 3 Williamstown/Exit 5 Middlesex/Exit 9 Richmond/Exit 11 Colchester/Exit 17 Georgia/Exit 18	<u>I-91</u> Brattleboro/Exit 1 Putney/Exit 4 Rockingham/Exit 6 Springfield/Exit 7 Weathersfield/Exit 8 Wilder/Exit 12 Fairlee/Exit 15 St. Johnsbury/Exit 20 <u>I-89</u> Woodstock/Exit 1 Randolph/Exit 4 Montpelier/Exit 9 Waterbury/Exit 10 Winooski/Exit 15 St. Albans/Exit 19	<u>I-91</u> Brattleboro/Exit 3 White River Jct./Exit 11 Lyndonville/Exit 23 Derby/Exit 28 <u>I-89</u> Berlin/Exit 7 Williston/Exit 12 Burlington/Exit 14 Colchester/Exit 16 St. Albans/Exit 20 Swanton/Exit 21

Interchanges <u>not</u> threatened by sprawl

D	E	F
Interchanges with primarily residential development	Interchanges lacking development pressure for the forseeable future	Exits where geographic constraints discourage sprawl
<u>I-91</u> Brattleboro/Exit 2 Thetford/Exit 14 Barnet/Exit 18 Norwich/Exit 13 Derby Line/Exit 29 <u>I-89</u> Sharon/Exit 2	<u>I-91</u> Derby/Exit 29 Derby/Exit 27 Lyndon Ctr./Exit 24 <u>I-89</u> Highgate/Exit 22	<u>I-91</u> White River Jct./Exit 10 St. Johnsbury/Exit 19, 21 <u>I-89</u> Berlin/Exit 6 So. Burlington/Exit 13

Growth Control

The second table groups exits according to how they are regulated by the town plan, zoning, and Act 250. The chart illustrates the importance of a town plan in determining the fate of an exit. Exits dominated by sprawl were all deemed growth areas by their town plan, zoned for industrial/commercial use only, and are admonished by their town plan to avoid sprawl. Likewise, many exits not threatened by sprawl are in towns that advise, in the town plan, against over-development of the interchange.

Information on Act 250's role in limiting sprawl is based on permit denials, and permits containing stringent conditions to mitigate sprawl. Information on Act 250 jurisdiction is based on tax maps depicting acreage, communications with town officials about projects not requiring Act 250 review, and the jurisdictional requirements of Act 250.

Town Plans, Zoning and Act 250 at interchanges

Interchanges designated growth areas by town plan	Interchanges zoned only for industrial/commercial uses	Interchanges where Act 250 has contributed to limiting sprawl	Interchanges where many development lots are too small for Act 250 jurisdiction
I-91 Brattleboro/Exit 1 Brattleboro/Exit 3 Putney/Exit 4 Westminster/Exit 5 Rockingham/Exit 6 Springfield/Exit 7 Weathersfield/Exit 8 White River Jct./Exit 11 Wilder/Exit 12 Bradford/Exit 16 Newbury/Exit 17 St. Johnsbury/Exit 20 St. Johnsbury/Exit 22 Lyndonville/Exit 23 Derby/Exit 28 I-89 Woodstock/Exit 1 Royalton/Exit 3 Randolph/Exit 4 Williamstown/Exit 5 Berlin/Exit 6 Berlin/Exit 7 Waterbury/Exit 10 Richmond/Exit 11 Williston/Exit 12 Burlington/Exit 14 Colchester/Exit 16 Colchester/Exit 17 Georgia/Exit 18 St. Albans/Exit 20 Swanton/Exit 21	I-91 Brattleboro/Exit 1 Brattleboro/Exit 3 Putney/Exit 4 Westminster/Exit 5 Rockingham/Exit 6 Springfield/Exit 7 Weathersfield/Exit 8 White River Jct./Exit 11 St. Johnsbury/Exit 20 Lyndonville/Exit 23 Derby/Exit 28 I-89 Woodstock/Exit 1 Randolph/Exit 4 Berlin/Exit 6 Berlin/Exit 7 Waterbury/Exit 10 Williston/Exit 12 Burlington/Exit 14 Colchester/Exit 16 Colchester/Exit 17 St. Albans/Exit 20 Swanton/Exit 21	I-91 Hartland/Exit 9 Lyndonville/Exit 23 Barton/Exit 25 I-89 Royalton/Exit 3 Randolph/Exit 4 Berlin/Exit 7 Richmond/Exit 11 Williston/Exit 12 St. Albans/Exit 19	I-91 Brattleboro/Exit 1 Brattleboro/Exit 3 Putney/Exit 4 Westminster/Exit 5 Rockingham/Exit 6 Springfield/Exit 7 Weathersfield/Exit 8 White River Jct./Exit 11 Wilder/Exit 12 I-89 Waterbury/Exit 10 Burlington/Exit 14 Winooski/Exit 15 Colchester/Exit 16 Colchester/Exit 17 Georgia/Exit 18 St. Albans/Exit 19 St. Albans/Exit 20 Swanton/Exit 21

Interchanges discouraged from developing sprawl by zoning or town plan	
I-91 Brattleboro/Exit 2 Hartland/Exit 9 Norwich/Exit 13 Thetford/Exit 14 Newbury/Exit 17 Barnet/Exit 18 Waterford/Exit 1 (I-93) Lyndonville/Exit 23, 24 Barton/Exit 25	I-89 Sharon/Exit 2 Royalton/Exit 3 Richmond/Exit 11

This table shows that local and state land use controls are not crafted to prevent sprawl at highway exits. The localities are generally concerned with growth, and the State has limited jurisdiction at the interchanges. The correlation between sprawl at interchanges and town plans suggests that towns have the best tool against sprawl. By discouraging the over-development of interchanges, a town plan and zoning regulations can prevent sprawl. Typical approaches include varying the zoning at an interchange to reflect the qualities of each quadrant (as in Richmond), and specifying in the plan that an exit should be developed only if the town center's economy and scenic entrance are not disturbed (Newbury/Exit 17, I-91).

5. *Multi-town Strips*

Vermont Law School's Environmental Law Center undertook an informal study of multi-town strips and has sponsored several conferences on the of multi-town strips and has sponsored several conferences on the topic. Specifically, the Center found that Act 250 had limited control over strip development in Vermont. Fueled by small business development, highway traffic loads and increased attractiveness of destinations at the end of strips, strip development has flourished.

Two areas have sought to control strip: an in-town effort is the Mountain Road plan for Stowe. The other is the Mad River Planning District, a tri-town planning effort seeking to secure controls over strip development in the Valley.

6. *Existing Expanding Institutions*

Much growth in Vermont may be due to the gradual expansion of existing institutions – hospitals, schools and universities, airports, private businesses. Many of the larger institutions have master plans which mark out their future expansion plans. Some are now adopting "ecological footprint studies," seeking to specify what impact their institution makes upon the land, water and air.

Vermont's current land use and environmental regulations may not "regulate" the gradual increase in the activities of existing institutions, unless specific construction projects are involved. Our Vermont Supreme Court has explicitly decided that growth plans are not "developments" subject to review under Act 250.

7. *Secondary Growth From New Major Developments*

Under the recent WalMart decision, the district commission and Environmental Board may evaluate secondary growth impacts. A draft fiscal and economic analysis under Act 250 has been proposed. This analysis seeks to identify different types of development, their possible secondary growth impact and the resulting municipal costs and reviews, school costs, tax implications and "capacity." This analysis is currently being refined.

In addition, a new master permit policy has been proposed under Act 250 and is currently under collaborative negotiation by stakeholders. Aside from the question of whether or not Act 250 authorizes such a permit process, such a process will probably not control most of the kinds of growth identified in this discussion.

8. <u>*Downtown Development*</u>

The original Capability and Development Plan in Act 250 proposed the strengthening of compact downtowns. [*As part of that effort, Vermont Law School's Environmental Law Center completed a study of downtown Town Greens. Recently it has been proposed that any effort to strengthen Vermont's downtowns include a strong historic preservation component*]. In any case, the recent "Vermont Downtown Economic and Policy Study" finds a limited percentage of population living "downtown," a decline in the percentage employed downtown; downtowns are the host for a modest percentage of businesses and a modest source of state tax revenues in the state.

Even with the recent downtown development legislation which authorizes and funds downtown community development activities and provides for access control to state highways, it is unlikely, given present development patterns, that land use trends will significantly shift. Given the pattern of sprawling residential and commercial development, it is unlikely that Vermont's downtowns will offer a near-term solution.

9. <u>*Rural Growth Centers*</u>

Vermont's Act 250 envisaged rural growth centers, encouraging their adoption of clustering and other new town development techniques. Until recently, there has been little interest in the Act 250 provision authorizing rural growth. Three recent developments have changed this. First, environmental groups and others are now viewing some of the ski area developments as rural growth areas. Such developments are discussed above. Second, the Growth Centers Pilot Project focused, in part, upon rural growth centers within Hinesburg, Jericho and Morristown/Morrisville. The study provided excellent documentation of the activities needed and obstacles to promoting growth centers in these towns. However, the pattern of growth did not reveal a focus within the designated growth areas. *[The project foundered on* *political grounds].* third, the Husky plant, located in what most observers would conclude to be a relatively "rural area," was summarily classified as not in a rural area. This decision raised the serious question as to what the criteria of such rural areas were. [*Even if the Husky plant had been designated to be in a rural area, it is unclear as to whether the campus plan might not have complied with the Act 250 criteria*].

10. *Large-Scale Housing Developments*

The Environmental Law Center is currently updating a review of housing policies and Act 250 in Vermont.

11. *Growth Peripheral to Natural Resource Areas*

Residential and commercial growth can encroach upon our lakes, rivers, mountains, as well as wetlands and agricultural areas. To be sure, Act 250, environmental regulations and land use planning may seek to protect these areas. In the 1970's and 80's the Agency of Natural Resources studied the "urbanization" of some of Vermont's lakes. Recent efforts have been made to plan for, if not stringently control population growth in proximity to Lake Champlain and the Connecticut River. Perhaps the most interesting effort has been a series of reports issued in 1997 entitled "The Vermont Byways Program." Unfortunately, this commendable effort has not focused upon the impact of growth upon the scenic byways which have been or may be identified by the methods set forth.

What then are the implications of these major forces for Act 250's control of growth in Vermont? First, as stated above, it should be clearly recognized that residential and commercial growth is occurring at different places and hence requires different policy responses. Different policies are needed for 1) ski area villages, 2) peripheries of larger cities; 3) growth in cities outside the state; 4) highway exits; 5) multi-town strip developments; 6) proximity to major expanding institutions; 7) secondary growth harm from new major developments; 8) downtown development; 9) rural growth centers; 10) large-scale housing developments; and 11) growth peripheral to natural resource areas.

Control of growth on ski area peripheries may require both state and local controls, since the pressures are immense at the local level to permit this development. The scattered development on the peripheries of the larger cities requires, at the minimum, a regional strategy which has to be implemented either at the local, regional, or state level. (Current regional controls are too weak to pull this off). A similar situation exists for growth responding to urban centers outside the state; (obviously, no controls are feasible on extra-state growth-inducing development). The growth at highway exits requires a state-related transportation-related land use site specific planning program, with some guarantee that the locality recovers the tax revenues from such developments. A good portion of exit development may be servicing a "highway" clientele and hence, planning for the needs of that clientele is necessary as part of this planning process. The planning and control of multi-town strip development requires micro planning, which must involve the locality. But since such planning may involve limiting curb cuts and planning and control efforts through several localities, regional and state involvement is required. The expansion of personnel and programs of major institutions is a generator of growth, resulting in consequent land use development, which to my knowledge has never been controlled. Yet it may be the most significant cumulative source of growth. Secondary growth from major developments must be controlled by a combination of local planning and state project review. Downtown development requires economic development funds and local planning. Rural growth centers, large-scale housing developments, and growth near resource areas require specialized site planning.

Finally, there is the general diffusion of residential growth throughout towns. Such growth can be micro-managed for environmental protection, and the rate may be slowed, but not capped. We shall eventually see the gradual coverage of Vermont's countryside by residences, residential businesses, and small businesses on the myriad of backroads in Vermont. Perhaps the major challenge here is simply securing the adequate infrastructure of roads, schools and related government services.

It is useful to distinguish between immediate environmental impacts of major projects, which are more or less well controlled, and the cumulative impacts of large and small projects with quality of life impacts. Studies completed in other states reveal that citizens are as much or more concerned with quality of life impacts--i.e., noise, traffic, aesthetic light--as they are with strictly environmental abuses. Yet the least controlled are quality of life cumulative impacts of small development.

The Limits of Act 250

In the past several years, I have been studying Act 250. How in theory does Act 250 approach growth? 1) It recommends compact town centers; 2) it claims to facilitate rural growth areas; 3) in reviewing a major development, it claims to monitor cumulative impacts of that development and other previous developments in terms of specific burdens on services, education, traffic etc.; 4) it evaluates major development impacts on natural resources, an evaluation which in theory can indirectly assess prior cumulative impacts; 5) it indirectly controls for impacts of major projects, when such impacts do not conform with specific planning or zoning within municipal and regional plans; (6) it generally evaluates the net costs and benefits of impacts of major development in light of existing facilities; 7) it assesses impacts in light of their relative pay-off of employment and tax revenues.

Act 250 does not have an unambiguous policy in regard to growth, since many of these policies can conflict one with another. For example, encouraging rural developments such as the Husky plant which exceed present carrying capacity can discourage in-town development, pulling development away from downtown. Assessing growth in terms of costs and benefits of major development often acts to permit the proposed growth, since ordinarily, the benefits will be short term and immediate while the costs will be long term and diffuse. Moreover, despite the major developments which are reviewed by Act 250, the kinds of growth not reviewable under Act 250 include the increase in small developments, the non-land development growth of larger institutions, the secondary impacts of developments and infrastructures, and expansion of grandfathered development. In addition, our review of Act 250's operation in multi-town strips and highway exits reveals the ineffectiveness of this law in these situations.

Implications for Local Planning and Zoning

By disaggregating the different loci and stakeholders of growth in Vermont, the task of local planning and zoning is defined in light of the relation of the town to the kind of growth involved. Since growth is taking place, it is safe to say that current town planning and zoning is not controlling it. This is not surprising since the growth may take place outside the town's jurisdiction, the town may favor growth for tax reasons, or at most, be ambivalent about growth.

My less than comprehensive review of town plans and zoning suggests that town plans or zoning does not reflect significant efforts to control growth.

On a more specific level, each form of growth has its own relevant particular local planning and zoning vehicle. Ski areas are controlled through PUD's and through the zoning of nearby access roads. Growth centers require appropriate downtown boundaries, appropriate capital budgets, and down zoning of surrounding areas. Downtown development, as envisaged by the new downtowns legislation requires a plan for curb cuts controls as well as determination of development and historic districts. Highway exits require careful onsite planning and zoning not only of the site, but the roads leading up to the exit. Multi-town strips require appropriate planning and zoning to develop nodes of development, which includes off-street development areas. Natural areas require appropriate set-back areas, density controls, appropriate sewage regulations, control of steep slopes, and ridge top controls. Rural growth districts have to be defined and the areas around them controlled. Appropriate sites for large housing developments should, in theory, be identified. It is relatively easy to identify the tools necessary to implement policies in each of the areas in question; it is less easy to reach agreement on the fundamental questions facing each growth area. These questions include:

(1) What limits, (if any), are we going to place upon the growth of ski areas and how are we going to mitigate the transportation and economic impacts on the surrounding areas?

(2) What do we want for our highway exits? What "face" do we wish to present to the public visiting our state?

(3) Do we want to control the extension of multi-town strip development, and, if so, how can we do it?

(4) What resources can be brought to bear to produce a resurgence in the small downtowns of Vermont?

(5) Do we wish to control large scale development in some of the rural areas of the state?

(6) How can we control the population encroachment on Vermont's natural resources?

(7) Where can we facilitate housing developments for meeting the needs of low and moderate income people?

(8) Can we find an alternative effective way for planning to control the secondary growth resulting from existing large institutions and new developments?

Rather than engage in large conferences or hearings to wile away the bitter Vermont winters by discussing these questions, I propose a series of more focused stakeholders meetings around each of the problems. (A suggested list of stakeholder is listed above.) I envisage such meeting leading to the institutionalization of new stakeholder groups to plan for each kind of growth problem. State funding should be provided for the convening and staff assistance of each of these groups with the intent of further state support of the resulting plans of each group, as well as support for their implementation.

Appendix F - Oregon

I. Oregon

II. Oregon is the first State to move away from traditional Euclidian zoning into what is now known as "Smart Growth". The process began in Portland during the late sixties and by 1971 these communities created future plans for growth. In 1973 the Legislature created a statewide planning commission called the Land Conservation and Development Commission ("LCDC"). This commission is a Governor appointed seven member body that acknowledges and accepts local land use plans. The legislature also created the Dept. of Land Conservation Development ("DLCD") which administers all land use statutes and creates administrative rules which affect zoning.

As a result, the DLCD created the Urban Growth Boundary ("UGB"). This boundary serves to contain growth within established metropolitan areas and restricts development in agricultural or forestland areas. The governing bodies elected to place these "UGBs" are also unique to Oregon. These regional governing bodies control placement of the UGB in their region, monitor growth to ensure they have a 20 year supply of land for their region and help local municipalities use their land more efficiently.

Oregon created this complex new governmental structure to handle its cumulative growth policies and has been viewed by some as highly effective. ["The Link Between Growth Management and Housing Affordability: The Academic Evidence" Nelson, Arthur D. Pendall, Rolf. Dawkins, Casey. Knapp, Genit J. www.brookings.edu/dybdocroot/es/urban/publications/growthmanagexsum.htm February 2002. "Fast Facts: Oregon's Statewide Land Use Planning Program" www.lcd.state.or.us/fastpdfs.fastfacts.pdf]

Yet, the State is currently facing legal challenges to their zoning ordinances. These challengers passed a State constitutional amendment requiring the State to reimburse any landowner for lost property value as a result of state regulation. If the Oregon Supreme Court upholds this amendment, the State will be forced to pay millions of dollars to thousands of residents who lost property value because of Oregon's land use laws.

III. Oregon's Tools As They Address Specific Cumulative Growth Concerns

1) Preservation of Local Communities

(a) The Creation of State, regional and local land use plans

- Oregon's statewide planning commission, the LCDC, created the "Urban Growth Boundary" which act as walls to keeps development inside and severely limit development outside. [www.lcd.state.or]
- This Commission also created planning goals for the entire State. Each goal represents a different land use or cumulative growth concern and tools to deal with them. There are a total of 19 goals. [www.lcd.state.or.us/goalhtml/goals.html]
- Goal 14 "Urbanization" created the urban growth boundary. This was adopted by the DLCD on December 27, 1974. This goal requires each

city to adopt a UGB, "in a cooperative process between a city and the county or counties that surround it." There are 7 factors that must be considered in drawing the UGB. The first two are "need factors" which ask each city to determine how much land is needed for growth and the last five factors are "locational factors" which determine where the boundary should be placed. ["What is an Urban Growth Boundary?" www.darkwing.uoregon.edu/~pppm/landuse/UGB.html]

- Along with the UGB, Oregon created a new branch of their Legislative body. Regional Planning Authorities were created to place "UGBs" within a specific metropolitan area. These regional bodies also assist local villages, towns and cities with their implementation of the DLCD's statewide land use plan. These regional authorities do not have control over local zoning regulations or local land use decisions but they do control growth in areas through placement of the "UGB". [ORS 268.730]
- Oregon has preserved local community's ability to regulate their own lands. Each locality must create a land use plan and have set procedures for variances, amendments, special use permits and subdivision or site plan permitting. [SR 100 Section 17 - Section 19, Oregon Legislative Assembly 1973 Session] As was stated above, these municipalities are bound to follow DLCD's comprehensive statewide land use goals. Further, each municipality must adhere to the regional commission's designation of the "UGBs". For example, if a municipality is outside the UGB and is designated farm use only the municipality may not allow subdivision of a large parcel of land for condominium developments. Municipalities are free to carry out the State goals as they choose but must adhere to them in their local plans. [Goal 3 "Agricultural Lands", Oregon's Statewide Planning Goals & Guidelines, www.lcd.state.or/goalshtml/goals.html; ORS 215.243; ORS 215.700]
- While localities are free to mandate local land uses the legislature included some exceptions to this authority in the 1973 bill. The legislature created a special category of land use issues and called them, "Activities of State-Wide Significance". These include the designation of public transportation facilities, public sewage systems, public water supply systems, solid waste disposal systems, planning and siting of public schools. The DLCD permits for these activities and has zoning regulations for these as well. [SR 100 Section 25, Oregon General Assembly 1973 Session]
- The DLCD and DLD must keep the municipalities involved in these decision making processes, though. The 1973 legislation set up requirements that Commission members be citizens of local communities and the agency must hold public hearings about comprehensive plans. [SR 100 Section 34 - Section 35, Oregon General Assembly 1973 Session] This created the Local Officials Advisory Committee (LOAC) who advise and assist the DLDC with policy and programs. Members of LOAC are city and county elected officials appointed by DLCD. [www.loac.org???]

(b) Preservation of local communities through Regional Commissions

- Oregon's regional commissions are charged with the task of placing the UGB for their region. These governmental bodies must ensure they hold a 20 year supply of land within the UGB called the "urban reserve". [ORS 268.000 et seq.] For example, in Portland their regional government is called the METRO. The METRO places, and if necessary moves, the "UGB" within the Portland area. The DLCD has stated that the purpose of the "UGB" is to control sprawl and as such the incentive is to keep the "UGBs" where they are and achieve adequate supplies of housing through creative development inside the UGB. [Goal 14 "Urbanization" Oregon's Statewide Planning Goals, www.lcd.state.or.goalshtml/goals.html] As a result, the METRO has created a vision for development within the Portland area called Vision 2040. ["The Nature of 2040" METRO]

(c)Preservation of communities through creation of zoning regions

- Oregon has created three types of land categories beyond the areas inside the urban growth boundary. These three are: exclusive farm use (EFU), forest lands, and secondary use lands. [ORS 215.243 and ORS 268) The State has set zoning regulations for each of these areas which must be followed by each municipality. Oregon's State legislature has been very specific about parcel size, subdivision, and acceptable uses for these areas.
- Oregon does not focus on other specific areas and has decided to concentrate on dense growth within the UGB and strict control of growth outside these areas.

(d) tax incentives

- Oregon does not focus on tax incentives to control growth. They do offer grants to cities and towns who advance the state's land use goals. The DLCD offers these grants and send information regarding availability of funds to each municipality on an annual basis. [Letter]

(e) growth centers

- Oregon has created growth centers within their urban areas. This was done through the designation of areas as inside the UGB. Any area that is inside the UGB is set for growth. Oregon is currently experiencing difficulties because they are quickly out-growing the current UGBs. The regional authorities are looking into ways to promote denser growth within the UGB instead of expanding the UGB again. ["The Nature of 2040" METRO]

2) Farmland Protection

(a) Oregon's preservation of agricultural lands through exclusionary zoning

- When the DLCD was created one of their planning goals was to focus on agricultural lands. (Goal 3 "Agricultural Lands", Oregon's Statewide Planning Goals & Guidelines, www.lcd.state.or.goalshtml/goals.html) To implement the protection of this land they limit zoning to uses which do not adversely effect agricultural or forest land uses. Each counties board of commissioners determines if a requests variance on use will adversely affect the zone. The procedure for reviewing these variances or special uses is traditional. The request must be submitted to the local planning board or selectboard. A public notice is given and public hearings, if necessary, are held to address concerns over the requested use. All appeals of county commissioners decisions are handled by the DLCD. [ORS 215.203; ORS 215.243; ORS 215.284 - 296]

- The State does have certain specific zoning ordinances that apply to all farm land. For example, the State has set limits to parcel sizes to ensure subdivision of large agricultural plots of land does not occur. Every parcel within the exclusive farm use zone (EFU), that is not designated as rangeland, must be at least 80 acres. If the property is rangeland the parcel size must be 160 acres. Additionally, any parcel of 80 acres or more must be a farm as defined by the State. A working farm is defined by annual gross sales generated by farming on that parcel. Any land designated "high-quality" farmland by DLCD must have gross sales of $80,000 or more each year. [OAR 660-033-0100; OAR 660-033-0135]
- If the property is not suitable for farming or grazing, the owner may develop his or her land for non-farming uses, but only if this development does not interfere with commercial agricultural production. The county board of commissions would determine if a development interfered or was even eligible for this exception. The board does not rate the actual quality of the land, though, that is done at the State level by the DLCD. The DLCD uses federal soils classification to determine the quality of any parcel. [ORS 215.209; OAR 660-033-0010 – 0090].
- The legislature in 1993 passed laws which gave more exceptions to this exclusive zone. This bill allows non farm dwellings on parcel's that were held at the time of the creation of the EFU zone and also allows subdividing of a larger parcel if that section is not high-value farmland as determined by the DLCD. This bill effectively re-zoned 75% of the states farmland but the majority of municipalities have yet to adopt the legislation. (HB 3661 Session Law 1993) One reason for the re-zoning is pressure from residents who own land within the region but they were not satisfied with this legislation and pushed for a constitutional amdendment which would force the State to reimburse landowners for lost property value. [See IV. Conclusion – Litigation Warnings]

(b) loan fund/tax incentives

- All farmlands (designated as EFU and producing $80,000/year gross profit) receive a tax break of one-tenth to one-fourth the tax a residential parcel would be assessed. [ORS 215.243 et seq.]
- An individual who holds farmland may designate certain portion of that land for environmental conservation. The owner of any conserved lands will be tax-exempt for that portion of their parcel. [ORS 215.243 et seq.]

3) Affordable Housing

(a) tax incentives in planned areas

- Oregon does not use tax incentives to control growth. They do offer grants to local cities and towns that advance the state's land use goals. See above for more information.

(b) identification of growth centers

- Goal 10 of Oregon's statewide planning goals instructs all cities to inventory its developable land, project future needs for land, and plan and zone enough land to meet those needs. This goal also prohibits "snob" zoning or zoning that would discriminate against needed housing types. [Goal 10 "Affordable Housing" Oregon's Statewide Planning Goals, www.lcd.state.or/goalshtml/goals.html] Each city is encouraged to determine where they can grow and create a growth center in this area. The State does not mandate the creation of these growth centers but does encourage it. The regional bodies also encourage this and indirectly control the growth by not expanding the UGB until all areas within it are densly developed according to the regional plan. ["The Nature of 2040" METRO]

(c) transportation

- Goal 12 of Oregon's statewide planning goals is to provide adequate public transportation to ensure access to local centers and metropolitan areas. [Goal 12 "Transportation" Oregon's Statewide Planning Goals, www.lcd.state.or/goalshtml/goals.html] The legislature added to this goal in 1993 when they passed H.B. 3661 which instructed all cities and towns with the UGBs to reduce the number of personal vehicle miles traveled by 20% over the next 10 years. (Session Law 1993 H.D. 3661)
- Regional bodies have taken this goal forward by working with several municipalities to create transportation plans. ["The Nature of 2040" METRO]

4) Natural Resource Protection

(a) local protection

- As is true for all of Oregon's land use planning the local protection comes at the direction of the State. Localities are given goals created by the DLCD and must adhere to them in any manner they choose to ensure the goals are implemented. Of course, the DLCD has created implementation procedures in some circumstances. [www.lcd.state.or]

(b) specific zoning for forest lands

- Forest land protection and zoning is very similar to farmland zoning. Goal 4 of the statewide planning goals is for the preservation of forest lands. [Goal 4 "Forest Lands" Oregon's Statewide Planning Goals, www.lcd.state.or/goalshtml/goals.html] The main difference in implementation and therefore, legislation, is the size of parcels, but otherwise there are similar exceptions for unproductive lands and strict restrictions on general development.

(c) specific zoning requirements for protection measures

- Goals 5, 6, 13, 15, 16, 17, 18 and 19 all deal with specific protections for natural resources. Goal 5 requires the preservation of natural resources and open spaces. Goal 6 requires the implementation of measures to control air, water and land quality. Goal 13 encourages alternative energy and requires conservation of energy when possible. The remaining goals deal with regulations for specific areas e.g. coastal protections, beaches and dunes, ocean resources and river valleys. [www.lcd.state.or/goalshtml/goals.html]
- Oregon uses federal environmental protections and State mandates to increase protections in these areas and create unique zoning for these unique lands. For example, the legislature in 1991 created the Ocean Policy Advisory Council (OPAC) as part of Goal 19. This council is staffed by LCDC and serves three functions. First, they act as a forum for discussing ocean management. Secondly, the council's 23 members prepare and maintain management plans for the state's territorial sea. Lastly, the council provides policy advice to the Governor and State agencies. 16 of the councils members are Governor appointed and represent ocean fisherman, coastal local governments, coastal tribes, ports, Oregon Sea Grant, and environmental organizations. The council is chaired by the Governor's Assistnat for Natural Resources. [ORS 196.405 - .515] This council has no legislative authority but once the DLCD approves their plans and policies they become law. [www.lcd.state.or.us/coast/offshore.html#Anchor-Elements-11481]

(d) infrastructure issues

- Goal 11 requires efficient planning of public services such as sewers, water, law enforcement and fire protection. [Goal 11 "Public Services" Oregon's Statewide Planning Goals, www.lcd.state.or/goalshtml/goals.html] The State has taken control over permitting and planning some of these services away from municipalities. As was stated above, the Legislature in 1973 determined that certain issues were of statewide importance and should be handled through the State. These issues are: public schools, public transportation, water supply, sewage treatment and solid waste disposal. The State controls these and permits any new development or addition. [SR 100 Section 25, Oregon General Assembly 1973 Session]

IV. ***Conclusion - Litigation Warnings

The designation of the UGB and subsequent limitation on development outside this boundary has spawned litigation. Measure 7 was a constitutional amendment that would require payment to landowners if governmental regulations adopted after an owner acquires property reduced the "market value" of their property. On February 22, 2001 Circuit Court Judge Paul Lipscomb ruled that Measure 7 fails the State Constitutional tests and declared it invalid. Currently, this is being appealed to the Oregon Supreme Court and all parties are awaiting final decision. If this Measure succeeds it will prove highly detrimental for the State. The State has already received

1,000 of compensation claims related to this measure and expects to receive many more if this measure is seen as constitutional by the court. The issue over whether or not Oregon's land use legislation has created a taking of private property will be hotly contested. Obviously, any inclination to follow in Oregon's footsteps will be determined based in part on what the Oregon Supreme Court says about Measure 7.

Appendix G - Maryland

I. Maryland

II. In 1997 Maryland's Governor, Parris N. Glendening introduced his "Smart-Growth" Bill to the Legislature. This bill was amended and passed during that session. It, along with a 1992 Economic Growth, Resource Protection and Planning Act, make up Maryland's comprehensive land use plan in place today. This plan proposes to control cumulative growth by limiting state funding to specific areas within the state which meet specific criteria. The main force behind this plan is the creation of, Priority Funding Areas ("PFAs"). These PFAs are the only areas that are eligible to receive state funding for development projects. Through this act, Maryland has been able to provide incentives for "Smart-Growth" projects and thereby create denser pre-existing municipalities which in-turn limit leapfrog sprawl.

The funding made available for these projects came from monies already allocated for development. Maryland already provided funding for specific programs through the following agencies: Department of Transportation, Department of Housing and Community Development, Department of Business and Economic Development, and the Department of Environment. Further, this legislation does not guarantee funding if your project is "growth related" but does restrict funding if your project is not within a PFA and is not "growth related".

A problem with this program is lack of county participation. They are not required to participate but will not receive funding if they have not designated lands as PFAs. Yet, this has not enticed every county into participation. Only 8 of counties that designated Smart Growth Areas and PFA's used the analysis recommended by the state. The other 11 counties chose to use a less scientifc analysis to determine whether or not they were PFA's. Likewise, only 5 counties included existing communities in their initial submittals and excluded portions of their lands from their PFA designation. Finally, counties did not hold public hearings about these designations and in some cases smart growth area designations were submitted for certification without being adopted officially by local governing body, as required by statute.

One way Maryland attempted to further control growth is through the use of impact fees for developers and required assessments of public facilities. The first tool is a widely used and has been challenged in almost every jurisdiction. The second is a newer tool termed, Adequate Public Facilities Ordinance "APFO" and is a way of justifying impact fees and denying permits. Maryland's statute requires that impact fees have a "rational nexus" between the fee and the infrastructure. This requirement is the minimum standard courts require to support the levy of these fees. APFO's are more controversial, but Maryland is using a cooperative approach to deal with this important issue.

Counties who have determined what their current capacity standards are for schools, sewer, public water, transportation, fire and police set APFO's. This tool is used as a pacer for development and a planning tool. As stated above, APFO's have been challenged in court and most jurisdictions support their use as long as they are "reasonably and rationally related to a valid governmental interest".

While the impact fees and APFO's may be seen as controversial the remainder of

Maryland's program is funding based and is quite prudent.

III. Maryland's Tools As They Address Specific Cumulative Growth Concerns

1) Preservation of Local Communities

(a) creation of local, regional and state land use plans

- The "Smart Growth" program has 3 main goals and one of them is "to support existing communities and neighborhoods by targeting state resources to support development in areas where the infrastructure is already in place or planned to support it" (www.mdp.state.md.us/smartgrowth/smartwhat.htm)
- The 1997 legislation's' foundation is the creation of "Priority Funding Areas" (PFA's). These are the only areas where state funds can be allocated. The following areas are PFA's: "every municipality, areas inside the Washington Beltway and the Baltimore Beltway, and areas already designated as enterprise zones, neighborhood revitalization areas, heritage areas and existing industrial land" (www.mdp.state.md.us/smartgrowth/smartpfa.htm). This designation allows the state to focus on funding rural communities town centers, existing municipalities and existing urban areas.
- All municipalities within Maryland are free to create their own zoning regulations, but they must include specific standards in order to be eligible for state funding. Specifically, Maryland has set up APFO's (Adequate Public Facilities Ordinances) as a way to further entice municipalities into participating in the "Smart Growth" program. The statute states "A growth related project may not be funded by the State in a municipal corporation exercising zoning authority unless the municipal corporation has first adopted residential development standards relating to public school adequacy" (1997 Maryland Laws Ch. 759 Sec. 5-7B-04(c)(1)) There are a few exceptions to this such as impact fees can be levied to counterbalance the strain a development might have on the infrastructure of a community.

(b) regional planning commissions

- Unlike Oregon, Maryland has not created additional branches of government to control growth. The Smart-Growth program works with the existing legislative and executive structure of the state. Further, the program did not cost a considerable amount of extra money to implement since it draws on funding projects already in place at the time of the Bill's enactment.

(c) zoning regions

- Municipalities and the State have created "growth centers" and "priority funding areas" using the standards set out by the legislature. (See above)
- Growth Centers are identified by counties. (See above)
- Priority funding areas are identified by the legislature and counties governing bodies. (1997 Maryland Laws Ch. 759 Sec. 5-7B-02; 5-7B-

03)

- In addition to these regions Maryland utilized their more traditional Euclidean designations to identify what would be considered a "priority funding area". For example, "The governing body of a county may designate priority funding areas as provided in this section. (2) An area zoned or, if applicable, classified by January 1, 1997 principally for industrial use may be designated as a priority funding area." (1997 Maryland Laws Ch. 759 Sec. 5-7B-03(a)(2))

(d) tax incentives

- Any business that develops within a designated growth area is given tax breaks. The Job Creation Tax Credit encourages mid-sized and smaller businesses to invest in Smart Growth Areas by giving them tax credits if they create at least 25 jobs within these areas. (www.mdp.state.md.us/smartgrowth/taxcredit.htm)

(e) growth centers

- Priority funding areas are the growth centers in Maryland.

2) Farmland Protection

(a) specific zoning for farm lands

- As is stated above, there are 3 main purposes to the Smart-Growth Bills and one of them is, "to save our most valuable remaining natural resources before they are forever lost" (www.mdp.state.md.us/smartgrowth/smartwhat.htm). In addition, the legislature included in their purpose section, "If current patterns of development continue unchanged, Maryland will lose over 500,000 acres of farms and open spaces" (1997 Maryland Laws Ch. 759 Preamble)
- Maryland's law sets standards through which counties may designate certain lands for "priority funding" and these standards protect farmlands by not including them in the applicable lands able to be designated as growth areas. Further, one of the set standards relates to the density of a community. A county can not include agricultural lands when making its' calculations. "…Average density shall be calculated based on the total acreage of all parcels in the area … excluding land (2) Subject to a[n] [state] agricultural easement… (3)Subject to a [n] [county] agricultural easement" (1997 Maryland Laws Ch. 759 Sec.5-7B-03(h)(2)-(3))
- Yet, the above exclusion only protects agricultural lands subject to easements. As such, the state created the "Rural Legacy Program". This program's purpose is "to reallocate State funds to purchase conservation easements for large contiguous tracts of agricultural, forest and natural areas subject to development pressure, and fee interests in open space where public access and use is needed." (www.mdp.state.md.us/smartgrowth/legacy.htm) Specifically this program "provides funds to the local governments and land trusts to purchase interests in real property from willing sellers, including easements and fee estates, focused in the designated rural legacy

areas." (1997 Maryland Laws SB 388 Sec. 5-9A-01(B)(2))

(b) loan fund/tax incentives

- The Rural Legacy Program described above is a grant giving program. The Rural Legacy Board within the Department of Natural Resources determines who gets funds. The state funded this program through property transfer taxes (which they increased the first year of this program to 10%) and through proceeds from the sale of general obligation bonds. (1997 Maryland Laws SB 388 Sec.5-9A-01(C))

3) Affordable Housing

(a) tax incentives in planned areas

- Maryland's "Live Near Your Work" program is not only an affordable housing program but a transportation solution to the effects of sprawl. This program provides, at a minimum, $3,000 to home buyers moving to designated neighborhoods. The county or local government designates areas as LNYW neighborhoods and the home buyer must agree to stay in that house for 3 years. (www.mdp.state.md.us/smartgrowth/lnyw.htm)

(b) identification of growth centers

- See Priority Funding Areas and Live Near Your Work

(c) transportation

- See the Live Near Your Work section

4) Natural Resource Protection

(a) local protection

- As stated in the farmland protection section, protection of natural resources is a chief component of Maryland's Smart-Growth. The protection afforded natural resources is similar to that given to farmlands.
- ""...Average density shall be calculated based on the total acreage of all parcels in the area ... excluding land (1)(ii) Dedicated to recreational use;(5) Identified by local government as: (i) 1. Streams and their buffers; 2. 100-year floodplains; 3. Habitats of threatened and endangered species; and 4. Steep slopes;" (1997 Maryland Laws Ch. 759 Sec.5-7B-03(h)(1)(ii) and (5)) The exclusion of these areas from a county's density calculations will protect over-development of these areas. This is the basic local protection given to natural resources.

(b) specific zoning for forest lands

- See Rural Legacy Program

(c) specific zoning requirements for protection measures

- Maryland does have several Coastal Zone Management programs, but for the purpose of their cumulative growth initiative they did not add to these.

(d) Infrastructure issues

- A Brownfields voluntary cleanup and revitalization program was developed during the 1997 Smart Growth legislative session. This program allows tax jurisdictions (counties) to elect whether to participate in the program which would authorize the Department of Business and Economic Development (DBED) to select Brownfield sites and establish an incentive fund which would allow counties to give tax credits for brownfield owners.

- To be eligible for the program the owner of the property must have bought the property after it was contaminated or be able to prove he or she did not contribute to the contamination of the property. Further, the counties must elect to participate and then the state will decide if your property meets the other long list of criteria. The state reimburses the counties with their lost revenues and the property owner gets a tax break. (1997 Maryland Law SB340)

IV. Conclusion

Smart-Growth is a less severe way for states to create growth boundaries without having to actually draw the boundary line. The State can indicate what projects it will support and where growth should be centered, but individual counties still control their own destiny. If counties do not designate Smart Growth Areas, then there is no way for the state to control growth since that county is indicating they do not care if they get state money. Realistically, a county will designate the entire county as a PFA. Counties will force the state to choose between projects in areas where population density differs but since both areas are designated the same by Smart Growth standards priority funding is not pre-determined. Additionally, each area still has its own zoning, which may not support in-fill and dense development. Smart-Growth is a good program but it still allows for much room for interpretation by local government. This approach may prove to produce arbitrary results based upon each county's unique way for designating its own area.

The other Smart Growth programs, Rural Legacy and Brownfields Tax Incentives, are good examples of ways the state can, through funding, support environmental protection of natural resources. The state is able to work with property owners who are willing to adopt these protection measures. This relationship will undoubtedly produce better results than one where the state mandates policy. If property owners feel they are benefiting from their investment and are able to preserve their state's natural resources they will most likely support these measures.

Overall, Maryland's program is prudent and well supported. They do not have the same litigation troubles Oregon and Lake Tahoe are currently facing because they are not engaging in exclusionary zoning practices.

Appendix H – Lake Tahoe

I. Lake Tahoe

II. Lake Tahoe's land use policies are an interesting jurisdiction to review. This is the only multi-state planning agency in the U.S.. The Tahoe Regional Planning Agency ("TRPA") was created by Congress when they accepted California and Nevada's "Compact" legislation which mandated land use policy for the region. Additionally, this is the only region that chose to halt development for 32 months. The legislatures invoked this moratorium to allow the TRPA time to study the region's development patterns and to determine the effect this was having on the region's ecology.

Lake Tahoe's overall land use policy was created in 1968 when the legislatures of California and Nevada adopted the Tahoe Regional Planning Compact ("Compact"). Congress approved the Compact in 1969. (1968 Cal. Stats., ch. 998, p.1900 §1; 1968 Nev.Stats.4; Publ.L. 91-148, 83 Stat. 360) This Compact was enacted to preserve and improve the quality of Lake Tahoe. Specifically, their goal is to protect Lake Tahoe from the effects of increased nutrient loading on lake caused by development. Development increases the impervious coverage of the land surrounding the Basin and this in turn increases run-off of into the lake. When there is more run-off the lake begins to change the color and lose clarity. For these reasons all the land use policies created in the Compact and carried out by TRPA attempt to limit run-off.

Initially the region was separated into 7 land capability districts by the Compact. Each of these districts was assigned a land coverage coefficient which represents the recommended limit of land that should be covered by impervious surface (concrete, housing, office space, etc…). The TRPA also evaluates the region's land on a continuous basis and identifies the "environmental threshold capacity" for zones within the region. The TRPA has many departments and branches, but the governing body of the TRPA adopts the regional plan and creates ordinances to enforce this plan.

Lake Tahoe was facing some tough challenges when they decided to create this regional form of government to control growth. They have since become embroiled in litigation since the agency's creation. The Supreme Court recently decided in favor of TRPA's policies in, "*Tahoe-Sierra Preservation Council, Inc. et al v Tahoe Regional Planning Agency et al.*, 535 U.S. ___ (2002) Slip No. 00-1167 April 23, 2002). This case upholds TRPA's actions and further defines what constitutes a taking under the 5th Amendment by incorporating not only the individual loss of value but community benefit from regulation into their decision making process.

III. Lake Tahoe's Tools As They Address Specific Cumulative Growth Concerns

1) Preservation of Local Communities

(a) Creation of local, regional and state land use plans

- Lake Tahoe is a region that spans two states and as a result the structure of their enabling legislation is quite unique. California and Nevada teamed up to control land uses in this area. They enacted legislation in 1968 called the, "Compact". This and the 1980 amendment control land use policy for the region. (www.trpa.org/1987Reg.html) (Public Law 96-551, 94 Statute 3233)

- Congress authorized this group effort in 1969 and created the a regional agency to regulate and effectuate policy in the region. This agency, The Tahoe Regional Planning Agency ("TRPA") now adopts and amends the Regional Plan and creates and enforces all ordinances designed to implement this plan.
- All local governments retain control over local development. Further, while the governing body issues regional ordinances which must establish minimum standards for the region's use, any local jurisdiction may adopt and enforce an equal or higher standard. (Pub.L. 96-551, Art.VI(a))

(b) regional planning commissions

- The governing body of the agency is the legislative body. The governing body consists of appointed members from all 5 counties, governor appointees, state legislature appointees, Nevada Secretary of State of his designee, and Nevada's Director of conservation and natural resources or this designee. The members of the body serve at the pleasure of the county that appointed them but every 4 years at a minimum the members should be re-appointed by each county. (Pub.L. 96-551 Art.III)
- The advisory planning commission recommends policy to the governing body who decided whether or not to approve their recommendation. The advisory planning commission's members are appointed by the TRPA. They must include the chief planning officers of each county, the regional water board executive director, the regional air resources board officer, the regional EPA administrator, and four lay members. (Pub.L.96-551 Art.III)
- The TRPA's departments enforce TRPA ordinances and monitor the region to ensure TRPA's policies are meeting the requirements laid out in the Compact. (Organizational Chart of TRPA)
- When the TRPA was originally created in 1968, California felt the agency did not do enough to control development. As a result California pulled out of the Compact and controlled development themselves. The two States with Congressional approval amended the Compact and re-joined their planning efforts in 1980. The amended Compact provided for stricter regulations and broadens the scope of TRPA's duties. (Pub.L. 96-551, 94 Stat. 3233; Cal. Govt Code Ann. §66801 (West Supp. 2002); Nev.Rev.Stat. §277.200 (1980))
- The revised duties of the TRPA were to create "environmental threshold carrying capacities" for the region. As a result of this mandate the TRPA decided to halt development to study the region's ecology and the effects development was having on the region. (Pub.L.96-551, 94 Stat.3233, 3243)
- TRPA's authority was very specifically outlined by the legislatures in the amended Compact. For example, the new law sets forth specific criteria TRPA must consider, when conducting an EIS and this EIS was required to determine the "environmental threshold carrying

capacities" for each region's zones. (Pub.L. 96-551 Art.V)

(c) zoning regions

- The TRPA has decided to forego traditional zoning tools. The 1972 TRPA adopted ordinances that divided the region into 7 "land capability districts". Unlike traditional Euclidian zoning, these districts were created based upon steepness of that region and other factors that affect run-off. (*Tahoe-Sierra Preserv. Council, Inc. v TRPA,* SLIP No. 00-1167 at 4)
- In addition to this classification, and as a result of the re-organization of TRPA and the Compact, TRPA established environmental threshold carrying capacities that define the capacity of the natural environment and set specific environmental performance standards for land use. (TRPA – Goals and Policies, Chap. II – Land Use Element pg.II-1)
- TRPA created their current master plan in 1987 and further defined zones through the creation of 5 land use classifications. These are: conservation, recreation, residential, commercial, public service, and tourist. Additionally, TRPA created planning area statements for each of these regions to set forth the management theme for each zone. There are three management themes to choose from, (1) maximum regulation; (2) development with mitigation, and (3) redirection of development. (TRPA Goals and Policies, Chap. II – Land Use Element pg.II-3)

(d) tax incentives

- TRPA does not provide tax incentives.

(e) growth centers

- Through the classification of the region into districts, TRPA has created "growth centers" in the areas of the region that are classified as 5 – 7 districts or in zones where the planning area statement identified the management theme as "redirection of development". These centers were created by analyzing the likelihood that development (creation of impervious surfaces) will contribute to run-off. The overall philosophy of TRPA's policies is to promote denser development in existing urban areas and prohibit development elsewhere. (TRPA Goals and Policies, Ch.II – Land Use Element pg.II-3)

2) Farmland Protection (not applicable)

(a) specific zoning for farm lands

(b) loan fund/tax incentives

3) Affordable Housing

(a) tax incentives in planned areas

- No tax incentives are given as part of this program

(b) identification of growth centers

- Affordable Housing is a criteria within the Bonus Unit Evaluation system. If a project is an affordable housing project then the developer will receive bonus units based upon the need of the project and as long as mitigation measures such as: participation in capital improvement project with: (i)water quality management plan, (ii)transportation plan, (iii)stream environmental zone restoration program, (iv)retirement of undeveloped parcel, (v)transfer of existing units and retirement of parcel, (vi) provisions within project allocating portion of parcel for public access or recreation, (vii) project using less land cover than allocated by statute, or (viii)scenic restoration projects; are incorporated into the project. (TRPA Code of Ordinances Ch. 35 Sec.35.2.E)

(c) transportation

- The Compact mandates that a transportation plan be included in the regional plan. This portion of the regional plan must contain provisions to: "reduce dependency on the automobile..reduce air pollution caused by motor vehicles...[and] utilize light rail service already in existence" (Pub.L.96-551 Art.V (2))
- If a developer incorporates transportation mitigation measures into their project they will receive bonus units totaling: "project cost divided by $5,000 x 10 points." (TRPA Code of Ordinances Ch. 35 Sec. 35.2.D(1))

4) Natural Resource Protection

(a) local protection

- As is stated above, any local jurisdiction is capable of adopting and enforcing standards that a equal or greater than the standards set by TRPA. This of course, includes natural resource protection policy.

(b) specific zoning for forest lands

- Not applicable

(c) specific zoning requirements for protection measures

- The crux of the TRPA's program is the creation of "environmental threshold capacities". The TRPA adopted thresholds for the Region in Resolution 82-11. This set forth standards for water quality, air quality, soils, wildlife, fisheries, vegetation, scenic quality, and recreation. (TRPA Goals and Policies Ch.1 Organization)
- The 1987 Regional Plan still prohibits development on all sensitive lands in the Basin. This continued prohibition of development is in response to the steep nature of these lands and the probably effect development will have on the lake. These lands are within the conservation zone and are classified as 1a, 1b or 1c districts.
- There are two agencies within the TRPA that address natural resource protection and enforcement. There is another TRPA agency that specifically monitors ecological conditions in the region to ensure TRPA's policies are meeting their desired goals. (TRPA Organizational Chart)
- The environmental threshold carrying capacities created and maintained by the TRPA deal exclusively with natural resource protection. The nine thresholds adopted by TRPA are: air quality, water quality, soil conservation, vegetation, fisheries, wildlife, scenic resources, noise and recreation. TRPA evaluates every 5 years

whether or not its policies maintain these. (TRPA 2001 Threshold Evaluation)

(d) Infrastructure issues

- The Compact legislation required the TRPA to include a public services and facilities plan into their regional plan. (Pub.L.96-551 Art.V(c)(5))
- Public Services are one of the five zoning classifications established in the 1987 Regional Plan. The purpose of this classification is to concentrate development in areas where adequate public services are existing. This will contribute to dense growth and limit growth outside existing urban areas. (TRPA – Goals and Policies, Chap. II – Land Use Element pg.II-3)

IV. Conclusion – Litigation Warning

Lake Tahoe is not the standard example to review when decided how to construct a state's land use policy, but they are a good example of one way a region has decided to address the issue of natural resource protection and growth. Their structure has effectively stopped the degradation of waters in Lake Tahoe. Of course, this has not been achieved without criticism and challenge to their policies. The Supreme Court just decided the most recent of these challenges by siding with TRPA. The issue before the court was whether or not the 32 month moratorium mandated by the legislatures in the amended Compact was a regulatory taking. The standard for determining if something is a regulatory taking was stated to be, "either: (1)it [regulation] does not substantially advance a legitimate state interest; or (2) it denies the owner economically viable use of her land." (*Tahoe-Sierra Preservation Council, Inc. v TRPA,* SLIP No. 00-1167 pg.10). The district court reviewed the claim and felt that using the test in *Lucas*, a categorical taking resulting in total loss of property value had occurred as a result of TRPA's ordinance. The appellate court disagreed and ruled that because the ordinance was temporary no categorical taking had occurred. The Supreme Court concluded, "a permanent deprivation of the owner's use of the entire area is a taking of "the parcel as a whole", whereas a temporary restriction that merely causes a diminution in value is not." (*Id.* At 28).

Luckily, for TRPA the court decided the moratorium was not a taking and was rather a necessary government action designed to promote the health and safety of the region. The zoning regulations, uniqueness of the landscape, and litigation disputes surrounding this region make Lake Tahoe a leader in growth control. While their programs are specifically focused for lands near large bodies of water, their programs are comprehensive in scope. Any Lake community, possibly Lake Champlain, would do well to review the tools used by TRPA to protect natural resources and control growth.