

Growing SmartSM Legislative Guidebook

*Model Statutes for Planning and the
Management of Change*

Stuart Meck, FAICP
General Editor

2002 Edition
January 2002

Growing SmartSM is a program of the
American Planning Association



The Growing SmartSM project has been funded by: Henry M. Jackson Foundation, Seattle, Wash; the U.S. Department of Housing and Urban Development (HUD) (lead federal agency); the Federal Highway Administration, U.S. Department of Transportation (DOT); the U.S. Environmental Protection Agency; the Federal Emergency Management Agency; the Federal Transit Administration, DOT; the Rural Economic and Community Development Administration, U.S. Department of Agriculture; the Annie E. Casey Foundation, Baltimore, Md.; the Siemens Corporation, Washington, D.C.; and the American Planning Association.

The work that provided a basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government. This report was prepared under HUD cooperative agreement H-59-51-CA.

The contents of this report are the views of the authors and do not necessarily reflect the views or policies of HUD, the U.S. government, or any other project sponsor. The *Growing SmartSM Legislative Guidebook* and accompanying *User Manual* are research products and do not necessarily represent the policy of the APA, unless specifically identified as such in a policy guide or other action by its Board of Directors.

ISBN: 1-844829-67-8

Published in January 2002 by the American Planning Association. APA's publications office is at 122 S. Michigan Ave., Suite 1600, Chicago, IL 60603, telephone (312)431-9100. E-mail: growingsmart@planning.org. APA headquarters is at 1776 Massachusetts Ave., N.W., Washington, DC 20036, telephone (202)872-0611.

Table of Contents

PREFACE	xxv
FOREWARD AND ACKNOWLEDGMENTS	xxxiii
INTRODUCTION	xli
<i>Section</i>	<i>Page</i>
CHAPTER 1 – INITIATING PLANNING STATUTE REFORM	
<i>Commentary: Model Legislation and Executive Orders for Initiating Planning Statute Reform</i>	<i>1-14</i>
Alternative 1 – Study Commission Composed of State Legislators and State Department Head	1-15
1-101 Creation of Planning and Land-Use Legislative Study Commission; Membership; Reimbursement for Expenses	1-15
1-102 Functions and Duties; Public Hearings; Interim and Final Reports; Recommended Legislation	1-15
1-103 Staff and Consulting Support; Application for and Acceptance of Gifts and Grants	1-17
1-104 Advisory Committees; Cooperation of State Departments and Agencies	1-17
1-105 Appropriation of Funds	1-17
1-106 Commission to Expire Unless Extended	1-18
Alternative 2 – Independent Study Commission Composed of State Legislators, a State Department Head, and Citizen Representatives	1-18
1-201 Creation of Planning and Land-Use Legislative Study Commission; Membership; Reimbursement for Expenses	1-18
1-202 Functions and Duties; Public Hearings; Interim and Final Reports; Recommended Legislation	1-19
1-203 Staff and Consulting Support; Application for and Acceptance of Gifts and Grants	1-19
1-204 Advisory Committees; Cooperation of State Departments and Agencies	1-19
1-205 Appropriation of Funds	1-19
1-206 Commission to Expire Unless Extended	1-19
Alternative 3 – Permanent Joint Legislative Study Committee on Planning, Land Use, and Growth Management	1-19
1-301 Creation of Joint Legislative Study Committee on Planning, Land Use, and Growth Management; Membership; Vacancies; Reimbursement for Expenses; Quorum	1-19
1-302 Functions and Duties of Committee; Powers	1-20

TABLE OF CONTENTS

<i>Section</i>	<i>Page</i>
1-303 Staff and Consulting Support; Executive Secretary	1-22
1-304 Annual Report; Other Reports	1-22
1-305 Appropriation of Funds	1-22
Alternative 4 – Executive Order No. _____ Establishing a State Interagency Planning and Land-Use Task Force [and Advisory Committee] Appointed by the Governor	1-22
Alternative 5 – Executive Order No. _____ Establishing an Independent [Growth Strategies] Study Commission Appointed by the Governor	1-25
CHAPTER 2 – PURPOSES AND GRANT OF POWER	
<i>Commentary: Purposes of Planning</i>	2-5
2-101 Purposes (Four Alternatives)	2-8
Alternative 1 – Planning as an Advisory Activity	2-8
Alternative 2 – Planning as an Activity to be Encouraged Through the Use of Incentives	2-9
Alternative 3 – Planning as a Mandatory Activity	2-10
Alternative 4 – Planning as a Mandatory Activity, to be Vertically and Horizontally Integrated	2-10
<i>Commentary: Addressing Statewide Planning Interests</i>	2-11
2-102 State Interests for Which Public Entities Shall Have Regard	2-12
<i>Commentary: Delegation of Power</i>	2-13
2-103 Grant of Power	2-14
CHAPTER 3 – DEFINITIONS	
3-101 Definitions	3-3
CHAPTER 4 – STATE PLANNING	
STATE PLANNING AGENCY ORGANIZATION	
<i>Commentary: Types of State Planning Agencies</i>	4-15
4-101 State Planning Agency [Five Alternatives]	4-19
Alternative 1 – State Planning Office	4-19
Alternative 2 – State Planning Department	4-19
Alternative 3 – State Planning Commission; Creation, Powers	4-20
Alternative 4 – Cabinet Coordinating Committee	4-22
Alternative 5 – Planning Division within the Department of Development	4-24
<i>Commentary: Functions and Duties of the State Planning Agency</i>	4-24
4-102 Functions and Duties of the State Planning Agency	4-25

TABLE OF CONTENTS

<i>Section</i>	<i>Page</i>
<i>Commentary: Rule-Making Authority</i>	4-27
4-103 Authority to Adopt Rules, Issue Orders, and Promulgate Guidelines	4-28
<i>Commentary: Biennial Report</i>	4-29
4-104 Biennial Report	4-29
STATE PLANS	
<i>Commentary: State Futures Commission and State Strategic Futures Plan</i>	4-34
4-201 State Futures Commission; State Futures Plan	4-35
<i>Commentary: State Agency Strategic Plan of Operation</i>	4-37
4-202 State Agency Strategic Plan of Operation	4-37
<i>Commentary: State Comprehensive Plan</i>	4-39
4-203 State Comprehensive Plan	4-39
<i>Commentary: State Land Development Plan</i>	4-43
4-204 State Land Development Plan	4-44
<i>Commentary: State Biodiversity Conservation Plan</i>	4-47
4-204.1 State Biodiversity Conservation Plan	4-51
FUNCTIONAL PLANS	
<i>Commentary: State Transportation Plan</i>	4-54
4-205 State Transportation Plan	4-55
<i>Commentary: State Economic Development Plan</i>	4-58
4-206 State Economic Development Plan	4-58
<i>Commentary: State Telecommunications and Information Technology Plan</i>	4-61
4-206.1 State Telecommunications and Information Technology Plan	4-64
<i>Commentary: State Housing Plan</i>	4-67
4-207 State Housing Plan; Housing Advisory Committee; Annual Progress Report	4-68
<i>Commentary: State Planning for Affordable Housing (Two Alternatives)</i>	4-73
4-208 State Planning for Affordable Housing (Two Alternatives)	4-77
Alternative 1 – A Model Balanced and Affordable Housing Act	4-77
4-208.1 Findings and Purposes	4-77
4-208.2 Intent	4-78
4-208.3 Definitions	4-79
4-208.4 Creation and Composition of Balanced and Affordable Housing Council	4-83
4-208.5 Organization of the Council	4-84
<i>Section</i>	<i>Page</i>

TABLE OF CONTENTS

Alternative 1A – Strong Council with No Regional Planning Agency Involvement	4-84
4-208.6 Functions and Duties of the Council	4-84
Alternative 1B – Functions and Duties of the Council and Regional Planning Agencies	4-85
4-208.6 Functions and Duties of the Council and Regional Planning Agencies	4-85
4-208.7 Appointment of Council Executive Director; Hire by Contracts; Purchases and Leases; Maintenance of Public Records	4-86
Alternative 1A – Action by Council	4-87
4-208.8 Council Designation of Housing Regions; Determination of Present and Prospective Housing Need; Regional Fair-Share Allocations; Adoption of Need Estimates and Allocations	4-87
Alternative 1B – Actions by Council and Regional Planning Agency	4-89
4-208.8 Council Designation of Housing Regions; Preparation of Estimates of Present and Prospective Housing Need; Preparation of Regional Fair-Share Allocation Plan by Regional Planning Agency; Adoption of Plan; Review and Approval of Plan by Council	4-89
4-208.9 Contents of a Housing Element	4-92
4-208.10 Submission of Housing Element to [Council <i>or</i> Regional Planning Agency]	4-95
4-208.11 Notice of Submission	4-96
4-208.12 Objection to a Housing Element; Mediation	4-96
4-208.13 Council or Regional Planning Agency Review and Approval of Housing Element	4-97
4-208.14 Adoption of Changes to Development After Approval	4-98
4-208.15 Quasi-legislative Review	4-98
4-208.16 Appeal to Council of Decision Made by a Local Government Regarding an Inclusionary Development When a Housing Element is not Approved or is not Submitted	4-98
4-208.17 Review of Decisions of the Council and Regional Planning Agency	4-100
4-208.18 Enforcement of Housing Element Requirements	4-101
4-208.19 Assistance of Court in Enforcing Orders	4-101
4-208.20 Council as Advocate	4-101
4-208.21 Designation of Authority; Controls on Affordability of Low- and Moderate-Income Dwelling Units	4-102
<i>Commentary: Controls on Resales and Re-Rentals</i>	4-102
4-208.22 Controls on Resales and Re-rentals of Low- and Moderate-Income Dwelling Units	4-104
4-208.23 Enforcement of Deed Restriction	4-105
4-208.24 Local Government Right to Purchase, Lease, or Acquire Real Estate Property for Low- and Moderate-Income Housing	4-106
4-208.25 Biennial Report of the Council to the Governor and Legislature	4-106
Alternative 2 – Application for Affordable Housing Development; Affordable Housing Appeals	4-107
4-208.1 Findings	4-107
4-208.2 Purpose	4-108
<i>Section</i>	<i>Page</i>
4-208.3 Definitions	4-108

TABLE OF CONTENTS

4-208.4	Local Government Actions on Affordable Housing Applications	4-111
4-208.5	Basis for Approving Authority Determination	4-111
4-208.6	Appeal to State Housing Appeals Board or Court	4-112
4-208.7	Enforcement	4-113
4-208.8	Nonresidential Development as Part of an Affordable Housing Development	4-113
4-208.9	Overconcentration of Affordable Housing	4-114
4-208.10	Housing Appeals Board	4-114
4-208.11	Publication of List of Exempt Local Governments	4-116
4-208.12	Effective Date	4-116

PROCEDURES RELATED TO STATE PLAN MAKING, ADOPTION, AND IMPLEMENTATION

<i>Commentary: Public Review and Hearings</i>		4-116
4-209	Workshops and Public Hearings	4-116
<i>Commentary: Adoption of Plans</i>		4-118
4-210	Adoption of Plans (Four Alternatives)	4-121
	Alternative 1 – By Executive Order	4-121
	Alternative 2 – By Action of the Governor and State Legislature	4-121
	Alternative 3 – By Action of a State Board or Commission	4-121
	Alternative 4 – by Action of a State Agency Head	4-121
<i>Commentary: Certification of Plan to State Agencies, Regional Agencies, and Local Governments</i>		4-122
4-211	Certification of Plan; Availability for Sale	4-122
<i>Commentary: Effect of State Plans on State Agencies; Interagency Coordination</i>		4-123
4-212	Effect of State Plans on State Agencies; Interagency Coordination (Two Alternatives)	4-124
	Alternative 1 – Agency Takes State Plan Into Consideration	4-124
	Alternative 2 – Agency Required to Observe Strict Consistency	4-124
4-213	Effect of State Plans on Regional and Local Agencies—See Sections 7-402.1 to 7-402.5	4-125
4-214	Resolution of Conflict Between State, Regional, and Local Plans; Certification— See Sections 7-402.1 to 7-402.5	4-125

STATE CAPITAL BUDGET AND CAPITAL IMPROVEMENT PROGRAM

<i>Commentary: State Capital Budget and Capital Improvement Program</i>		4-125
4-301	Definitions	4-125
4-302	Submission of State Capital Budget and Capital Improvement Program	4-126
4-303	Contents of State Capital Budget and Capital Improvement Program	4-127
4-304	Participation by Cooperation of State Agencies	4-127

Section *Page*

SMART GROWTH ACT

TABLE OF CONTENTS

<i>Commentary: Smart Growth Act</i>	4-128
4-401 Smart Growth Act	4-129
NOTE 4A – A NOTE ON STATE PLANNING GOALS	4-138
NOTE 4B – A NOTE ON STATE PLANNING APPROACHES TO PROMOTE AFFORDABLE HOUSING	4-148

CHAPTER 5 – STATE LAND-USE CONTROL

SITING STATE FACILITIES

<i>Commentary: A Model for Siting State Facilities</i>	5-12
5-101 Purpose	5-13
5-102 Definitions	5-13
5-103 Preparation of Proposed Statement of Needs; State Facilities Map	5-15
5-104 Submission of Proposed Statement of Needs to State Legislature; Adoption	5-16
5-105 Establishment of Criteria for Siting or Expanding State Facilities	5-17
5-106 Establishment of Criteria for Closing or Reducing State Facilities	5-21
5-107 Publication and Adoption of Rules	5-21
5-108 Notice and Public Hearings	5-22
5-109 Review of Proposal and Decision by State Agency	5-23
5-110 Appeals	5-23

AREAS OF CRITICAL STATE CONCERN

<i>Commentary: Areas of Critical State Concern</i>	5-31
5-201 Purposes	5-34
5-202 Designation of Areas of Critical State Concern, Generally	5-34
5-203 Criteria for Designation of Areas of Critical State Concern	5-35
5-204 Initiating the Designation of an Area of Critical State Concern	5-37
5-205 Preparation of a Draft Proposal for Designation of an Area of Critical State Concern	5-38
5-206 Public Hearings on Draft Proposal for Designation of an Area of Critical State Concern	5-39
5-207 Final Proposal for Designation of an Area of Critical State Concern	5-41
5-208 Recordation of Designation	5-42
5-209 State and Local Regulation and Local Plans in Areas of Critical State Concern; Availability of Grants to Local Governments	5-42
5-210 Interim Regulation of Development and Plans	5-44
5-211 Development Permission in Areas of Critical State Concern	5-44
5-212 Amendment of Regulations and Plans	5-46
5-213 Withdrawal of Areas of Critical State Concern	5-46
5-214 Judicial Review of Agency Decisions	5-46

<i>Section</i>	<i>Page</i>
----------------	-------------

DEVELOPMENTS OF REGIONAL IMPACT

TABLE OF CONTENTS

<i>Commentary: Procedures for Regulating Developments of Regional Impact</i>	5-56
5-301 Statement of Purpose; Source of Authority	5-59
5-302 Definitions	5-59
5-303 Statewide Standards, Criteria, and Thresholds	5-61
5-304 Variations in Thresholds	5-62
5-305 Determination of DRI Status	5-62
5-306 Submittal of DRI Application (Two Alternatives)	5-62
Alternative 1 – Host Local Government as Primary Reviewing Body	5-62
Alternative 2 – Regional Planning Agency as Primary Reviewing Agency	5-63
5-307 Review and Recommendations of Interested Agencies and Entities	5-64
5-308 Notice and Public Hearings	5-64
5-309 Review of DRI Application	5-65
5-310 Issuance of Decision	5-66
5-311 Amendments	5-67
5-312 Enforcement	5-67
5-313 Exemptions	5-68
5-314 Development Agreements	5-68
5-315 Appeals	5-68
NOTE 5 – A NOTE ON NEW YORK CITY’S “FAIR-SHARE” PROCESS	5-69

CHAPTER 6 – REGIONAL PLANNING

ORGANIZATIONAL STRUCTURE

<i>Commentary: Regional Planning Agencies</i>	6-17
6-101 Creation of Regional Planning Agency; Boundaries of Regional Planning Agency; Interstate Regional Planning (Two Alternatives)	6-23
Alternative 1 – Voluntary Creation of Regional Planning Agency	6-23
Alternative 2 – Mandate Creation of Regional Planning Agency	6-25
<i>Commentary: Composition of Regional Planning Agency</i>	6-25
6-102 Composition of Regional Planning Agency; Finances; State Representation; Representation of Federal Military Installations and Facilities (Two Alternatives)	6-25
Alternative 1 – Permissive Composition and Membership of Regional Planning Agency	6-25
Alternative 2 – Mandated Composition and Membership of Regional Planning Agency by Local Elected Officials, Appointees of the Governor, and State Agency Representatives	6-27
<i>Commentary: Voting</i>	6-27
6-103 Voting; Provision for Proportional Voting	6-28
6-104 Chair; Other Officers and Committees; Frequency of Meetings; Reports of Committees	6-29
<i>Commentary: Rule-Making Authority</i>	6-29
6-105 Rule-Making Authority (Two Alternatives)	6-30
<i>Section</i>	<i>Page</i>
Alternative 1 – Simple Rule-Making Authority	6-30
Alternative 2 – Detailed Rule-Making Authority	6-30

TABLE OF CONTENTS

6-106	Appointment and Responsibilities of Executive Director; Contracts, Purchases, and Leases	6-31
	<i>Commentary: Powers and Duties of a Regional Planning Agency</i>	6-31
6-107	Powers and Duties of a Regional Planning Agency	6-32
6-108	Biennial Report	6-36

PLAN PREPARATION

	<i>Commentary: Regional Comprehensive Plan</i>	6-37
6-201	Preparation of Regional Comprehensive Plan (Two Alternatives)	6-38
	Alternative 1 – Regional Comprehensive Plan as an Advisory Document	6-38
	Alternative 2 – Regional Comprehensive Plan as a Document to Integrate State, Regional, and Local Interests	6-39
	<i>Commentary: Urban Growth Areas</i>	6-44
6-201.1	Urban Growth Areas [Optional]	6-56
	<i>Commentary: Preparation of Regional Functional Plans</i>	6-61
6-202	Commentary: Preparation of Regional Functional Plans	6-61
	<i>Commentary: Regional Housing Plan</i>	6-62
6-203	Regional Housing Plan	6-63
	<i>Commentary: Preparation of Regional Transportation Plan</i>	6-65
6-204	Regional Transportation Plan	6-68

PROCEDURES FOR PLAN REVIEW AND ADOPTION

	<i>Commentary: Public Review and Hearings on Regional Plans (Two Alternatives)</i>	6-73
6-301	Workshops and Public Hearings (Two Alternatives)	6-72
	Alternative 1 – Simple Procedure	6-72
	Alternative 2 – Detailed Procedure	6-72
6-302	Resolving Potential Conflicts Among State, Regional, and Local Plans-- See Sections 7-402.1 to 7-402.5)	6-74
	<i>Commentary: Adoption of Regional Plans</i>	6-74
6-303	Adoption of Regional Plans	6-75
6-304	Certification of Regional Plan; Availability for Purchase	6-75
6-305	Adoption of Plans by Local Governments, Special Districts, and Other Governments	6-76

<i>Section</i>	<i>Page</i>
----------------	-------------

RELATIONSHIPS AND AGREEMENTS WITH OTHER UNITS OF GOVERNMENT

	<i>Commentary: Reviewing Plans and Major Capital Facility Projects</i>	6-80
--	--	------

TABLE OF CONTENTS

6-401	Effects of Regional Plans on State Agencies, Local Governments, and Special Districts; Review of Plans and Major Capital Facility Projects of Extra-jurisdictional or Regional Significance	6-78
-------	---	------

Commentary: Agreements with Other Governmental Units 6-80

6-402	Regional Planning and Coordination Agreements	6-81
6-403	Urban Service Agreements	6-83

MISCELLANEOUS PROVISIONS

6-501	Withdrawal from Regional Planning Agency	6-85
6-502	Dissolution of [Regional Planning Agency]	6-86

Commentary: State Aid to Regional Planning Agencies 6-86

6-503	State Aid to [Regional Planning Agency]	6-87
-------	---	------

DESIGNATION OF REGIONAL PLANNING AGENCY AS SUBSTATE DISTRICT ORGANIZATION

Commentary: Designation of Regional Planning Agency as Substate District Organization 6-88

6-601	Delineation of Substate Districts	6-89
6-602	Designation of Substate District Organization	6-90
6-603	State Agency Use of Substate District Boundaries	6-91
6-604	Effect of Designation on Substate District Organization	6-91

NOTE 6A – A NOTE ON WEIGHTED VOTING PROCEDURES 6-92

NOTE 6B – A NOTE ON URBAN GROWTH AREAS AND REGIONAL PLANNING 6-94

NOTE 6C – A NOTE ON EXISTING REGIONAL PLANS 6-103

CHAPTER 7 – LOCAL PLANNING

GENERAL PROVISIONS

7-101	Definitions	7-18
7-102	Establishment of Local Planning Agency	7-25
7-103	Powers of Local Planning Agency	7-26
7-104	Rule-Making Authority	7-29

ORGANIZATIONAL STRUCTURE

Commentary: Local Planning Commission 7-30

7-105	Establishment of Local Planning Commission (Three Alternatives)	7-31
-------	---	------

Section *Page*

Alternative 1A– All appointed citizens; no constituency representatives	7-32
Alternative 1B – All appointed citizens; constituencies represented	7-32
Alternative 2 – Appointed members and elected officials	7-33
Alternative 3 – Appointed members, administrative officials, and elected officials	7-33

TABLE OF CONTENTS

7-106	Powers and Duties of Local Planning Commission	7-39
7-107	Annual Reports of Local Planning Agency and Local Planning Commission	7-43
	<i>Commentary: Neighborhood Designation, Neighborhoods Planning Councils, Neighborhood and Community Organizations</i>	7-44
7-108	Designation of Neighborhoods	7-49
7-109	Neighborhood Planning Councils	7-50
7-110	Neighborhood and Community Organizations; Recognition	7-52
THE LOCAL COMPREHENSIVE PLAN		
7-201	Local Comprehensive Plan Generally; Purposes	7-68
	Alternative 1 - Local Comprehensive Plan as an Advisory Document	7-69
	Alternative 2 - Local Comprehensive as a Document to Integrate State, Regional, Local Interests	7-69
7-202	Specifications for Plan Elements and Supporting Studies: Economic, Demographic, and Related Assumptions; Mandatory and Optional Elements; Opt-Out Provisions; Joint Plan or Plan Element Preparation	7-70
Required Elements		
	<i>Commentary: Issues and Opportunities Element</i>	7-73
7-203	Issues and Opportunities Element	7-75
	<i>Commentary: Land-Use Element</i>	7-77
7-204	Land-Use Element	7-83
	<i>Commentary: Monitoring Land Markets</i>	7-91
7-204.1	Land Market Monitoring System [Optional, but Required if Urban Growth Areas are Required]	7-94
	<i>Commentary: Transportation Element</i>	7-99
7-205	Transportation Element	7-104
	<i>Commentary: Community Facilities Element</i>	7-110
7-206	Community Facilities Element	7-111
	<i>Commentary: Telecommunications</i>	7-115
7-206.1	Telecommunications Component	7-118
	<i>Commentary: Housing Element</i>	7-120
7-207	Housing Element (Two Alternatives)	7-123
	<i>Section</i>	<i>Page</i>
	Alternative 1 – A General Housing Element	7-123
	Alternative 2 – A Housing Element Intended to Satisfy a Local Government’s Fair-Share Obligation	7-127
	<i>Commentary: Economic Development Element</i>	7-127
7-208	Economic Development Element [Opt-Out Provision Applies]	7-131

TABLE OF CONTENTS

<i>Commentary: Critical and Sensitive Areas Element</i>	7-134
7-209 Critical and Sensitive Areas Element [Opt-Out Provision Applies]	7-139
<i>Commentary: Natural Hazards Element</i>	7-142
7-210 Natural Hazards Element [Opt-Out Provision Applies]	7-144
<i>Commentary: Program of Implementation</i>	7-150
7-211 Program of Implementation	7-151
Optional Elements	
<i>Commentary: Agriculture, Forest, and Scenic Preservation Element</i>	7-153
7-212 Agriculture, Forest, and Scenic Preservation Element	7-155
<i>Commentary: Human Services Planning</i>	7-162
7-213 Human Services Element	1-165
<i>Commentary: Community Design Planning</i>	7-168
7-214 Community Design Element	7-169
<i>Commentary: Historic Preservation Planning</i>	7-172
7-215 Historic Preservation Element	7-173
7-216 [Other]	7-175
Subplans	
<i>Commentary: Neighborhood Plans</i>	7-176
7-301 Neighborhood Plans	7-177
<i>Commentary: Transit-Oriented Development</i>	7-183
7-302 Transit-Oriented Development Plan	7-185
<i>Commentary: Planning Redevelopment Areas</i>	7-188
7-303 Redevelopment Area Plan	7-191
7-304 [Other Subplans – For Future Expansion]	7-195
PROCEDURES FOR PLAN REVIEW, ADOPTION, AND AMENDMENT	
<i>Commentary: Public Participation and Public Hearings</i>	7-195
7-401 Public Participation and Public Hearings	7-199
<i>Section</i>	<i>Page</i>
State Review and Approval Procedures	
<i>Commentary: Comprehensive Plan Appeals Board</i>	7-201
7-402.1 Comprehensive Plan Appeals Board	7-203
<i>Commentary: Approval of Regional and Local Plans by the State</i>	7-204

TABLE OF CONTENTS

7-402.2	Review and Approval of Regional and Local Comprehensive Plans and Significant Amendments	7-210
	<i>Commentary: Appeal of Urban Growth Area Designation</i>	7-218
7-402.3	Appeal of Determination Regarding Urban Growth Area Designation	7-219
	<i>Commentary: Procedures for Authorizing State and Special District Projects Not Included in Approved Regional or Local Comprehensive Plan</i>	7-222
7-402.4	State, Special District, and School District Projects Not Included in Approved Regional and Local Comprehensive Plans; Review by Comprehensive Plan Appeals Board	7-223
	<i>Commentary: Financial Incentive to Prepare a New Plan</i>	7-226
7-402.5	Submission of Plans Under This Act; Withholding of Grant Money	7-228
	<i>Commentary: Adoption, Amendment, and Recordation of Local Comprehensive Plans</i>	7-229
7-403	Adoption of Local Comprehensive Plan	7-229
7-404	Certification, Filing, and Recordation of Local Comprehensive Plans; Availability for Purchase; Computer Access to Plans	7-230
7-405	Amendment of Local Comprehensive Plans	7-230
	<i>Commentary: Periodic Review and Revision of the Local Comprehensive Plan and Land Development Regulations</i>	7-231
7-406	Periodic Review and Revisions of the Local Comprehensive Plan and Land Development Regulations	7-234
IMPLEMENTATION; AGREEMENTS WITH OTHER GOVERNMENT AND NONPROFIT ORGANIZATIONS		
	<i>Commentary: Corridor Maps</i>	7-237
7-501	Corridor Map	7-246
	<i>Commentary: Local Capital Improvement Program and Capital Budget</i>	7-255
7-502	Local Capital Improvement Program; Adoption of Local Capital Budget	7-257
	<i>Commentary: Implementation Agreements</i>	7-259
7-503	Implementation Agreements	7-261
	<i>Commentary: Benchmarking in Local Comprehensive Plans</i>	7-263
7-504	Benchmarks; Reporting Requirements	7-266
	NOTE 7A – A NOTE ON NEIGHBORHOOD PLANS	7-267
	<i>Section</i>	<i>Page</i>
	APPENDIX – LIST OF NEIGHBORHOOD PLANS REVIEWED (BY CHRONOLOGY)	7-277
	NOTE 7B – A NOTE ON COMPREHENSIVE PLANNING REQUIREMENTS IN STATE STATUTES	7-279

CHAPTER 8 – LAND DEVELOPMENT REGULATIONS

TABLE OF CONTENTS

GENERAL PROVISIONS

8-101	Definitions	8-19
	<i>Commentary: Authority to Adopt Land Development Regulations</i>	8-26
8-102	Authority to Adopt Land Development Regulations; Purposes; Presumption of Validity	8-27
8-103	Adoption and Amendment of Land Development Regulations; Notice and Hearing	8-30
	<i>Commentary: Gauging Regulatory Consistency with a Local Comprehensive Plan</i>	8-33
8-104	Consistency of Land Development Regulations with Local Comprehensive Plan	8-36
	<i>Commentary: Relationship of Land Development Regulations with Other State and Federal Programs</i>	8-38
8-105	Relationship of Land Development Regulations with Other Federal and State Laws, Regulations, Programs, and Plans; Maintenance of List by the State Planning Agency	8-39
	<i>Commentary: Federal and State Exemption from Local Land Development Regulations</i>	8-40
8-106	Federal and State Exemption from Local Land Development Regulations (Four Alternatives)	8-42
	Alternative 1 – Complete Exemption of Lands Owned by the Federal Government, But No Exemption for Lands Owned or Leased by the State and Certain Other Public Agencies When the Local Comprehensive Plan has been Approved by the State	8-42
	Alternative 2 – Complete Exemption of Land Owned by the Federal Government, But No Exemption for Lands Owned by the State	8-43
	Alternative 3 – Complete Exemption of Lands Owned by the State or Federal Government	8-43
	Alternative 4 – Exemption of Lands Owned by the State or Federal Government, Subject to Non-Binding Public Hearing for Certain State Development Proposals	8-43

ZONING

	<i>Commentary: The Contents of a Zoning Ordinance</i>	8-45
8-201	Zoning Ordinance	8-51

REVIEW OF PLATS AND PLANS

	<i>Commentary: Subdivision Ordinances and Subdivision Review</i>	8-57
8-301	Subdivision Ordinance; Review and Approval of Subdivision by Local Government	8-61
	<i>Commentary: Site Plan Review</i>	8-68
8-302	Site Plan Review	8-72
	<i>Section</i>	<i>Page</i>
	<i>Commentary: Planned Unit Development</i>	8-75
8-303	Planned Unit Development	8-77

UNIFORM DEVELOPMENT STANDARDS

	<i>Commentary: Uniform Development Standards</i>	8-84
8-401	Uniform Development Standards	8-90

TABLE OF CONTENTS

DEVELOPMENT RIGHTS AND PRIVILEGES

<i>Commentary: Vested Right to Develop</i>	8-95
8-501 Vested Right to Develop (Two Alternatives)	8-108
Alternative 1 – “Bright Line” Vesting Rule	8-108
Alternative 2 – Vested Right Upon Significant and Ascertainable Development	8-110
<i>Commentary: Regulation of Nonconforming Uses</i>	8-111
8-502 Regulation of Nonconforming Uses (Two Alternatives)	8-124
Alternative 1 – Local Specification of Regulations	8-127
Alternative 2 – Direct Statutory Specifications of Regulations	8-128

EXACTIONS, IMPACT FEES, AND SEQUENCING OF DEVELOPMENT

<i>Commentary: Development Improvements and Exactions</i>	8-129
8-601 Development Improvements and Exactions	8-134
<i>Commentary: Development Impact Fees</i>	8-141
8-602 Development Impact Fees	8-161
<i>Commentary: Concurrency and Adequate Public Facilities Controls</i>	8-166
8-603 Concurrency; Provision of Adequate Public Facilities	8-173
<i>Commentary: Development Moratoria</i>	8-180
8-604 Moratorium on Issuance of Development Permits for a Definite Term (Three Alternatives)	8-188

DEVELOPMENT AGREEMENTS

<i>Commentary: Development Agreements</i>	8-192
8-197 Development Agreements	8-197

CHAPTER 9 – SPECIAL AND ENVIRONMENTAL LAND DEVELOPMENT REGULATIONS AND LAND-USE INCENTIVES

<i>Commentary: Regulation of Critical and Sensitive Areas and Natural Hazard Areas</i>	9-3
9-101 Regulation of Critical and Sensitive Areas and Natural Hazard Areas	9-5
<i>Section</i>	<i>Page</i>
<i>Commentary: Transportation Demand Management</i>	9-11
9-201 Transportation Demand Management	9-14
<i>Commentary: Historic and Architectural Design Review</i>	9-24
9-301 Historic Districts and Landmarks; Design Review	9-29
<i>Commentary: Transfer of Development Rights</i>	9-37
9-401 Transfer of Development Rights	9-58

TABLE OF CONTENTS

<i>Commentary: Conservation Easements; Purchase of Development Rights</i>	9-64
9-402 Purchase of Development Rights	9-70
9-402.1 Conservation Easements	9-73
<i>Commentary: Mitigation</i>	9-78
9-403 Mitigation	9-84
<i>Commentary: Land-Use Incentives</i>	9-90
9-501 Land-Use Incentives for Affordable Housing, Community Design, and Open Space Dedication; Unified Incentives Ordinance	9-99

CHAPTER 10 – ADMINISTRATION AND JUDICIAL REVIEW OF LAND-USE DECISIONS

GENERAL PROVISIONS

10-101 Definitions	10-17
10-102 Purposes	10-20
10-103 Exemptions for Corridor Maps	10-21

UNIFIED DEVELOPMENT PERMIT REVIEW PROCESS

10-201 Development Permit; Unified Permit Review Process; Inclusion of Amendment of Zoning Map	10-24
10-202 Development Permit Applications	10-26
<i>Commentary: Completeness</i>	10-27
10-203 Completeness Determination	10-27
<i>Commentary: Administrative Review</i>	10-28
10-204 Administrative Review	10-29
10-205 Notice of Record Hearing	10-31
<i>Commentary: Methods of Notice</i>	10-33
10-206 Methods of Notice	10-33
10-207 Record Hearings	10-34
<i>Commentary: Consolidated Permit Review Process</i>	10-39
<i>Section</i>	<i>Page</i>
10-208 Consolidated Permit Review Process	10-39
10-209 Appeals	10-40
<i>Commentary: Time Limits and Their Effect</i>	10-43
10-210 Time Limits on Land-Use Decisions (Two Alternatives)	10-44
10-211 Fees	10-45
<i>Commentary: Hearing Examiner System</i>	10-46
10-301 Hearing Examiner System	10-46

TABLE OF CONTENTS

10-302	Hearing Examiner's Jurisdiction	10-47
10-303	Decision to Recuse	10-48
10-304	Decisions Based on Record Hearings	10-48
10-305	Decisions Based on Record Appeals	10-49

<i>Commentary: Effect of Hearing Examiner's Decisions</i>		10-49
10-306	Effect of Hearing Examiner's Decisions	10-49
10-307	Review of Hearing Examiner Recommendations	10-50
10-308	Filing and Publication of Hearing Examiner Decisions	10-50

LAND-USE REVIEW BOARD

10-401	Land-Use Review Board Authorized	10-51
10-402	Organization and Procedures	10-51
10-403	Compensation, Expenses and Assistance	10-51
10-404	Training	10-51
10-405	Powers	10-52

ADMINISTRATIVE ACTIONS AND REMEDIES

<i>Commentary: Authority to Approve</i>		10-52
10-501	Authority to Approve	10-52

<i>Commentary: Conditional Uses</i>		10-52
10-502	Conditional Uses	10-53

<i>Commentary: Variances</i>		10-53
10-503	Variances	10-53

<i>Commentary: Mediated Agreement</i>		10-54
10-504	Mediated Agreement	10-56
10-505	Referral to Planning Commission	10-58

<i>Commentary: Imposition of Conditions</i>		10-59
10-506	Conditions	10-59

<i>Commentary: Integration of Procedures</i>		10-60
10-507	Procedures	10-60

TABLE OF CONTENTS

<i>Section</i>	<i>Page</i>
JUDICIAL REVIEW OF LAND-USE DECISIONS	
10-601 Purposes	10-69
<i>Commentary: Exclusive Method of Judicial Review</i>	10-69
10-602 Method of Judicial Review Exclusive	10-70
<i>Commentary: Judicial Review</i>	10-71
10-603 Judicial Review of Final Land-Use Decisions	10-71
<i>Commentary: Exhaustion of Remedies</i>	10-72
10-604 Exhaustion of Remedies	10-73
<i>Commentary: Federal Claims</i>	10-73
10-605 Federal Claims	10-74
10-606 Filing and Service of Land-Use Petition	10-74
<i>Commentary: Standing and Intervention</i>	10-74
10-607 Standing and Intervention	10-75
10-608 Required Elements in a Land-Use Petition	10-75
10-606 Preliminary Hearing	10-76
1-610 Expedited Judicial Review	10-77
<i>Commentary: Stays of Action</i>	10-77
10-611 Stay of Action Pending Judicial Review	10-78
10-612 Submittal of Record for Judicial Review	10-78
<i>Commentary: Review and Supplementation of the Record</i>	10-79
10-613 Review and Supplementation of the Record	10-80
10-614 Discovery When Record Supplemented	10-82
<i>Commentary: Discovery When Record Supplemented</i>	10-82
10-615 Standards for Granting Relief	10-82
10-616 Decision of the Court	10-84
<i>Commentary: Definitive Relief</i>	10-84
10-617 Definitive Relief	10-85
10-618 Compensation and Damages Disclaimer	10-85
Appendix – Literature on Administrative and Judicial Review of Land-Use Decisions	10-85

CHAPTER 11 – ENFORCEMENT OF LAND DEVELOPMENT REGULATIONS

GENERAL PROVISIONS

<i>Commentary: Enforcement Generally</i>	11-11
--	-------

TABLE OF CONTENTS

<i>Section</i>	<i>Page</i>
11-101 Enforcement Generally	11-12
<i>Commentary: Adoption of Administrative Enforcement</i>	11-15
11-102 Adoption of Administrative Enforcement	11-15
<i>Commentary: Election of Procedures</i>	11-17
11-103 Election of Procedures	11-19
ADMINISTRATIVE PROCEDURE	
<i>Commentary: Enforcement Notice</i>	11-21
11-201 Enforcement Notice	11-21
<i>Commentary: Preliminary Order</i>	11-23
11-202 Preliminary Order	11-24
<i>Commentary: Enforcement Hearings</i>	11-27
11-203 Enforcement Hearings	11-28
<i>Commentary: Enforcement Order; Remedies and Penalties</i>	11-30
11-204 Enforcement Order; Remedies and Penalties	11-31
JUDICIAL PROCEDURE	
<i>Commentary: Civil Proceeding</i>	11-34
11-301 Civil Proceeding	11-35
<i>Commentary: Criminal Proceeding</i>	11-37
11-302 Criminal Proceeding	11-38
CHAPTER 12 – INTEGRATING STATE ENVIRONMENTAL POLICY ACTS WITH LOCAL PLANNING	
Alternative 1	12-17
12-101 Evaluation of Environmental Effects of the Land-Use, Housing, Transportation, and Community Facilities Elements of a Comprehensive Plan	12-17
Alternative 2	12-20
12-101 Environmental Impact Statement on a Comprehensive Plan	12-20
Alternative 3	12-24
12-101 Environmental Requirements in Local Comprehensive Plan and Land Development Regulations	12-25
APPENDIX A – LITERATURE SUGGESTING IMPROVEMENTS FOR SEPAS	12-28
APPENDIX B – OVERVIEW OF SEPAS	12-30

TABLE OF CONTENTS

<i>Section</i>	<i>Page</i>
CHAPTER 13 – FINANCING REQUIRED PLANNING	
LOCAL TAX FINANCING OF PLANNING	
<i>Commentary: Local Financing of Planning Activities</i>	13-3
13-101 Real Property Tax to Finance Planning	13-10
13-102 Real Property Transfer Tax to Finance Planning	13-10
13-103 Development Excise Tax to Finance Planning	13-13
13-104 Disposition of Revenue from Planning Taxes	13-17
FINANCIAL AND TECHNICAL ASSISTANCE FOR PLANNING	
<i>Commentary: Smart Growth Technical Assistance Act</i>	13-19
13-201 Smart Growth Technical Assistance Act	13-19
CHAPTER 14 – TAX EQUITY DEVICES AND TAX RELIEF PROGRAMS	
REGIONAL [METROPOLITAN] TAX-BASE SHARING	
<i>Commentary: Regional [Metropolitan] Tax-Base Sharing</i>	14-12
14-101 Findings and Purpose	14-16
14-102 Definitions	14-17
14-103 Administering Fiscal Officer	14-19
14-104 Assessed Valuation; Base Year and Subsequent Years	14-20
14-105 Increases in Assessed Valuation of Commercial-Industrial Property; Computation of Excess Residential Property	14-20
14-106 Computation of Areawide Tax Base	14-21
14-107 Distribution of Areawide Tax Base	14-21
14-108 Taxable Value of Component Local Units; Local and Areawide	14-22
14-109 Levies and Mill Rates; Local and Areawide	14-23
14-110 Miscellaneous Adjustments to Local and Areawide Rates and Levies	14-24
14-111 Changes in Status of Qualifying Local Units	14-24
14-112 Tax Collection and Disbursements to Qualifying Local Units	14-25
14-113 Separability	14-25
14-114 Effective Date	14-25
INTERGOVERNMENTAL AGREEMENTS	
<i>Commentary: Intergovernmental Agreement for a Joint Economic Development Zone</i>	14-25
14-201 Joint Economic Development Zone	14-26
REDEVELOPMENT AND TAX RELIEF	
<i>Commentary: Redevelopment Areas</i>	14-29
14-301 Redevelopment Areas	14-38
<i>Commentary: Tax Increment Financing</i>	14-51
14-302 Tax Increment Financing	14-57

TABLE OF CONTENTS

<i>Section</i>	<i>Page</i>
<i>Commentary: Tax Abatement</i>	14-62
14-303 Tax Abatement	14-67

AGRICULTURAL DISTRICTS

<i>Commentary: Agricultural Districts</i>	14-75
14-401 Agricultural Districts; Use Valuation of Agricultural Land	14-81
NOTE 14 – A NOTE ON ELEMENTARY AND SECONDARY PUBLIC SCHOOL FINANCE AND ITS RELATION TO PLANNING	14-90

CHAPTER 15 – STATE LEVEL GEOGRAPHIC INFORMATION SYSTEMS AND PUBLIC RECORDS OF PLANS, LAND DEVELOPMENT REGULATIONS, AND DEVELOPMENT PERMITS

STATEWIDE GEOGRAPHIC INFORMATION SYSTEMS

<i>Commentary: State-level Geographic Information Systems</i>	15-3
15-101 Division of Geographic Information	15-7
15-102 Geographic Information Advisory Board	15-9

PUBLIC RECORDS OF PLANS, LAND DEVELOPMENT REGULATIONS, AND DEVELOPMENT PERMITS

<i>Commentary: Public Records of Plans, Land Development Regulations, and Development Permits</i>	15-11
15-201 Filing Requirements for Development Permits and Land Development Regulations Affecting Specific Lots or Parcels	15-13
15-202 Recording Requirements for Plans and Land Development Regulations of General Applicability	15-15

<i>Table</i>	<i>Page</i>
--------------	-------------

List of Tables

2-1. Pros and Cons of Requiring Different Levels of Planning	2-7
4-1. Elements of the Civic and Management Models of State Planning	4-12
4-2. Types of State Planning Agencies	4-14
4-3. Typical State Plans and Their Purposes	4-30
4-4. Methods of State Plan Adoption and Their Pros and Cons	4-120
4-5. Policy /Plan Context of State Planning Goals	4-139
6-1. Some Pros and Cons of Urban Growth Boundaries	6-53

<i>Table</i>	<i>Page</i>
6-2. Regional Plans and Their Contents	6-108
7-1. Voluntary Planning Organizations	7-17
7-2. Organizing for Neighborhood Planning	7-48
7-3. Local Comprehensive Plan Elements in Model Statutes	7-61
7-4. Some Pros and Cons of Mandatory Local Planning	7-68
7-5. Summary of State Statutory Requirements for Comprehensive Plans	7-284
10-1. Why Development Permitting Processes Should be Reformed	10-14
12.1. Approaches to Integrating Land-Use Planning and Regulation with Environmental Reviews	12-11
15-1. GIS Use in State Government	15-5
APPENDIX: Statements from Members of the Growing SmartSM Directorate	A-1
INDEX	I-1

PREFACE

Two Futures

Picture two metropolitan regions of the United States in the not-so-distant future. Each once had the same resources--water, air, land, and people--but a quick glance reveals that each took different paths in the latter part of the twentieth century.

In one region, the features that had once made it attractive are rapidly vanishing. The region's central city, which formerly prospered with an active downtown, strong manufacturing base, and vibrant neighborhood network, is now experiencing disinvestment. Its residents, at least those who remain, are disproportionately poorer and older, and their neighborhoods are not being renewed with younger families and new or rehabilitated housing. The aging suburbs that circle the city have also begun to experience similar patterns of disinvestment. However, the threat of blight and decline is even more ominous here given that they have fewer financial resources than the central city due to a stagnant tax base and are unable to cope with changing demands for services and the need to maintain streets, parks, and sewers.

The region's outlying suburbs lie in what was once a rich and productive agricultural belt, with small independent towns of distinct and diverse qualities. But the agricultural land is quickly disappearing; the small towns have evolved into a characterless blur on the region's landscape with homogeneous commercial strips. The region has reached a point where every place looks like every other place. Visual blight from excessive and inappropriate signage abounds. The residents who had moved to these areas complain that the very attributes that had first drawn them to their communities are fading. Commuting delays grow longer and longer, and no matter how many fixes are made to the expressways, nothing helps to ease the congestion. Families and friends have less time to spend together, and citizens have limited opportunities to participate in community life.

Of course, a few communities in the outlying areas always seem to capture the prestigious office parks and shopping malls, and, consequently, they have low property taxes and very good public services. The rest, however, struggle to keep up with the demands of growth and financing shortfalls. Hoping to attract a large commercial or industrial development, they mortgage their future by offering tax incentives they cannot afford and zoning waivers that will destroy their landscape and community character. Service businesses in these outlying areas cannot entice employees because there is no affordable housing nearby and transportation from the central city and the inner-ring suburbs is infrequent, expensive, and inconvenient. School teachers and police officers in these communities complain that they cannot afford to live near where they work. They face long, time-consuming trips by automobile across the region to reach their jobs.

The natural environment is not much better. Development has been permitted in areas that periodically flood. Repeated damages from flooding threaten to drive out small businesses, creating an economic climate of apprehension and instability in a number of the region's communities. The wetlands and open spaces that had once been so prominent in the region and provided refuge for birds, fishes, and rare plant species are being filled and developed. Forested stream corridors are being denuded. There has been talk about purchasing these lands for a greenbelt system, but the elected officials in the region worry about the costs of acquisition and the loss of property taxes from

PREFACE

denying development, so the idea is shelved.

Are We Growing Smart?

The seismic aftershocks of explosive growth have registered in the American hinterlands--in distant wilderness preserves, wildlife refuges, and parks; in deserts, prairies, forests, and mountain ranges; and in the agricultural communities and rural horizons that once defined the American experience. The vast American countryside, the fountainhead of national myth, memory and identity, is beginning to lose its distinctiveness.

For many people today, dissatisfaction goes beyond physical change in the landscape and the attendant costs. They are searching for roots, a sense of place, a sense of community. Their discontent may stem from economic uncertainties or reflect unease about the nature and pace of change generally. Their anxiety may be sparked by an influx of newcomers, incidents of street crime, maddening traffic jams, or deteriorating schools. It must seem to some Americans that they have lost control of their communities, maybe even their lives. Many undoubtedly yearn to recapture from the past a seemingly simpler time, with tranquil suburbs or thriving friendly urban neighborhoods. . . .

[It is not] inevitable that the country be locked into the rising costs of extending public facilities or of providing disaster relief because of inefficient land use patterns that do not respect natural forces, especially the flow of water. Rather than treating land as an afterthought incidental to the quality of life, Americans should recognize that land stewardship--promoting efficient use of the land and rational decision making about its use--is central to realizing their desires for a strong economy, a healthy environment, and livable communities. This concern readily cuts across political lines, uniting all Americans who can about the future of their country.

H.L. Diamond and P.F. Noonan, eds., *Land Use in America* (Washington, D.C.: Island Press, 1996), 1, 3-5.

In the second metropolitan region, it is a different story. The region's governments pride themselves on their willingness to cooperate with one another, plan for the general good, and offer their citizens opportunities to participate collaboratively in civic life. These characteristics give the region an international reputation and delegations from other states nationwide and even other countries regularly visit to learn from its successes. The planning for the region is animated by a strong set of commonly held values by the area's citizens and a vision of where the region wants to be in 20 years.

The central city and the inner-ring suburbs work together to prevent the area from slipping into decline. They continue to be vibrant communities, with bustling, diverse neighborhoods. They experience cycles of renewal and rebirth involving housing, retail businesses, and start-up companies. Because the region's leaders had agreed some years before to share tax revenue on a metropolitan basis, businesses have located where people can get to them easily, and no local government feels pressured to accept a business

at a site that is not optimal or on terms that are not in the public interest, or to annex land only for tax ratables.

The federal government had given the region the opportunity to decide its own transportation destiny, to make decisions on where transportation dollars would be spent. As a consequence, the region's leaders had the foresight to opt for a transportation system that offers people many

PREFACE

alternatives to automobiles, rather than just one or two. Mass transit, many believed, could be quicker, cheaper, and safer than automobiles, and an increasing number of people now leave their cars parked at home. The transportation system is now linked together, and it is possible to cross the region rapidly, moving from train to bus without significant delay. One environmental consequence of reduced auto travel is that the air has become cleaner and fresher.

The region's leaders also initiated a long-range plan to purchase, in advance of development, environmentally significant parcels containing wetlands, steep slopes, stream corridors, and natural habitats. This series of greenways form a continuous recreational and open space link within the region. Bike paths have been constructed through and alongside the greenway system, and as a result, the greenways double as transportation corridors. Because the region has taken steps to direct development away from flood-prone areas, its communities do not have to expend funds to clear up flood debris and repair public facilities. Scenic viewsheds have been identified, mapped, and protected.

Growth has been carefully planned in the region to avoid prime agricultural lands, which benefit from a comprehensive farmland preservation program that relieves the pressure to develop them. The villages in the region's outskirts remain freestanding and retain their distinctive rural character.

The region's leaders have recognized an obligation to ensure that affordable housing is dispersed across the metropolitan area to provide opportunities for all and are taking active measures to guarantee that an adequate supply is built. In this way, teachers, police officers, bank and grocery clerks, waiters and waitresses, and people with other low- and moderate-wage jobs can live within reasonable distances of their employers.

NEW TIMES, NEW TOOLS

These scenarios describe two contrasting environments in contemporary American life. In the first, the set of problems facing the metropolitan region is exacerbated by the local governments' inability to work towards shared goals and the lack of advanced and coordinated planning. In the second, while local governments maintain their independence but cooperate with each other on matters of multi-jurisdictional importance, the region's leadership is able to employ planning early on to systematically address the management of growth and change.

The two scenarios represent some of the choices that leaders and citizens must make to appropriately guide their communities and regions into the twenty-first century. Political will is necessary to confront those choices about the future. The translation of political will into solutions calls for legislation---the adoption of state statutes that will establish new planning systems and tools to adapt to new times.

OUR PAST

The effort to offer new legislative solutions to manage growth and change is not itself novel. In fact, in the 1920s, as our nation's urban areas underwent a surge of growth, far-sighted urban experts and federal officials focused their attention on creating enabling legislation for planning and land-use controls. They believed that, if urban areas had the proper grant of power from their state legislatures, they could create tools to grapple with the social and environmental stresses that

PREFACE

afflicted the growing cities.

The realization that new powers were needed to cope with growth and change did not occur overnight. States and local governments had been experimenting with various types of planning legislation since 1910. In the 1920s, however, the process of legislative reform accelerated. Secretary of Commerce, and later President, Herbert Hoover appointed an advisory committee that drafted the *Standard City Planning and Zoning Enabling Acts*. These Standard Acts, as they were called, proved enormously popular as many states rushed to adopt legislation based on them.

When the Standard Acts were drafted, the nation was a different place than it is today. Growth was largely confined to central cities and the few suburbs that had commuter train lines. While control of air and water pollution, noise, and industrial hazards was always a factor in urban areas and prompted the adoption of many early land-use regulations, appreciation of the complex interactions of ecological systems--and the human impact on those systems--was still in its infancy.

The post-World War II period, with the vast changes in the shape and complexity of metropolitan areas, tested the structure the Standard Acts provided. Prior to the automotive era, development had spread out radially along a series of public transit lines that brought workers into the central areas during the day. With the advent of the automotive era, development began to fill in vast open spaces between those transportation spokes. Growth shifted outward from the central city to rural areas in ways that would have profound effects on the way cities and towns look. The political and social climate of the period supported financial incentives for building homes in the suburbs (through federally insured low-cost mortgages) and a massive federally-subsidized expansion of highways that included the interstate system. Together they helped pushed development far beyond the nation's central cities.

At first, Americans tended to fantasize about an idyllic existence in these newly developed suburban communities. The new communities had unquestionable attractions--large yards, garages, new schools, safe streets, and a frontier-like sense of promise. Relatively few people seriously challenged this new pattern of growth in the outlying areas or questioned the changes in the central cities wrought by urban renewal and the replacement of older urban neighborhoods with multi-lane freeways. While a few cities responded by experimenting with metropolitan-level or regional forms of government, in most metropolitan areas such ideas got a cool reception.

In the metropolitan areas with characteristics similar to the one described in the first scenario above--and there are many of them--there is a growing appreciation that something is wrong with the way things have turned out. Some persist in believing that the solution to the problems of metropolitan growth, decline, and change is to continue to expand outward to the next tier of open land, striving to remain one jump ahead. But more and more people are acknowledging the social, economic, and environmental costs of pushing ever-outward and the need for more effective planning to respond to changing needs of a region's population. They are asking whether there are better, more action-oriented planning models that are attuned to the realities of today . . . and tomorrow.

WHY IS IT IMPORTANT TO REFORM PLANNING ENABLING LEGISLATION?

PREFACE

The planning approaches of the 1920s are incapable of meeting the challenges of the twenty-first century. There are at least four reasons for this deficiency:

(1) **A more significant intergovernmental dimension for planning.** In the 1920s, government was simpler, and there were fewer governmental units. Planning was a local activity, not something that was expected of all levels of government. Indeed, the role of the federal and state governments in shaping our urban and rural areas ranged from minimal to nonexistent. Beginning in the 1950s, the federal government created programs addressing transportation, environment, and other functional areas that had statewide or regional significance. Increasingly, the federal government devolved or placed greater responsibility on the state and local governments for making transportation, environmental, and public facilities planning decisions when federal monies were involved. Moreover, the repercussions of decisions on developments whose impacts spill over jurisdictional boundaries are no longer ignored. States recognized this concern and state legislatures responded. In some parts of the country, states now take an active role in managing this intergovernmental dimension to ensure uniformity, fairness, and the advancement of state interests.

(2) **A marked shift in society's view of land.** People no longer believe, as they did in the nineteenth century, that land is something merely to be bought and sold. We now also regard land as a resource. Where we once encouraged the filling in and development of swamps, we now regard those same wetlands as a vital part of nature's system of flood control and important for wildlife and their habitats that should be protected for the benefit of future generations. Where we once built without concern for scenic protection, we now value scenic beauty as an irreplaceable regional asset. We see vacant, developable land as having competing social values--it can be used for the construction of affordable housing or for the continuation of agriculture. We recognize that how we develop our land--at what density or intensity--will have consequences for the form and relative compactness of metropolitan areas, which in turn will affect how much we have to travel to conduct our lives and what consequences that has for the air we breathe.

(3) **A more active citizenry.** In the 1920s, community plans tended to be prepared by consultants working for business elites who sought little broad-based public support or involvement. What opportunities there were for citizen participation were rudimentary and perfunctory--a single public hearing after the major planning decisions had already been made. As a consequence, such plans were not often implemented. Although many planning statutes are silent on the tools and techniques of participation, citizens now expect to be engaged in community planning processes, and, when they participate, they expect to see results from their efforts. The existence of the Internet, on which plans and information about developments can be placed as part of a government's home page, also opens new options for citizen involvement.

(4) **A more challenging legal environment.** Land-use controls are being employed to solve or prevent environmental problems, maintain open space, exact public improvements for schools and roads, and preserve agricultural land. The line between protecting the public from nuisances--the focus of the 1920s--and securing public benefits has blurred over the past 70 years. In response, courts have begun to require government to compensate land owners for regulations that result in either a permanent or temporary taking of private property, that go "too far" in pushing the envelope in protecting the public health, safety, and welfare--the traditional police power objectives of land-

PREFACE

use controls. Thus, the planning basis for our development decisions becomes even more significant as the justification for the regulatory and public expenditure systems it underpins.

THE GROWING SMARTSM LEGISLATIVE GUIDEBOOK

Our planning tools date from another era. They are shopworn and inadequate for the job at hand. Just as states and municipalities experimented with new enabling legislation and local land-use controls prior to the Standard Acts, so too since the 1970s have they begun again to refashion their planning statutes. Some states, like Florida, Maryland, Oregon, Tennessee, Vermont, Washington, and Wisconsin have already wholly or partially revamped their planning statutes in order to provide choices and tools for managing growth and change. In others, there are efforts (or least discussions) currently underway on statutory reform. This process of reexamination is not only inevitable, but it is desirable if communities are to respond effectively to change.

To help in this process of reexamination, the American Planning Association has prepared this *Legislative Guidebook*, which contains model statutes for planning and the management of change as well as commentary that highlights key issues in the use of the statutory tools by states, regional planning agencies, and local governments in their use. In the belief that there is no “one-size-fits-all,” the model statutes are presented as alternatives that can be adapted by states in response to their particular needs.

ARE WE UP TO THE CHALLENGE?

Many people sense that we are caught in a race against time. We must regain control over the impact of growth, decline, and change on our quality of life. We must give people new choices concerning housing, employment, transportation, and the environment. The stakes in this quest are high. As *New Yorker* magazine writer Tony Hiss observes in his book, *The Experience of Place*:

Over the next hundred years or so, America will essentially complete itself... Most of [the nation's] future population will live in urbanized surroundings within a hundred miles of a major shoreline--the Atlantic, the Pacific, or one of the Great Lakes. The lasting shape of those late-twenty-first century surroundings will to a large extent be determined by thousands of short-term decisions we will be making during the next thirty years. This is partly because most of the remaining surge of American population growth will take place before 2020.¹

Reform of planning statutes is a serious contemporary concern that affects every state, region, and community in this nation. This 2002 edition of *Legislative Guidebook* will provide the means to address that subject by offering statutory options--many from contemporary planning practice and successful state experience--to aid legislators, state and local government officials, planners, and concerned citizens confront and make reasoned, informed choices concerning just about any planning issue facing us today.

¹Tony Hiss, *The Experience of Place* (New York: Alfred A. Knopf, 1990), 221.

PREFACE

The future is closing in. We must work harder to make those “thousands of short-term decisions” to which Tony Hiss refers. We must grow in a *smarter* way.

FOREWORD AND ACKNOWLEDGMENTS

This is the 2002 edition of the *Legislative Guidebook*, a product of the Growing SmartSM project of the American Planning Association (APA). It contains model statutes, with commentary, for planning and the management of change. It is accompanied by a separately published *User Manual*, which guides the interested reader through the text and the issues of planning statute reform.

PROJECT STAFF AND CONSULTANTS

The project has been staffed at APA in Chicago by William Klein, AICP, director of research; Stuart Meck, FAICP, principal investigator for the project and general editor of the *Legislative Guidebook*; John Bredin, attorney and research fellow; Marya Morris, AICP, senior research associate; Rodney Cobb, former staff attorney and editor of APA's *Land Use Law & Zoning Digest*; Jim Hecimovich, assistant director of research; Megan Lewis, AICP, research associate; Michael Davidson, research associate; James Schwab, AICP, senior research associate; Michelle Zimet, AICP, attorney and former senior research fellow; Dr. Gerrit Knaap, former senior research fellow. Former senior research associate Michelle Gregory, AICP, contributed to the research note, commentary, and model statutes on neighborhood planning in Chapter 7. During their terms as APA research interns Shannon Armstrong (now an APA research associate and Planning Advisory Service supervisor), Jerome Cleland (now an APA research associate); Nate Hutcheson, Kevin Krizek, Sarah Bohlen, Mary Beth McGuire, Laura Thompson, and Jason Wittenberg also assisted the project staff. The Growing SmartSM logo was designed by Richard Sessions, art and design director for APA's *Planning* magazine. Dr. Joseph Whorton, director of the Georgia Rural Development Council, served as project facilitator for meetings of the Directorate (see below). Dr. Jerry Weitz, AICP, of Jerry Weitz & Associates of Alpharetta, Georgia, was APA's consultant on the companion *User Manual* for the *Guidebook*.

A number of planners and attorneys participated in the drafting of the model statutes. Harvey Moskowitz, AICP/PP, a planning consultant from Florham Park, New Jersey, and Peter Buchsbaum, an attorney from Woodbridge, New Jersey, together drafted the initial version of the model balanced and affordable housing act in Chapter 4. Mr. Buchsbaum also drafted the initial version of the housing appeals model that appears in the same chapter. James Berry, attorney and professor of biology at Elmhurst College in Elmhurst, Illinois, wrote the areas of critical state concern model statute contained in Chapter 5. The Hon. Myron Orfield, Jr., a Minnesota state representative and attorney in Minneapolis, drafted the regional tax base-sharing model in Chapter 14. Professor Daniel R. Mandelker, AICP, of Washington University School of Law in St. Louis wrote working papers and drafted model legislation for Chapter 10, on administrative and judicial review of land-use decisions and Chapter 12, on integrating state environmental policy acts with state and local planning. Professor Mandelker also contributed substantially to the model legislation on corridor mapping in Chapter 7 and on amortization in Chapter 8.

Barbara Becker, AICP, associate professor of planning, Drachman Institute, University of Arizona, Tucson, and Susan Bradbury, associate professor of planning, Eastern Washington

FOREWORD AND ACKNOWLEDGMENTS

University, Spokane, were the principal drafters of the state telecommunications and information technology plan statute in Chapter 4 and the telecommunications component statute and Chapter 7. Patricia Salkin, director of the Government Law Center at the Albany Law School in Albany, New York, drafted an initial version of the public participation procedures and public hearings provisions for local comprehensive planning that appear in Chapter 7. Jon Witten, AICP, an attorney and environmental planning consultant in Sandwich, Massachusetts, drafted both the critical and sensitive areas element and the agriculture and forestry preservation element as well as most of the supporting commentary for the two statutes, which appear in Chapter 7. Witten also drafted the initial version of the critical and sensitive areas/natural hazards overlay district authorization statute in Chapter 9.

Laura Hood Watchman, a conservation biologist with Defenders of Wildlife in Washington, D.C. and Caron Whitaker, smart growth and wildlife coordinator with the National Wildlife Federation of Reston, Va. drafted the initial commentary and statute for the state biodiversity conservation plan in Chapter 4.

Students from IIT Chicago-Kent School of Law and the Washington University School of Law in St. Louis assisted in the preparation of a 50-state summary of planning statutes. The summaries are available on diskette upon request at APA's web site (www.planning.org). Chicago-Kent law students included: Jane Banaszak; Ann Bloss; John Bredin; Patrick Cassidy; Joshua Gubkin; George Hoffman; James Mata; Mark O'Meara; Laurie Altpeter O'Sullivan; Yanick Polycarpe; Janet Stearns; and Joel Sternstein. Washington University's law student was Ann White. A special mention should be made of Theresa Kenders, a former legal intern with APA and an attorney in Elgin, Illinois, who edited the statutory summaries and drafted initial versions of the model statute on siting state facilities in Chapter 5.

DIRECTORATE

A project Directorate, consisting of representatives of national organizations and representatives for the built and natural environments and local government law, plus APA, advised the project team. The practical counsel of Directorate members was invaluable in guiding the project. Operating under a charter—a set of bylaws for its operation—and working by consensus, the Directorate met 13 times during the course of the project (from 1995 to 2001) to review and suggest changes, including alternatives not previously considered, in drafts of Chapters of the *Legislative Guidebook* and other work products. Directorate members also reviewed proposals and comments on the project materials from organizations and persons not represented on the Directorate but affected by legislative reform. Membership on the Directorate, however, does not imply or mean endorsement of any aspect of the Growing SmartSM project; each member organization retains its right to act independently with respect to any proposal contained in the *Guidebook*. **The APA Board of Directors has stated that the *Guidebook* is a research product and does not necessarily represent the policy of the APA, unless specifically identified as such in a policy guide or other Board action.**

Present and former members (who are noted by an asterisk) of the Directorate include, by

FOREWORD AND ACKNOWLEDGMENTS

organization:

American Planning Association

William Klein, AICP, director of research, Chicago

Council of Governors' Policy Advisors

Richard Gross,* executive director, Washington, D.C.

Council of State Community Development Agencies

John Sidor,* executive director, Washington, D.C.

Kimberly Dellinger,* chief, Division of Housing Policy Development, California Department of Housing and Community Development, Sacramento

National Conference of State Legislatures (NCSL)

Barbara Gray, Massachusetts state representative, (retired), Framingham, Mass.

Larry Morandi, director, environment, energy, and transportation program, NCSL, Denver, Colo.

Douglas Farquhar,* program principal, NCSL, Denver, Colo.

The Hon. Myron Orfield, Jr.,* Minnesota state representative, Minneapolis

National Association of Counties

Charles Compton, AICP, planning director, Lexington County, S.C.

James Davenport, AICP, research associate, NACO, Washington, D.C.

Haron Battle,* associate legislative director for community and economic development, Washington, D.C. (deceased)

Karen Jackson Sims,* AICP, director, Community Affairs/Intergovernmental Relations, Manatee County Government, Bradenton, Florida

National Association of Regional Councils

William Dodge, former executive director, NARC, Washington, D.C., and principal, Regional Excellence Consulting, Bethesda, Md.

Kenneth Sulzer, AICP, executive director (retired), San Diego Association of Governments, San Diego

John Epling,* AICP, former executive director, NARC

National Association of Towns and Townships

Joan Buser, township supervisor (retired), Oakland Township, Rochester, Michigan, now of Flat Rock, N.C.

Elam Herr, director of legislation, Pennsylvania Association of Township Supervisors, Camp Hill, Pa.

Kenneth Grieder,* executive director, Pennsylvania Association of Township Supervisors, Camp Hill

FOREWORD AND ACKNOWLEDGMENTS

National Governors Association²

Evan Richert, AICP, director, Maine State Planning Office, Augusta

Barbara Wells,* program director, energy and environment, National Governor's Association, Washington, D.C.

National League of Cities

Donald Borut, executive director, Washington, D.C.

H. Bernard Waugh, Jr., former general counsel, New Hampshire Municipal Association, Concord, N.H., and attorney, Gardner and Fulton, Lebanon, N.H.

U. S. Conference of Mayors

Daniel Kemmis, director, Center for the Rocky Mountain West, Missoula, Montana

Eugene Lowe, assistant executive director, U.S. Conference of Mayors, Washington, D.C.

J. Thomas Cochran,* executive director, Washington, D.C.

Member-at-Large for the Built Environment

Paul Barru, BHI Inc., Littleton, Colo., and former chair, National Association of Home Builders Land Development Committee, Washington, D.C.

Member-at-Large for Local Government Law

Henry Underhill, Jr., executive director, International Municipal Lawyers Association, Washington, D.C.

Benjamin Brown,* Attorney, Baltimore

Member-at-Large for the Natural Environment

James McElfish, senior attorney, Environmental Law Institute, Washington, D.C.

William Futrell,* president, Environmental Law Institute, Washington, D.C.

ACKNOWLEDGMENTS

Many individuals critiqued chapter drafts or provided advice during the course of the project. Their suggestions notably improved the quality, scope, and utility of the *Legislative Guidebook*. They include: Deborah Bassert and Robert McNamara, AICP, planners, and Michele LeFaivre, staff counsel, with the National Association of Home Builders, Washington, D.C.; Gus Bauman, attorney, Washington, D.C.; John Delaney, AICP, attorney, Silver Spring, Maryland; Bruce McDowell, AICP, now-retired director of governmental policy research, U.S. Advisory Commission on Intergovernmental Relations, Washington, D.C.; Irving Hand, AICP, professor of planning emeritus, Pennsylvania State University, Harrisburg; Teree Bergmann, AICP, planning director, Columbus, Ind.; Mark Wyckoff, AICP, president of the Planning and Zoning Center, Inc., Lansing, Mich.; Arnold Cogan, AICP, a planning consultant in Portland, Ore.; Mitch Rohse, AICP, communications

²The National Governors Association removed itself from the Directorate in April 2001.

FOREWORD AND ACKNOWLEDGMENTS

manager for the Oregon Department of Land Conservation and Development in Salem; A. Dan Tarlock, professor of law, IIT-Chicago Kent School of Law; Fred Bosselman, AICP, professor of law, IIT Chicago-Kent School of Law; Ronald Levin, professor of law, Washington University School of Law; Brian Ohm, assistant professor of urban and regional planning, University of Wisconsin, Madison; Clyde Forrest, AICP, professor of urban and regional planning, University of Illinois at Champaign-Urbana; Brian Blaesser, attorney, Boston; Linda Cox, AICP, program officer, Lila Wallace/Reader's Digest Fund, New York City, and former director, Planning Center, Municipal Art Society, New York City; Horace Brown, AICP, retired undersecretary of the comprehensive planning division, Connecticut state office of policy and management, Manchester, Conn.; Gary Johnson, professor and director of urban studies and planning at Virginia Commonwealth University in Richmond; Marina Pennington, community program administrator, Florida Department of Community Affairs, Tallahassee; Mark Pisano, executive director, Southern California Association of Governments; Nancy Stroud, attorney, Boca Raton, Florida; Edward Kaiser, AICP, professor of planning, University of North Carolina at Chapel Hill; and David Godschalk, AICP, professor of planning, University of North Carolina at Chapel Hill.

The National Association of Regional Councils appointed a committee that reviewed drafts of chapters and offered helpful perspectives. The committee included: Howard Maier, AICP, executive director, Northeast Ohio Areawide Coordinating Agency, Cleveland; Robert Shepherd, executive director, Land-of-Sky Regional Council, Asheville, N.C.; Floyd Villines, Pulaski County judge, Little Rock, Ark.; and William Wagner, executive director, Oregon Cascades West Council of Governments, Albany.

Others providing comment include: Rick Pruetz, AICP, planning consultant; Constance Beaumont, Paul Edmonson, Esq., Julia Miller, Esq., and Leslie Tucker, Esq. of the National Trust for Historic Preservation; Joseph Molinaro, AICP, and Joe Maheady, of the National Association of RealtorsSM; a coalition of groups including Defenders of Wildlife (Laura Watchman), Natural Resources Defense Council (Deron Lovaas), National Trust for Historic Preservation (Constance Beaumont), National Wildlife Federation (Caron Whitaker), Scenic America (Meg Maguire), Sierra Club (Melody Flowers), and the Surface Transportation Policy Project (David Burwell); a coalition of groups from the National Association of Industrial and Office Properties (Thomas Bisacquino); the National Multi Housing Council (Douglas Bibby), the Self Storage Association (Michael Kidd), and the American Road and Transportation Builders Association (T. Peter Ruane); and Ellen Greenberg, AICP, of the Congress for the New Urbanism.

WORKING PAPER AUTHORS

APA was fortunate to have a brilliant and passionate group of planners, academics, and attorneys who wrote working papers for the project. The papers have been published in two volumes, *Modernizing State Planning Statutes: The Growing SmartSM Working Papers, Vol. 1*, Planning Advisory Service Report No. 462/463 (Chicago: APA, March 1996) and Volume 2, Planning Advisory Service Report No. 480/481 (Chicago: APA, September 1998). The papers suggested alternate conceptual approaches to planning statute reform and were incorporated into the commentary in the *Legislative Guidebook*.

FOREWORD AND ACKNOWLEDGMENTS

Authors who contributed papers to Phases I and II included: Peter Buchsbaum; Deborah Johnson; Dan Mandelker; Peter Salsich; and Patricia Salkin.

Other working paper authors for Phase I included: James Berry; David Callies; John DeGrove; AICP, John Delaney, AICP; Clyde Forrest, AICP; Robert Freilich, AICP; Stephen Galowitz; Gloria Jeff; AICP; Jay Hicks, AICP; Robert Lincoln, AICP; James McElfish, Jr.; William Futrell; Harvey Moskowitz, AICP; John Nolon; the Hon. Myron Orfield; Douglas R. Porter, AICP; Mitch Rohse, AICP; Nancy Stroud; S. Mark White; and the late Norman Williams, Jr., AICP, professor of law, Vermont Law School in South Royalton, whose writings on American planning law have inspired us all.

The working paper authors for Phase II included: Barbara Becker, AICP; Phillip Berke; Brian Blaesser; Scott Bollens; Susan Bradbury; Frank Costa; Charles Connerly; Leo Estrada; David Godschalk, AICP; Deborah Johnson; Edward Kaiser, AICP; Gerrit Knaap; Michael Marshall; Catherine Preston; Tovah Redwood; Brian Sommers; Gail Gordon Sommers; Ralph Stone; and Jerry Weitz, AICP.

Working paper authors for Phase III include: Professor Michael Addonizio of Wayne State University (whose working paper is summarized at the end of Chapter 14); Deborah Bassert; Nancy Benzinger Brown, AICP; Robert McNamara, AICP, and Douglas Porter, AICP. The working papers for Phase III will be included in a PAS Report in 2002, after the publication of the *Guidebook*.

PROJECT SUPPORT

Growing SmartSM has been funded by the following agencies and organizations:

Henry M. Jackson Foundation, Seattle, Washington
U.S. Department of Housing and Urban Development (HUD) (lead federal agency)
Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT)
U.S. Environmental Protection Agency (EPA)
Federal Emergency Management Agency (FEMA)
Federal Transit Administration (FTA), DOT
Rural Economic and Community Development Administration (RECD), U.S. Department of Agriculture
Annie E. Casey Foundation, Baltimore, Md.
Siemens Corporation, Washington, D.C.
American Planning Association

We want to thank the Federal agencies that have provided financial and technical support to this project and also want to thank staff in these agencies who lent their expertise to the preparation of the model statutes and commentary: Amy Donoghue, program analyst, RECD; Sheldon Edner, community planner, FHWA, Office of Environment and Planning; David Kuehn, AICP, community planner, FHWA, Office of Environmental Planning; Michael Hopson, former community planner, FTA; Cecelia Rosenberg, physical scientist, FEMA; Paula Van Lare, coordinator, and Catherine Preston, former planning coordinator, Transportation Partners Program, Air and Energy Policy

FOREWORD AND ACKNOWLEDGMENTS

Division, EPA; and Amber Levofski, general environmental protection specialist, Air and Energy Policy Division, EPA. James E. Hoben, AICP, of HUD's Office of Policy Development and Research (PDR), was the initial project officer for Growing SmartSM and provided APA with challenging, insightful, and stimulating reviews of all work products. Dale Thomson and Edwin Stromberg, both social science analysts with HUD, followed Mr. Hoben after his retirement in October 2000, and were thoughtful and creative project officers. David Engel, PDR's director of affordable housing and research technology, also provided helpful reviews of project materials.

Grenville Garside, attorney, Washington D.C., and former vice president of the Henry M. Jackson Foundation, and Lara Iglitzin, executive director of the Jackson Foundation in Seattle, have continued to be enthusiastic and thoughtful backers of this statutory reform effort. Miriam Shark of the Annie E. Casey Foundation in Baltimore was an earlier supporter of the approach the *Guidebook* took on neighborhood planning, human services planning, and public participation. Finally we thank Jeremiah Murphy, vice president, Siemens Corporation, Washington, D.C. for his help in the development of the model statutes for telecommunications planning.

William R. Klein, AICP
Director of Research, APA

Stuart Meck, FAICP
Principal Investigator

December 2001

INTRODUCTION

MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE

This *Legislative Guidebook* contains model statutes for planning and the management of change. The statutes are intended as an update to and rethinking of the *Standard City Planning and Zoning Enabling Acts* drafted by an advisory committee of the U.S. Department of Commerce in the 1920s (“Standard Acts”), and the American Law Institute’s *A Model Land Development Code* (1976), as well as other model statutes.

Wherever possible, the *Guidebook* presents alternative approaches to drafting statutes. Commentary typically precedes the statutory models. The commentary provides background about the topic that is the focus of the statute, describes the pros and cons of the legislative alternatives, and makes suggestions concerning implementation. In places, the commentary directs the reader, through footnotes and special research notes, to relevant state and federal statutes, books, reports, and articles. The research notes detail subjects addressed by the model statutes.

The model statutes are intended to provide governors, state legislators, state legislative research bureaus, local elected and appointed officials, planners, citizens, and advocates for statutory change with ideas, principles, methods, procedures, phraseology, and alternative legislative approaches drawn from various states, regions, and local governments across the country. A number of the legislative models are composites of existing, successful statutory language; the commentary or

Heritage of the 1920s: The Standard Acts

Most states' planning statutes are the offspring of the two model statutes drafted by an advisory committee of the U.S. Department of Commerce in the 1920s. For many states, the *Standard City Planning and Zoning Enabling Acts* still supply the institutional structure for planning (such as the establishment of planning commissions and boards of zoning adjustment or appeals), although some procedural and substantive components have changed over time.

These acts regarded planning and zoning as matters of purely *local* and, more particularly, *urban* concern. The acts were intended to provide clear delegation of the state’s police power authority to local government, which is the fundamental reason enabling legislation exists. They were also intended to preserve private property rights and to protect cities against slums, blight, congestion, and loss of amenities.

Their drafters also wanted to ensure that private investments and the value they produce could be protected from nuisances and other incompatibilities from neighboring properties. They also wanted to establish a uniform national framework of planning and zoning that could survive challenges in state and federal courts.

INTRODUCTION

research notes will indicate the source for further reference.

Users of the model statutes should be aware that the structure of government and the names of governmental units may differ from state to state; a term such as “municipality” may mean, variously, “borough,” “town,” or “village” in different states. Further, states may distinguish among classes of local government by granting a broader array of powers to those governmental units in higher classes, and the planning legislation may need to be adjusted to correspond to this distribution of powers.

HOW THE GROWING SMARTSM STATUTES WERE DEVELOPED

APA developed the model statutes in conjunction with a project Directorate, an advisory group that has included representatives of national public interest organizations and of various affected constituencies, and APA staff. Directorate members met 13 times from 1995 to 2001 to review each of the *Guidebook* chapters. They also suggested ways in which the materials APA produced could be most helpful to their audience of elected officials and others who are actively involved in statutory reform. A number of outside planners and attorneys also critiqued drafts of chapters contained in the *Guidebook* (see Foreword and Acknowledgments).

APA also commissioned working papers from national experts on various aspects of statutory reform. These working papers formed the conceptual foundation for some of the approaches that APA used. In several cases, parts of the working papers were incorporated into the commentary that accompany the statutes. The papers have been published separately in *Modernizing State Planning Statutes: The Growing SmartSM Working Papers, Vol. 1*, Planning Advisory Service (PAS) Report No. 462/463 (March 1996) and *Vol. 2*, PAS Report No. 480/481 (September 1998). A final set of working papers will be published as a PAS report in 2002.

To prepare the model statutes, project staff reviewed virtually every statutory reform study completed by a state, federal agency or commission, or private group in the post-WWII period; an annotated bibliography of these studies is available upon request from APA. In addition, a 50-state statutory summary was completed with the assistance of law students at Chicago-IIT Kent School of Law in Chicago and Washington University School of Law in St. Louis. The summary enabled APA to identify innovative statutes and provisions and to incorporate them into the model statutes. This statutory summary is available on diskette and APA’s Internet site: <http://www.planning.org>, where the annotated bibliography may also be found.

STATEMENTS OF PHILOSOPHY THAT GUIDE GROWING SMARTSM

There is a philosophy that guided the drafting of the Growing SmartSM model statutes that evolved through suggestions from the Directorate members and others. There are 11 elements to this philosophy:

(1) **There is no single, “one-size-fits-all” model for planning statutes.** As APA began to research planning statutes, it quickly became apparent that states were increasingly shaping their statutes to address problems that were unique to their circumstances. Consequently, the model statutes had to be drafted to give users alternative ways of approaching planning issues. These alternatives have been developed along a continuum that takes into account the degree of planning

Factors to Consider in Reforming Planning Statutes

- The political perspective that finds current regulations cumbersome and complex, and questions the need for new regulation
- The fiscal impacts of development decisions on local government
- The capacity of local government to design and implement planning systems
- Ongoing problems of housing affordability, lack of housing diversity, traffic congestion, environmental degradation, and exposure of life and property to natural hazards
- Increased sensitivity to the operation of the private market
- The obligation to promote social equity--the expansion of opportunities for betterment, creating more choices for those who have few--in the face of economic and spatial separation
- Encouragement of compact development patterns to conserve resources
- The need to quantify and offset impacts of development that go beyond the borders of one jurisdiction
- The challenge of managing growth in undeveloped and developing areas while encouraging reinvestment in older areas that are not growing

required and graduated levels of state or regional intervention. This continuum is discussed in detail in Chapter 2, Purposes and Grant of Power, and is summarized here:

Planning permissive only. Legislation that permits, but does not mandate, planning that is purely advisory.

Planning encouraged with incentives. Legislation that encourages planning by authorizing supplemental powers, such as the enactment of development impact fees, to local governments that prepare and adopt plans.

Planning required with sanctions. Legislation that mandates planning by local governments. Under this alternative, a government could not exercise regulatory and related powers unless it has adopted a comprehensive plan that satisfies statutory criteria. Such planning would ensure that parts of an individual plan relate to, or do not conflict with, one another, and are prepared with the same assumptions.

Completely integrated planning system. Legislation that mandates a state-regional-local planning system that is integrated and both vertically

INTRODUCTION

and horizontally consistent. Vertical consistency is the concept that regional and local plans be consistent with state plans and vice-versa. Horizontal consistency calls for neighboring local governments to ensure that their plans do not conflict with one another.

From this array of choices, a state can strike a balance between local self-determination and increasing state and regional involvement. The alternatives enable a state to make choices knowing some of the likely long-run consequences and trade-offs of each decision.

The model statutes include other internal options as well. For example, they may describe a certain type of plan in several different ways, depending on how directive the plan is intended to be. Or, they may offer choices in the manner in which the plan is to be adopted. APA has prepared a separate user manual for the *Guidebook* to show how to link the components of the model legislation together to achieve various policy alternatives.

(2) Model statutes should provide for planning that goes beyond the shaping and guidance of physical development. Reflecting the influence of the Standard Acts of the 1920s and their progeny, much contemporary planning emphasizes the improvement of the physical environment. Increasingly, however, states, regional agencies, and local governments are engaging in a broader type of planning that expressly deals with social and economic issues. For example, APA reviewed a selection of state plans as part of the preparation of Chapter 4, State Planning. It found that a number of states had developed plans to address job creation, natural disasters and hazards, education, tourism, emergency management, government efficiency, and public safety. Other states are involved in processes intended to devise a broad-brush vision of the future, and only parts of that vision relate to the physical environment. These approaches go well beyond the traditional view of planning as relating only to the development of land and should not be ignored in drafting model statutes.

(3) Model statutes should build on the strengths of existing organizations that undertake and implement planning. Some planning statute reform efforts have been intentionally linked to the creation of new planning organizations. Proper planning can be effective, it is argued, only through new institutions. The Growing SmartSM models do not opt for that approach, although it may be an alternative that some governments may wish to pursue. Resistance to change often occurs not because the concept is flawed, but because the creation of a new organization may necessarily threaten the authority of existing organizations.

As commentary to Chapter 6, Regional Planning, notes in another context, the organizational structure of a planning agency is usually less important than the powers and duties it has, the clarity with which the powers and duties are described in the enabling legislation, and how effectively those powers and duties are actually carried out. Thus, the model statutes consistently provide alternative ways to establish organizations that plan. In order to offer additional flexibility to planning organizations, the model statutes grant rule-making authority so that procedures can be adapted to shifting political realities. In addition, they authorize the preparation of written agreements between planning agencies and other governmental units and nonprofit organizations to provide options to the way plans can be carried out. In applying these models, the user should *first* examine the powers

INTRODUCTION

and duties of existing organizations, and should consider modifying them to reach desired outcomes, *before* endeavoring to create wholly new organizations.

Goals of Statutory Reform: A Checklist for What Can Be Accomplished

- ✓ Certainty and efficiency in the development review and approval process can be improved.
- ✓ Statutes will contain a mix of carrots and sticks to promote planning.
- ✓ People affected by the planning process can be involved early in the process.
- ✓ Plans can address the interrelationships of employment, housing, fiscal impacts, transportation, environment, and social equity.
- ✓ Governments are empowered with a range of planning tools to manage growth and change locally to create quality communities.
- ✓ The timing, location, and intensity of development can be linked to existing or planned infrastructure.
- ✓ Mechanisms to monitor the ongoing performance of planning systems can be created.

(4) **Planning statute reform should not look just at regulation but also at provision of infrastructure and property taxation.** The late Norman Williams, Jr., Professor of Law at the Vermont Law School and author of the multivolume national treatise, *American Land Planning Law: Land Use and the Police Power* (1985-88), observed, in two influential articles, that there is not one system of land-use control, but rather three, with each tending to work against the others.³ Williams noted that in most parts of the country, the property tax system supports major public services but does not bring in enough revenue to meet local needs. Inevitably, local officials are driven to take into account the revenue-raising capacities of various proposed land uses. This leads

³Norman Williams, “The Three Systems of Land Use Control,” *Rutgers L. Rev.* 25 (1970): 80, 82-85; and “Planning Law in the 1980’s: What Do We Know About It?” *Vermont L. Rev.* 7 (1982): 205, 212-214.

INTRODUCTION

to a situation where “good ratables,” such as industrial, most commercial, and high-value residential development--which bring in significant real property taxes and require little in the way of public services--are encouraged, but “bad ratables,” such as quality affordable housing, are discouraged.

The second system concerns the impact of major public services, particularly transportation facilities, such as highway interchanges, and those for sewage collection and disposal. Williams observed that, while the construction of some facilities, such as schools, depends primarily on the type and intensity of land use in the area, other public facilities, such as water and sewers, can have such a strong influence on adjacent land use that they actually may dominate the official set of controls.

The third official system of land-use control that Williams identified is comprised of zoning, subdivision control, official mapping, and other devices. Counter-intuitively, Williams pointed out that the official system may actually be the least important. If the first two systems work to produce unbalanced development in search of good ratables or development in the wrong place due to lack of forethought and coordination, the third system, in Williams’s words, “comes out third best.”

Professor Williams’s reasoning has strongly influenced the drafting of these model statutes. Only when planning statute reform accounts for the impacts of all three systems will states, regions, and local governments be effective in shaping development patterns.

(5) Model statutes should account for the intergovernmental dimension of planning and development control. The “three systems” analysis described above acknowledges that planning and development decisions are affected by and affect a variety of governmental units. They include adjoining and nearby local governmental units; special districts (e.g., school, sewer, flood control, and water districts), which plan, construct, and operate facilities; and state agencies. The planning system must contain mechanisms to ensure that plans and policies that have intergovernmental consequences are reviewed and assessed in a manner that addresses their multijurisdictional impacts.

(6) Model statutes should prescribe the substantive contents of plans. Many existing planning and zoning enabling acts lack a good description of comprehensive and functional plans. Clear language on what constitutes a plan will eliminate any subsequent confusion over its scope and purpose. When the statute is not precise on the nature of a comprehensive plan, it is difficult for a local government to prepare the plan document. This creates inconsistencies from one plan to the next. Detailing the types of analyses that must underpin plans and describing plan elements in statutes are two ways of ensuring that thorough, systematic, and useful documents will result from the planning process.

(7) Model statutes should anticipate the potential for abuse of planning tools and correct for it. The drafters of the Standard Acts began to recognize, several years after the Acts were released, that many local boards of zoning appeals were overstepping their authority and granting

INTRODUCTION

variances that, in effect, amended the zoning regulations.⁴ By then, many states had adopted the Standard Acts in one form or another and the die was cast; the legislative framework was difficult to alter. Exclusionary zoning, interminable local delays in development decisions, imposition of exactions on new developments that bear little relationship to their impact, and failure or refusal to consult with adjoining jurisdictions when preparing plans are other examples of questionable actions and abuses. They arise, in part, out of enabling legislation that does not clearly circumscribe the procedures and authority of governmental units in anticipation of the potential misuse of planning powers.

(8) **Model statutes should use familiar terminology.** Language can often be a barrier to accepting new ways of doing things. As a consequence, the model statutes in this *Guidebook* use terms that most states, regions, and local governments will recognize and accept. Where new concepts or terms are introduced, the model statutes thoroughly explain, in commentary, their origins and meaning to help the user.

(9) **Model statutes should expressly provide for citizen involvement.** The processes for engaging the public in planning are not made clear in many planning statutes. Requirements for public notice, public hearings, workshops, and distribution and publication of plans and development regulations are often improvised. Consequently, the public may find its role and the use of its input uncertain, and it may be suspicious of plans and decisions that emerge. Planning should be doing the opposite; it should engage citizens positively at all steps in the planning process, acknowledging and responding to their comments and concerns. Through collaborative approaches, planning should build support for outcomes which ensure that what the public wants indeed will happen.

(10) **Model statutes should allow flexibility in planning administration.** Not every nuance or impact of a statute's operation can be anticipated. New Jersey, for example, provided for a three-step process of "cross-acceptance" in its 1985 state planning statute. Under cross-acceptance, the state planning commission, counties, and municipalities negotiated and resolved conflicts between the state development and redevelopment plan and local plans. Yet the statute did not describe exactly what was to occur in the cross-acceptance process, leaving it to the state planning commission to develop the steps through rule-making.⁵ This gave the state planning commission a measure of flexibility to modify the process to ensure that it was workable. Statutes should not contain very specific language providing detailed guidance for administrative or managerial decisions, such as the contents of an application form or the precise composition of all the subcommittees of a regional planning agency. These are matters for which administrative rule-making is particularly appropriate.

⁴Ruth Knack, Stuart Meck, and Israel Stollman, "The Real Story Behind the Standard Planning and Zoning Acts of the 1920s," *Land Use Law & Zoning Digest* 48, no. 2 (February 1996): 3, 5-6.

⁵N.J.S.A. §52:18A-202.1; N.J.A.C. §17:32, Subchap. 2-5.

INTRODUCTION

(11) **Model statutes should be based on an appraisal of what has worked.** Often when states consider new legislation, they look to the experience of other states. This approach is certainly understandable and pragmatic. It saves time and can minimize surprises as to secondary and unanticipated consequences of a new initiative. Generally, this has been the approach used in drafting these model statutes. This is not to suggest, however, that innovative approaches have been necessarily rejected. Rather, it is a recognition that innovation comes about not just by a single big idea, but by constant reassessment and adjustment of how that idea is actually being carried out.

HIGHLIGHTS OF THE 2002 EDITION OF THE *GUIDEBOOK*

Highlights in the 2002 edition include model statutes for:

- ▶ initiating reform of planning and land-use statutes (Chapter 1);
- ▶ establishing state planning agencies and state comprehensive, transportation, economic development, and land development plans as well as ensuring state agency consistency with adopted state plans (Chapter 4);
- ▶ authorizing state and regional planning for affordable housing and the removal of regulatory barriers to it (Chapter 4);
- ▶ a state telecommunications and information technology plan (Chapter 4);
- ▶ a state “smart growth act,” based on the innovative 1997 Maryland law (Chapter 4);
- ▶ a state biodiversity conservation plan (Chapter 4);
- ▶ innovative procedures for siting controversial state facilities and for reviewing developments of regional impact (Chapter 5);
- ▶ designation of areas of critical state concern that are crucial to the environmental health of the state or represent other critical resources (Chapter 5);
- ▶ alternative organizational arrangements for regional planning agencies (Chapter 6);
- ▶ describing regional comprehensive, infrastructure, housing, and transportation plans and the manner in which they are adopted (Chapter 6);
- ▶ agreements for the purpose of providing and coordinating urban services (Chapter 6);
- ▶ different organizational structures for local planning commissions and neighborhood planning entities to ensure a broad spectrum of perspectives by citizens (Chapter 7);

INTRODUCTION

- ▶ describing local comprehensive plans (including natural hazards, telecommunications, economic development, and agriculture, forest and scenic preservation elements), transit-oriented development plans, redevelopment area plans, neighborhood plans, and ensuring early and continuous citizen participation in plan preparation (Chapter 7);
- ▶ establishment of urban growth areas on a regional or countywide basis and land market monitoring systems to ensure an adequate supply of buildable land (Chapter 6);
- ▶ state review and approval of local and regional comprehensive plans (Chapter 7);
- ▶ creation of a state comprehensive plan appeals board to hear appeals of state reviews of local or regional plans and county or regional designation of urban growth areas (Chapter 7);
- ▶ corridor maps to reserve land for future transportation improvements, benchmarking, and implementation agreements to carry out local comprehensive plan proposals (Chapter 7);
- ▶ a full suite of land development regulations, including special provisions for traditional neighborhood development, either as a zoning overlay district or as part of a planned unit development (Chapter 8);
- ▶ amortization of nonconforming uses (Chapter 8);
- ▶ development moratoria, with alternatives for different purposes (Chapter 8);
- ▶ a vested right to develop through development permit review, including alternate “bright-line” and estoppel-based models (Chapter 8);
- ▶ transfer and purchase of development rights (Chapter 9);
- ▶ land-use incentives for affordable housing, community design, and open space dedication (Chapter 9);
- ▶ a comprehensive, yet flexible, unified development permit review system (Chapter 10);
- ▶ administrative and judicial review of land-use decisions (Chapter 10);
- ▶ enforcement of land development regulations (Chapter 11);
- ▶ integrating existing state environmental policy acts into local planning as well as providing for nonbinding environmental evaluations of key elements of a local comprehensive plan prior to

INTRODUCTION

- its adoption (Chapter 12);
- ▶ financing alternatives for required local planning (Chapter 13);
 - ▶ tax abatement, redevelopment, and tax increment financing (Chapter 14);
 - ▶ authorizing regional tax-base sharing and permitting voluntary intergovernmental agreements among two or more units of local government to create a joint economic development zone (Chapter 14); and
 - ▶ a statewide geographic information system (Chapter 15).