

Working paper: A Smart Growth Agenda for Ohio

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Summary

This working paper presents a proposal to develop a Smart Growth legislative agenda for Ohio. This agenda is intended to respond to long-term trends affecting the state and to fit with Ohio's governmental structure and political traditions. Its goal is to shape a new approach to development, redevelopment, and resource conservation.

The first part of the paper gives an overview of Ohio's progressive traditions in planning and land-use control. The second part analyzes economic, demographic, and land consumption in the state since the 1960s, both on a statewide basis and among seven urbanized areas. While population growth overall has been modest, it notes that urbanized areas have spread rapidly outward, due in part to Ohioans consuming much more land per capita than in previous years. Employment in metropolitan areas also decentralized from core to outlying counties. In addition, the density of the urbanized areas of the state decreased markedly, resulting in greater land consumption for development purposes and loss of farmland. The third part of the paper reviews a number of state plans and programs that affect, directly or indirectly, the pattern and amount of growth. The fourth part describes how six other states—Oregon, Washington, New Jersey, Tennessee, Rhode Island, and Maryland—have confronted similar trends and what measures they have taken. The last part lists several criteria that a Smart Growth agenda should satisfy.

The paper next proposes a legislative program consisting of three components:

- (1) a high-level organization to coordinate among state departments and promote sound planning at all levels;
- (2) a cross-cutting state goals document that will integrate state policy and set direction for development, redevelopment, and resource conservation for Ohio; and
- (3) an incentive-based program to guide state capital investment, based on a 1997 law from Maryland, that would target state growth-related expenditures to county-designated compact growth areas that meet certain statutory criteria.

Finally, the paper suggests a number of immediate measures that a new governor and the state legislature could take to provide leadership in implementing this new agenda.

Introduction

The premise of this working paper is that the state of Ohio, through its investments in infrastructure and the operation of many state programs, affects development patterns. These

development patterns are clearly changing. Development over the past 30 years in Ohio has become less dense and is spreading out, using more land.

The term that is used in popular and planning literature for this pattern of development is "urban sprawl," which has been officially defined by one state, Florida, as:

. . . urban development or uses which are located in predominantly rural areas, or rural areas interspersed with generally low- intensity or low-density urban uses, and which are characterized by one or more of the following conditions: (a) The premature or poorly planned conversion of rural land to other uses; (b) The creation of areas of urban development or uses which are not functionally related to land uses which predominate the adjacent area; or (c) The creation of areas of urban development or uses which fail to maximize the use of existing public facilities or the use of areas within which public services are currently provided. Urban sprawl is typically manifested in one or more of the following land use or development patterns: Leapfrog or scattered development; ribbon or strip commercial or other development; or large expanses of predominantly low-intensity, low-density, or single-use development.²

Urban sprawl has been criticized in a large body of literature for a variety of costs that it imposes on the public, either directly or indirectly. These include excessive public infrastructure and operating costs (including duplication of infrastructure), increases in vehicle miles traveled, transit system operating losses related to reduced use of transit in areas where sprawl is located, loss of farmland and environmentally sensitive areas, the undermining of the economy of older cities through the loss or reduction of tax-paying capacity, and loss of a sense of community resulting from the new dispersed development patterns.³

Advocates or apologists for sprawl believe that it is merely an outgrowth of the expression of strongly-held public values that are immutable, regardless of the consequences. The movement outward, with its corresponding consumption of natural resources and heightened public and private costs, represents a desire for enhanced public safety, better public education, and a more secure housing investment.⁴ An attempt to modify the policies or practices that have yielded this pattern, the argument goes, will defy the public's deeply entrenched preferences and cause unanticipated repercussions in the form of higher housing costs, slower economic mobility, restrained personal mobility, and a loss of an overall standard of living. Others contend that state involvement will come at the expense of local government control, even though local governments draw their authority from the state.

There can, of course, be a fair degree of debate on whether this pattern is good or bad. But as Cleveland State University's Patricia Burgess and Tom Bier have observed, "what is undeniable is that American metropolitan regions continue to expand into once-rural areas while their central cities continue to lose population."⁵

Still, there seems to be a sea change in public sentiment underway in manner in which Americans view the development of their states, regions, and communities. As this paper shows, an increasing number of state governments—and the survey in this paper is only a partial one—are responding to this change and directly confronting the pattern and character of development

and the role of the state (as well as local governments) in bringing about that pattern. Governors and state legislatures in these states are listening to constituent concerns about growth and sprawl and are attempting to balance orderly development with the need to protect and preserve key state resources and define and advance state goals. Each state is different, however, and the political dynamic that brought about a rethinking of state policies in Oregon, Tennessee, and Maryland, for example, may not apply to Ohio. Nonetheless, much can be learned from the experience of other states and this paper's intent is to explore some of these approaches to see which ones might best fit Ohio. The paper resists broadside attacks on state agency practices and programs and blanket condemnation of state officials as insensitive Philistines. It is easy to criticize, particularly from afar, but much harder to bring about constructive change. The approach advocated here is a systematic and gradual one in which change would come about, not by one or two sweeping big ideas or silver bullets, but through a thoughtful and considered process of evaluation and careful action. This paper suggests that the governor and General Assembly should begin to look at the sum total of state actions that affect development patterns and ask themselves whether the result is what is really desired and should be continued and, if not, whether there could instead be a better way. The authors of this paper believe there is.

Part I

Historical background:

A brief overview of Ohio's progressive traditions in planning and land-use control

Ohio's progressive tradition in planning and land-use control began in 1915 with the enactment of one of the first statutes for municipal planning in the U.S. That statute, which authorized a municipal commission to prepare a master plan for a community, was drafted by Cincinnati attorney and planning law pioneer, Alfred Bettman. Subsequently, the Ohio law influenced the drafting of the Standard City Planning Act, developed by an advisory committee of the U.S. Department of Commerce that was appointed by Secretary (and later President) Herbert Hoover. The municipal planning act was followed by enabling legislation for municipal zoning (1920), and municipal subdivision and regional planning (1923). A landmark decision that originated in Ohio was *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, the 1926 United State Supreme Court case that upheld the constitutionality of zoning. Once the constitutionality of the concept of zoning was affirmed by the Court, zoning spread rapidly through the United States.

In Ohio, county and regional planning commissions received the authority to regulate subdivisions—the division of land into buildable lots—in unincorporated areas in 1935. However, counties and townships did not obtain the authority to regulate land use itself in unincorporated areas through zoning until 1947 when the enabling legislation was enacted; those zoning enabling statutes underwent redrafting and amendment in 1957.

The early efforts were aimed at clarifying the roles and responsibilities of local government in planning and land-use control. The municipal authority for planning and land-use control is derived from Article XVIII, Section 3 of the Ohio Constitution, the so-called home rule amendment that allows municipalities to exercise all powers of local self-government and

enforce police power regulations, as long as they are not in conflict with the general laws of the state.⁶ Counties and townships draw their authority from the grant of power in the state statutes rather than the Ohio Constitution. The Ohio statutes are largely devices that delegate the state's power and provide uniform procedures for their use, with limited substantive standards for local planning. With a few exceptions (such as preemption of local regulation of licensed hazardous waste facilities and certain electrical generating and transmission facilities, and approval of permanent structures in coastal erosion areas), the state does not directly regulate land use nor provide oversight or coordination of local planning, even though local planning is clearly influenced by state investment decisions, such as those affecting highways, park development, and the construction of higher educational facilities.

In the 1970s, attention turned to economic development, agricultural preservation, and environmental protection. The Ohio General Assembly enacted or amended a number of economic development statutes providing Ohio communities with the ability to offer incentives for businesses to locate, start-up, and/or expand within them. After an amendment was enacted to the Ohio constitution authorizing current agricultural use valuation (see below), implementing legislation was also passed to preserve farmland. It allowed the creation of agricultural districts in which land would be taxed at its value for agriculture rather than its market or speculative value for development. Prompted in part by federal laws, the General Assembly began to enact statutes addressing environment issues, starting with the creation of the Ohio Environmental Protection Agency and the Ohio Power Siting Board, which oversees the location of such facilities as electrical generating plants and major transmission lines. This continued throughout the 1980s with the passage of legislation for solid waste planning and coastal zone management along Lake Erie.

Recent measures

The need to reinvest in local infrastructure and to provide for affordable housing were other areas of state concern. Created in 1988 after a 1987 amendment to the Ohio constitution (and reauthorized in 1995) that allowed the state to issue \$120 million in bonds each year, the Ohio Public Works Commission and the Ohio Small Governments Capital Improvement Commission together oversee an innovative intergovernmental program that provides monies to pay for public infrastructure capital improvement projects of local governments. In 1990, Ohio voters approved an amendment to the Ohio constitution that authorized housing as a public purpose; the General Assembly responded both with amendments to Chapter 175, which expanded the role of the state in the area of housing finance, and with the passage of Chapter 176, which established a new role for counties, townships, and municipalities in planning for and providing affordable housing through a variety of measures.

Ohio has addressed the question of reform of its planning laws on two occasions, once formally and the other indirectly. In 1975, the General Assembly created the Ohio Land Use Review Committee that was charged with looking at planning and land-use control at the state, regional, county, township, and municipal levels. The committee's report was released in 1977 and proposed a broad array of changes.⁷ They included greater responsibilities for county and regional planning commissions, procedures for large-scale development review, and enhanced

authority for municipal and county planning commissions. The report also suggested that regional tax-base sharing, a mechanism implemented in the Twin Cities area by which local governments share in a portion of the growth of the commercial and industrial real property tax base, should be studied further. As these recommendations were aimed chiefly at local governments, the report did not indicate any dramatic changes in responsibilities for state agencies. While omnibus legislation was introduced to implement the report's recommendations, it was never enacted because of lack of strong political support for the changes suggested by the Committee.

In 1996, Governor George Voinovich created, by executive order, the Ohio Farmland Preservation Task Force. After conducting hearings around the state, the Task Force made its report in 1997.⁸ Among its recommendations was a proposal to encourage local governments to prepare comprehensive land-use plans. Such plans would, in turn, encourage the preservation of farmland, the efficient use of public infrastructure investments, the use of agriculturally supportive zoning, and the managed expansion of urban and suburban areas, including the identification of urban service areas. The Task Force recommended that the state provide matching grants and technical assistance for the preparation of local comprehensive land-use plans. A bill that incorporated numerous Task Force recommendations (including a proposal for voluntary countywide comprehensive plans), H.B. 645, was introduced in the Ohio House in December 1997; it has not yet been enacted. Neither has S.B. 223, a companion proposal to authorize the purchase of agricultural conservation easements. One Task Force proposal has been implemented through legislation—the creation of an office of farmland preservation in the Department of Agriculture. That office has been charged with carrying out another Task Force recommendation, the development of a strategy to preserve farmland in the state, to be unveiled in September 1998.

Part II

Overview of demographic, economic and land consumption trends in Ohio

Over the past three decades, Ohio has experienced continued population growth, with most of its major urbanized⁹ areas (Akron, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown) growing as well, although at different rates. Even in those areas of the state where population has experienced only modest growth, urbanized areas have spread rapidly outward, in part due to Ohioans consuming much more land per capita than in previous years. Employment in metropolitan areas underwent continued decentralization from core to outlying counties, although the core counties still have the highest percentage of employment concentration. In addition, the density of the urbanized areas of the state decreased markedly, resulting in greater land consumption for development purposes and loss of farmland.

Between 1960 and 1990, Ohio's population grew from 9,706,397 to 10,847,115, an increase of 11.8 percent. The state's 1997 population is estimated at 11,186,331, an increase of 3.1 percent for the first seven years of the decade. Taking into account the estimated population in 1997, the state is growing at about 0.38 percent per year. Of the seven urbanized areas, Columbus had the greatest gain, increasing from 616,743 to 945,237 from 1960 to 1990, a

change of 53.3 percent. Because of population loss in Cuyahoga County, the core county, the Cleveland urbanized area's population *decreased*, dropping 5.9 percent from 1,783,436 to 1,677,492.

Based on data from *County Business Patterns* (which excludes agricultural and most governmental jobs as well as self-employed persons), employment in Ohio grew from 2,540,433 to 4,550,590 over the period 1959 to 1995.¹⁰ Job growth was more rapid in counties along the fringes of metropolitan areas compared to counties containing central cities. In the Cleveland area, for example, Cuyahoga County experienced a 26.8-percent increase in the number of private sector employees over the 36-year period. In Geauga and Medina Counties, employment more than quadrupled, while Lorain County underwent a 91-percent rise. Similar employment shifts occurred in other Ohio metropolitan areas. Even though the pace of its job growth was significantly slower, Cuyahoga still accounted for 74.3 percent of the jobs in the four-county area in 1995, a figure that was still down from 87.1 percent in 1959.

Metropolitan dispersal

For the period 1960 to 1990, the urbanized area of Ohio that grew the most in terms of total square miles area was Cincinnati, which added 270.2 square miles (including areas outside of Ohio, in Kentucky and Indiana). In terms of percent change in square miles of urbanized land, however, the Columbus area grew the fastest, increasing from 142.6 to 344.9 square miles, a 141.9-percent change.

In contrast, the Cleveland urbanized area experienced the slowest growth; the square miles of its urbanized area only rose by 9.4 percent over 30 years. Although the land area of the Cleveland urbanized area increased at a rate that was one of the slowest in the state, the increase occurred while, as noted, the population of the urbanized area itself actually decreased by 5.9 percent (still, population of the urbanized area outside Cuyahoga, the core county, grew).¹¹

For all seven major urbanized areas of the state, the number of persons per square mile—a measure of density—decreased substantially from 1960 to 1990.¹² The most dramatic shift occurred in the Dayton area, which dropped from 4,013 to 2,243 persons per square mile, a 44.1-percent decline. Density decreased more gradually in the Cleveland urbanized area, a 14-percent decline, from 3,067 to 2,638 persons per square mile. Of the seven urbanized areas, Columbus was the most dense in 1990, with 2,740 persons per square mile, while Akron was the least dense, with 2,053.

Ohio lost 4,258,827 acres in farms between 1959 and 1992, a rate of 10,754 acres per month, according to figures from the U.S. Census of Agriculture.¹³ The seven counties in the Columbus metropolitan area (Franklin, Delaware, Fairfield, Licking, Madison, Pickaway, and Union) account for the largest amount of farmland lost, 425,101 acres, approximately 1,073 acres per month over the 33-year period, or a 22.9-percent change. Among metropolitan areas, counties in the Cleveland metropolitan area (Cuyahoga, Geauga, Lake, Lorain, and Medina) together lost 39.4 percent of their farmland. They were followed closely by counties in the Cincinnati metropolitan area (Hamilton, Butler, Clermont, and Warren), which lost 39.1 percent. By comparison, Toledo area counties (Lucas, Fulton, and Wood) underwent the slowest rate of loss, 15.2 percent.

Dispersed development patterns are certainly part of changes in transportation behavior in Ohio (although other factors, such as increased labor force participation, are at work). According to *Access Ohio*, the state transportation plan (see below), while Ohio's overall population increased by only 0.45 percent over the past decade (1980-90), the increase in vehicle miles traveled in Ohio was 29.7 percent, going from 71.7 billion miles a year to 93 billion miles a year. Trips are more frequent and longer as well. In 1990, according to the plan, Ohioans averaged 3.1 trips per day, compared to 3.02 trips per day nationally. While average trip length nationally increased almost 10 percent from 1977 to 1990, from 8.3 miles to 9.1 miles, Ohio's average trip length for 1990 was even higher at 10.76 miles.¹⁴

Promoting low density

State investment decisions, of course, have influenced these changes, particularly in the area of transportation. For example, a 1996 review by the Cuyahoga County planning commission on the impacts of proposed lane additions to Interstate 90 in Lorain County, to the west of Cuyahoga County, observed:

The patterns of outmigration which were established in the 1950s have been further accelerated by the development of the Interstate Highway System in the Greater Cleveland area. As new freeways were added, interchanges constructed and arterial roads improved and upgraded, outlying areas began to take advantage of the increased traffic capacity by zoning large tracts of valuable farmland for low density residential, retail centers, and industrial parks. As a result major shifts in population and employment began to occur. . .

Between 1970 and 1990, the population of Cuyahoga County decreased by 13%, while the combined population of the six surrounding counties [Geauga, Lake, Lorain, Medina, Portage, and Summit] increased by 4.4%. . . . In the ten-year period between 1980 and 1990, 157,580 people moved from Cuyahoga County to the surrounding counties, while 104,635 residents moved from those counties to Cuyahoga County. Thus, in that ten-year period, the central county experienced a net loss of 52,945 residents to adjacent counties. Of these, the largest exodus, in the amount of 31,555 persons, was to Lorain County.¹⁵

In a subsequent 1998 analysis of the land-use impacts for the Ohio Department of Transportation (ODOT) District 12 Major Investment study, the Cuyahoga County planning commission pointed to the construction of I-71 in Medina County as a factor in corresponding population loss by Cuyahoga County:

In 1960, Medina County's population was 65,315 and Cuyahoga County's was 1,647,895. By 1996, the population of Medina County had increased by 112% to 138,847, while Cuyahoga County's decreased by 246,343. These population changes are based on a number of factors. . . . [I]ncreased road capacity, the decline of manufacturing, the Cleveland [public school] desegregation suit, and the start of busing in Cleveland influenced the trends of Cuyahoga and Medina Counties for the past 36 years. The largest increase in Medina County's population (37%) and largest decrease in Cuyahoga

County's population (13%) occurred in the ten-year period following the opening of I-71. Since 1990, Medina County has had the fifth highest population growth rate of the state's 88 counties, increasing 13.6 percent. Cuyahoga County had the tenth largest rate of decline, 0.7 percent, and had the largest actual population loss of 10,588.¹⁶

In an extensive study of development patterns in Medina County, Cleveland State University's Patricia Burgess and Tom Bier offer another perspective on the nature of change there. In the early 1970s most of the county's land was in active agricultural production and many of those who lived in the cities and villages worked in county in agriculture-related jobs or meeting the consumer and service needs of Medina County farmers and other residents. They observe:

Despite its proximity to Cleveland, the county did not perceive itself—and was not perceived by others—as being within the Cleveland metropolitan area. In the 1980s, however, population growth became visibly apparent as new subdivisions appeared at the edges of the cities. The pace has picked up in the 1990s, especially with the increased sales on five-to-ten acre parcels. Many of the new residents of the last fifteen years do not work in Medina County; they commute to neighboring Cuyahoga or Summit counties, often to employment centers on the fringes of Cleveland and Akron. The county is now clearly within the greater Cleveland metropolitan area, and its development is seen as evidence of “sprawl.”¹⁷

Burgess and Bier point to home building on five-to-ten acre parcels as having a much greater impact on the character of Medina County than conventional subdivision development (in Ohio such development typically bypasses local platting procedures through an exemption in the Revised Code that applies to unincorporated areas). This development is now stretching out along minor township roads as well as county or state highways, they report. “For every year since 1991 between half and two-thirds of the residential building permits issued in Medina County have been for parcels outside of the three cities [of Medina, Brunswick, and Wadsworth]. . . A foreseeable problem is that land will be sold off in five-to-ten acre parcels for residential development at a faster rate than demand for such development grows, leaving the land undeveloped but no longer suitable for agriculture because of its size, location, and loss of agriculture tax class.”¹⁸

[SIDEBAR

[An issue that] must be addressed if the State seriously wants to preserve rural character and farmland is the current state law that exempts five-acre or greater sized lots from local subdivision regulations. The exemption threshold should be increased to 20 acres.

—Tracy D. Kulikowski, AICP
Planner

SIDEBAR]

Factors other than state agency decisions of course influence these changes in development patterns as well. As a 1995 study by the Ohio Environmental Protection Agency pointed out, reductions in household size, combined with changing household composition, have created a demand for additional housing units, apart from the general modest growth in population in the state. However, the OEPA report acknowledged that the “movement of in-state households (e.g., from central city areas to the suburbs) also accounts for much of the suburban development that is now occurring around Ohio’s largest cities.”¹⁹

Part III

A Description of the major state agency activities that affect growth

State agencies in Ohio directly and indirectly affect growth in a variety of ways. They may

- (a) have the authority to prepare plans or formulate policies that provide a basis for or justify state investment or influence state action;
- (b) construct facilities that result in or stimulate growth, such as a freeway interchange (which provides land access) or a state office facility (which, by providing employment in an area of the state, creates a demand for housing and supporting services in the area); and
- (c) approve the location of other publicly or privately financed facilities that spur growth, such as the location of water and sewer lines or the construction of wastewater treatment plants; and
- (d) administer grant and loan programs for local infrastructure or economic development purposes. Others agencies may collect and analyze information that other state agencies, local governments, and the private sector may use to make development decisions.

[SIDEBAR--TEXT BOX

All public policy makers should acknowledge the clear nexus between new state-assisted investment in one place and the resulting disinvestment or stagnation nearby in older areas. A cause-and-effect relationship exists and cannot be ignored. The argument can be easily made that the State has an obligation to avoid doing harm when it assists in development and, if harm is caused, the State should provide a remedy.

—Paul Oyaski
Mayor of Euclid, Ohio

SIDEBAR END]

Below are summaries of selected state department activities that have growth-related implications.²⁰ The programs were selected to give a representation of the range of state agency

activity in the area of growth and development; not all state-authorized activities have been inventoried, although they may also have similar implications.²¹

Ohio Department of Agriculture

In 1997, an office of farmland preservation was created within the Ohio Department of Agriculture (ODOA).²² The office is charged with establishing a farmland preservation program to coordinate and assist local farmland preservation programs. It also is to administer a farmland preservation fund, established by the state legislature, consisting of monies received by the office and to be used to leverage or match other farmland preservation funds provided from federal, local, or private sources.

By executive order, Governor George Voinovich directed the office to work with state agencies to formulate an "Ohio Farmland Protection Plan." The plan is to describe the impacts of planned or pending state agency actions that may threaten farmland and what steps state agencies can take to minimize irretrievable farmland conversion.²³ A press release from the office of the governor gave a preview of what the new plan, scheduled for release on September 22, 1998, will contain.²⁴ According to the release, state agencies such as the Ohio Department of Transportation (ODOT) (see below) and the Ohio Department of Natural Resources (ODNR), "will work to avoid or minimize farmland conversion as part of their routine funding and permitting decisions that affect land use. The plan also calls for them to take into consideration local comprehensive land use plans."²⁵ The plan will create a coordinating group that includes the agencies with the greatest potential impact on farmland use, including ODOA, ODNR, the Ohio Environmental Protection Agency, the Ohio Department of Development, DOT, the Water Development Authority, Ohio Public Works Commission, and Power Siting Board.

Farmland preservation can be a tool to direct or shape development patterns by removing certain farmland, particularly on the urbanizing edge of metropolitan areas, from the inventory of lands that could otherwise be developed. This is an emerging function for the ODOA; its success will depend on the extent to which ODOA shows leadership in this area.

The director of agriculture plays a role in determining whether a governmental agency can use eminent domain in agricultural districts under RC 929.01 et seq. An agricultural district is created by the initiative of individual landowners, who can apply to the county auditor to place the land in a district for five years. The land must have been devoted exclusively to agricultural production or devoted to and qualified for payments from a federal land retirement or conservation program for the previous three calendar years. Also, the land must either total not less than ten acres or the activities conducted on the land must have produced an average yearly gross income of at least \$2,500 during that three-year period, or the owner has evidence of an anticipated gross income of that amount from those activities. Once placed in a district, such land is taxed at its use rather than its true market value and is exempt from special assessments for sewer, water, or electrical service without the owner's permission. There is also some protection from nuisance suits by nearby property owners stemming from the impact of agricultural uses.

When a state or local government and certain private agencies intend to appropriate more than 10 acres or 10 percent of an individual property in an agricultural district, which ever is

greater, or to distribute public funds for the construction of housing, or commercial or industrial facilities to serve nonagricultural districts, the government or agency must notify the ODOA before commencing action. The notice must be accompanied by a report justifying the proposed action and identifying alternatives that would not require the action within an agricultural district. The ODOA reviews the proposed action to determine its effort on agricultural production and on plans, policies, objectives, and programs of other state and local government agencies. If the proposed action will adversely affect the district, the director can notify the government, which can delay the action, and can recommend other alternatives to stem impact on farmland loss to the agency contemplating the action.²⁶

It is not necessary, however, to be placed in an agricultural district to benefit from current agricultural use valuation. Under R.C. 5713.31 et seq., any owner of agricultural land can apply to a county auditor, requesting that the auditor value the land for real property tax purposes at the current value such land has for agricultural use. When all or a portion of land is converted to nonagricultural use, the county auditor levies a charge on such land equal to the amount of tax savings during the three tax years immediately preceding the year in which the conversion occurs. The county auditor then values such land under rules promulgated by the state tax commission. Land valued in such a way does not have the protection that land in agricultural districts have.

Ohio Department of Development

By statute, the Ohio Department of Development (ODOD) is the state planning agency, with the authority under R.C. 122.06(B), to prepare “comprehensive plans and recommendations for promotion of more desirable patterns of growth and development of the resources of the state.”

A number of ODOD efforts have locational impacts on housing. For example, through the Ohio Housing Finance Agency (OHFA), the state allocates housing credits for projects on a statewide basis for acquisition, substantial rehabilitation, new construction, and single room occupancy. The credits are used to offset an individual corporation’s federal income tax liability. The allocations appear in a “qualified allocation plan” prepared by OHFA. The plan gives preference to housing projects that are located in qualified census tracts (as defined by the U.S. Department of Housing and Urban Development—HUD) as well as low-income counties (concentrated in the southeast portion of the state) and counties that have been declared federal disaster areas.²⁷

OHFA also administers the state's first-time homebuyer program that provides low-interest loans to qualified applicants to purchase new homes. The criteria for home selection can determine where such a home may be located. The maximum size of a tract on which such a home may be located is two acres but could be larger depending on health requirements for septic tanks. Consequently, this criterion allows the purchase of homes in rural areas as well as those receiving urban services.²⁸

Via its Office of Housing and Community Partnerships, ODOD administers the Small Cities Community Development Block Grant (CDBG) program for smaller municipalities and counties in the state. That program provides monies to local governments for community development projects that satisfy federal requirements to eliminate slums and blight and to benefit low- and

moderate-income persons.

While CDBG projects are typically constructed in neighborhoods or areas where there are existing concentrations of low- and moderate-income persons, they can include new areas as well. For example, CDBG funds can be used to extend water and sewer lines to a new housing project that is occupied in whole or in part by low- and moderate-income families. CDBG monies can also be used to provide grants and loans to new business start-ups and expansions that benefit low- and moderate-income individuals.

The ODOD also oversees a large portfolio of state economic development programs that have locational criteria. An example is the urban or rural jobs and enterprise program. RC 5709.61 to RC 5708.67 authorize the creation of such zones by county and municipal authorities.

County zones may include municipalities as well as unincorporated areas, but their establishment requires the consent of the affected legislative body or board of township trustees. The legislation is intended to retain existing jobs or create new employment opportunities for the state as a whole. It is not intended to result in the transfer of employment from one political subdivision in Ohio to another, although relocation of jobs within the state is permitted under certain circumstances.

Under this legislation, a county or municipality can designate such zones by petitioning and obtaining the approval of the ODOD director, who must review such petitions to determine whether they satisfy statutory criteria. A central city in a metropolitan statistical area may designate one or more areas as enterprise zones without county involvement. For example, the Cleveland enterprise zone covers the entire city of Cleveland. If a municipal corporation is not a central city in an MSA, county board approval of the enterprise zone is required.

Enterprises that locate in such zones enter into agreements with the county or municipal corporation, which can offer incentives that include exemptions from taxes on tangible personal property used in the business at the project site and for real property constituting the project site. In addition, the enterprise zone statute provides for state corporate franchise tax incentives by the state on new investment when the enterprise reimburses new employees for job training. The ODOD director, along with the state tax commissioner and director of human services, administers the enterprise zone program; the ODOD director annually reports to the General Assembly on the program's costs and benefits.

Cleveland State University's Urban Center, in the Levin College of Urban Affairs, completed an in-depth evaluation—the first of its type—of the enterprise zone program in 1998 for an economic development advisory committee headed by State Sen. Charles Horn. It found that the program had “a marginally positive impact on the State of Ohio's Treasury and the tax bases of Ohio communities using the enterprise zone.”²⁹ It also found that the program was “reasonably well administered and run at the state level.”³⁰ However, the evaluation observed that the program “currently lacks an adequate guiding policy vision and management goals to understand in a complete sense the costs, benefits, and other impacts of the program.”³¹ This study noted that communities using the program needed to explicitly identify how their zone is guided by overall community economic development goals within an appropriate surrounding regional context.³²

One of the Cleveland State recommendations proposed that locational criteria for zone

designation be revised to allow distinctions to be made between communities that were experiencing distress and those that were already benefiting from business start-ups and expansions. Under the proposals, “disadvantaged communities” would be permitted to offer the greatest amount of benefits to firms locating within zones. In contrast, a community that was experiencing rapid growth would be authorized to offer the least amount of benefits to firms. The study recommended that an analysis of Ohio communities be conducted to establish more specific parameters in defining how communities would be classified into different zone types. Enterprise zone designations would be limited to municipal governments, in contrast with current practice.³³

Within the ODOD for administrative purposes is the Ohio Water and Sewer Commission. The commission can advance monies to counties and municipalities as well as other public entities to cover that portion of the cost of water and sewer line extensions to be financed by assessments that are statutorily deferred or exempt (for example, water line assessments that cross agricultural property). The seven-member commission is composed of director of development or the director's representative, the director of health or the director's representative, the director of agriculture or the director's representative, the director of natural resources or the director's representative, and three members appointed by the governor.³⁴ Funding for the commission's activities comes from sale of state infrastructure bonds and interest as well as monies that are recouped through repayment of deferred assessments. The criteria governing the Commission's granting of such advances do not actually appear in the Revised Code, but in the Ohio Administrative Code.³⁵

[SIDEBAR

A group of 25 of Ohio’s mature suburbs and older communities have proposed revamping state incentives for economic development along the lines of a Smart Growth agenda. Here’s what the group recommends:

- Revise economic development incentive programs to give priority to communities that have the greatest needs for redevelopment.
- Establish that redevelopment of used land (including “brownfields”) and reuse of existing real estate are comparable in state policy to development of greenfield lands.
- Count job relocation within the state and job retention, not job creation.

–Draft Summary Statement from
“Forum for the Future of Ohio’s Mature
Suburbs” conference held April 24, 1998,
Shaker Heights

SIDEBAR END]

Ohio Environmental Protection Agency

The impact of the Ohio Environmental Protection Agency (OEPA) on growth stems from its planning and regulatory authority over water and wastewater. OEPA reviews all plans for the

construction or expansion of water supply and treatment and wastewater treatment plants. The agency also reviews engineering plans for the design of water distribution systems and wastewater collection systems, such as those for residential subdivisions, and must approve them prior to their installation.³⁶ OEPA approval is separate from any local review. These approvals are critical because they determine where development can occur. OEPA regulates emissions through air quality permits and discharges into receiving streams and water bodies through water quality permits.

The OEPA director has authority over the approval of solid waste management plans that provide a framework for the location of landfills and other facilities. In addition, all solid waste and infectious waste facility operators must apply for and receive a permit or license from the OEPA or the local board of health to establish or operate the facility. A hazardous waste facilities board (composed of the OEPA director, the director of the Department of Natural Resources, the director of the Ohio Water Development authority, and a chemical engineer and a geologist, both of whom must be employed by the state) has sole authority to approve permits for hazardous waste facilities. State approval for such facilities preempts local approvals.

In the mid-1990s, OEPA, working with 100 volunteers from around the state, undertook a comparative risk project. The project's goals included "gathering the best available quantitative and qualitative data about environmental issues, ranking environmental risks, and prioritizing recommendations to reduce risks."³⁷ The final report in 1997 included a series of recommendations to maximize overall reductions in risk to human health, ecosystems, and quality of life.

Among the project's recommendations, as yet not implemented, were the following:

- A proposal to produce a "comprehensive long-term plan for achieving and maintaining environmental sustainability within Ohio's transportation system, by blending transportation alternatives in a manner which achieves and maintains sustainability at the lowest net cost to Ohioans."³⁸ OEPA observed that the Ohio Department of Transportation (see discussion below) should "fully consider alternatives to new road construction as a means of addressing localized congestion issues. . . . Continuing to build highways has been shown by at least 30 years' experience to be a very expensive way to achieve temporary reductions in highway congestion."³⁹

- A proposal that the governor or General Assembly create a commission composed of legislators, as well as land use professionals and lay persons. The commission's responsibilities would include studying existing laws affecting the development and use of property, and the development of land "from an environmental perspective," looking at model legislation for controlling the use and development of land, and recommending new legislation within 18-24 months.⁴⁰ This commission would revisit some of the recommendations of the Ohio Land Use Review Committee dating from the 1970s.

Ohio Department of Natural Resources

The Ohio Department of Natural Resources (ODNR) has influence over land use in the state through its planning and regulatory activities in the Lake Erie coastal area as well as its supervisory jurisdiction over floodplain regulation enacted by counties and municipalities. It

also maintains sophisticated computer-based information systems on land-use, soils, geology, and land use capability that are used by state and local government and the private sector.

Under the authority granted to it by R.C. Chapter 1506, ODNR is the lead agency for the development of a coastal management program for Lake Erie, administered by the Division of Real Estate and Land Management (REALM). The planning program is intended to preserve, protect, develop, restore, and enhance the resources of the Lake Erie coastal area. Stimulus for this program was the Federal Coastal Zone Management Act of 1972 managed by the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce. That act and subsequent amendments authorize federal financial assistance to coastal states for the development of such management programs. The act requires that federal actions be consistent with approved coastal management programs. ODNR completed a federally-approved plan in 1997. The document details the extent of the coastal areas through a narrative boundary description and scaled county maps, and sets forth state policies for resource management along the Lake Erie coast.⁴¹

Under the coastal management program, ODNR may provide grants awarded from federal and other funds to counties, townships, and municipalities to pay for the adoption, administration, and enforcement of zoning ordinances and resolutions relating to coastal flood hazard areas or coastal erosion areas, among other purposes. RC 1506.04 requires the ODNR director to compel counties and municipalities in a coastal flood hazard area, should they fail to participate or remain in compliance, to adopt resolutions or ordinances that meet or exceed the standards required for participation in the national flood insurance program. RC 1506.06 gives the director the authority to identify coastal erosion areas around Lake Erie and to notify affected local governments and landowners in such areas.

RC 1506.07 authorizes the director to regulate the construction of permanent structures in the coastal erosion areas in the absence of locally adopted zoning or building regulations that have been approved by ODNR as meeting its standards. The intention of the statute is to provide for a more stable shore as well as to lessen erosion along Lake Erie. The law effectively gives ODNR land-use regulatory authority over portions of the Lake Erie coast. ODNR's Division of Geological Survey has mapped coastal erosion areas that are the subject of regulatory protection. As of June 1998, ODNR requires a permit for construction of any new permanent structure in a coastal erosion area, regardless of whether the property is publicly or privately owned. However, no state permit is required where a county or municipality is enforcing a permit system that meets standards required by law. Some 2,200 properties are covered by the coastal erosion program.

Projects or activities in the coastal area that are proposed by a state agency or subject to state approval must be consistent with the coastal management program document, as determined by the ODNR director. However, any state agency may develop and adopt a statement of coastal management policies. If the ODNR director approves those policies and if the project or activity is in accordance with that statement, a determination is not required.

ODNR's Division of Water supervises the floodplain management program in the state, including review of local floodplain regulations for compliance with federal standards.⁴² The division serves as a clearinghouse for floodplain maps within Ohio and makes available model

floodplain regulations. Once a county or a municipality has adopted floodplain regulations, it must forward the regulations to the Division of Water for review. Once the division finds that the regulation meets federal standards, it forwards the regulation to the Federal Emergency Management Agency (FEMA), which oversees the federal Flood Insurance Program, for approval. The division can also cite a county or municipality for failing to properly enforce or administer an adopted floodplain regulation and can advise FEMA of the local government's noncompliance.

Through REALM, ODNR provides services to the state in the area of geographic information systems for land-use planning, agricultural use, development reviews, and the coastal zone program. A key land-use tool developed by ODNR is its Ohio Capability Analysis program that allows the computer generation of composite maps of land-use inventories and land capability analysis maps. The capability maps evaluate the ability of land to support or sustain different land uses for planning and regulatory purposes by governmental units and the private sector.

Also within ODNR is a Division of Mines and Reclamation that issues permits for the siting of surface mining operations. Such permits have land use impacts that must be reconciled with regional or local plans. Indeed, one state administrative appeals body has ruled in a case that involved farmland preservation. In a recent decision that overturned a permit issued by the division, the State Reclamation Commission held that the division must consult a comprehensive plan when it is considering issuing a permit.⁴³ In this case, the Clinton County Comprehensive Plan, prepared pursuant to Chapter 713 of the Revised Code by the Clinton County Regional Planning Commission and adopted in 1995 by the board of county commissioners, had designated the area where a proposed mine was to be located as an "Agricultural Protection Area" characterized by soils that were highly productive and uniquely suited to agricultural use. The Reclamation Commission found there was a conflict between the county's comprehensive plan and the proposed future use of the area sought to be mined.

Ohio Public Works Commission

RC Chapter 164 created a statewide infrastructure financing program after Ohio voters approved constitutional amendments in 1987 and again in 1995 to authorize it. The program is administered by the seven-member Ohio Public Works Commission (OPWC) and the eleven-member Ohio Small Governments Capital Improvement Commission (OSGIC). It provides monies for grants, loans, debt support, and credit enhancements to local government. Eligible costs include roads and bridges, wastewater treatment systems, water supply systems, solid waste disposal facilities, flood control systems, stormwater and sanitary collection, storage, and treatment facilities.

The statute established 19 district public works integrating committees that include from one to 11 counties. These committees rank projects submitted from local governments within allocations established by the state and submit them to OPWC. Separate district subcommittees prioritize projects from townships and villages with populations under 5,000 to submit to OSGIC.

The structure of the program, including requirements for local matching funds, places high priority on projects that involve repair and replacement of existing infrastructure rather than new

and expanded facilities. For example, the statute requires that a local government must put up 10 percent of the estimated cost of repair and replacement projects and 50 percent of the total cost for new and expanded infrastructure. In addition, projects that can be funded by user fees, such as those for water and sewer, tend to receive authorization for loans rather than grants. Statutory criteria for projects "tend to ensure that the district integrating committee selects projects which have a greater-than-local impact, have significant local match, have other funds committed [such as those from the state or federal government], and are ready to go to construction."⁴⁴

Again, this is a program, also well-administered, that has implications for growth and development through authorization of projects that could, for example, expand highway, water, or sewer capacity or affect the state's natural resources. Recent OPWC policies recognize this to some degree. For example, a May 1998 advisory document states that OPWC, as part of its review of "new and expansion" projects, will evaluate whether the project will have a significant impact on productive farmland.⁴⁵ If it does, OPWC may deny the project. Another advisory addresses compliance with state flood damage reduction standards prior to approval by the OPWC.⁴⁶

Ohio Department of Transportation

The Ohio Department of Transportation (ODOT), pursuant to RC 5501.03(A)(2), coordinates and develops, in cooperation with local, regional, state, and federal planning agencies, "comprehensive and balanced state policy and planning to meet present and future needs for adequate transportation facilities." ODOT also serves as the administrator for federal department of transportation grants for planning and the construction of highway and mass transportation facilities.

[add NOACA TRAC statement sidebar]

[SIDEBAR

According to a group of Ohio's mature suburbs and older communities, "ODOT expands highway access to undeveloped land surrounding the state's metropolitan regions. But often that development is at the expense of older communities as residents and employers relocate." The group has proposed a number of initiatives to ensure the well being of mature communities:

- Revise the formula that determines the distribution of fuel tax funds to base allocation on need and contribution.
- Revise the scoring system for major new capacity projects to equate urban redevelopment with greenfield economic development.
- Increase funding for municipalities for repair and rehabilitation of roadways and bridges.

—Draft Summary Statement from
"Forum for the Future of Ohio's Mature
Suburbs" conference held April 24, 1998,
Shaker Heights

END SIDEBAR]

ODOT's current plan for the state's transportation system is *Access Ohio*.⁴⁷ The plan is organized around five goals that address system preservation and management, economic development and quality of life, a cooperative planning process and transportation efficiency, transportation safety, and funding. The plan proposes a variety of initiatives in the areas of highways, bikeways/pedestrian activities, rail, air, transit, and water.

In particular, *Access Ohio* highway proposals contemplate a series of "macro-corridors" connecting 76 of Ohio's 88 counties—and these obviously have the greatest implications for growth and development in the state. The macro-corridors include widening 299 miles (including 250 bridges) of the rural interstate system "to ensure that increasing traffic will not reduce the level of service."⁴⁸ For example, the plan calls for widening 88.6 miles (including 160 bridges) of the east-west highway, I-70, across the center of the state. Some 37.7 miles of I-75 (including improving 34 bridges) from Miami County to the Cincinnati area are proposed for widening. Some 13 miles of Interstate 90 east of Cleveland will require widening (including improvements to 14 bridges). Segments of I-71 adjacent to the Cincinnati and Columbus areas, totaling 88.6 miles (including 150 bridges), are also proposed for widening. *Access Ohio* comments that "[m]uch of the highway between Cincinnati and Columbus is adequate if traffic increases at the same rate it has in past years. However, a major new generator of traffic in the southwestern part of the state could trigger new growth and may require additional improvements in the decades ahead." (emphasis supplied)⁴⁹ This implies that a single or series of local government land-use decisions can force change in the state plan, at least as the decisions affect this transportation corridor.

The plan includes improvements to rural arterial highways as well: U.S. 30 across the entire state, U.S. 24 from the Indiana border to Toledo, U.S. 23 and S.R. 2, and portions of U.S. 50, S.R. 161, S.R. 71, U.S. 33. The plan also projects a possible high-speed rail line on 260 miles of track connecting Cleveland, Mansfield, Columbus, Springfield, Dayton, and Cincinnati. The Ohio High Speed Rail Authority, which is the state lead agency in passenger rail, commissioned a study that anticipated a capital cost of this effort of \$3.1 billion.

Access Ohio also includes summaries of the regional transportation plans for the 16 urbanized areas in the state that have metropolitan planning organizations (MPOs). The details of transportation planning (including mass transit) within the state's urbanized areas are the responsibility of these MPOs, rather than ODOT.⁵⁰ However, the state and regional transportation plans obviously must be coordinated, and the state has considerable influence over the contents of these plans through participation in the metropolitan transportation planning process.

In large measure, although the plan does not generally acknowledge it, *Access Ohio* will have land-use impacts. For example, it is clear from reading the plan (including its system of prioritizing corridors and hubs) that it contemplates a continual corridor of urbanization between Miami County, north of Dayton, to Cincinnati, along I-75. The plan also recognizes the possibility of a urbanized corridor between Columbus and Cincinnati along I-71; it anticipates a major new passenger air facility in the southwest portion of Ohio, "possibly within the triangle of Columbus, Dayton, and Cincinnati"⁵¹ and in fact shows this new airport facility southwest of

Columbus in Clinton County on one of the plan's maps.⁵² This new facility would be necessary, according to the plan, to accommodate a new generation of "hypersonic" aircraft that fly faster than the speed of sound and would make international flights into Ohio. Less apparent are improvements to U.S. 30 and the consequent potential for urbanization of portions of a corridor along the northern quarter of the state extending from Indiana to Pennsylvania (including the area from Cleveland to Toledo). U.S. 35, which cuts across the southwest and south central portion of Ohio, is another candidate for additional urbanization.

[SIDEBAR--TEXT BOX

The State should not pay for any new interchanges on interstate highways. The abutting property owners and/or the abutting communities should pay the entire costs (or the state should pay only that portion of the cost that reflects the proportional share of total tax revenues generated from the particular county(ies) involved).

—Mayor Paul Oyaski
City of Euclid, Ohio

END SIDEBAR]

ODOT has the ability to implement *Access Ohio* through the formulation of a transportation improvement program that lists federally backed transportation improvements for the areas outside of MPO jurisdiction. MPOs themselves prepare similar documents for their urbanized areas that establish immediate funding priorities. ODOT maintains a system to prioritize and select new road projects. The system places high priority (60 percent of the total base score) on average daily traffic, traffic volume, and completion of the "macro-corridors," but also takes into account economic development, regional multimodal transportation, and traffic accident factors.⁵³ A newly-created Transportation Review Advisory Council (TRAC) is reviewing the ranking system and can hear appeals from any local government that believes its project did not receive a high enough ranking.

Apart from programming and serving as the advocate for transportation projects, ODOT also reviews engineering designs, such as those for interchanges and bridges, and approves land access to roads under state jurisdiction, among other duties. These responsibilities give ODOT authority over the degree and type of access that property will have to state roads and, therefore, some control over the type and intensity of development that will occur.

Access Ohio also documented the relatively limited role of the state in the area of public transit and proposed heightened support through dedicated funding options that are "politically feasible." According to the plan, there are 56 public transit systems in Ohio that serve villages, cities, and unincorporated areas in 48 of the state's 88 counties. Twenty-four systems serve urban areas and 32 serve rural communities and counties. Thus, public transit is only an option in 54 percent of the state's counties. Recent expenditures for all 56 of the systems totaled about \$430 million annually, supporting both annual operating and capital costs. ODOT has provided about \$30 million a year of this total, with the remainder coming from the federal government,

local government funds, and user fees.

The state transportation plan noted the prohibition in the Ohio constitution on the use of gasoline and motor vehicle license taxes for programs other than road and highway projects. There is no law, however, that would prohibit Ohio from creating a dedicated tax for transit assistance and the plan proposed three options: (1) a motor vehicle rental fee; (2) a motor vehicle lease-purchase fee; and (3) an annual excise fee on parking spaces. The plan calculated the amount of money that could be expected from each; the annual excise fee on parking lot spaces yielded the most, \$187.3 million and all three together could generate between \$216.7 and \$252.2 million per year. The plan did not propose changing the state constitution, however, although that is always an option. The plan concluded that Ohio needs to develop a dedicated source of funding for mass transit in order to create a truly balanced multi-modal transportation system. Based on a survey conducted for ODOT by the University of Cincinnati's Institute for Policy Research, the plan asserted that Ohio residents appeared to support a well-chosen source of funding.⁵⁴

Ohio Water Development Authority

R.C. 6121.01 et seq. authorizes the establishment of a state water development authority with the power make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency. These include both wastewater and water management projects. These projects are funded through water revenue bonds and issued for such purposes. The authority is composed of eight members as follows: five members appointed by the governor, and the directors of natural resources, environmental protection, and development, who serve in an ex-officio capacity.

Part IV

Possible state land-use planning models for Ohio

This section describes state level land-use planning programs from Oregon, Washington, Tennessee, New Jersey, Rhode Island, and Maryland. It concludes by comparing the programs and assessing their implications for Ohio.

Oregon

The Oregon system, enacted in 1973 and under continuous change, is perhaps the most advanced state-administered, land-use planning system in the United States.⁵⁵ The system is administered by a state agency, the Department of Land Conservation and Development, and an appointed board, the Land Conservation and Development Commission. Over a period of years, the commission has adopted 19 statewide planning goals, as well as detailed regulations that guide how the statutes are administered. All cities and counties in the state are required to have local comprehensive plans and implementing measures that satisfy both planning goals and administrative rules. Once local governments adopt new comprehensive land-use plans or modify existing plans, the commission, with the assistance of the state department, reviews each

proposed city and county plan to determine whether it properly implements these goals.

If the local government's plan satisfies the state requirements, the commission "acknowledges" or certifies the plan. If it does not, the commission requires that it be revised and resubmitted. The commission has the power to force local governments to fulfill their responsibilities under the legislation by identifying corrective action to be taken and suspending local authority to issue building permits or approve land subdivisions. Where a local government refuses to rezone property for higher density residential uses, which the Oregon program requires, the commission can force the issuance of permits or approval of subdivision. The commission can also block distribution of certain state tax revenues, such as those from cigarette and liquor taxes, to a local government, up to the amount the government had previously received under planning grants. Over the years, the commission has used all of these sanctions.

Decisions made by cities, counties, and the regional planning agency for the Portland area can be appealed to a land-use board of appeals (LUBA), a specialized appellate court whose members are three attorneys. LUBA has a mandate to reverse and remand these decisions when they violate the local comprehensive plan or the state goals. It may also reverse and remand the governmental decisions when they are unconstitutional, lack evidence to support them, or are based on an error in law. LUBA is not a trial court, but it makes its rulings in most cases based on a record submitted to it by the local government.

Here is a simple example of how LUBA works. Say a local government in Oregon has had its local plan acknowledged by the Land Conservation and Development Commission. The plan shows the future density in one part of the community at a level that is greater than it is now. When the developer applies to rezone property so that it is consistent with that proposed density in the plan, the local government refuses to approve the change. The developer appeals the denial to LUBA, which in all likelihood will reverse the decision and order the local government to rezone the land. LUBA's strength is that it decides these appeals rapidly, within about three months, much faster than the regular state court system.

The Oregon system has many interesting features. The best known are the requirements for urban growth boundaries and protection of agricultural land.⁵⁶ One goal of the Oregon system establishes a policy of urban containment that requires every city in the state to establish an urban growth boundary contain existing built-upon land as well as vacant, undeveloped land that is sufficient to accommodate growth during a 20-year planning period. Local governments must monitor land supply and periodically consider adjustments to the urban growth boundary. For the Portland metropolitan area, the Land Development and Conservation Commission has established minimum density requirements of 10 dwelling units per net acre in Portland and from six to eight dwelling units per net acre in outlying suburban areas.⁵⁷ The intention is to ensure that, over time, development within the growth boundary becomes denser, reducing pressure to expand the boundary as population grows. Outside the urban growth boundaries, rural lands are placed in what is called exclusive farmland use (EFU) zoning, a highly restrictive form of agricultural zoning that limits the use and structures in the zone to farming and closely related activities and structures.⁵⁸ Land subject to such controls is then taxed at its value for farming, not development.

The Oregon system has proved successful, for the most part, with densities in the Portland metropolitan area's urban growth boundary, for example, gradually increasing.⁵⁹ Of the state's 28 million acres, some 2 million are inside urban growth boundaries.⁶⁰ The system has also dramatically slowed, but not completely eliminated, nonagricultural uses in the areas outside the urban growth boundary around the state. The loophole in the law has to do with approval by local governments of "hobby farms" in the rural areas by the counties. These farms are not commercial operations but are non-economic agricultural operations that are also serving as rural home sites serviced by on-site sewage treatment systems. Consequently, in some areas, most notably the Willamette Valley outside Portland, some low-density sprawl, under the guise of hobby farms, has occurred; this is a result of lax enforcement by the counties.

There has also been criticism, notably by developers and homebuilders, that the urban growth boundaries throughout the state, but particularly in the Portland area, have not been expanded sufficiently over time to add to the supply of land for housing and that this has increased the costs of all housing relative to income. Proponents of growth management respond that housing costs in Portland have not risen as fast as costs in some other rapidly growing Western cities, and higher housing densities required within the urban growth boundary have made it possible to build more moderately-priced housing on smaller lots.

Washington

Washington State enacted new growth management laws in 1990 and 1991⁶¹ and, in 1997, approved a series of minor amendments to the planning statutes. Under the Washington state program, counties (as well as the cities within them) of a certain population size and/or that have experienced certain percentages of population increases over the previous decade must prepare comprehensive plans. The plans must reflect cooperative efforts with each municipal government in that county's jurisdiction.

Like the statutes and administrative rules governing the Oregon system, Washington's are extremely detailed.⁶² The statutes require that each local comprehensive plan include elements addressing land use, housing, capital facilities, transportation, and utilities. The program employs extensive use of urban growth areas. County plans must designate urban growth areas and those lands outside the urban growth boundaries that will be classified as "rural." They must also limit uses on such lands to those that preserve the lands' rural character. The county plan elements must be consistent with one another as well as with the plans of each city or county sharing a common border or regional problems. Under the Washington system, the comprehensive plan replaces zoning and other development regulations as the "constitution" of land-use law; such regulations must conform to and carry out the plan.

Unlike Oregon, there is no state agency or board that approves or certifies these local plans. Instead, the state has created three regional growth management hearing boards with the authority to hear petitions alleging that a state agency, county, or city is not in compliance with the growth management laws, including the goals for the state that are contained in the statute, or that the 20-year growth management population projection used to create urban growth boundaries should be adjusted. In hearing these petitions, the burden is on the challenging party to show noncompliance. The boards presume that a city or county's plans, development

regulations, and amendments are valid upon adoption.

The Washington program has been controversial but has survived attempts to repeal it or water it down. The controversies have chiefly focused on the role of growth management hearing boards to interpret the law and the imposition of planning requirements on local governments. Since there is no mechanism for official state review and approval of plans and development regulations (as in Oregon), the boards have, in effect, stepped into that void in deciding challenges to the plans and development regulations and holding local governments accountable for the requirements in the legislation. Because there are three boards rather than one, there may not be consistency in the rulings; the boards, in effect, are making state policy indirectly through their decisions (even though that was not the expressed intent of the statute). Local governments resent the boards because they feel they second-guess local decisions on planning and development.

Moreover, the restrictions on rural development have been problematic in that the statute has not been precise as to what “rural” is. The Washington statutes require the counties, in their local comprehensive plans, to designate areas of rural character, which would include some rural development as well as agriculture and forestry activities. Not surprisingly, agricultural, real estate, and timber interests would like as broad and as flexible definition as possible, with no requirement for density and liberal ability to convert land to rural home sites. In 1997, the Washington state legislature, at the recommendation of a special state land-use study commission, amended the definition of “rural character” as follows:

“Rural character” refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.⁶³

Tennessee

In May 1998, Tennessee enacted a statute intended to create a “comprehensive growth policy for the state” that incorporates the designation of urban growth boundaries for municipalities and planned growth areas for unincorporated areas.⁶⁴ The statute establishes in each county a coordinating committee consisting of representatives of the county, municipalities, utilities, boards of education, and chamber of commerce. In the alternative, if the population of the largest municipality in the county is at least 60 percent of the county population, the coordinating

committee may be the county planning commission and the local planning commission of that municipality. Each committee must develop a growth plan for its county by January 1, 2000, including, with recommendations from the municipalities, urban growth boundaries for each municipality in the county. The proposed growth plan must first undergo at least two public hearings after due notice and does not take effect unless ratified by the county legislative body and by the individual municipalities.

If the county or any municipality rejects the proposed growth plan, it must state its reasons for rejection, and the coordinating committee must reconsider its decision. If a county or municipality declares that there is an impasse in the ratification process, the Secretary of State appoints a three-member dispute resolution panel.⁶⁵ The panel can impose a growth plan if its recommended solutions are rejected, and the cost of the dispute resolution process can be assessed against a party acting in bad faith or putting forth frivolous objections.⁶⁶ Judicial review of the urban growth boundary by the county chancery court is available to any landowner or resident of the county, as well as to the county and municipalities, and the review is a *de novo* (or original) review in which the challenger must show by preponderance that the growth plan is “arbitrary, capricious, illegal, or ... characterized by an abuse of official discretion.”⁶⁷ All such reviews commenced against the same proposed growth plan must be consolidated in a single civil action.

Once a growth plan is ratified, all land-use decisions must be consistent with the plan. A growth plan stays in effect for up to three years, absent a showing of “extraordinary circumstances.”⁶⁸ The plan must indicate urban growth boundaries, planned growth areas, and rural areas. An urban growth boundary must encompass the contiguous territory of a municipality, an area sufficient for 20 years of predicted growth, and territory in which the municipality is better able to provide urban services than other municipalities.⁶⁹ It must be based on population growth projections, a projection of infrastructure costs, and a land-demand projection. The county can create planned growth areas, which are similar to areas inside urban growth boundaries and are subject to the same requirements, except that planned growth areas must be outside any urban growth boundary and any municipality. Any territory that is not within an urban growth boundary or planned growth area can be designated as a rural area, which is intended to be used for the next 20 years for agriculture, forestry, wildlife preservation, recreation, or other low-density uses.

After a municipality has an urban growth boundary in place, it can annex only territory within that boundary, but the municipality is expressly authorized to amend the urban growth boundary, under the same procedure as the enactment of a growth plan to include the territory that is to be annexed.⁷⁰ New municipalities can be created only in planned growth areas, and the county must approve the municipal borders and urban growth boundary before any vote on incorporation can be held.⁷¹

Counties and municipalities that do not have the growth plans that have been approved by the coordinating committee, certain state grants for housing, infrastructure, tourism, and job training, as well as federal transportation and community development funds are to remain “unavailable” until the plans are approved.⁷²

New Jersey

New Jersey's contribution to statewide land-use planning was the adoption of the State Planning Act in 1986⁷³. That act created a state planning commission composed of citizens and state agency officials. The commission has the authority to prepare and adopt a state plan. The *New Jersey State Development and Redevelopment Plan*, adopted in 1992 and currently under revision, is a policy guide for the state. The plan's general strategy is "to achieve all state planning goals by coordinating public and private actions to guide future growth into compact forms of development and redevelopment, located to make the most efficient use of infrastructure systems and to support the maintenance of capacities in other systems."⁷⁴ State plan goals and strategies include revitalization of cities and towns, conservation of state natural resources and systems, promotion of economic growth, protection of the environment, provision of adequate public facilities and services at reasonable cost, provision of adequate housing at reasonable cost, and preservation and enhancement of areas with historic, cultural, scenic, open space, and recreational value.

The plan contains policies and plan maps that divide the state into a series of planning areas for the purpose of deciding where to encourage growth, redevelopment, and resource preservation. For example, the plan attempts to direct development away from agricultural areas and environmentally sensitive areas, such as the New Jersey Pinelands. In addition, the plan provides a hierarchy of centers (urban centers, towns, regional centers, villages, hamlets) in which different levels of concentrated development should occur. The plan's contents, especially the plan map, were subject to a three-stage, negotiated, nonbinding "cross-acceptance" process among the state planning commission, county planning commissions, and local governments in which the centers and the surrounding planning areas were identified and classified. Through this process, local governments begin to incorporate components of the state plan into their local plans. In turn, the state plan is gradually modified to ensure compatibility with local plans.⁷⁵

The current (1997) draft revision of the plan contains an extensive discussion of how it is being implemented in the state.⁷⁶ For example, Gov. Christine Whitman has called upon her cabinet to incorporate the plan's proposals into all state agency programs, policies, and decisions, and to provide her with annual reports on their progress. Whitman requested, and the state legislature approved, \$40,000 for each county in New Jersey to participate in the cross-acceptance process. State agencies have been using the state plan in shaping program rules and regulations. For instance, the state department of transportation has incorporated the plan's hierarchy of planning areas into the establishment of roadway access standards that would apply to different parts of New Jersey.

Rhode Island

Rhode Island began revamping its planning and land-use laws in the late 1980s. The intention of the reform effort was to provide uniformity and predictability in planning and land-use control among the state's 39 cities and towns, as well as to define the role of the state with respect to reviewing and approving local comprehensive plans that guide development.

A central feature of the Rhode Island law is its requirement that all cities and towns prepare and adopt a comprehensive plan that contains nine elements: goals and policies; land use (with a

plan map); housing (including affordable housing); economic development; natural and cultural resources; services and facilities; open space and recreation; circulation; and implementation.⁷⁷

Under the statute, local governments submit adopted comprehensive plans to the state for review by a planning division in the state department of administration and by other state agencies. State officials check for compliance with the statute and with the *State Guide Plan*, a collection of state goals and policies that have been formulated by state agencies.

If a plan is turned down, local officials may request a review by the Comprehensive Plan Appeals Board, which was created by statute.⁷⁸ If the plan is deemed unacceptable (for example, if it conflicts with a state policy), the planning division may step in and prepare a plan, which then goes back to the appeals board. However, the planning division has never found it necessary to use this authority to prepare a plan.

One consequence of the statute is that the approved local plan must be consulted for all state projects and no state agency can construct a project that contravenes a local comprehensive plan unless it first successfully pursues an appeal to a state planning council, also established by statute. The planning council may approve a state project that conflicts with a local plan but only after a public hearing and only after finding that the project satisfies four strict criteria in the state planning act.

Maryland

Maryland began amending its planning statutes in 1992 and again in 1997. The 1992 amendments⁷⁹ required cities and counties to adopt comprehensive plans with certain prescribed elements. For example, local governments must address environmentally critical or sensitive areas in their plans. The sensitive areas must include streams and their buffers, 100-year floodplains, habitats of threatened and endangered species, and steep slopes.

These plans also have to address or incorporate a series of state “visions” or policy statements in the plan. One “vision” relates to the preservation of the Chesapeake Bay. Still another calls for local governments in rural areas to direct growth to existing populations centers and to protect what it calls “resource areas,” although the statute doesn’t define what such resource areas are. Despite some ambiguous language in the law in terms of the meaning of “visions” as well as lack of a certification process by the state, local governments in Maryland have begun preparing and adopting plans that meet the statute’s objectives. Counties and cities are required to report on their progress each year to a State Economic Growth, Resource Protection, and Planning Commission, which monitors the act’s operation and suggests changes to Maryland’s governor and legislature.

The most recent development occurred in 1997. At the prompting of its governor, Parris Glendening, Maryland passed a “Smart Growth” act⁸⁰ aimed at directing new development into “priority funding areas.” Under the statute, the state will give priority in funding projects with state money in these growth areas as well as existing municipalities and industrial areas. These priority areas must meet state guidelines for intended use (including a minimum density requirements) and adequacy of plans for sewer and water systems. Existing communities and areas where economic development is desired are eligible. Counties may also designate growth areas for new residential communities. The priority areas include the state’s 154 municipalities,

land within the Baltimore and Washington Beltways, 31 enterprise zones, and the locally designated growth areas.⁸¹

Beginning October 1, 1998, the state is prohibited from funding “growth-related” projects not located in these priority growth areas. State funding is also restricted for projects in communities without sewer systems and in rural villages. The intention is, of course, to channel state monies into areas that are suited for growth and limit development in rural areas by not extending sewers or making transportation improvements that would spur growth. In this way, conversion of rural and agricultural lands to urban uses is slowed or at least actively discouraged through state policy. Local governments and private interests can, of course, spend their own funds outside of these priority growth areas, but they cannot expect state monies for infrastructure.

Other legislation that is part of the “Smart Growth” package is intended to support locally identified development areas. For example, the program facilitates the use of brownfields (abandoned or underutilized industrial sites that are either polluted or perceived to be polluted) through grants, low-interest loans, and limitations on liability in redeveloping those lands. It provides tax credits to businesses creating jobs in a priority funding area. A “Rural Legacy” program also makes state funds available to enable local governments and land trusts to purchase properties, development rights, or permanent easements in order to protect targeted rural greenbelts. The new initiative supplements the Maryland’s agricultural lands preservation program and open space program.

The 1997 Maryland “Smart Growth” act has attracted a lot of attention in the United States because it is one of the few instances in recent years where a governor has staked his political career on a comprehensive planning approach for his state. Here, it was the governor who pressed the state legislature to enact this package of laws, and it will also be the governor who steers state agencies through the law’s implementation.

[SIDEBAR

Ohio lacks direction on growth and the political will to substantively change inefficient systems. This may exacerbate the decline of towns and urban centers, the degradation of natural systems, and the conversion of farmland. It may also exacerbate traffic congestion and other transportation problems, the costly remediation of growth-related problems, and generally unsustainable growth. One can say Ohio is thus at a long-term social and economic disadvantage.

—James Q. Duane
Executive Director
Ohio-Kentucky-Indiana
Council of Governments

SIDEBAR END]

Transferability to Ohio

Each of these programs has different implications in terms of transferability to and utility for Ohio.

As noted, the Oregon program involves a strong centralized role for the state, both in terms of establishing state goals for land-use planning and ensuring, through the certification of local plans and regulations, compliance with state goals and rules. There are strong state goals in terms of urbanization and compact development, diverse and affordable housing, and farmland preservation, among others.

In Washington, the state role is more indirect; there is no formal approval by the state of local plans. Disputes over whether a local government has complied with statutes are appealed to a growth management hearing board for resolution on a case-by-case basis. The state's planning goals were not developed independently by a commission, as in Oregon, but instead are incorporated directly into the legislation setting up the state's growth management program. Still, the state legislation speaks to many of the same goals and values that the Oregon program addresses.

In contrast to the Oregon and Washington programs, the Tennessee approach eschews statewide goal setting but has some transferability for Ohio in that it manages to blend planning and development issues with annexation, an ongoing controversial topic among Ohio local governments. In Tennessee, the county growth plan requirement provides a framework in which both development and annexation questions can be resolved ahead of actual annexation proposals. It also makes clear that, in the context of the state, urban development is to be supported by urban services, the preferred provider of which is municipal governments.

New Jersey attempts to orchestrate state development patterns through written and mapped policies, not regulation and administrative oversight concerning local planning decisions. The state development and redevelopment plan is implemented through direct action by state agencies through administrative practices, rulemaking, state expenditures, and, indirectly, through the voluntary cross-acceptance process that involves bargaining between the state and its local governments over the contents of local plans. The New Jersey effort is notable for its attempt to formulate a set of cross-cutting strategies that address development, redevelopment, conservation, transportation, land use, and public investment in one document about which there was broad statewide debate. The advantage, of course, is that the public can see how the state intends to integrate and coordinate the activities of various state agencies, while involving local governments, to achieve the kind of environment the state's citizens say they want.

The Rhode Island program is not oriented toward encouraging compact development through an urban growth area requirement (the case in Oregon, Washington, and Tennessee) or toward achieving a specific pattern or hierarchy of land use (the case in New Jersey, albeit voluntarily). Here, the state review is aimed at ensuring that: local plans satisfy state statutory standards; written state policies, where they exist, are reflected in local plans; and plans account for potential state infrastructure projects.

In Maryland, local governments are expected to incorporate a series of state "visions" into their plans and to designate the "priority funding areas" where state spending on projects that induce growth will be limited. The state is relying on its public investment policies to persuade

local governments and the private sector to implement the state's goals. There is no requirement to designate priority funding areas by counties, but counties that fail to do so then lose out on the commitment of state infrastructure to support growth. In addition, the state is attempting to integrate a variety of state programs so that, while rural areas are protected, urban areas are enhanced.

It should be noted that, in all of these states, the governmental structure is somewhat simpler than Ohio's. This is because none of the states has township forms of government; rather, the chief actors are the state, counties (except in Rhode Island), and municipal corporations.

In large measure, these programs also reflect the influence of an intergovernmental approach. They require various forms of mutual review and adjustment of policies. As urban areas spread out and local government boundaries butt up against each other, there is now a recognition that states and their local governments have, at bottom, a clear commonality of interests in addressing the problems of urban and rural growth and development.

PART V

The framework for a smart growth program for Ohio

What kind of Smart Growth program would fit Ohio? What needs would it fulfill or benefits would it provide? What would its chief components be? Clearly, there are conditions, unique characteristics, and political traditions in the state that any type of reform effort will have to address, including:

- **Modest state growth pressure.** Even though the state is growing, the growth pressures are not intense. Of all of the municipalities in the state that have experienced growth, only one, the City of Hudson in Summit County, has adopted a formal growth management program, fiercely opposed by home building and development interests.⁸² Moreover, in contrast to states like Washington and Oregon, Ohio has not developed the same degree of heightened and well-organized political awareness of the need to protect and conserve natural resources.

- **Priority on economic development.** For the past several decades, the priority of the state has clearly been economic development. In its staffing and outreach to local governments, for example, the Department of Development has stressed training in community and economic development and application of the state's various economic development statutes and programs. There is little emphasis on formal local comprehensive planning and limited technical assistance, save for the use of the land capability analysis mapping programs in the Ohio Department of Natural Resources. Still, as the discussion of state programs above shows, the state is clearly affecting development through numerous venues.

- **Farmland preservation as a bellwether issue.** The creation of the office of farmland preservation may be a bellwether of a shift in attitude in the state. The analysis above underscores that farmland loss is real. A report on the state of Ohio's environment by the Ohio Environmental Protection Agency, citing an ODNR assessment of trends facing the state by the year 2010, confirms this. "As urbanization continues," it states, "more agricultural land will be removed from production and converted to residential areas. Conversion of farmland from

agricultural to residential use is most likely in metropolitan counties. Prime farmland, once converted to urban use, will never again be available for agriculture.”⁸³

• **No formal integration of strategies across agencies.** In reviewing the types of programs and plans that the state either administers or adopts, it is striking that the state of Ohio’s approach has been to stress vertical functional responsibilities by state departments or commissions with minimal formal horizontal integration among agency efforts or some type of unifying vision for the state. Not surprisingly, each state agency “sticks to its knitting” (the office of farmland preservation’s charge to devise a farmland protection plan is a new wrinkle for Ohio). For example, the *Access Ohio* transportation plan, discussed above, offers scant treatment of land-use or environmental issues and none on farmland loss, although it does mention economic development. The 1997 report from OEPA containing recommendations on reducing environmental risk in Ohio doesn’t discuss the impact of its recommendations on affordable housing and economic development; it does, however, question the appropriateness of continuing to try to solve problems of traffic congestion by continuing to build highways, preferring the formulation of an environmentally sustainable transportation system. It also acknowledges the “high implementation difficulty” in ODOT’s changing its approach—substituting traffic management techniques and technologies, with a smaller net environmental impact—because of “bureaucratic inertia and deeply entrenched economic and political interests.”⁸⁴

• **Home rule.** A further political tradition, of course, is home rule for municipalities (counties and townships do not have home rule powers). An original intent of home rule was to confer on municipalities the ability to govern and organize themselves as they saw fit without having to continually return to the state legislature with hat-in-hand requests for specific and minuscule authorizations. This was particularly important at the turn of the century when the home rule amendment to the Ohio constitution was enacted and when the legislature was dominated by less sympathetic rural, rather than urban, interests.⁸⁵

[SIDEBAR--TEXT BOX

Home rule is a powerful legal and cultural tradition in Ohio and other midwestern states, but one unfortunate side effect is the absence of meaningful coordination or even communication on regional, multi-county or statewide development and land-use patterns. Our state pattern is really just the sum of local actions, with a result where the total may be less than the sum of the parts.

--Lawrence W. Libby
Professor and C. William Swank
Chair in Rural-Urban Policy
Department of Agricultural
The Ohio State University

END SIDEBAR]

To some degree, that purpose—to provide flexibility to cities and villages in self-governance and to allow municipalities to perform their own internal housekeeping without state involvement or permission—has taken a back seat to a prevalent “don’t tread on me” attitude when it comes to formulating new programs that would require cooperative action among counties, townships, and municipalities along with the state itself. Even for such a simple matter as the enforcement of the uniform statewide building code that is based on a national model—certainly a sensible idea—home rule can mean that any municipality can supersede such a uniform code by enacting stiffer requirements for its jurisdiction than would apply to building construction in unincorporated areas, so that there could conceivably be *one* building code for areas outside municipal corporations and *multiple* building codes for Ohio’s cities and villages.⁸⁶

• **No strong organization infrastructure.** The kinds of statewide planning and land-use control programs that Oregon, Washington, and Rhode Island have enacted, which involve the state in reviewing and certifying local plans and generally scrutinizing local development decisions, would run afoul of the political tradition of municipal home rule. Counties and townships, which do not have constitutional home rule authority, might see such programs simply as state interference with the operation of local self-government. As a practical matter, Ohio has no strong organizational infrastructure that would permit the administration of such programs. Furthermore, it is highly unlikely to create one.

Criteria for a Smart Growth Agenda

Given these considerations, a Smart Growth Agenda for Ohio would involve a program or statutes that meet the following criteria. The actions in the agenda must together:

- not dramatically expand existing state agencies;
- provide for integration among state programs with respect to their effects on development, redevelopment, and resource conservation;
- create or support a continuing constituency for cooperative planning efforts; and
- be primarily incentive-based, rather than regulatory.

Contents of a Smart Growth Agenda

Given these criteria, a Smart Growth agenda for Ohio would have at least the following three components:

(1) **The creation of a high-level planning organization in state government that allows the identification and accommodation of various interests in Ohio.** Currently, there is no single entity that can realistically fulfill that function. The existing line departments have the drawback of having functional missions that could overwhelm or derail any long-range policy development responsibility. While the ODOD certainly has ample authority, its orientation is still economic development. By contrast, ODNR and OEPA deal primarily with conservation, recreation, and regulatory issues, but do not have clear statutory authority.

There are at least two approaches that can be used: a state planning commission or a cabinet coordinating committee that works directly for the governor.⁸⁷

A **state planning commission** is an independent body that develops state goals, plans, and

broad-based support for planning, and advises the governor, state agencies, and the legislature. It may be composed of members of the governor's cabinet, representatives from various governmental organizations (like the state municipal league, township trustees associations, and county commissioners groups), and lay citizens. Sometimes specific nongovernmental organizations, like those for environmentalists and home builders, are also represented.

The concept of a state planning commission, an appointed advisory body responsible for all state planning, dates back to the 1930s, when many states established them in response to the federal-level National Planning Board which urged governors to create and staff such boards.⁸⁸ The early planning boards, in states like Maryland and Pennsylvania, focused on rural and resource-related problems, reflecting state planning's conservation lineage.

A number of states still have state planning commissions, as discussed above. Maryland, for example, recast its state planning commission in 1992 as the "Economic Growth, Resource Protection, and Planning Commission," and gave it a number of new duties, including the preparation of an annual report to the governor and general assembly on the achievement of state planning goals.⁸⁹ New Jersey's State Planning Commission is responsible for overseeing the preparation of the state development and redevelopment plan.⁹⁰ Oregon's Land Conservation and Development Commission oversees the state-mandated local land-use planning program, adopts statewide planning goals, and reviews local comprehensive plans for compliance with those goals.⁹¹

Where a state (like Ohio) does not have a strong tradition of statewide planning and requires an independent body to initiate and gain support for a new program, a state planning commission is a helpful mechanism. Moreover, because the commission will continue through different administrations, it can establish a presence and continuity for planning in the state. The disadvantage, of course, is that if a governor decides to ignore the state planning commission or if the state planning commission's advice isn't particularly useful (or is threatening) to the governor, the commission will rapidly become a vestigial organ of state government.

A **cabinet coordinating committee** pulls together key departments whose activities have an impact on planning and land use, enabling a governor to speak with a single voice on critical growth, development, and conservation issues in the state. A secondary purpose of the committee is to resolve disputes among state departments on the siting of state and regional public facilities.

Under the Delaware state planning act, for example, the governor has created such a council, composed of departments of transportation, agriculture, economic development, budget, natural resources, and environmental control in cabinet committee on state planning issues.⁹² It has a small staff that aids it in its work.

A major disadvantage of such a committee is the omission of the general public and specific interest groups from the state planning process. In addition, the legislature, which would presumably have a say in who is appointed to the state planning commission described above, would have virtually no input as to who sits on the cabinet coordinating committee. Another disadvantage is that a committee would probably keep a great deal of the functional focus of the individual departments that had representation on the committee and would therefore be less likely to spend time developing broad-based support from the public.

Both a state planning commission and cabinet coordinating committee would require new legislation, although it is possible that a cabinet coordinating committee could be established through an executive order, although this is less permanent and therefore less desirable.⁹³ The ODOD or the office of the governor could provide staff support for either body.⁹⁴ Alternatively, in the case of the state planning commission, it could have its own small staff.

(2) **The drafting of a cross-cutting development, redevelopment, and resource conservation goals document for the state.**⁹⁵ As noted above, it is what is now missing for the state. Such a document would provide goals and policies that will articulate a unifying vision for Ohio—a statement of what the state wishes to become in the next 20 years. The goals document is intended to be a direction-setting device, developed out of broad citizen participation,⁹⁶ rather than a form of regulation or state mandate.

Such a document is intended to coordinate policy among all levels of government in such areas as economic development, land use, transportation, health, education, public safety, telecommunications, water resources, and intergovernmental relations. Here, the purpose is to infuse plans and actions of various governmental units and levels with policies that are consistent with those the state desires, with the hope that the state's goals would be, in part, implemented through local action. The goals document can be used, for example, to direct state capital budgeting and location decisions, modify administrative rules, and evaluate or initiate new legislative proposals (e.g., such as funding a dedicated source for public transit in Ohio or for state programs to acquire open space or development rights for agricultural land).

The document would either be developed by a new state planning commission or cabinet coordinating committee and formally adopted, presumably by action of the governor and General Assembly.

As noted above, a number of states have documents like this in various forms: Rhode Island with its *State Guide Plan*, New Jersey with its *State Development and Redevelopment Plan*, Oregon with the 19 state goals and implementing guidelines developed by the Land Conservation and Development Commission, and Maryland with its seven “visions” (among them the protection and enhancement of the Chesapeake Bay).⁹⁷

The advantage of such a document is that it could build consensus about where the state is going and whether the individual approaches state agencies as well as other governmental units are taking will get the state there. The disadvantage is the propensity for such a document to become a mind-numbing abstraction or weighed down with specific conditions or reservations that make the achievement of its direction unlikely. On the other hand, it could be so detailed—like an administrative rule—that it would threaten potential users and supporters.

To avoid such detail, this working paper **strongly discourages the development of a map as part of the goals document** (in contrast, for example, to the New Jersey's state development and redevelopment plan) that would describe the effect of the document's strategies to different areas of Ohio. A state goals document containing a map is most difficult to achieve, particularly in a large state with major urban concentrations, because of the amount of information that must be collected, the many actors involved, the individualized determinations on delineation of the state's policies to specific areas, and the sometimes threatening perceptions of line drawing that specifies areas for different purposes or scales of development or direction of growth.

What kind of goals could conceivably be incorporated? The state has in fact begun the process by recognizing the importance of the protection of farmland. That is one prong of a strategy dealing with resource conservation, an approach that would also address other environmentally sensitive areas. But as contemplated here the goals document would also extend to state policies on developed areas in order to ensure state reinvestment in mature communities, commitment of state funds for adequate maintenance of existing infrastructure, initiation of new programs, and an evaluation of state agency practices that affect developed, as opposed to developing or undeveloped, areas. Solely emphasizing farmland may result in viewing development patterns from the outside in, rather from the inside out. State policy-making and agency practices need the benefits of both perspectives.

(3) Development of an incentive-based state investment program that targets state growth-related expenditures to locally designated compact growth areas. Clearly, the state's physical structure has been changing dramatically over the past three decades, as the analysis above demonstrates. Urbanized areas are spreading out, with higher consumption of land by residences and commercial and industrial uses. Farmlands are being lost to development. According to OEPA, this development pattern also poses "significant environmental degradation" to wetlands.⁹⁸

The question is how to respond to these changes in a manner that "fits" the state. This working paper advocates using the Maryland Smart Growth initiative as a foundation for development of a statute that would use the state's power to spend on growth-related projects (e.g., highways, sewer and water construction assistance, economic development assistance, and state leases or construction of new office or educational facilities).⁹⁹ Maryland's statute establishes a process that targets expenditures to areas that counties designate for compact urban growth. Encouraging development in these areas will result both in less land consumption and in the establishment of a pattern of development that is supported by urban services, such as centralized water and sewer. If Ohio were to employ this approach, it would need to identify those existing state programs that it considers to be growth related.¹⁰⁰ If it added incentive programs, such as monies for infrastructure, land or development rights acquisition, public transit, or affordable housing, the amounts should be sufficient to cause changes in behavior by local governments as well as the private sector.¹⁰¹

The Maryland statute predesignates certain areas of the state that form the traditional core of urban development there. This includes, for example, all municipalities, including the City of Baltimore, areas inside the Baltimore and Washington beltways, and enterprise zones. A similar statute for Ohio could predesignate the state's central cities and other core municipalities as well as certain existing enterprise zones.

The Maryland legislation, as noted, authorizes counties to designate additional "priority funding areas" that meet minimum criteria contained in the statute. Priority funding areas designated by counties must be based on the capacity of land areas for development and the amount of land area that will be necessary to satisfy demand for development.¹⁰² Once this analysis is completed, counties may then designate areas as priority funding areas if they meet specified requirements for type of land use (e.g., industrial), water and sewer services, and residential density.¹⁰³

A statute for Ohio would need to define similar criteria in order to target expenditures. These criteria would be based on an analysis of characteristics of desirable development patterns in the state and would incorporate the state goals. The statute could also provide for multi-county designations of compact growth areas, deriving from the same philosophy that supports multi-county solid waste districts in Ohio.

Such a statute would need to provide procedural options that a county could use in reaching agreement on which areas to designate. For example, a special committee, appointed by the board of county commissioners, could be established. Alternately, an existing county or regional planning commission or council of governments could be the organization charged with identifying and recommending candidates for designation to the county commissioners. If such an organization was not charged with overseeing the designation process, then it could instead provide technical assistance to local governments within the county in meeting the requirements of the act. Some state funding to help support the initial designation process may also be desirable.

Finally, a state department should be placed in charge of the program. In Maryland that department is the long-established and well-respected state office of planning. Such an agency would need to have staff capacity to provide technical assistance to local governments, including regional planning agencies, and the ability to coordinate with other state agencies, in particular by providing other state agencies with precise maps of designated priority funding areas based on criteria in the legislation. A review process would need to be established within state government to ensure that state funding, including state funding that is used to match federal and other monies, for projects was consistent with the statute. To that end, the governor may need to issue executive orders to more fully implement the law—to give state departments a prodding.¹⁰⁴ An annual reporting system would of course be necessary to advise the governor, the legislature, and the public on how well the new program is working.

The advantage of this approach, of course, is that it is voluntary. Under the Maryland program, nothing obligates a county to designate such areas, nor does the program restrict use of county or other local government funds and private-sector development. As a Maryland publication points out, county-designated priority funding areas “are simply areas the county wants to be eligible for State funded projects,” in part “to make these areas more attractive for residents and potential residents, as well as for private sector development and redevelopment.”¹⁰⁵ The disadvantage is that it may limit state agency action; state agencies would see it as an incursion on their discretionary decision-making power and attempt to devise ways to circumvent it (e.g., characterizing a capacity improvement to a road as being essential to protect public safety, as opposed to permitting additional growth). It may also be viewed by local governments as attaching too many strings to state monies. Alternately, the incentives may be insufficient to attract counties and the local governments within them to participate.

[SIDEBAR

Smart growth and historic preservation

How can a Smart Growth agenda promote the revitalization of downtowns and older neighborhoods? Here's what Constance Beaumont of the National Trust for Historic Preservation

recommends:

- Require that local comprehensive plans address the need to protect historic, scenic, and cultural resources. Ohio planning statutes do not presently address this.
- Develop state transportation policies that give greater emphasis to maintaining the existing infrastructure of older cities and less emphasis on new roads that encourage sprawl. Appoint a state transportation department director who understands the importance of land use and urban design to mobility and community revitalization.
- Evaluate state statutes (i.e., R.C. Chapter 3318) and state school facilities commission rules and guidelines to encourage the rehabilitation of older, but still serviceable, schools in walkable neighborhoods and to discourage “school sprawl.”
- Evaluate existing state tax incentives to ensure they are preserving historic homes as well as rehabilitation or construction of well-designed, new, downtown housing.
- Provide state funding to support local efforts to rehabilitate historic buildings and architecturally distinctive housing stock in core cities and inner-ring suburbs.
- Support downtown revitalization by directing state agencies to locate downtown (and in historic buildings) whenever possible.

Next steps

What are some immediate steps a new governor and the General Assembly could take to put this agenda into effect, to build consensus on the direction to take, before developing legislation? Clearly, the approaches in this paper call for gubernatorial and legislative leadership, not passivity. Here are several implementing actions:

- **A state conference on development, redevelopment, and resource conservation sponsored by the governor and General Assembly.** Such a conference could serve as a means of discussing in more detail the trends identified in this paper and the experience of other states in formulating policies to encourage more compact growth, redirect development patterns to existing urban areas, protect farmland and environmentally sensitive areas, expand public transit, and encourage economic development. One potential outcome would be to generate new ideas for legislation or develop support for ideas that have previously languished. The conference would also provide a springboard for both the state’s chief executive and legislature to initiate the Smart Growth agenda.

- **A state agency working group, appointed by the governor, to assess the specific impacts of state programs and statutes on development patterns of the state,** including their long-term costs to citizens. Such a working group could identify the particular state investments that would be covered by the incentive-based program described above as well as state-administered programs that affect development patterns. The kind of policy evaluation research carried out by the Cleveland State University Urban Center in gauging the effects of the urban enterprise zone is the general method that is needed, but on a much broader basis. The results of this research would inform the preparation of implementing legislation for the Smart Growth Agenda. The working group could also identify state administrative rules and policies that could be modified without action of the state legislature to achieve Smart Growth objectives. For

example, several reviewers of this working paper felt clearer and more substantive policies were needed to direct local boards of health in regulating septic tanks in developing areas. This would entail a reassessment of Ohio Department of Health rules governing the installation of household sewage disposal systems.¹⁰⁶

• **Provision of technical assistance to counties, municipalities, and townships that voluntarily wish to undertake Smart Growth programs.** This could be in the form of a periodic newsletter, information on the state's web site, and manuals, with model ordinances, resolutions and suggested procedures, that local governments could use. This is a function that the Ohio Department of Development has carried out in the past¹⁰⁷ and is also a responsibility of the office of farmland preservation in the Department of Agriculture. Some of this technical assistance could be undertaken in cooperation with regional and county planning commissions, which are well-suited for this purpose.

• **Reconsideration by the General Assembly of the 1977 report of the Ohio Land Use Review Committee.** Several reviewers of the initial draft of this working paper were puzzled as to why the General Assembly never acted on the still-relevant recommendations of this group, while others pointed to the lack of a coalition of support for them. Still, the state continues to revisit, albeit indirectly, the issues raised by this far-sighted report through the proposals by the Ohio Farmland Preservation Task Force and OEPA's Comparative Risk Project, for example. While thorny and complex, they are issues that simply will not disappear. State legislatures in surrounding states of Kentucky, Michigan, Pennsylvania, and West Virginia have, over the past several years, continued to re-examine and debate the adequacy of their planning enabling legislation.¹⁰⁸ Not only does Ohio need to assess whether its local governments have sufficient tools to undertake planning for the first decade of the 21st century, but also whether the existing system of land-use control at all levels is predictable, efficient, and fair to builders, developers, neighborhood groups, and environmental organizations, as well as the ordinary citizen who needs a zoning permit for a home addition.¹⁰⁹ A new initiative to evaluate the state's planning laws, also headquartered at Cleveland State University's Urban Center through Ohio's cooperative urban university program, may be one resource for the General Assembly in this area.

• **Preparation of draft legislation** to carry out the proposals in this working paper. The legislation should be drafted in the form of an annotated study bill, with the involvement of both the office of the governor and the General Assembly. As this working paper has attempted to do, the study bill could identify options and the supporting commentary could discuss the pros and cons of each option.

Conclusion

This working paper has presented the outlines of a Smart Growth Agenda for Ohio that is intended to respond to trends affecting the state and to mesh with its governmental structure and political traditions. The authors encourage distribution of this paper in order to stimulate debate on its analyses and proposals, and to invite additional details, modifications or alternatives. As the modern experience of state-level planning has confirmed, finding the approach that fits best

is not an easy one. This paper attempts to describe a beginning and a potential new direction.

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² 9 Fla. Admin. Code (1998) §9J-5.003(140).

³Robert W. Burchell, "Economic and Fiscal Costs (and Benefits) of Sprawl," *Urban Lawyer* 29, no. 2 (Spring 1997): 165-170. This article includes an excellent critical summary of the academic literature on sprawl, including a comparison between planned growth and sprawl development regarding public and private capital costs, land consumption, and overall fiscal impact. *Id.*, 170-178. See also Robert H. Freilich and Bruce G. Peshoff, "The Social and Economic Costs of Sprawl," *Urban Lawyer* 29, no. 2 (Spring 1997): 183-198.

⁴*Ibid.*, 170.

⁵Patricia Burgess and Tom Bier, with research assistance from Charles Post and Ivan Maric, *Public Policy and 'Rural Sprawl': Lessons from Northeast Ohio* (Cleveland: Cleveland State University, The Urban Center, Levin College of Urban Affairs, December 1997), 6.

⁶Regarding planning and zoning, municipal governments in Ohio have the choice of following the Revised Code or, if they have adopted a charter that provides for or authorizes alternate requirements and procedures, following those alternate approaches, provided that they do not conflict with applicable general laws of the state.

⁷Ohio Land Use Review Committee, *Report of the Ohio Land Use Review Committee* (Columbus: The Committee, June 1977).

⁸Ohio Farmland Preservation Task Force, *Report* (August 29, 1997), <http://www.state.oh.us/agr/>

⁹An "urbanized area," according to the U.S. Census Bureau, is an area that:

comprises one or more places ("central place") and the adjacent densely settled surrounding territory ("urban fringe") that together have a minimum of 50,000 persons. The urban fringe generally consists of contiguous territory having a density of at least 1,000 persons per square mile. The urban fringe also includes outlying territory of such density if it was connected to the core of the contiguous area by road and is within 1 ½ road miles of that core, or within 5 road miles of the core, but separated by water, or other undevelopable territory. Other territory with a population of fewer than 1,000 people per square mile is included in the urban fringe if it eliminates an enclave or closes an indentation of the urbanized area.

U.S. Bureau of the Census, *Urbanized Areas of the United States and Puerto Rico*, 1990 CPH-S-1-2, Section 2 of 2 (Washington, D.C. U.S. GPO., 1994), A-12. Urbanized areas are not necessarily coterminous with counties or with metropolitan areas. Because this analysis focuses on urbanization and its impacts, the relevant unit was chiefly urbanized areas. However, the analysis also takes into account trends among metropolitan areas, which are based on

internal commuting patterns among counties.

¹⁰*County Business Patterns*, a Census Bureau report, was not published for the year 1960, so 1959 was used instead as the beginning of the analysis period.

¹¹What is probably happening in the Cleveland area is that, as development occurs in townships, the built densities are much lower than what would otherwise be experienced inside municipalities, where a full array of urban services, including sewers, are usually available. A study by Cleveland State University on development trends in Medina County pointed out that, since the 1970s, the average lot size for a new home has remained fairly constant at about 1.86 acres. There is, the study noted, substantial variation in lot size among the cities, villages, and townships, ranging from 10 acres (minimum) in Homer Township to an average of 0.35 acres in Wadsworth City. The study also pointed out that development has been located on soil conditions that may not be suitable for septic systems. Thomas Bier, et al., *Development Trends in Medina County* (Cleveland, Ohio: The Urban Center, Cleveland State University, February 20, 1998), 6, 9, Appendices C and D.

¹²Density can be measured in a variety of ways. For the purposes of this comparative analysis, which is based on census data, density is measured in terms of persons per square mile (which includes both residential and nonresidential land). It can also be measured in terms of dwelling units per gross residential acre (including streets and other public improvements) or in terms of dwelling units per net residential acre (excluding streets and other public improvements).

¹³Some portion of this loss is the result of returning marginal agricultural land to forest, although the loss was unlikely to occur in metropolitan counties. The Ohio Environmental Protection Agency reports that, in 1940, 3.2 million acres of Ohio were forested, while in 1991, 7.86 million acres of forest land were identified in the state. Ohio Comparative Risk Project, Ohio Environmental Protection Agency (OEPA), *Facts and Figures About Ohio's Environment* (Columbus: OEPA, April 1996), 24.

¹⁴Ohio Department of Transportation (ODOT), *Access Ohio: Reaching New Horizons in the 21st Century, Macro Phase* (Columbus: ODOT, October 1993), 45.

¹⁵Cuyahoga County Planning Commission, *Review of Proposed Interstate 90 West (Lorain) Lane Addition and ODOT District 3 Major Investment Study* (Cleveland: The Commission, November 18, 1996), 5.1.

¹⁶Cuyahoga County Planning Commission, *Land Use Impact Analysis for the ODOT District 12 Major Investment Study* (Cleveland: The Commission, April 1998), <http://www.planning.co.cuyahoga.oh.us/i71/histor01.htm>.

¹⁷Burgess and Bier, *op. cit.*, at 13-14.

¹⁸*Ibid.*, 12-13.

¹⁹Ohio Comparative Risk Project, Ohio Environmental Protection Agency (OEPA), *Ohio State of the Environment Report* (Columbus: OEPA, December 1995), 135.

²⁰Portions of the discussion in this section appeared in different form in Chapter 4 of *Ohio Planning and Zoning Law*, 1998 Edition (Eagan, Minn.: West Group, 1998) by Stuart Meck and Kenneth Pearlman and are used by permission of the publisher.

²¹For example, local boards of health, which operate under a grant of power from the state, have authority to formulate and adopt rules regarding household sewage disposal pursuant to RC 3709.21. Such rules can affect the extent to which development is permitted without central sewer, which in turn affects lot size, which in turn affects overall development densities. See also Oh. Admin. Code Ch. 3701-29 (Household Sewage Disposal Systems).

²²RC 901.54.

²³State of Ohio, Office of the Governor, Exec. Order No. 98-03V (1-12-98).

²⁴Telephone interview with Howard Wise, office of the Ohio Lieutenant Governor, August 26, 1998.

²⁵Office of the Governor, George V. Voinovich, Communications Office, "Governor Voinovich Outlines State's New Farmland Protection Strategy (August 12, 1998), www.state.oh.us./agr/GovFmlandRls898.HTML.

²⁶R.C. 929.05.

²⁷A summary of the housing credit program and the qualified allocation plan appears at: <http://www.odod.ohio.gov/ohfa>.

²⁸See summary of the first-time homebuyer program at: <http://www.odod.ohio.gov/ohfa>.

²⁹Urban Center, Levin College of Urban Affairs, Cleveland State University, *Ohio's Enterprise Zone Program: The Next Phase--Entrepreneurial Community-Building, Final Program Evaluation Report* (Cleveland, Ohio: The Center, April 22, 1998), 45-46.

³⁰*Ibid.*, 46.

³¹*Ibid.*

³²The evaluation looked at case studies of five enterprise zones across Ohio. One was in Lake County, just east of Cuyahoga County. The study pointed out that, because of existing development patterns in Greater Cleveland, "it is not uncommon for firms to both expand new and relocate existing businesses across county lines. More often than not, Lake County is the recipient of firms relocating from the the City of Cleveland [and] Cuyahoga County [,] both of which continue to loss [sic] population and jobs at a significant rate. A total of 2,354 actual new jobs were created, and 3,380 existing jobs retained by the zone since its establishment. Twenty-one relocation waiver requests have been made: 13 were approved, 6 rejected, and 2 withdrawn." Urban Center, *Program Evaluation Report*, 32.

³³*Ibid.*, 49-50. To this end, the Cleveland-based First Suburbs Consortium, which includes many of the inner-ring suburbs in Cuyahoga County, is now advocating the restriction of enterprise zones "to mature communities that need development" as part of a broader-based strategy to redirect major investment in fully developed communities. See First Suburbs Consortium "Real Growth for Ohio in the 21st Century: Position Statement" (Cleveland Heights: The Consortium, n.d.).

³⁴R.C. 1525.11

³⁵Oh. Admin. Code §1525-01-07 (describing criteria).

³⁶R.C. 6108.07 (water supply), R.C. 6111.44 (sewerage and sewerage treatment works).

³⁷Ohio Comparative Risk Project, Ohio Environmental Protection Agency (OEPA), *Recommendations to Reduce Environmental Risk in Ohio* (Columbus: OEPA, July 1997), i.

³⁸*Ibid.*, 25.

³⁹Ibid.

⁴⁰Ibid., 60.

⁴¹A summary of ODNR's coastal management program appears at: <http://www.dnr.state.oh.us/odnr/reln/coastal>.

⁴²RC 1521.13; RC 1521.18

⁴³Board of County Commissioners of Clinton County v. Division of Mines and Reclamation, Nos. RC-97-006 to RC-97-008 (Reclamation Commission, 12-18-97), interpreting R.C. 1514.02(A)(9)(b).

⁴⁴Stuart Meck and Kenneth Pearlman, *Ohio Planning and Zoning Law*, 1998 ed. (Eagan, Minn.: West Group, 1998), 651.

⁴⁵The project advisory includes the following review criteria: (1) the immediate impact the project will have on productive agricultural and grazing land related to land acquisition; (2) indirect impact that will result in the loss of productive agricultural and grazing land from development related to the project; and (3) mitigation measures that could be implemented when alternative sites or locations are not feasible. Ohio Public Works Commission, "Farmland Preservation Review," Advisory XII (May 1998).

⁴⁶Ohio Public Works Commission, "Floodplain Management Requirements," Advisory XIII (May 1998).

⁴⁷Ohio Department of Transportation (ODOT), *Access Ohio: Reaching New Horizons in the 21st Century, Macro Phase* (Columbus: ODOT, October 1993); ODOT, *Access Ohio: Reaching New Horizons for the 21st Century, Micro Phase* (Columbus: ODOT, June 1995).

⁴⁸ODOT, *Access Ohio, Macro Phase*, 38. There is always the question of whether facility widening ever solves a congestion problem. Economist Anthony Downs called this conundrum the "triple convergence" phenomenon of equilibrium, which makes traffic congestion a ubiquitous problem that is next to impossible to solve. It means that, as a governmental unit completes a highway capacity project, the new capacity gets swamped in a short period of time because the streams converge: (1) people who traveled at earlier or later periods now use the highway at peak periods; (2) people traveling other modes, such as transit, now find it quicker to drive; and (3) those who found alternative routes earlier will now use the expanded capacity of the highway because it is faster. Anthony Downs, *Stuck in Traffic: Coping with Peak-Hour Traffic Congestion* (Cambridge, Mass.: Brookings Institution and Lincoln Institute of Land Policy, 1992), 27-28. As widening increases capacity, albeit temporarily, and speed therefore increases as well, land is thus opened up for development because it is within convenient driving time of population concentrations and employment centers.

⁴⁹Ibid.

⁵⁰The state department of transportation serves as the MPO for the areas of the state that are not urbanized.

⁵¹Ibid., 43.

⁵²Ibid., Map 19 (Macro-Corridors and Hubs). Some who have traveled the I-71 corridor between Columbus and Cincinnati might persuasively argue that the pattern of urbanization has already begun to set in.

⁵³The system for prioritizing major new highway projects is at: <http://www.dot.state.oh.us/stip/cr/cri.htm>. The system does not presently take into account environmental, land use, or farmland loss factors.

⁵⁴ODOT, *Access Ohio, Micro Phase*, 131-137.

⁵⁵The Oregon planning statutes appear in Ore. Rev. Stat., Ch. 197 (1996); the administrative rules appear in Ore. Admin. Rules, Ch. 660.

⁵⁶The 19 state planning goals appear in Oregon Department of Land Conservation and Development (DLCDC), *Oregon's Statewide Planning Goals* (Salem, Ore.: DLCDC, 1995).

⁵⁷See Ore. Admin. Rule §660-07-035 (March 1991) (Minimum residential density allocation for new construction).

⁵⁸Oregon does permit the establishment of "exception areas" for development concentrations (e.g., rural residential and rural industrial development) in what would otherwise be exclusive agricultural or forest areas under very limited conditions. Ore. Admin. Rule, Div. 4 (March 1991). In addition, in the Portland area, some lands immediately adjacent to urban growth boundary have been designated as "urban reserves" to be considered for future urbanization if and when boundary is extended. Ore. Admin. Rule, Div. 21 ((November 1992).

⁵⁹For a good assessment of the Oregon system, see Robert L. Liberty, "Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States," *Environmental Law Reporter News and Analysis* 22, No. 6 (June 1992): 10367-91. The discussion below is drawn from Mr. Liberty's article. See also *Planning the Oregon Way: A Twenty Year Evaluation*, Carl Abbott, Deborah Howe, and Sy Adler, eds. (Corvallis, Ore.: Oregon State University Press, 1994); and Arthur C. Nelson and Gerrit Knaap, *The Regulated Landscape: Lessons on State Land Use Planning from Oregon* (Cambridge, Mass: Lincoln Institute of Land Policy, 1992).

⁶⁰Nelson and Knaap, *The Regulated Landscape*, at 137.

⁶¹For a discussion of the passage of these acts, see John M. DeGrove with Deborah A. Miness, *The New Frontier for Land Policy: Planning and Growth Management in the States* (Cambridge, Mass.: Lincoln Institute of Land Policy, 1992), Ch. 8.

⁶²The statutes describing the Washington state program appear in Revised Code of Washington, §36.70A.010 et. seq. (1997); administrative rules appear at Wash. Admin. Code, Ch. 365-195.

⁶³Rev. Code of Wash., §36.70A.030(14) (1997).

⁶⁴State of Tennessee, 100th Gen'l Assembly, Senate Bill 3278 (passed 5-1-98, approved 5-19-98), § 3.

⁶⁵*Ibid.*, §5(b)(1), (2).

⁶⁶*Ibid.*, § 5(b)(3), (4).

⁶⁷*Ibid.*, § 6(a), (b).

⁶⁸*Ibid.*, §5(e)(1).

⁶⁹*Ibid.*, § 7(a)(1).

⁷⁰*Ibid.*, §12(c), (d).

⁷¹*Ibid.*, §13(a)(1), (d)(1).

⁷²Ibid., §11.

⁷³The New Jersey State Planning Act appears at N.J. Stat .Ann., §52:18A-196 et seq. (1997).

⁷⁴New Jersey State Planning Commission, *Communities of Place: The New Jersey State Development and Redevelopment Plan* (Trenton: The Commission, June 12, 1992), 3. For a discussion of the adoption of the New Jersey Plan, see Peter A. Buchsbaum, "The New Jersey Experience," in Peter A. Buchsbaum and Larry J. Smith, eds., *State and Regional Comprehensive Planning: Implementing New Methods for Growth Management* (Chicago: American Bar Association Section of Urban, State, and Local Government Law, 1993), 176-90; John Epling, "The New Jersey State Planning Process: An Experiment in Intergovernmental Negotiations," in Jay M. Stein, ed., *Growth Management: The Planning Challenge of the 1990's* (Newbury Park, Calif.: Sage, 1993), 96-112.

⁷⁵Authority for cross acceptance appears in N.J .Stat. Ann. §§52:18A-202 to 202.1 (1997 Supp.) The cross-acceptance rules appear in N.J .Admin. Code §17:32, Subchapters 3, 4, and 5.

⁷⁶New Jersey State Planning Commission, *The New Jersey State Development and Redevelopment Plan: Reexamination Report and Preliminary Plan* (Trenton, N.J.: The Commission, June 25, 1997), 44-58.

⁷⁷See R.I. Gen Laws, tit. 45, ch. 22.2 (R.I. Comprehensive Planning and Land Use Regulation Act) (1997).

⁷⁸R.I. Gen Laws, tit. 45, 22.3 (State Comprehensive Plan Appeals Board).

⁷⁹The 1992 Act, HB 1195, appears at 1992 Maryland Laws ch. 437.

⁸⁰The "Smart Growth" legislation is S.B. 389 (1997 Regular Session).

⁸¹Bill Lambrecht, "Maryland's a Contender," *Planning* 63, No. 11 (November 1997): 12.

⁸²The City of Hudson has enacted and successfully defended in federal court a growth management system, the first in Ohio. See *Schenck v. City of Hudson*, 114 F.3d 590 (6th Cir., Ohio, 1997), reversing and remanding 937 F. Supp. 679 (N.D. Ohio 1996), on remand, 997 F. Supp. 902 (1998)

⁸³Ohio Comparative Risk Project, *Ohio State of the Environment Report*, 135.

⁸⁴Ohio Comparative Risk Project, *Recommendations to Reduce Environmental Risk in Ohio*, 25.

⁸⁵The municipal home rule provisions to the Ohio constitution were adopted in 1912. See generally Hoyt Landon Warner, *Progressivism in Ohio, 1897-1917* (Columbus: The Ohio State University Press for the Ohio Historical Society, 1964); George D. Vaubel, *Municipal Home Rule in Ohio* (Buffalo, N.Y.: W. S. Hein, 1978) (reprint of series that appeared in the Ohio Northern University Law Review)

⁸⁶*City of Middleburg Heights v Board of Bldg. Stds.*, 65 Ohio St. 3d 510, 604 N.E. 2d 66 (1992) (municipality may adopt building code standards that are more stringent than, but do not conflict with, Ohio Basic Building Code).

⁸⁷Model statutes for these two entities appear in American Planning Association, *Growing SmartSM Legislative Guidebook: Model Statutes for Planning and the Management of Change, Phase I Interim Edition* (Chicago: APA, December 1996), 4-18 to 4-21.

⁸⁸Harold F. Wise, *History of State Planning--An Interpretive Commentary* (Washington, D.C.: Council of State

Planning Agencies, 1977), 11.

⁸⁹Md. Code Ann., State Finance and Procurement, §§5-701 to 5-708 (1995). See also Pa. Stat. Ann. §§1049.2 to 1049.3 (1995) (establishment and powers and duties of state planning board).

⁹⁰N.J.S.A. §52:18A-196 *et seq.* (1997 Supp).

⁹¹Ore. Rev. Stat. §197.303 *et seq.*, esp. §197.040 (1997).

⁹²Del. Code Ann, Tit. 29, §9101 (Cabinet Committee on State Planning Issues) (1995).

⁹³The coordinating committee proposed by Governor George V. Voinovich in a press release on the forthcoming state farmland protection strategy, described above, could form the basis for a cabinet coordinating committee. However, this working paper favors a permanent body that is established by means that are more formal than an executive order and that has a charge that is broader than integration of farmland protection in state agency activities.

⁹⁴One reviewer of a draft of this working paper suggested the creation of an office of planning coordination, reporting to the Lieutenant Governor. Certainly this is an option as well, but is important that such an office operate with the direct authority of the governor.

⁹⁵See American Planning Association, *Growing SmartSM Legislative Guidebook*, Section 4-203.

⁹⁶Procedures for citizen participation have not been described in this working paper.

⁹⁷For examples of state goals in state plans, see American Planning Association, *Growing SmartSM Legislative Guidebook*, 4-105 to 4-114. Other states with formal goals that are cited in the *Guidebook* include Connecticut, Florida, Georgia, Hawaii, Vermont, and Washington.

⁹⁸Ohio Comparative Risk Project, *Ohio State of the Environment Report*, 138

⁹⁹The Maryland legislation contains a list of specific state programs that are considered “growth-related.” Md. Code Ann., Art. State Finance and Procurement, §5-7B-01(D) (1997).

¹⁰⁰However, not all programs should be included, and a degree of flexibility is desired. For example, the Maryland program exempts programs that are necessary to protect public health and safety (a state grant to a community that is been flooded and needs immediate assistance) or that involve federal funds that cannot be constrained by state law.

¹⁰¹For an example of a program that provides incentive payments to encourage regional cooperation by local governments, see the Virginia Regional Competitiveness Act, Code of Virginia §15.2-1308 *et seq.* (1998).

¹⁰²Md. Code Ann., §5-7B-03(G).

¹⁰³The following areas are eligible for county designation under the Maryland statute: (1) areas with industrial zoning (areas with new industrial zoning after January 1, 1997, must be in a county-designated growth area and be served by a sewer system); (2) areas where the principal uses are for employment and which are served by, or are planned for, sewer services (areas zoned after January 1, 1997 must be in a county-designated growth area); (3) existing communities (prior to January 1, 1997) which are served by a sewer or water system and which have an average density of two or more units per acre; (3) “rural villages” designated in a county comprehensive plan as of

July 1, 1998; and (4) other areas within county-designated growth areas that reflect a long-term policy for promoting an orderly expansion of growth and an efficient use of land and public services, are planned to be served by water and sewer services, and have a permitted average density of 3.5 or more units per acre for new residential development. Ibid., §5-7B-03.

¹⁰⁴See Parris N. Glendening, Governor, State of Maryland, Executive Order 01.01.1998.04, “Smart Growth and Neighborhood Conservation Policy” (January 23,1998).

¹⁰⁵Maryland Office of Planning, “Smart Growth Fact Sheet; Smart Growth Areas Act: An Overview” (Baltimore: The Office, n.d.), 2.

¹⁰⁶See Oh. Admin. Code, Ch. 3701-29 (Household Sewage Disposal Systems).

¹⁰⁷For example, the Ohio Department of Development has published model zoning and subdivisions regulations that are used by local governments. See Ohio Department of Development, *A Model Zoning Code*, Terry Jacobs, editor (Columbus: The Department,1989); and Ohio Department of Development, Planning Division, *Model Subdivision Regulations* (Columbus: The Department, 1971).

¹⁰⁸See generally Sarah Bohlen, Mary Beth Maguire, and Stuart Meck, “Getting Started: Initiating the Process of State Planning Law Reform,” in *Modernizing State Planning Statutes: The Growing Smartsm Working Papers, Vol. 1*, Planning Advisory Service Report Nos. 461/462 (Chicago: American Planning Association, March 1996), 171-183 (discussion of initiatives in Pennsylvania, Michigan, and West Virginia). Ohio could also do well to examine Kentucky’s planning legislation, which is among the clearest and well-drafted in the U.S.

¹⁰⁹One question such a re-examination should consider is the degree to which land-use regulation by local governments interferes with the ability of the private sector to construct or rehabilitate affordable housing. This is an issue that the 1977 Land Use Review Committee never confronted squarely.