

**Smart Growth: A Tale of Two States
New Jersey & Maryland**

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Introduction

Sprawl has been the prevailing growth pattern in metropolitan areas in the United States for much of the past century. It is not new. Sprawl accelerated and became more ubiquitous in the last quarter of the 20th century. Its manifestations may today seem more obvious to urban, suburban and rural dwellers alike. This growth pattern results in pushing population, jobs and housing into the suburbs as they extend out from a central core, so that today over 60% of Americans live in these suburbs. It is expected that if current trends continue, as much as 80% of the additional growth will likely go there in the foreseeable future. (Bullard, R.D., et al., eds.: 2000:1)

What is sprawl? Sprawl means different things to different people. To some it is the honest expression of who we are—“fractured, free and consumptive.” To others it seems more like a virus that infects the land and culture. (Calthorpe, P., Fulton, W.: 2000:2) For still others, sprawl is viewed as random, either unplanned or misplanned growth best characterized by inadequate accessibility to essential land uses such as housing, jobs and public services like schools, hospitals and mass transit. The physical manifestations of this pattern are generally agreed upon—the highway strips, massive malls, single-use subdivisions, and heavy reliance, if not complete dependence on the automobile.

Why sprawl? It is neither inevitable nor historical accident, but rather the result of a confluence of powerful social forces. Yet there now appears to be an opportunity to do something different—a “transition to a new paradigm of growth.” Some suggest that “Sprawl’s tendency to fracture local communities, empty our cities, and consume the natural and agrarian landscape is coming to an end.” (Calthorpe, R., Fulton, W.: 2000: 12) The term that has emerged to capture this reversing trend is “smart growth.”

Yet any directional change in the conventional development pattern must overcome significant impediments. The amount and quality of growth on the suburban-rural fringe will need to be managed and a portion of that growth will have to be redirected in the form of reinvestment in older suburban and central city areas. The policies applied to this yin and yang often become muddled once immersed in the melange of metropolitan politics.

Long-term residents living on the fringe are often torn between two camps—those who deplore changing the character of those communities and the others who view it as an economic opportunity. Newcomers to these once rural areas are on a quest to attain the best of both rural and urban living. Only rarely do they see themselves as the cutting edge of change, a perception they usually save for later arrivals whom they often resist.

For those who would move back to the city or others who want to remain there, staying put in older urban and suburban areas may appear as a kind of heresy to the established American Dream. It raises fundamental issues about economic class, ethnic and racial integration that have proven difficult if not entirely intractable in this primarily market-driven economy.

The difficulties in reversing long-standing trends are obvious—fragmented and overlapping governments; a lack of regional vision; the absence of a sense of place with identity; the arrival of newcomers and with them the emergence of social conflicts; too few planning resources to meet new demands, while too many cling to outdated planning and zoning techniques. (Daniels, T.:1999:45) These obstacles are hardly insurmountable, particularly in light of the contemporary changing balance of social forces, but neither are they so easily overcome.

What of these changing social forces? Changing demographics is an important driver of smart growth. A growing number of baby-boomer empty-nesters and their offspring of young, aspiring professionals, are combining with immigrants from other parts of the world to move into places that earlier generations rejected. The costs of continued sprawl also seem to be rising. For these reasons, a number of central cities and inner ring suburbs seem better positioned than they have been in decades. A new, more convenient development pattern, if one can be delivered and appropriately marketed, may prove economically competitive with the conventions of the past.

What does “smart growth,” mean? It connotes control of outward movement, inner-area revitalization, design innovations, land and natural resource preservation, transportation re-orientation, and an equitable access to more affordable housing. (Porter, D.:1999)

Yet “smart growth” has been characterized as “something less than a bold new horizon.” This dampened description is a function of skepticism surrounding its implementation. In few, if any places, is there coordinated top-down/bottoms-up and outward-in/inward-out method of administering smart growth. “One of the haunting realities of smart growth is that we really don’t know how to grow smartly.” Although there may be a growing desire to have this new development pattern penetrate public policies in a variety of substantive areas, and even an incipient demand for it, at least currently, there is no simple recipe for altering the prevailing course. (Burchell, R.W., et al: 2000:34)

The important role of state governments seems to be clear. The point is that “...the federal government is distant, local government is myopic, and regional government is lacking. In this context, state government is best able to promote regional planning. Whether it is purchasing land for conservation, mandating urban boundaries, or restricting low-density development, state leadership is needed to foster awareness and to sponsor smart growth.” (Duany, A., Plater-Zyberk, E., Speck, J.: 2000: 233)

This paper contrasts just two state cases—New Jersey and Maryland—on the ways that the two states have taken to this notion of smart growth. Although located in proximity on the United States’ east coast, and seemingly interested in similar results, each has gone about smart growth in different ways. Both states call for a “pro-growth strategy” with respect to older urban and suburban areas, while each pursues a more “balanced growth strategy” on the metropolitan fringe. (Daniels,T: 1999: 65-86) Valuable lessons may be drawn by this comparison. They may also provide a test for the viability of the concept of smart growth itself.

A Brief History to Set the Stage

The history of American metropolitan growth has been extensively documented and exhaustively debated. The benefits of its results may be argued, but few, if any, will disagree with the powerful force of its logic. The centrifugal pull of American metropolitan development is the outcome of long-standing trends. Those trends accelerated in the post-World War II era and continued through the last quarter of the 20th century. The underlying causes driving these trends are protean. The resulting pattern includes the dispersion of decision-making authority with a unique interplay of private and public forces. (Clawson, M., Hall, P.: 1973:18-31)

What was the logic of this centrifugal pattern that swept people out from the densely populated center to the more sparsely settled periphery? Edward Banfield dubbed it the “logic of metropolitan growth.” The logic was driven by its own imperatives—demographic growth, technologic improvements, and a particular economic distribution of wealth and income. (Banfield, E.: 1972:25-51)

Urban historian Sam Bass Warner added a property rights dimension to this mix. Treating civic values as afterthought to private development, often speculative in nature, Americans seemed to get for what they privately bargained. Warner viewed America’s urban locations as places lacking a “golden past.” Comparing cities to middle-aged neurotics, he viewed American cities as “case histories of the repercussions of basic flaws and conflicts.” (Warner, S.B.:1972:3)

Kenneth T. Jackson listed time-tested themes in his classic work on suburban growth. He identified land developers, cheap lots, inexpensive construction methods, improved transportation technology, abundant energy, government subsidies and racial stress as keys to unlock its understanding. “Pervasive throughout was the notion that Americans have long preferred a detached dwelling to a row house, rural life to city life, and owning to renting.” (Jackson, K.T.:1985:11)

Even more recently, physical planners Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck find the origins of today's suburban reality in yesterday's pastoral dream of the autonomous homestead in the countryside. Yet, the central, but often unstated assumption "of this centrifugal system of growth are the abandonment of existing neighborhoods and the mandatory purchase of one car per adult." (Duany, A., Plater-Zyberk, E., Speck, J.:2000:40)

Echoing Warner, this trio ties the suburban milieu to the supercession of the private over the public. "The American private realm is simply a superior product.... Americans may have the finest private realm in the developed world, but our public realm is brutal." (Duany, A., Plater-Zyberk, E., Speck, J.: 2000:41)

This dynamic interplay over time led another metropolitan observer, David Rusk, to describe what he dubs the "inside game" and "outside game." He points to the racial and economic pulls, then twisted by jurisdictional fragmentation within metropolitan areas to explain contemporary land-use and development patterns. (Rusk, D.: 1998) Rusk points to the particular dilemmas of metropolitan areas of the northeast where jurisdictional fragmentation is particularly problematic.

Yet another political observer focused on similar concerns. Paul Lewis, a political scientist, argues that the more fragmented the metropolitan regime, the more likely it is to spread development over the landscape. The wider this spread the more likely it is to result in disparities in ways that reflect differences in values, priorities, and competencies by local governments. According to Lewis, jurisdictional fragmentation frequently serves as a perceptual filter for residents, their representatives and developers. It organizes interests. It shapes people's thinking about growth and its effects. It leads to decision-making rules, access points and veto opportunities that then influence future growth and development. (Lewis,P.G.: 1996:31-32)

Yet by looking into this rear view mirror, it is too easy to fall for a fatalistic vision. The causes of sprawl—popular attitudes, population pressures, public and private investment patterns, public regulation—are still present. However, the costs of sprawl—urban disinvestment, capital facility costs, farmland loss, rising property taxes, social and economic segregation, environmental degradation and traffic congestion, seem today to tipping a balance in another direction. (Nelson, A.C., Duncan, J.B.: 1995:1-18) What are the changes leading to such a shift in the historically predominant development pattern? Can the comparison between New Jersey and Maryland provide insight?

The New Jersey Case

A. The New Jersey Context

New Jersey is a relatively small state, 46th in land area, comprised of 7,790 square miles. It is a heavily populated state, with approximately 8.2 million people, making it the most densely populated state in the nation. The State is expected to grow by more than 10% over the next 20 years. (APA:1999: 37-46)

In addition to its high population density, New Jersey experiences an unusually high degree of jurisdictional fragmentation. New Jersey contends with 21 counties, 566 municipalities and over 600 school districts. Its statutory home rule, heavy reliance on local property taxes and weak county government combine to reinforce these fragmented decision-making patterns. Its total lack of unincorporated land combined with its Municipal Land Use Law translate into having its 566 municipal jurisdictions primarily responsible for its land-use decisions.

Moreover, New Jersey has a unique relationship to two major urban centers located just beyond its borders. While Ben Franklin may have been the first to describe New Jersey as a “keg tapped at both ends,” he was certainly not the last. New Jersey provides a convenient corridor connecting two major media markets—New York City and Philadelphia. These two metropolises are major growth generators whose markets nearly touch somewhere in Central Jersey.

B. New Jersey’s Smart Growth—The State Plan

The New Jersey State Legislature enacted the New Jersey State Planning Act (N.J.S.A. 52:18A-196 et seq.) in 1985. The legislation established the State Planning Commission and an Office of State Planning to serve as professional staff to that Commission. The Commission’s legislative charge was to write a statewide comprehensive growth management plan.

At the time, the State legislature was responding to pressures coming from different sources. The precipitating cause, however, was the New Jersey Supreme Court. Interest in state planning was propelled by that Court’s Mt. Laurel decisions. (Southern Burlington County NAACP v. Township of Mount Laurel (1975), Southern Burlington County NAACP v. Township of Mount Laurel (1983), and Hills Development Corporation vs. Bernaards Township Mt. Laurel II (1986)).

The typical pattern of low-density, segregated uses on the urban periphery surrounding an aging deteriorating core was no longer tolerable to the New Jersey Supreme Court. The State could no longer legally rely upon the narrowly defined and less than coordinated decision-making of 21 counties and the then 567 municipalities.

The New Jersey Supreme Court intervened to constrain local land-use discretion, at least with respect to the provision of affordable housing. In that Court's view, too many local governments had used their police powers to zone in exclusionary ways. The Court came to understand that the metropolitan growth pattern was not a naturally occurring outgrowth of private market forces, but rather reflected the results of multiple governments' decision-making in ways that distorted private markets.

The New Jersey Supreme Court reasoned that a State Plan could provide ways to coordinate multiple planning and regulatory efforts to a more equitable, socially satisfying and constitutionally defensible result. In this way, the New Jersey Supreme Court expressed an understanding that regional decision-making might mitigate racial and economic disparities and result in a different arrangement of preference aggregation than that produced by highly fragmented, localized units.

The Court elevated and transformed the role of a State Development Guide Plan, written as a guide to allocate federal funding by the State's Department of Community Affairs. Three years later the State Legislature responded that that document would be superseded by a legislatively-sanctioned 17-member Commission, located in the Department of Treasury. The Commission would include members of the Governor's Cabinet and Policy Office, representatives of county and municipal governments, along with seven public members, including a licensed New Jersey planner. *

The wide-ranging goals to be included in the State Plan were stretched far beyond affordable housing. In addition to the affordable housing goal, the State Plan was required to meet goals affecting urban revitalization, environmental protection, natural resource and cultural heritage preservation, farmland protection, beneficial economic growth, public infrastructure facilities and sound and integrated planning.

The State Plan legislation garnered support from a coalition, in part reacting to the Mt. Laurel decisions and in part reacting to a mid-1980's economic and real estate growth spurt. For different reasons it included local government officials and planners, developers, urban and affordable housing advocates and environmentalists.

* The State Supreme Court Justices relied heavily on a document first designed for another purpose. The State Development Guide Plan had been devised by the Division of State and Regional Planning within the New Jersey Department of Community Affairs. It was intended as a guide to coordinate the distribution of Federal funding. In response to this judicial reliance, then Governor Thomas Kean, no fan of the Mt. Laurel decisions, de-funded the Division. The Kean administration appeared to change its position in supporting the State Planning Act three years later.

After six years to formulate its first State Plan, the State Planning Commission approved the New Jersey State Development and Redevelopment Plan in June 1992. The adopted State Plan drew upon a State Planning tradition that actually spanned nearly three-quarters of a century. But no previous State Plan was as ambitious or as process-oriented as the 1992 version. (Bierbaum, M., Nowicki, L.: 1992)

Perhaps more importantly, Governor Kean, who came to support State Planning in its resurrected form, was already long gone. His successor, James Florio, a Governor of the opposite political party, would not summon his encouragement for the State Plan until a few weeks before he was ready to leave office at the end of his first and only term. By that time, his support seemed little more than hollow gesture.

The Plan's challenge remained -- to create a vision that would absorb an additional million people and nearly an equal number of jobs over a 20-year horizon period. Trend projections were taken as a given. To make the State Plan politically palatable, no loss of growth could be contemplated. It was only to be re-arranged. The initial coalition that supported the legislation at the time of its enactment including the League of Municipalities and the New Jersey Builders' Association, agreed that it was better to plan for growth than to simply let it happen.

While the 1992 State Plan calls for innovative planning practice, its vision hardly seems revolutionary. Through its statewide policies, hierarchy of centers and planning areas, it prefers a development pattern that seeks to encourage future growth in areas that are already developed. Then, to accommodate additional expected growth in less developed areas, it suggests modes reminiscent of more compact, pedestrian-friendly communities of yesteryear. In those places, the State Plan calls to mind traditional towns and villages. The approach expects to rely less on single-use zoning and automobile dependency, and more on mixed-use and multi-modal transportation alternatives.

Although the New Jersey State Plan includes hundreds of statewide policies, its centerpiece is its "Resource Planning and Management Structure." That Structure serves to integrate three critical spatial concepts of the State Plan—Centers, Environs, and Planning Areas. This aspect of the State Plan is responsive to the State Planning Act's provision that directs the State Planning Commission to "identify areas for growth, agriculture, open space conservation, and other appropriate designations." (N.J.S.A. 52:18A-199)

The centers are central places within Planning Areas where growth should be either attracted or contained. The theory is that they provide preferred development opportunities to sprawl. They depend upon the unique characteristics and growth opportunities of each center and the characteristics of the planning area in which they are located. They are classified into five types—urban centers, regional centers, towns, villages and hamlets.

Environs are defined as those areas outside the Community Development Boundaries of centers. These areas generally include the lands between designated Centers in Planning Areas 3, 4, and 5. Unlike Centers and the Planning Areas, Environs are not designated in the State Plan. They are described to provide policy guidance for decisions regarding potential development or conservation. The Environs are the preferred areas for the protection of large contiguous areas, including the preservation of farmland and open space.

The Planning Areas of the Resource Planning and Management Structure of the State Plan are the Metropolitan Planning Area (PA-1), the Suburban Planning Area (PA-2), the Fringe Planning Area (PA-3), the Rural Planning Area (PA-4), and the Environmentally Sensitive Planning Area (PA-5). Each Planning Area has its State Plan prescribed characteristics and objectives.

In addition, the State Legislature prescribed a process, dubbed “cross-acceptance,” by which the State Plan would be developed. (N.J.S.A. 52:18a-202) It is a unique aspect of the New Jersey state planning process. “Cross-acceptance” refers to the process of comparison and negotiation of plans and planning policies among the governmental levels

with the purpose of attaining a high degree of consistency and/or compatibility among municipal, county, and state plans. The 21 counties are required to file a formal report of findings, recommendations and objections concerning the inconsistency between the State’s preliminary plan and county and municipal plans. The final State Plan results from this labor-intensive, public participatory process. Throughout, the emphasis is on trying to build consensus among the three levels of government through discussion and negotiation surrounding these various plans. (N.J.S.A. 52:18a-202)

Furthermore, in an amendment to the State Planning Act, (N.J.S.A. 52:18A-202.1), the State Legislature established a two-step process to examine the economic, environmental, infrastructure, community life and inter-governmental coordination impacts of the State Plan. Once the comparison process with local governments is completed, the State Planning Commission is required to develop an “interim plan,” which then undergoes an impact assessment by a third party. When that report is complete and part of the public record, public hearings are held throughout the State. Comments are then received before the State Plan can be finalized and approved by the State Planning Commission.

C. State Plan Implementation

Perhaps the most critical factor in terms of New Jersey State Plan implementation is to stress that the New Jersey State Planning Act says nothing about implementation. Indeed, the State Plan is by legislative design intended to be an advisory document.

Much of the Commission's energy and therefore also the energy of the Office of State Planning has been directed to and consumed by the development of the first and more recently-the second State Plan through its legislatively prescribed cross-acceptance process. On balance, relatively small attention has been paid throughout to its implementation.

The Office of State Planning for more than a decade was part of the Department of Treasury. It is now an office within the Department of Community Affairs. It is headed by a director who reports to a Cabinet-level Commissioner. The Office currently operates with approximately 30 staff people.

Since the State Planning Commission's adoption of the first State Plan in 1992, some efforts were taken to implement the State Plan. The six State Departments represented on the State Planning Commission were asked to file annual reports with the State Planning Commission on their efforts in implementing the State Plan. They were expected to point to the ways that each is seeking to become more consistent with the State Plan.

Nevertheless, programs within Departments were largely left to their own devices. At least one program within the Department of Environmental Protection and another within the Department of Community Affairs developed point systems to provide weight for projects that demonstrated State Plan consistency. The Department of Transportation took a similar approach. There was only limited effort on the part of the State Planning Commission or the Office of State Planning to review of implementation efforts. Moreover, from all accounts, rarely, if ever, was State Plan weighting sufficient to be outcome determinative with respect to these activities.

With respect to municipalities, the Office of State Planning developed guidance, eventually adopted by the State Planning Commission, for "centers designation." Under this process, municipalities could voluntarily petition the State Planning Commission for "designation" if the municipalities met the "centers criteria" provided in the guidelines. The touted benefits tied to such designation included priority for funding and promises of expedited permit review. Over the past eight years, approximately 70 municipalities have received such designation in addition to nearly another twenty as a result of county plan endorsements in two counties.

This limited commitment to State Plan implementation began to change with the start of Governor Christine Todd Whitman's second term in 1997. In her second inaugural address, Governor Whitman reported directing her Cabinet "to use the State Plan as a fundamental guide in making permit and funding decisions."

To underscore her point, she embarked on a campaign to place an open space bond issue referendum on the ballot and fought for its passage. The passage of this referendum and the legislation that followed established an expanded source of stable funding for open space land acquisition. The Governor set a goal to triple the State's pace for land preservation, calling for 300,000 acres of preserved land by the end of her term and ultimately a million acres preserved before the end of the next decade. (Whitman, C.T.: January 20, 1998:4-5; Also see other remarks, May 5, 1998, December 15, 1998) In the words of David Rusk, this became the Governor's "outside game." (Rusk, D.: 1999)

The Governor launched several initiatives to more effectively implement aspects of the State Plan. She moved the Office of State Planning and State Planning Commission out from under the Treasurer and back into the Department of Community Affairs. The Governor also moved the New Jersey Redevelopment Authority (NJRA) from the State's Commerce Department to the Department of Community Affairs. In this way, she gave Department of Community Affairs Commissioner, Jane Kenny, additional instruments to concentrate on the urban revitalization aspects of State Plan implementation.

To develop an "inside game," she included the adoption of an award-winning revised urban rehabilitation code, the establishment of a faith-based initiative, and the announcement of mortgage-based incentives to employees of New Jersey's colleges and universities located in urban areas.

In addition, upon requests from the Whitman Administration, the State Legislature approved an initial \$3 million appropriation for "Smart Growth Grants," followed by a second annual appropriation for the same amount. The purpose of these grants was to facilitate local government planning in ways compatible with the State Plan. These funds were administered and disbursed by the Department of Community Affairs in response to proposals received from counties and municipalities. The same amount was re-appropriated in the next fiscal year.

To more effectively address the "outside-game," in addition to her land preservation initiative, the Governor promulgated Executive Order No. 109 in January 2000. This Executive Order imposed new conditions and alternative analyses on still pending wastewater management plan approvals. (Executive Order No. 109: January 11, 2000) The following month, the State's revised Coastal Area Facilities Review Act (CAFRA) regulations took effect. These CAFRA II rules were written to implement a legislative enactment made seven years earlier in 1993. The enactment required that future real estate development on New Jersey's coast "shall be coordinated with the State Development and Redevelopment Plan." The adopted rules translated this "coordination"

so that real estate development in the CAFRA region be connected to the State Plan's Planning Area designations with impervious cover limits associated with each of those Areas and Centers.

Several months later, the Department of Environmental Protection released proposed wastewater and septic management rules. Just prior to their release in April 2000, the Governor described the importance of these rules in a talk she entitled "Sewers: The Last Frontier of Smart Growth." She said that passage of the rules would not be easy, but that she was ready to take on the fight. She added that, "As popular as our million-acre land preservation plan has been, it is only half of the equation of smart growth." (Whitman, C.T.: April 27, 2000: 1-3, also remarks on April 18, 2000)

An additional initiative launched in January 1999 was much less visible from outside State government. At least since the final State Plan's adoption in 1992, counties and municipalities had argued for the need to create an analogue to cross-acceptance for state agencies. Previously, the State response was to question why State government should have to "cross-accept" its own plan? Yet good reasons exist for why a more formalized implementation process on the state level is warranted, even in the absence of statutory prescription. Those reasons arise less from legalities than from the characteristics of large organizations.

Implementing the State Plan within and among large organizations is neither simple nor straight-forward. The State Plan was legislatively established as an advisory document without the full force and effect of law. State agencies often act in response to more weighty Federal mandates and state legislative requirements. Atop these mandates, each department has enacted its own set of enforceable rules pursuant to the Administrative Procedures Act. These rules are typically tied to each department's specialized mission. Court decisions and law suit threats also take their toll. Daily pressures, whether legitimate public health and safety concerns, politically generated, or just bureaucratic inertia may displace the best well-laid plans. Yet somewhere in this mix, room had to be made for pressing State Plan priorities.

In recognition of this situation, Department of Community Affairs Commissioner Jane Kenny appointed a State Plan Implementation Liaison to coordinate State Department implementation efforts. The approach began with State department focus groups. These groups were employed to establish a baseline of State Plan awareness and activity. Potential tasks were also identified by these groups. Three ideas quickly emerged: each department needed to devise an internal State Plan marketing and training program to raise department awareness; identify key State Plan-related programs and devise revised guidance and implementation tools to be employed by those programs; and create an inter-departmental forum to engage in problem-solving with respect to cross-cutting issues.

A fourth activity arose in early further discussions. That fourth activity was the establishment of a set of meaningful performance measures to assess progress in terms of State Plan implementation.

Over the past two years, the six State departments represented on the State Planning Commission have developed and deployed their State Plan marketing and training programs. They have also identified necessary changes to make programs more State Plan compatible. They are in the process of developing measures of consistency along with tools to help get there. An inter-department problem-solving forum comprised of team members has been established. In addition, communication across departments has been improved with the introduction of an electronic white board and a means to use geographic information systems across departments. (Bierbaum, M.: 2000: 86-94)

D. Local Land Use Controls and Regional Models

Through the establishment of the cross-acceptance process the State Legislature may have tipped its proverbial hat to state planning while simultaneously showing its distrust for Trenton-hatched initiatives. The State Planning Act was not intended to undermine New Jersey's respect for home rule or municipal responsibility for land-use controls. Nevertheless, the State Planning Act and subsequently the adopted State Plan created an inevitable tension between the State Plan, particularly its centers designations and planning areas, and local land-use controls, especially zoning.

The State's municipalities address their responsibilities largely through zoning ordinances, subdivision controls and site plan reviews. They are encouraged to form planning boards of seven to nine members to develop municipal plans. These boards and their master plans are guided by New Jersey's Municipal Land Use Law which was adopted a decade earlier in 1975. (N.J.S.A. 40:55D-1 et.seq.) The boards are charged with development of a master plan, zoning ordinances, capital improvements program and official map, subdivision controls and site plan reviews.

County planning was limited historically to county facilities planning, traffic impacts on county roads, stormwater effects on county facilities and county park systems. To this list, the State Planning Act simply added the cross-acceptance process, apparently expecting counties to begin to play a leadership role with respect to municipalities and providing some semblance of regional planning. *

* In addition to more traditional municipal and county planning and land-use controls, New Jersey has at least two regional planning models. The two regional planning entities in New Jersey are the Pinelands Commission and the Hackensack-Meadowlands Development Commission (HMDC). These regional entities were exempt by statute from State Plan jurisdiction. However, a memorandum of understanding with the Pinelands Commission was developed and executed with the State Planning Commission shortly after the adoption of the first State Plan in 1992.

E. State Policy & Program Changes

1. Urban Revitalization and Economic Development

The State Plan promotes compact development in existing and new urban and regional centers, towns, villages and hamlets to eliminate further sprawl. In addition, state resources are available for revitalizing older urban areas and inner ring suburbs.

Part of the state's strategy has been to coordinate the actions and resources of agencies with urban programs or programs that impact urban areas: the Department of Community Affairs, Housing Mortgage Finance Agency, New Jersey Redevelopment Authority, Economic Development Authority, Labor, Transportation, Environmental Protection, Education, Health, Human Services and Law and Public Safety. This effort is being advanced both through an Urban Coordinating Council, staffed by the Department of Community Affairs and the State Plan Implementation Teams, also coordinated through that Department.

The Brownfield and Contaminated Site Remediation Act, which was signed into law on January 6, 1998, amends key statutes and adds provisions that make brownfields reuse part of a comprehensive program for urban area development. Liability protection is provided to no-liable developers who remediate property under the oversight of the New Jersey Department of Environmental Protection. In addition, the state offers financial incentives for cleaning up and redevelopment of brownfield sites.

Previously, the Industrial Site Recovery Act (ISRA), adopted in 1993, added flexibility to the earlier adopted site remediation process by allowing recovery standards to vary according to the type of land use. In addition, the act created the Hazardous Discharge Site Remediation Fund, which provides grants and low-interest loans to municipalities and private entities for site investigations and remediation.

Other urban revitalization efforts administered through the State's Department of Community Affairs, its Housing Mortgage Finance Agency, and New Jersey Redevelopment Authority involve programs related to neighborhood preservation, urban homeownership, rehabilitating buildings for mixed-uses, downtown business improvement districts and faith-based community development. In addition, an award-winning rehabilitation subcode has greatly reduced the cost and administrative obstacles to rehabilitating older buildings, thereby facilitating reinvestment in urban areas.

2. Environmental Protection

In the past two years, the Department of Environmental Protection has begun to more aggressively acknowledge the State Plan effort. In 1998, that Department approved its own strategic plan that “more fully supports the objectives of the State Plan.” A key component of the strategic plan is its expressed orientation toward partnerships with local governments to assist those governments in achieving the goals of their plans that are presumably consistent with the State Plan. (NJDEP:1998)

In 1999, the department adopted its revised “anti-sprawl” rule proposal to protect coastal areas from inappropriate development. Under the proposal, coastal zone management rules would be integrated with State Plan Planning Areas and Centers. Coastal communities that plan will be entitled to priority funding for grants and loans. Development that occurs in appropriately designated areas are expected to receive expedited permitting.

The department also developed a “sector-permit” for the CAFRA region. The sector permit allows the Department to certify municipal plans as consistent with the State Plan along with department environmental regulations. Once a municipal plan is certified, the department effectively delegates CAFRA permitting to the municipality. Thus far, one coastal community, Long Branch, has received the sector designation. Others are now moving in similar directions.

Through statewide watershed management, New Jersey is implementing an integrated approach to maintain existing, high quality ground and surface waters, clean polluted waters and enhance water supply protection measures. The issues affecting each of the 20 watershed management areas are being identified and prioritized. Partnerships with municipal, county, state and federal governments, business and industry, environmental groups, and citizens are being established. As this effort progresses, it, too, will need to be reconciled with the State Planning process and will likely become an aspect of the cross-acceptance process in the future.

3. Farmland and Open Space Preservation

The State Plan is expected to serve as a guide for both open space preservation for environmental reasons as well as for the protection of farmland. Both Farmland Preservation Programs, Green Acres, which is an open space land acquisition program within NJDEP, and the Governor’s most recent open space initiative have been joined to try to retain increased amounts of open space. The State Plan is intended to serve as a guide to encourage future development in rural areas in and around centers, while channelling funds to preserve contiguous open spaces.

Currently the state has more than 800,000 acres in farmland, down from 1.8 million acres a half-century ago. Another million or so acres is characterized as open space, often considered by the State Plan to be environmentally sensitive in nature. The preservation of these lands took a leap forward in June 1999 when the Garden State Preservation Trust Act was signed into law. The act implements a constitutional amendment approved by voters in November 1998 that dedicates \$98 million annually from the State sales tax over a 10-year period to repay \$1 billion in bonds issued to purchase one million acres of open space and farmland.

Additional funding for agricultural land preservation comes from the Farmland Preservation Bond Act of 1981, the Open Space Preservation Bond Act of 1989 and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992. In addition, increasingly, counties and municipalities have begun to tax themselves to dedicate funds for open space preservation.

To keep farms in the hands of those who will work them, thereby keeping the land in conformance with local farmland preservation plans, the agriculture committee established the Farm Link program to match potential buyers with potential sellers. Established in 1997, Farm Link enrolled more than 140 participants in its first year. The State Department of Agriculture has also provided Planning Incentive Grants to encourage rural communities to improve planning, and bring about increased alignment with the State Plan.

Also underway in the state is an experimental program in Burlington County testing the transfer of development rights (TDRs). The State's TDR Bank Board presented its first planning assistance grant in October 1998 to Lumberton Township. The Board also proposed new rules to develop procedures for purchasing development potential and for providing loan guarantees. Density transfers also are permitted in the Pinelands. For 19 years, the Pinelands Commission has permitted inter-municipal transfers from conservation areas to growth areas, allowing the state to protect more than 13,000 acres as circumscribed in the conservation area's plan.

To better promote eco-tourism throughout the state, the Department of Environmental Protection is building partnerships with viewing site hosts, municipalities and local businesses to foster a sense of local ownership and to develop related recreational and educational projects at each viewing site. In June 1998, the department published the New Jersey Wildlife Viewing Guide, which showcases 87 sites where visitors can observe the variety of New Jersey wildlife. (APA:1999: 43)

4. Transportation

New Jersey has more miles of highway per square mile than any other state. The New Jersey Department of Transportation recognizes that it can no longer afford, from fiscal, environmental or transportation perspectives to continue to widen lanes and build new highways as the main means of relieving traffic congestion. Increasingly, the Department of Transportation views transportation not only as a way to get people to and from communities, but as a way to support community planning objectives including environmental, housing, urban revitalization and economic development goals.

The Department of Transportation Implementation Team has introduced a “context sensitive design” initiative to make its designers and engineers more sensitive to what occurs just off the road pavement. This Team has also launched a department-wide training program; identified and tracks State Plan “showcase” projects; and has developed a “surplus property” acquisition and disposal policy that is State Plan consistent. In the Fall 2000, an external consultant was enlisted to identify strategic points of intervention to advance State Plan implementation. That consultant’s findings are currently under review.

In July 1997, each county established an interagency transportation steering committee charged with developing a Community Transportation Plan. The plan identifies local strategies for meeting the mobility needs of participants in Work First New Jersey, the state’s welfare reform program. (APA:1999: 44-45)

An innovative state-level partnership which has included the Departments of Human Services, Labor and Transportation, New Jersey Transit and the state Employment and Training Commission—supported the county-level planning processes by providing technical assistance, consulting services and funds. The plans link transportation and economic goals in the State Plan. The Community Transportation Plan is required before a county can receive a variety of federal and state funds. (APA:1999: 44-45)

Among the strategies included in local plans are the expansion of para-transit or dial-a-ride services, additional transit services, and the implementation of feeder services to connect rural and suburban areas to existing transit service. Also, the Department of Transportation increased funding for bicycle and pedestrian projects and made development of an extensive statewide bikeway network a priority. The creation of bike paths—the state has set a goal of adding 2000 miles in the next 12 years—is essential to achieving state open space preservation, transportation and air quality goals. (APA:1999:44-45)

Further reductions in exhaust emissions are expected from efforts to abate traffic congestion. For example, the State’s new “OzonePass” which became available during the summer of 1999 enables employers to offer \$2 round-trip tickets on New Jersey

Transit's system when ozone pollution is at unhealthy levels. By keeping drivers off the road, the OzonePass works to achieve the clean air goal while simultaneously increasing transit ridership. (APA:1999:44-45)

The state has also implemented a number of congestion-relief programs including the E-Z pass. This program is already being used as a lead-in to off-peak pricing. Also, through the Internet the state Department of Transportation offers applications for obtaining matches for car- and vanpools as well as a park-and-ride-locator and a commuting-cost calculator. (APA:1999:44-45)

The State Plan and the Department of Transportation's "New Transportation Vision" both emphasize increased use of public transportation. New Jersey Transit plans an 8.8 mile, 16 station system linking the cities of Newark and Elizabeth, the site of several recent brownfield redevelopments. An extension of Hudson-Bergen Waterfront light rail system also is underway. When complete, the \$2 billion 20.1 mile, 30 station line will carry 94,500 passengers a day and connect to park-and-ride lots, PATH and New Jersey transit commuter trains and ferries. (APA:1999:44-45)

New Jersey Transit is designing a new light-rail system linking Trenton to Camden, which is expected to spur revitalization of old industrial communities along the Delaware Riverfront. The state also has initiated a "transit village" program which pools resources from state funding agencies to promote compact, transit-friendly economic and residential development within walking distance of train stations.

5. Affordable Housing

In addition to the more conventional housing subsidy programs, New Jersey is unique in possessing a Council on Affordable Housing (COAH). The Council is a specialized state agency that was created by the New Jersey Fair Housing Act of 1985. (N.J.S.A. 52:27D-301 et.seq.) The law was enacted in response to anti-exclusionary zoning cases decided by the New Jersey Supreme Court in Mt. Laurel I in 1975 and Mt. Laurel II in 1983 and Mt. Laurel III in 1986. Under these rulings, local governments that enact zoning have an obligation to provide realistic opportunities for low-and moderate-income housing on a regional fair share basis. If local jurisdictions do not do meet this obligation, they fail to meet the state's constitutional requirements and may be subject to suit by developers. As a way to protect themselves from such legal action, municipalities may volunteer for certification by COAH and benefit from the protection its process offers.

Through the COAH process, municipalities may also meet their affordable housing allocation by building new housing or rehabilitating existing units. They may also contribute to the development of affordable housing elsewhere through a process that involves Regional Contribution Agreements (RCA's) with receiving municipalities. A memorandum of understanding was executed between the State Planning Commission

and COAH that influences the location of affordable housing so that it is consistent with the State Plan.

6. Heritage Areas and Cultural Assets

Another goal of the State Plan is preserving historic, cultural and scenic resources. Restoring historic properties is an economic pump-primer despite it being only a small segment of the rehabilitation market. According to a Rutgers University study, for every \$1 million spent on historic rehabilitation, 38.3 jobs are generated as are \$1.3 million in payroll and business earnings and \$202,000 in state taxes. The state's historic properties, valued at \$6 billion, pay \$120 million in annual property taxes. (APA: 1999:41-42)

The New Jersey Historic Trust, which is affiliated with the State of New Jersey and is comprised of a 15-member board of trustees, was established in 1967. Its Historic Preservation Bond Program was established by the Green Acres, Cultural Centers and the Historic Preservation Bond Act in 1987. The program, one of the first of its kind in the nation, has provided nearly \$55 million in matching grants for preservation projects. The Garden State Preservation Trust Act also recognizes the importance of these properties and includes them within its purview. (APA:1999: 41-42)

The Maryland Case

A. The Maryland Context

Maryland is the 42nd largest state in the country with 12,406 square miles of land and surface water. There are approximately 5.1 million Marylanders. The State estimates that of Maryland's approximately 6 million acres, one million are developed and one million are preserved, leaving about 4 million acres in play. There are 190 local governments in the state divided amongst its 23 counties, 10 inter-county agencies, and 157 municipalities. (APA: 1999: 25-36)

The U.S. Bureau of the Census projects that over the next twenty-five years, Maryland will be the 18th most populous state with an estimated 6.2 million people. Nearly 90% of the State's population resides within the Washington-Baltimore consolidated metropolitan statistical area. The four most populated areas in the state are Montgomery County, Prince George's County, Baltimore County and Baltimore City. (APA:1999:25-36)

B. Maryland's Smart Growth Initiative

Since Maryland's "smart growth" program was enacted in 1997, it has attracted national attention. Its impetus came from a gubernatorial response to perceived growth pressures experienced along the Baltimore-Washington corridor as well as environmental concerns related to the Chesapeake Bay. Under leadership provided by Governor Parris Glendening,

the initiative appears to have been carefully planned and executed. It kicked off with more than 400 public meetings throughout the state over just its first few months. The Governor's Office worked closely with Maryland's Planning Office, other State departments, the State Legislature, local jurisdictions on the Smart Growth roll-out. (Frece, J.: Interviews—November 8, 2000; December 14, 2000; Young, R.: Interview—December 14, 2000)

While Maryland's most recent smart growth initiative builds upon earlier efforts, it has acquired a more prominent place under the Glendening administration. During the previous administration, the State amended earlier state planning statutes with passage of the 1992 Maryland Economic Growth, Resource, Protection and Planning Act. The 1992 amendments required cities and counties to adopt comprehensive plans with specified elements. (Noonan, J.: Interview-December 14, 2000)

These comprehensive plans had to incorporate seven "visions" or policy statements including the following: concentrate development in suitable areas; protect environmentally sensitive areas; direct growth in rural areas to existing population centers and protect resources areas; acknowledge the importance of the stewardship of the Chesapeake Bay; conserve resources, including a reduction in resource consumption; encourage economic growth and streamline regulatory mechanisms; and address funding methods to achieve these visions.

In 1997, under Glendening's urging, Maryland enacted its Smart Growth Areas Act aimed at directing new development to "Priority Funding Areas" (PFA's) by limiting state support for growth-related projects and other programs to these areas. To qualify as PFA's, areas must meet state guidelines for intended uses, including minimum density requirements, adequacy of sewer and water systems, and agreement with state plan growth projections.

Eligible areas include the state's 157 municipalities, land within Baltimore's and Washington's outer ring highways or beltways, 31 enterprise zones, and locally designated but State approved growth areas. Counties may designate growth areas for new residential communities provided that the areas meet PFA criteria. Discussions typically ensue among state, county and municipal authorities to identify PFA boundaries.

Since October 1, 1998, the state has prohibited state funding to "growth-related" projects outside PFA's. In addition, state funding for projects in communities without sewer systems and in rural areas is restricted to projects that serve to maintain community

character, and do not increase the area's growth capacity. In this way, state policy discourages conversion of rural lands to urban uses. The expressed intention is to make it less costly to do business within the PFA's, and relatively more costly to develop outside those areas. (Frece, J.: Interviews—November 8, 2000; December 14, 2000)

In 1998, Governor Glendenning promulgated an Executive Order (Ex. Order 01.011.1998.04) to implement the Smart Growth Areas Act. It directed state agencies to give priority to central business districts, downtown core areas, empowerment zones and revitalization areas when funding projects or new facilities within the PFA's. It also directed state agencies to consider whether the proposed action supports existing communities, promotes mass transit use, and whether it reduces or promotes sprawl. Local jurisdictions and private interests may spend their own funds for development outside the PFA's, but a clear message was sent of State unwillingness to underwrite such activities. (Frece, J.: Interviews—November 8, 2000; December 14, 2000)

C. Smart Growth Implementation

Maryland's smart growth initiative does not rely on a grand vision or state plan. Instead, it is based on the Smart Growth Areas Act and an Executive Order. In addition, the Governor, in concert with key state departments, has identified a set of core programs, either pre-existing and re-packaged or recently established, that are attuned to Smart Growth implementation. These programs include the Rural Legacy Program, Brownfields-Voluntary Clean up and Revitalization Incentive Program, Job Creation Tax Credits, Live Near Your Work Program, among others. (Maryland Department of Planning: 1998; Frece, J.: Interviews—November 8, 2000; December 14, 2000)

Evidence of the Governor's leadership was also demonstrated by a number of well-publicized actions including Cabinet-level firings and public facilities siting decisions. He also elevated the State Planning Office to Cabinet-level, now headed by a Cabinet Secretary, who leads 100 staff under her charge. In addition, the Governor meets with the Smart Growth Sub-Cabinet Committee on a regular basis to discuss Smart Growth initiatives, their progress, and the need for additional legislation. (Frece, J.: Interviews—November 8, 2000; December 14, 2000; Tregoning, H.: Interview—December 14, 2000)

Maryland's Smart Growth initiative is guided by a set of easily articulated and well-understood principles that are consistent with "conservative" themes and lead to decision-making criteria. The initiative remains incentive- rather than disincentive- or rule-based. It is State budget-driven, stressing the importance of government cost-efficiencies. It is inclusive in that it asks for local government input and participation. It sets as a goal the protection and enhancement of existing communities and natural resources. It builds upon a consensus recognizing the importance of Chesapeake Bay. (Frece, J.: Interview – November 8, 2000; December 14, 2000; Guinane, M.: Interview—December 14, 2000)

But its key feature is the PFA's. They are defined by three easily understood criteria: residential density, water and sewer service areas, and consistency with State developed, but locally negotiated population and employment growth projections. The PFA's are linked to state program decision rules. If decisions are made outside those rules, they must meet "exceptions" criteria after review by a State Inter-departmental Coordinating

Committee. Even if a project is approved as an exception, conditions may be imposed to mitigate growth generating aspects of the project. If private developers and/or local jurisdictions wish to develop outside PFA boundaries, they are free to do so, but they will be unable to rely on state assistance.

The role of the State Planning Office is relatively well-defined. It works with counties and municipalities in identifying and delineating PFA's. It provides technical assistance, produces studies and publications, and promotes smart growth generally. It provides State agencies with maps with the PFA's delineated along with the technical assistance for interpreting them. It also staffs a State Growth Commission, although that Commission plays a limited, advisory role, more a remnant of earlier legislation, and only making recommendations for growth management-related research. (Noonan, J.: Interview—December 14, 2000)

D. Local Land-Use Controls and Regional Models

While adherence to home rule is part of Maryland's political landscape, Maryland's tradition of strong county government exercising land-use controls along with significant amounts of unincorporated land provide a valuable opportunity for regional planning and land-use regulations. This situation of land use controls at the county rather than the municipal level explains why resistance to Maryland's state planning has been more evident in coming from Maryland's counties with the exception of Baltimore County than from its incorporated municipalities. Its 157 incorporated municipalities, instead, perceive real benefits from the PFA designations and efforts to channel growth into traditional downtowns and town centers.

Under the earlier 1992 State Planning Act, Maryland's counties and cities are required to complete and implement local comprehensive plans. Monitoring yearly progress of these plans became the responsibility of the State Economic Growth, Resource Protection and Planning Commission. That Commission was also established under the 1992 Act. It is staffed by Maryland's Office of State Planning. The Commission is expected to make recommendations for changes to the Governor and the State Legislature. (Frece, J.: Interviews—November 8, 2000; December 14, 2000; Noonan, J.: Interview—December 14, 2000)

Other comprehensive plan requirements include a land-use element, a transportation element, a community facilities element, a mineral resources element, a sensitive areas element, including streams and buffers, 100 year-floodplains, threatened and endangered

species habitat, and steep slopes, and an implementation element that includes provisions to encourage regulatory streamlining , innovation and flexibility.

While the state recommends that local comprehensive plans address inter-jurisdictional coordination, such an element is not required. There are several regional planning authorities within the state. They play only limited roles. These authorities included the Baltimore Metropolitan Council, which addresses issues affecting the City of Baltimore, Howard, Anne Arundel, Harford and Carroll Counties. In addition, something akin to smart growth planning had been taking place previously in Baltimore City and Montgomery Counties.

E. State Policy/Program Changes

1. Urban Revitalization and Economic Development

To promote economic development yet curb undesirable and inefficient growth, Maryland’s 1992 planning act charged local governments’ comprehensive plans to create and implement three visions: concentrate development in suitable areas; direct growth in rural areas to existing population centers; and encourage economic growth and streamlined regulation mechanisms. The state encourages communities to facilitate revitalization of distressed areas and to direct economic growth towards infill, mixed-use and transit-oriented development instead of car-oriented strips.

Other recommended strategies include using traffic planning and parking management to enhance pedestrian facilities within traditional business districts, supporting resource-dependent economies, such as agriculture, nursery, and lumber products; and encouraging “home-based” businesses like catalogue sales and telecommuting.

As of 1998, the state prohibited funding for several growth-related projects outside of these designated areas, including five highway by-pass projects and a 550-acre surplus State Hospital tract that had been slated for State-supported development. Also, the law has prompted the relocation of two new district courthouses and a new county office building from the outskirts of town to a downtown area. (APA:1999: 25-36)

The state also drafted and adopted revised “smart code” building codes and infill regulations designed to promote redevelopment, infill and the re-use and preservation of older buildings in urban areas. This rehabilitation code was fashioned after the formerly adopted New Jersey code. (Frece, J.: Interviews—November 8, 2000; December 14, 2000)

Other state-sponsored smart growth incentive programs include “Main Street Maryland,” designed to revitalize and re-invigorate “main streets” in 40 communities statewide; “Transit Station Smart Growth,” providing funding to assist with community construction of transportation-related improvements around rail transit stations; “Voluntary Clean-up and Brownfields Incentives,” including two programs aimed at remediating 222 acres of abandoned hazardous waste sites; “Neighborhood Business Development,” offering financing for small businesses or start-ups in revitalization areas, similar to a previous

Enterprise Zone Program; “Neighborhood Conservation,” focusing on road improvement projects such as streetscaping, curbs and gutters, repaving and street lighting to improve mobility and assist in implementing local revitalization plans; “Live Near Your Work Program,” to provide residents in targeted communities with grants of up to \$3,000 to help purchase homes close to their employers; “Forty at Four,” to provide mortgage loans at 4% interest rates to persons purchasing homes in 15 older neighborhoods targeted for revitalization; and “Job Creation Tax Credit,” a program recently expanded to encourage mid-sized and smaller businesses to invest in PFA’s throughout the State.

(APA: 1999: 31-33; Maryland Office of Planning: 1998)

State government has also supported an array of economic development initiatives aimed at helping revitalize older downtowns and/or buildings throughout the state including projects in Silver Spring and Hagerstown. A major revitalization effort is also underway in Baltimore with support from the Downtown Housing Initiative, a public-private partnership. That program was expected to complete hundreds of housing units as well as the adaptive reuse of former industrial and commercial buildings for renovated commercial office, retail and residential space in Baltimore. (APA:1999: 31-33)

2. Environmental Protection

Eight years before the 1992 Maryland economic Growth, Resource Protection and Planning Act, the Chesapeake Bay Critical Areas Law was enacted to establish a commission to regulate development within a thousand-foot border of the Chesapeake Bay and its tidal tributaries. Working with the commission to manage development within this border are 40 municipalities and 17 other types of governmental units. The state soon after recognized that other measures were needed to address the Bay’s pollution problems. When the 1992 growth management act was adopted, one of its primary goals was to encourage the entire state to recognize that stewardship of the Chesapeake Bay. To that end, the state planning law requires all local comprehensive plans to include measures for protecting the Bay. (Bundy, M.: Interview—December 14, 2000; Wilson, S.: Interview—December 14, 2000)

Further guidance about ways municipalities may help restore and protect the Chesapeake Bay is provided by the Department of Natural Resources. A target was established to

reduce the amount of nitrogen and phosphorus washing into the Bay by 40% by the year 2000. The department's plan combines nutrient reduction goals across 10 major tributary watersheds. The strategies have been in place since 1993 and are administered by the Departments of Environment, Natural Resources, Agriculture and Maryland's Planning Office. These means of non-point source pollution prevention and control are viewed as

important aspects of growth management. Consequently, applying practices such as transfers of development rights, protective agricultural zoning, rural clustering, and forest conservation as well as increasing development potential in growth areas is a major priority. (Bundy, M.:Interview—December 14, 2000)

In addition to these measures for the Chesapeake Bay, the "sensitive areas" element of each local jurisdiction's plan is expected to include goals, objectives, principles, policies, and standards designed to protect streams and buffers; 100-year floodplains, habitats of threatened or endangered species and steep slopes. Maryland encourages jurisdictions to work together where watersheds are shared and to consider additional areas such as wellheads, cliff areas and scenic views for special protection. (APA:1999: 27-29)

3. Farmland and Open Space Preservation

Currently, Maryland has 2.2 million acres of farmland or the 16th largest amount of agricultural land in the country. Long before the state enacted its Smart Growth Act, Maryland had laws and programs in place to protect farmland and open space. Through "Program Open Space," first established in 1969, Maryland's Department of Natural Resources acquired more than 158,000 acres of open space for state parks and national resource protection. (APA:1999: 25-36)

Less than a decade later, in 1977, the "Agricultural Land Preservation Program" was created. Since it began, 139,828 acres of farmland have been protected through conservation easements. In 1978, the first transfer of development rights was completed by Calvert County. In 1980, landowners in Montgomery County were permitted to do the same.

As a result of these and other efforts, Maryland has set aside an estimated 13% of its land base as open space or farmland through public ownership or conservation easements. In addition to the State's "Agricultural Land Preservation Program," "Program Open Space" and other land protection efforts, Maryland has established a "Rural Legacy Program." First unveiled in April 1997, this program was designed to balance efforts to channel growth into existing urban areas. Through it, the state is establishing partnerships with local governments, land trusts, and citizens to protect up to 200,000 acres by 2011. Altogether, the state has authorized \$71.3 million in funding for this program for fiscal years 1998-2002. Its goals include establishing greenbelts of forests and farms around

rural communities, preserving critical habitats, supporting natural resource-based economies, and protecting riparian forests, wetlands and greenways as buffers adjacent to the Chesapeake Bay. Currently, Maryland reports that it is involved with 25 Rural Legacy Projects in 20 of its 23 counties. (Frece, J.: Interviews—November 8, December 14, 2000)

Other protection efforts are underway through the Maryland Department of Planning's "State Certification Program," whereby counties retain portions of the agriculture transfer tax if they are able to demonstrate that they have an effective program to preserve agriculturally viable farmland. To date 15 counties have been certified to have contributed to the protection of more than 90,000 acres of farmland. (APA:1999:26-41)

In addition, the "Forest Legacy Program," "Conservation Resource Enhancement Program" and "Farmland Preservation Atlas" add to Maryland's farmland preservation efforts by mapping lands, identifying environmentally important and threatened forest lands and providing more than \$200 million in additional funding. The goals of these programs are to encourage farmers to leave 100,000 agricultural acres fallow, to plant 5,000 acres of buffer strips to guard against polluted water runoff, and to restore 25,000 acres of wetlands. (APA:1999:29-31)

4. Transportation

Maryland's Department of Transportation set a target for expanding the number of public transit trips from approximately 570,000 per day in 1999 to approximately one million by 2020. To this end, the Maryland Department of Transportation has adopted a two-pronged approach that includes local and state-level planning, programs and activities. Through intelligent transportation systems, intermodal planning and smart growth, that Department hopes to integrate new information technologies to aid traveler mobility, reduce traffic congestion, promote job creation and support community vitality. (Halligan, D.:Interview—December 14, 2000)

Besides requiring local comprehensive plans to contain transportation elements, Maryland's Department of Transportation provides guidance that emphasizes the interface between land-use and transportation planning, the relative efficiencies of different land-use patterns, and the use of various transportation policies and strategies. Among the recommended approaches are mixed-use zoning and design that minimizes automobile dependency, more transit-oriented development that will accommodate pedestrians and bicycles, and discouraging strip development and residential sprawl.

In addition, Maryland is using a \$450,000 federal grant to integrate transportation planning with smart growth efforts, community conservation, and land and water protection initiatives. Entitled “Maryland Integrating Transportation and Smart Growth” (MINTS), the effort is one of 35 projects across the country directed toward inter-related problems involving transportation, land use, environmental protection, public safety, and economic development. (APA:1999:33-34)

Maryland is also investing in a number of “showcase” transit projects. Examples include the use of Federal dollars to enhance Baltimore’s Reisterstown Metro Station, with a children’s center and police substation added to the rail stop at an estimated cost of \$1.9 million. The renovated transit station will serve both as a place of origination and destination, and will provide significant neighborhood employment in light of the station’s proximity to commercial centers, a bus maintenance facility and medical, state and federal offices.

Other projects include the expansion of the Maryland Commuter Rail (MARC) system. This project has an estimated cost of \$140 million. It includes federal funds and involves track and station improvements as well as the purchase of new commuter rail coaches and locomotives. Also planned is the installation of another set of tracks along the last 9.4 miles of single tracks of the 29 miles of the Baltimore Central Light Rail Line. The total cost of that project, which is expected to be completed by 2020, is estimated at \$150 million. (APA:1999:33-34)

State officials also point to transferring \$150 million over six years from the State’s transportation budget to a Neighborhood Conservation Program to make infrastructure improvements in older communities. The goal is to help developed municipalities compete with newer areas and attract private investment. (Interview Frece, J.:)

In addition, to making public transportation more convenient, the state’s Mass Transit Administration is developing a single “smart card” that will be similar to a credit card and usable for bus, light rail and heavy rail transit services. “TransitPlus” is another incentive program. It allows employers to provide up to \$65 per employee per month in tax-free transit benefits that can be used for busses, Metro, light rail and the MARC train. (APA:1999:34-35)

5. Affordable Housing

Some 380,000 Maryland families, or approximately a quarter of its households have been estimated to have incomes of less than \$20,000 per year. More than 60% of these same households or more than 70% of its low-income renters reportedly were paying 30% or

more of their incomes for shelter costs and/or living in substandard or overcrowded housing units.

Maryland does not require local comprehensive plans to contain a housing element, although the state recommends that this element is a critical component of sound growth management practices. Within its planning guidelines, the state recommends ways jurisdictions might address housing issues within their land-use and development plans. The question of affordability is acknowledged as a special concern. (Spies, J.: Interview—December 14, 2000)

There are a number of housing programs in the state that assist in building safe, affordable homes for families and elderly residents. More than 1,000 homes are financed through these programs each year, while other programs like the “Smart Growth/Smart Ideas Homeownership” Program help provide additional support to low-income new homeowners. Through this program, homebuyers in selected neighborhoods are eligible for low-interest mortgages. “Maryland’s Mortgage Program” is another financing program that provides working families with below-market interest rate housing loans through private lending institutions.

Maryland also supports a “Hotspot Communities Home Ownership Initiative” to fund projects in targeted communities throughout Maryland. The “Hotspots” are identified based on public safety data and are used to target a number of programs to address that concern. Working in partnership with community groups and private businesses, this initiative provides more than \$4 million in mortgage money to selected communities to help revitalize areas considered to be high-crime and at-risk neighborhoods. The mortgages have typically had a 4% interest rate.

6. Heritage and Cultural Areas

Although the state’s 1992 Economic Growth, Resource Protection and Planning Act does not specifically address historic or cultural resources, under the “sensitive areas” provision of the law, counties and other jurisdictions may use their local comprehensive plans to designate such areas for special attention or protection.

Several state programs help communities use the comprehensive planning process to protect historic resources. The Maryland Department of Housing and Community Development operates Maryland’s “Historic Trust Easement Program” to protect properties listed on the National Register of Historic Places or located within a locally certified historic district. To date, the Trust holds easements on more than 400 architectural and archaeological properties on nearly 9,000 acres. The Trust also provides grants and loans for acquisition, rehabilitation and restoration of historic property. In 1996, the State department of Housing and Community Development began the “Heritage Preservation and Tourism Areas Program” to encourage heritage tourism. The program

provides matching grants, tax credits and program support for partnerships to develop cultural tourism opportunities. (APA:1999: 30-32)

F. A Smart Growth Comparison: New Jersey and Maryland

How do these two states' smart growth experiences compare? What does a close examination of their respective experiences yield? Taken together, do the two states' experiences demonstrate smart growth to be something more than just a ghost of an urban policy past, but more than likely still less than a bold new horizon?

Both New Jersey and Maryland have developed ambitious policies to counteract sprawl. They both acknowledge the importance of the issue. New Jersey through its State Plan and its policies, resource management system, map, exhaustive cross-acceptance process and smart growth grants are irrefutable evidence of attention paid to this issue. Maryland in a different way has fashioned its own approach to demonstrate its own high priority.

In terms of context, New Jersey may present a more difficult case. Its population density and degree of jurisdictional fragmentation are confounding factors. Its numerous local jurisdictions often defend their prerogatives under the banner of "home rule." In addition, New Jersey's municipalities rely heavily upon the local property tax to fund municipal services. This situation frequently leads to fiscal zoning, however disguised or defended. In many cases, municipalities, upon first impression, tend to see State Planning as an unwarranted intrusion into legally protected land-use prerogatives.

New Jersey county government remains weak, with a more circumscribed role when compared to counties in Maryland. This situation remains, despite the new role required of counties by New Jersey's State Planning Act. Planning capacity varies from county to county. However, with rare exception, New Jersey's 21 counties tend to avoid any semblance of regional planning by instead touting only the concerns of their respective municipalities.

The two examples of significant regional planning in New Jersey—the Pinelands and the Hackensack Meadowlands Development Commission, as well as a somewhat different treatment for development within the State's Coastal Zone— remain anomalies mostly set apart from the experiences of the remainder of the State.

By contrast, Maryland, with its 5.1 million people and larger land mass is less densely populated than New Jersey. Yet it anticipates about the same population increase over

the next two decades as New Jersey—about a million more people. Whereas, New Jersey’s growth pressures continue to stem from growth in the New York and Philadelphia Metropolitan regions, Maryland’s growth pressures will emanate from its Baltimore-Washington, D.C. corridor.

The jurisdictional situation that Maryland faces is considerably less fragmented than New Jersey’s, and with a stronger county role, the Maryland situation holds out more promise for meaningful regional planning. Its counties exercise land-use controls. Maryland can point to significant amounts of unincorporated land still managed by its counties. Annexation remains a possibility. Many of its 157 incorporated municipalities are interested in attracting new growth. Some expect and more easily perceive the benefits of smart growth scenarios.

New Jersey had a jump on Maryland’s smart growth by more than a decade. However, neither state began with a clean slate. New Jersey had nearly three-quarters of a century of its own State Planning experiences, often at federal impetus. Its more recent, homegrown effort was in some measure imposed by its Supreme Court on an issue that was likely to be less than popular with most of its growing suburban jurisdictions. Local concerns about complying with the State Plan are still entangled in with affordable housing issues.

Rather than affordable housing as a major driver for its planning, Maryland’s prior regional planning awareness was connected to the protection of a valued resource—the Chesapeake Bay. The perceived environmental degradation of the Bay provides a valuable nexus between land-use and water quality. One could easily speculate as to whether a bit of the difference between New Jersey’s and Maryland’s experiences grew out of the potential for discord or harmony as these planning efforts moved forward from their divergent beginnings.

Maryland sought to build on these positive beginnings. Just the name “smart growth” spoke volumes. Who could support its opposite, “dumb decline.” Moreover, Governor Glendening consciously launched a public education and outreach campaign, assigning his former press officer with major responsibilities for the initiative. He developed written materials and publicized smart growth showcase projects. The connection to the Governor was made clear. The target audiences included the State Legislature, local public officials, key stakeholder groups, and the public-at-large. (Interview: Frece, J.:) No similar New Jersey effort was evidenced until Governor Whitman’s second term.

Instead, New Jersey’s State Planning Act created a 17-member State Planning Commission. It includes members drawn from the Governor’s Cabinet, Policy Office,

county and municipal governments, and seven public members. The Commission is charged with developing a State Plan to address wide-ranging policy goals and create a policy map through an interactive, participatory cross-acceptance process. In some ways, the Commission serves to do what Commissions often do, that is to insulate its work from the rough and tumble of State politics. When compared with the Maryland case, however, such insulation might be a drawback rather than an advantage.

The cross-acceptance process has its benefits as it engages counties and municipalities throughout the State with its comparison of State and local plans. It is a consensus-building approach that clarifies policy direction while engaging local jurisdictions in dialogue. It serves to educate the public in a unique social learning way. However, it is labor-intensive and time-consuming. The State Legislature expected that this process would be conducted on a three-year cycle. Yet in its two attempts to date it has taken approximately twice that time. Tied to no one's electoral clock, it seems to have a dynamic of its own, almost divorced from the state's or even local political scenes.

Before the cross-acceptance process is considered complete, the State Plan must be re-drafted as an "interim plan" and submitted to a third-party for an impact analysis. Once the impact analysis is complete, the re-drafted State Plan, along with the impact analysis and a legislatively-mandated infrastructure needs assessment undergo further public scrutiny before the State Planning Commission can approve the Final Plan. These multiple steps all necessary to reach the approval stages of the State Plan development have kept staff and Commission preoccupied, while attention to implementation is seemingly put off to a time in the future.

By comparison, Maryland's approach seems streamlined, poised for action. Maryland's Smart Growth is less planning, and more political strategy. Governor Glendening has made it an administration centerpiece, providing the energy it seems to require. Attention is paid less to planners and more to decision-makers and program managers. The Governor and those closest to him responsible for smart growth seem keenly aware of the need to break out of the confines of planning to penetrate the worlds of political strategy, budgets and programs. (Mintzberg, H.: 1994)

The State Legislature along with key interest groups throughout the State were consulted and included in the process. The sizable Maryland Planning staff had no Commission with which it could become preoccupied. Rather than insulated from State politics, it was placed near its center. Rather than a process spread over successive administrations, its experience has been condensed, identified with just one Governor aggressively pursuing his agenda.

That Governor avoided controversy by selecting a unifying theme to sell the message. It was neither housing nor the environment, but government efficiency, irresistible with

even Maryland's most ardent hold-outs. He buttressed this marketing by restricting smart growth implementation to the employment of the state's budgetary incentives, steering away from disincentives and regulation. (Interview: Frece, J.: November 8, 2000, December 14, 2000)

Moreover, the smart growth sell has been strengthened by a relatively straight-forward State agency decision-making process that relies on the delineation of priority funding areas (pfa's), based on a limited number of understandable criteria—dwelling unit densities, public infrastructure and consensus on State growth projections.

By contrast to this relative simplicity, New Jersey's design, legislative and otherwise, seems cumbersome. First, the legislatively mandated architecture for the State Planning Commission limited its members to Agriculture, Commerce, Community Affairs, Environmental Protection, Transportation and Treasury. These may have seemed like reasonable growth management partners in the late 1980's. However, throughout the 1990's, concerns were raised that others were missing. Criticism was voiced that such key agencies as Human Services, Education, Labor and Law and Public Safety were not at the table, particularly to address New Jersey's difficult urban problems. In Maryland, these agencies are engaged in its smart growth planning and programming.

Moreover, the legislative design of the cross-acceptance process, the interim plan, and its mandatory impact assessment create multiple time-consuming steps. The process also primarily pointed the Office of State Planning and the State Planning Commission in the direction of local jurisdictions. The roles of State government departments were paid less attention, at least until 1997. In this way, this State Plan effort expended scarce energy on jurisdictional venues over which it would likely have less influence, while paying less attention to State agencies, over which it might have exercised greater control.

In addition, the State Planning Commission adopted a "centers designation" process that requires municipalities to voluntarily prepare and submit petitions to the State Planning Commission to be "blessed" as a "center" ostensibly to receive growth-supporting incentives from state agencies. Yet at the time that this procedure was adopted departments' incentives were, for the most part, not in place. These incentives are only now beginning to be cultivated as state agencies begin to align programs and activities with the State Plan.

Governor Whitman's second term began to mark a significant course correction. Changes in both policy and institutional structure were made. The Governor launched an open space initiative and added amendments to the State's Coastal Rules to provide additional powerful implementation tools. an Urban Rehabilitation Code was adopted to encourage reinvestment in existing structures in urban areas. Smart Growth Planning Grants, providing \$6 million in state planning assistance to local jurisdictions over two years, was another significant tool added during this period.

Through the 1998 Executive Reorganizational Plan, Whitman moved the Office of State Planning from Treasury and the New Jersey Redevelopment Authority from Commerce both to the Department of Community Affairs. The Department of Community Affairs Commissioner also identified a full-time inter-departmental liaison charged with bringing State Departments into improved alignment with the State Plan goals.

Maryland's smart growth initiative efforts concentrated on state departments' activities from the start. Key programs were either identified and repackaged or created anew to support the initiative. The Governor was able to employ the State budget, influence his

Cabinet, and elevate a sizable planning staff to Cabinet status. His executive order served as the basis to implement an understandable State government-administered decision-making process.

Both New Jersey and Maryland leave much of the local land-use decision-making apparatus in place. In both states, this may appear as weakness, perhaps undermining smart growth. Maryland has steered far from any state regulatory impositions, relying on the state's budget to provide incentives. This strategy guarantees that much will continue to be built in Maryland that is not necessarily consistent smart growth if local jurisdictions and developers are willing to go it with state support. New Jersey flirted with rules in terms of wastewater controls, but has retreated once Governor Whitman departed.

Some of the differences between New Jersey and Maryland are attributable to timing, and still others to context. New Jersey has devoted tremendous energy to creating a vision, writing a plan, and building consensus through a labor-intensive, time-consuming legislatively mandated process. It also seems to have paid less attention to decision-makers than to planners, and until very recently less to political strategy, state programs, and budgets than to local jurisdictions' plans. Maryland seems to have done very much the opposite. It skipped over the need for a plan, and move on to implementation based on a map and decision-making rules as tools. Whereas the New Jersey State Plan has demonstrated its penchant for surviving from one administration to the next by plodding along and remaining somewhat insulated from politics, Maryland's initiative is in the thick of things, but remains today unproven by the test of time.

G. Conclusions

More than a ghost of urban policy past, but less than a bold new horizon? New Jersey's second State Plan was approved by the State Planning Commission on March 1, 2001. Governor Whitman was no longer around to embrace it. She had left just more than a month before to take a post with the Bush Administration. New Jersey's State Plan has thereby moved into the beginning of its fourth gubernatorial administration. The future of Maryland's current efforts will be judged by the reactions of the current Governor's successor to her predecessor's achievements.

Is smart growth less than a “bold new horizon?” A qualified yes seems like the appropriate response. It is still very early in this game. There is no simple recipe for what is being attempted. Formulas suggest a precision that will not work. At this juncture, it seems only prudent to heed the words of Calthorpe and Fulton who in discussing State-led approaches recommend that “... the bureaucratic, regulatory approaches that states have traditionally adopted cannot by themselves be effective.” They must be supported by a whole panoply of affirmative policy and planning efforts to promote the concept of Smart Growth, a concept that they perceive to be essential to planning for the end of sprawl. (Calthorpe, P., Fulton, W.: 2001: 185) New Jersey and Maryland, each in their own way, demonstrate the lengths that two states have already gone beyond traditional regulatory approaches.

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