

ValpoScholar

Valparaiso University Law Review

Volume 36

Number 2 *Symposium on Land Use Law: Rights with Responsibilities*

pp.381-412

Symposium on Land Use Law: Rights with Responsibilities

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Recommended Citation

Patricia E. Salkin, *Smart Growth and Sustainable Development: Threads of a National Land Use Policy*, 36 Val. U. L. Rev. 381 (2002).

Available at: <https://scholar.valpo.edu/vulr/vol36/iss2/3>

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SMART GROWTH AND SUSTAINABLE DEVELOPMENT: THREADS OF A NATIONAL LAND USE POLICY

Patricia E. Salkin*

I. INTRODUCTION

While state land use reform and smart growth efforts continue to stay on the forefront of gubernatorial and legislative agendas across the United States, this level of activity is not exclusive to the states. The federal government has taken on an increasing policy role in the area of land use reform and in influencing state and local land use decisions through myriad regulations, funding programs, and other agency-level technical assistance programs. Traditionally viewed as a state government issue, governors in more than a dozen states have signed executive orders that address one or more aspects of land use reform or smart growth principles,¹ and governors have been responsible for signing or vetoing record levels of land use reform and smart growth

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¹ See Arizona Governor Jane Hull, Exec. Order No. 2001-02 (Feb. 2001) (establishing the Growing Smarter Oversight Council); Delaware Governor Ruth Ann Minner, Exec. Order No. 14 (Mar. 2001) (establishing the Livable Delaware Agenda); Florida Governor Jeb Bush, Exec. Order No. 2000-196 (July 2000) (establishing the Growth Management Study Commission); Illinois Governor George Ryan, Exec. Order No. 2000-8 (Apr. 2000) (creating the Balanced Growth Cabinet); Indiana Governor Frank O'Bannon, Exec. Order No. 01-03 (Mar. 2001) (creating the Indiana Land Use Forum); Kentucky Governor Paul Patton, Exec. Order No. 2000-628 (May 2001) (establishing a task force on smart growth); Maryland Governor Parris Glendening, Exec. Order 2001-01 (Mar. 2001) (creating the Commission on Environmental Justice and Sustainable Communities); Maryland Governor Parris Glendening, Exec. Order No. 1998-04 (Jan. 1998) (announcing the Smart Growth and Neighborhood Conservation Policy); former Massachusetts Governor William Weld, Exec. Order No. 385, Planning for Growth (1996); New Hampshire Governor Jeanne Shaheen, Exec. Order No. 99-2 (Feb. 1999) (pertaining to the Council on Resources and Development); New York Governor George Pataki, Exec. Order No. 102 (Jan. 2000) (establishing the Quality Communities Task Force); Oregon Governor John Kitzhaber, Exec. Order No. EO-97-22 (Dec. 1997) (pertaining to the Use of State Resources to Encourage the Development of Quality Communities); former Pennsylvania Governor Thomas J. Ridge, Exec. Order No. 1999-1 (Jan. 1999) (addressing state land use policy); Rhode Island Governor Lincoln Almond, Exec. Order No. 00-2 (Feb. 2000) (establishing the Growth Planning Council); Vermont Governor Howard Dean, Exec. Order No. 01-00 (Feb. 2000) (creating the Development Cabinet); former Wisconsin Governor Tommy Thompson, Exec. Order No. 236 (Sept. 1994) (creating the State Interagency Land Use Council and Wisconsin Strategic Growth Task Force).

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legislation that originated in the legislative branch of state government.² This Article is intended to shift attention away from the growing literature on state smart growth issues and focus on the continuing interest at the federal government level with respect to land use planning and smart growth issues.³ Based upon programs that originated during the Clinton-Gore administration, many of which have been carried over into the Bush administration, and combined with significant presidential appointments and announcements, the stage has been set for a potential increase, not decrease, in the involvement of the federal government in state and local land use decision making.

Although this Article does not advocate a national land use policy,⁴ it does demonstrate that there has been a de facto national policy and agenda in the making in the nation's capital for the last decade under the guise of sustainable development and that this is merely an extension of the historical federal interest and influence in land use policy. While the recent and continuing state-level land use reform initiatives provide a fertile ground for examples of new federalism, the fact remains that a national land use policy is being coordinated, funded, and advocated by various federal agencies, both houses in Congress, and the White House

² Recent legislation includes: H.R. 2361, 43d Leg., 2d Reg. Sess. (Ariz. 1998); H.R. 1427, 2000 Leg., Reg. Sess. (Colo. 2000); S. 399, 1999-2000 Leg., Reg. Sess. (Ga. 2000); S. 1473, 2000 Leg., Reg. Sess. (Haw. 2001) (vetoed by Governor Cayetano); S. 204, 2001 Leg., Reg. Sess. (Md. 2001); S. 389, 1997 Leg., Reg. Sess. (Md. 1997); S. 388, 1997 Leg., Reg. Sess. (Md. 1997); S. 1238, 1999-2000 Leg., Reg. Sess. (N.C. 2000); H.R. 1259, 2000 Gen. Ct., Reg. Sess. (N.H. 2000); H.R. 288, 1999 Gen. Ct., Reg. Sess. (N.H. 1999); H.R. 207, 1999 Gen. Ct., Reg. Sess. (N.H. 1999); H.R. 1238, 1998 Gen. Ct., Reg. Sess. (N.H. 1998); H.R. 199, 1999 Leg., Gen. Sess. (Utah 1999); Assemb. 9, 1999-2000 Assemb., Reg. Sess. (Wis. 1999).

³ See AM. PLANNING ASS'N, PLANNING COMMUNITIES FOR THE 21ST CENTURY pt. IV (1999); Patricia E. Salkin, *Smart Growth at Century's End: The State of the States*, 31 URB. LAW. 601 (1999); see also The Smart Growth Network, *Smart Growth News*, at <http://www.smartgrowth.org/news/default.asp> (last visited Mar. 17, 2002) (providing state-by-state news summaries).

⁴ That is to say that this author does not favor a piece of legislation entitled "National Comprehensive Land Use Plan" that would pre-empt state and local authority. However, federal funding to support various state initiatives aimed at state and local level reforms would be welcome. If federal funding exists, to the extent it dictates requirements as a condition of funding and such requirements shape a national agenda, this would be a type of national land use policy that could be palatable so long as decision making occurred at the state level. See Jerold S. Kayden, *National Land-Use Planning in America: Something Whose Time Has Never Come*, 3 WASH. U. J.L. & POL'Y 445 (2000) (discussing national land use planning).

(certainly under the prior administration, and, in all fairness, the jury is still out to some extent on the current administration).⁵

Federal policy is best articulated through the pocketbook, and federal funds are being spent in seemingly record amounts to promote various aspects of the land use reform and smart growth agenda. Whether they are called grant programs, incentives, or disincentives, the bottom line is that federal spending can and does influence what happens in community development. In addition to the funding of grant programs, resources for education, training, and technical assistance are key. As this Article demonstrates, a significant amount of education and training is being developed and propagated by federal agencies to the extent that they have set the tone for what are "appropriate" and perhaps "acceptable" planning practices and community development initiatives. However, a lack of full coordination across agencies continues to be a significant barrier to implementing federal programs that support state priorities.

II. HISTORICAL FEDERAL INTEREST IN MATTERS TRADITIONALLY WITHIN STATE AND LOCAL CONTROL

A. *Setting a Resource-Based Framework: The National Environmental Policy Act and the Council on Environmental Quality*

In 1969, Congress enacted the National Environmental Policy Act (NEPA), which set forth a framework for considering the environmental impacts of certain government decision making.⁶ The Council on Environmental Quality (Council), the entity responsible for implementing NEPA, has examined sprawl and smart growth issues in the past. For example, in 1974, the Council released a report entitled *The Costs of Sprawl*, which studied the impacts of sprawl.⁷ In 1981, the Council, in its *National Agricultural Lands Study*, examined the loss of agricultural lands due to sprawl.⁸ Currently, a legislative proposal has

⁵ It is too soon to tell exactly what President Bush plans to do, although this Article outlines what appears to be movement in the direction of keeping an active federal agenda with respect to smart growth and sustainable development issues (although the agenda may be called something different).

⁶ 42 U.S.C. §§ 4321-4370(d) (1994).

⁷ REAL ESTATE RESEARCH CORP., *THE COSTS OF SPRAWL: ENVIRONMENTAL AND ECONOMIC COSTS OF ALTERNATIVE RESIDENTIAL DEVELOPMENT PATTERNS AT THE URBAN FRINGE* (1974). This report was prepared for and funded by the Council on Environmental Quality, the United States Department of Housing and Urban Development, and the Environmental Protection Agency.

⁸ NATIONAL AGRICULTURAL LANDS STUDY: FINAL REPORT (1981).

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been introduced that requires the Council to update these studies and analyze how well recent environmental impact statements and environmental assessments have examined the impacts of proposed federal actions on growth and urban sprawl.⁹

B. *The National Land Use Policy Act . . . Foreshadowing the Future?*

Recognizing that NEPA was limited in scope to environmental impacts and that, while this was important and necessary, it was only part of the solution, Senator Henry Jackson introduced legislation entitled the National Land Use Policy Act (NLUPA).¹⁰ The proposal, meant to be a bookend with NEPA, was buried after it twice passed the Senate but failed to win support in the House of Representatives.¹¹ The NLUPA would have provided states with incentives in the form of funding for the purpose of preparing state land use plans. It also would have established a national data system for use by state and local governments in sound land use planning. The NLUPA also would have established a single federal agency to ensure that all other federal agencies were complying with state plans.

C. *The Coastal Zone Management Act*

In 1972, the federal government enacted the Coastal Zone Management Act (CZMA),¹² the first major federal land use model. The CZMA, passed primarily to provide state and local governments with guidance in managing and using the resources of the coastal zone,¹³ takes a voluntary approach to state and local participation with a strong

⁹ 147 CONG. REC. E729 (daily ed. May 3, 2001) (statement of Rep. Udall); *see also infra* Part IV.C.6 (discussing the Urban Sprawl and Smart Growth Study Act).

¹⁰ *See* John R. Nolon, *The National Land Use Policy Act*, 13 PACE ENVTL. L. REV. 519 (1996) (discussing the National Land Use Policy Act, S. 3354, 91st Cong. (1970)).

¹¹ *Id.* at 520.

¹² Coastal Zone Management Act of 1972, Pub. L. No. 92-583, 86 Stat. 1280. The CZMA was reauthorized with amendments in 1990 and 1996. Currently, two proposals are before Congress to make further modifications and reauthorizations. *See* Coastal Zone Enhancement Reauthorization of 2001, S. 328, 107th Cong. (2001); *see also* Coastal Community Conservation Act of 2001, H.R. 897, 107th Cong. (2001).

¹³ "The Coastal Zone Management Program is a unique federal-state partnership that provides a proven basis for protecting, restoring, and responsibly developing the nation's important and diverse coastal communities and resources." Office of Ocean & Coastal Res. Mgmt., Nat'l Oceanic & Atmospheric Admin., at <http://www.ocrm.nos.noaa.gov/czm/> (last visited Mar. 17, 2002). Objectives of the Act include protecting beaches, dunes, bluffs, rocky shores, wetlands, and estuaries. The goals of the Act also include the provision of public access to the coast, the promotion of seaports, and the revitalization of urban waterfronts. *National CZM Effectiveness Study*, COASTLINES, Summer 1997, at <http://www.epa.gov/owow/estuaries/coastlines/summer97/czm.html>.

fiscal incentive for states that choose to develop comprehensive management programs based upon minimal federal approval standards.¹⁴ In addition to the federal funding, federal agencies are required to ensure consistency between federal actions and state plans.¹⁵

D. The HUD 701 Program

Under the 1954 Housing Act, the Section 701 planning grant program of the United States Department of Housing and Urban Development (HUD) promoted urban planning by providing money to the states for the development of regional and local comprehensive land use plans.¹⁶ The 1965 Housing and Urban Development Act, which created HUD to coordinate urban planning at the federal level,¹⁷ extended and expanded the Section 701 grants.

E. Department of Transportation

With the enactment of the Federal Highway Act in 1921,¹⁸ the stage was set for the building of more than 200,000 miles of road, which represented just the beginning of the interstate highway system that critics have argued had a long-term negative effect on our cities and contributed significantly to sprawl.¹⁹ Under the Eisenhower administration, the Interstate Highway Act was enacted in 1958 and, among other things, created a 41,000-mile highway system with ninety percent of the cost for construction and maintenance borne by the federal government.²⁰ Historically, the federal government has spent more money on the construction of new roads than on public transit, and recent spending on roads has exceeded transit funding by a ratio of

¹⁴ The financial incentive for participation is significant, with fiscal year 2000 allotments totaling over fifty-eight million dollars for twenty-nine states and four territories. Office of Ocean & Coastal Res. Mgmt., Nat'l Oceanic & Atmospheric Admin., at <http://www.ocrm.nos.noaa.gov/czm/00finals.html> (last revised Mar. 17, 2002).

¹⁵ Office of Ocean & Coastal Res. Mgmt., Nat'l Oceanic Atmospheric Admin., at <http://www.ocrm.nos.noaa.gov/czm/national.html> (last revised Mar. 17, 2002).

¹⁶ 40 U.S.C. § 461 (1954) (repealed 1981); see also JOHN C. WHITAKER, STRIKING A BALANCE: ENVIRONMENT AND NATURAL RESOURCES POLICY IN THE NIXON-FORD YEARS 169 (1976); Charles E. Connerly & Marc Smith, *Developing a Fair Share Housing Policy for Florida*, 12 J. LAND USE & ENVT'L. L. 63, 76 (1996).

¹⁷ See Mark Solof, *History of Metropolitan Planning Organizations - Part II*, at http://njtpa.njit.edu/hist_mp02.htm (last visited Mar. 17, 2002).

¹⁸ Federal Highway Act, Pub. L. No. 67-87, 42 Stat. 212 (1921).

¹⁹ Michael Lewyn, *Suburban Sprawl: Not Just an Environmental Issue*, 84 MARQ. L. REV. 301 (2000).

²⁰ *Id.* (discussing the Interstate Highway Act, Pub. L. No. 85-767, 72 Stat. 885 (1958)).

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almost five to one.²¹ Today, the national highway system consists of 120,229 miles of rural highways and 45,826 miles of interstate highways.²²

F. Department of Interior

A number of federal bureaus within the Department of Interior have contributed to the growth of the country and influenced land development patterns. For example, in 1946, the Department's General Land Office and the Grazing Service (a result of the 1934 Taylor Grazing Act) were merged into the Bureau of Land Management, *an office that now administers 264 million acres of public lands in twelve western states.*²³ The Fish and Wildlife Service was created in 1940 and, today, manages approximately ninety-three million acres of land, including coastal lands.²⁴ Classifying itself as the "Nation's Principal Conservation Agency," the Department of Interior manages approximately twenty percent of the United States land in the form of public lands, parks, and refuges.²⁵ The magnitude of land management by the Department, through its various bureaus, sets the stage for important smart growth, conservation, and sprawl-related policies through a regulatory agenda and funding for various programs and initiatives.

G. Department of Defense

An often overlooked player in the land development and conservation communities, the Department of Defense is one of the largest landholders in the United States with approximately twenty-five million acres under its management.²⁶ The impact of these holdings on community development, smart growth, and environmental conservation has been great over the years. With 250 military bases targeted for closure since 1988, the federal government has transferred

²¹ *Id.* (citing to Liam A. McCann, *Tea-21: Paving Over Efforts to Stem Urban Sprawl and Reduce America's Dependence on the Automobile*, 23 WM. & MARY ENVTL. L. & POL'Y REV. 857 (1999)). According to *The Washington Post*, spending on new roads has recently decreased, while highway improvement spending has increased. See Edward Walsh, *Is the Road to State Sprawl Paved with U.S. Highway Funds?*, WASH. POST, May 26, 1998, at A3.

²² TEA-21, at <http://www.fhwa.dot.gov/tea21/sumauth.htm> (last modified July 13, 1998).

²³ Bureau of Land Mgmt., U.S. Dep't of the Interior, at <http://www.blm.gov/nhp/faqs/faqs1.html> (last updated Feb. 1, 2001).

²⁴ U.S. Fish & Wildlife Serv., at <http://www.fws.gov> (last visited Sept. 1, 2001).

²⁵ U.S. Dep't of the Interior, at <http://www.doi.gov/pfm/ar4doi.html> (last visited Sept. 1, 2001).

²⁶ Kevin Casaus, *Development of a Rule-Based Activity Planning System for Natural and Cultural Resource Management on a Department of Defense Facility*, at <http://www.esri.com/library/userconf/proc97/proc97/to250/pap222/p222.htm> (last visited Sept. 1, 2001).

extensive land areas to communities, which have been challenged to craft reuse and development strategies, particularly in light of potentially serious environmental problems on some of the lands.²⁷

III. THE PATCHWORK OF FEDERAL LAND USE POLICIES

A. *Policies with Good Intentions Producing Questionable Results*

Scholars have documented myriad federal laws and programs that affect state and local land use, including federal spending on highways, tax benefits and mortgage insurance, inner-city housing, urban renewal, block grants, and enterprise and empowerment zones.²⁸ In addition to spending programs that clearly influence land use, various agencies have promoted preservation efforts that, while laudable in public purpose, fail to produce anything other than a disconnected and haphazard puzzle of preserved parcels sprinkled across the landscape.

Commentators have criticized as pro-suburban the government's policies in the areas of housing, transportation, and education.²⁹ In fairness, however, these may have been well-intentioned programs that simply produced the unintended results of urban decay. For example, Federal Housing Administration (FHA) mortgage insurance programs during the New Deal era guaranteed home loans only in areas that were "low risk," and, by definition, these did not include inner-city properties.³⁰ Furthermore, FHA policies favored new construction over renovation, and programs that followed under the guise of urban renewal resulted in "white flight" from the cities by infusing capital to the poor and building public housing in the once vibrant cities.³¹

Transportation policies have contributed to sprawl by providing a steady stream of funding to support the construction of highways and roads. Although this activity provided jobs, "[g]overnment's obsession with road building has degraded cities and accelerated suburban sprawl . . . by physical destruction of city neighborhoods and by making suburban life more convenient."³²

²⁷ Dale Penneys Levy, *Military Base Closures: Developing the Peace Divided*, 8 PROB. & PROP. 32 (1994) (discussing the 1998 and 1990 base closure acts).

²⁸ See Shelby D. Green, *The Search for a National Land Use Policy: For the Cities' Sake*, 26 FORDHAM URB. L.J. 69 (1998).

²⁹ See generally Lewyn, *supra* note 19.

³⁰ *Id.* at 306.

³¹ *Id.* at 307.

³² *Id.* at 316.

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B. Policies Designed to Specifically Pre-empt State and Local Land Use Decision Making

There are a host of federal laws and agency regulations that limit or pre-empt local government land use decision making. This was exemplified most recently by the Religious Land Use and Institutionalized Persons Act of 2000, a law prohibiting any government from imposing or implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that the imposition of the burden on that person, assembly, or institution: first, is in furtherance of a compelling governmental interest and, second, is the least restrictive means of furthering that compelling governmental interest.³³ Traditionally, state common law has guided municipal decision making on land use issues that involve the siting, alteration, and expansion of religious uses.

The Telecommunications Act of 1996, while perhaps not as preemptive as critics originally warned, offers a mechanism to fast track the siting of thousands of wireless towers across the national landscape.³⁴ The Fair Housing Act amendments of 1988 placed a number of restrictions on local governments' ability to decide on the siting of group homes and other traditionally unwanted land uses.³⁵ Other federal laws that affect state and local land use regulations include the Americans with Disabilities Act,³⁶ the Clean Air Act,³⁷ the Clean Water Act, ISTEA, and TEA-21.³⁸ These are not discussed at length in this Article, but they are noted to make the point that a litany of federal laws and implementing regulations affect and restrict state and local land use decision making.

³³ Religious Land Use and Institutionalized Persons Act of 2000, Pub. L. No. 106-274, § 2, 114 Stat. 803 (2001).

³⁴ Telecommunications Act of 1996, 47 U.S.C.A. § 332 (1994 & Supp 2001).

³⁵ 42 U.S.C. §§ 3601-3619 (1994).

³⁶ The Americans with Disabilities Act has been held by several federal circuit courts as pre-empting local planning and zoning decision making.

³⁷ The Clean Air Act, among other things, requires states to develop state implementation plans (SIPs) that relate to various aspects of local planning and zoning decision making, yet this connection is rarely made due to the jurisdiction of the various levels of government.

³⁸ TEA-21 is expected to inject more than \$170 billion into the country's highway network. This has been criticized by anti-sprawl advocates as a policy that shortchanges mass transit and other transportation alternatives in favor of building more roads and access points to the highways that lead from the inner cities out into the suburbs and rural areas. See McCann, *supra* note 21.

C. *The Appropriate Federal Role in Land Use Reform*

The most appropriate role for the federal government in land use issues is not embodied in a national zoning scheme,³⁹ but rather in the facilitation of community planning through guidelines, technical assistance, and funding.⁴⁰ There is no doubt that a need exists for more comprehensive federal legislation on land use.⁴¹ Can Congress provide funding and the necessary assistance without its guidelines crossing the line from guidance to directives?⁴² The initiatives of the executive agencies and the legislative proposals must be read carefully to determine the federalist philosophy because there are countless inconsistencies. Some programs focus on the state level; others by-pass the states and go directly to local governments and, in some cases, communities (non-governmental entities).

IV. PRESCRIPTIONS DURING THE CLINTON-GORE ERA

The Clinton-Gore administration made smart growth (or livability) a priority by announcing a series of White House initiatives and supporting the work of a number of executive agencies.

A. *Federal Executive Agencies Join the Land Use Reform Effort Early*

1. Environmental Protection Agency (EPA)

Under the leadership of Carol Browner, the EPA joined the smart growth movement almost immediately. One of the agency's priorities was to provide "smart growth" support to states, tribes, and communities and help find solutions to livability issues.⁴³ Former New Jersey Governor Christie Todd Whitman, the new EPA Administrator, is an advocate for smart growth, and, in New Jersey, she encouraged new growth in cities and other areas where roads, sewers, and schools were already in place. She encouraged redevelopment of cities through

³⁹ Jason C. Rylander, *The Emerging Federal Role in Growth Management*, 15 J. LAND USE & ENVTL. L. 277 (2000).

⁴⁰ *Id.* at 298.

⁴¹ See Green, *supra* note 28.

⁴² For example, the recent proposed guidance documents on Environmental Justice from the EPA, although put forth as "merely guidance," place state and local governments in the difficult position of being scrutinized as to whether they actually followed the outline of actions in the guidance document, even though the guidance document is supposed to be "guidance" and not "law." See Patricia E. Salkin, *When Environmental Justice and Land Use Decisionmaking Collide*, in 24 ZONING AND PLANNING LAW REPORT 1 (Jan. 2001).

⁴³ U.S. ENVTL. PROT. AGENCY, EPA 100-R-99-006, AIMING FOR EXCELLENCE: ACTIONS TO ENCOURAGE STEWARDSHIP AND ACCELERATE ENVIRONMENTAL PROGRESS (1999).

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programs to streamline the clean up of abandoned industrial "brownfield" sites.⁴⁴

The EPA partnered with the International City-County Managers Association (ICMA) and the Urban Land Institute (ULI) to fund and support the Smart Growth Network.⁴⁵ The EPA has published numerous studies and reports on smart growth projects and launched a website to promote the livable communities agenda.⁴⁶ The agency has also developed a slide show and resource guide designed to increase awareness and understanding of the many facets of smart growth. As part of its Sustainable Urban Environments effort, the EPA has been analyzing the impact of its regulations, policies, and programs on sprawl and growth.⁴⁷ It has offered Sustainable Development Challenge Grants for local projects that help rebuild and strengthen communities.⁴⁸

The EPA's website contains information about its Green Communities Initiative, a program that advocates community-based environmental protection and sustainable development. The program promotes greater citizen participation and greater respect for communities' histories and traditions. The EPA offers community assessments to determine what is (and what is not) working in a community. The program is designed to provide technical assistance, offering communities an array of ideas for developing and implementing

⁴⁴ Office of the Admin., U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/adminweb/about.htm> (last visited June 1, 2001); see also Karen Finucan, *New Jersey*, in PLANNING COMMUNITIES FOR THE 21ST CENTURY (American Planning Institute 1999) (profiling New Jersey's smart growth efforts).

⁴⁵ See The Smart Growth Network, at <http://www.smartgrowth.org> (last visited May 22, 2002). The network was created to assist national, regional, and local coalitions in encouraging metropolitan development that is: environmentally smart (protecting air and water quality, enhancing access to nature, and encouraging brownfields redevelopment); fiscally smart (paying for itself and providing high-quality municipal services without constantly raising property taxes); and economically and socially smart (promoting community economic vitality, livability, resource efficiency, equity, and sense of place).

⁴⁶ U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/livablecommunities/> (last updated May 22, 2002).

⁴⁷ U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-99-87, COMMUNITY DEVELOPMENT: EXTENT OF FEDERAL INFLUENCE ON "URBAN SPRAWL" IS UNCLEAR 17 (1999).

⁴⁸ EPA Deputy Administrator Fred Hansen, Remarks at the Partners for Smart Growth Conference (Dec. 2, 1997), at <http://yosemite.epa.gov/opa/aasdspch.nsf>. EPA has awarded a number of grants in this program. The New Hampshire Office of State Planning received a \$20,000 grant to conduct a state-wide study of sprawl, and the Vermont Department of Housing and Community Affairs was awarded over \$200,000 for the coordination of a well-developed planning effort at four highway interchanges where development has been a problem.

action plans. A step-by-step guide for planning and implementing sustainable actions is also available.⁴⁹

The EPA is also involved with the "Community Based Approaches," in which various federal agencies, state and local governments, and citizens cooperate on environmental issues not traditionally subject to EPA regulation (e.g., sustaining community livability through environmentally compatible development).⁵⁰ In May 2000, the EPA's Innovative Community Partnership Program awarded eleven small grants to states, communities, and organizations "looking to promote the concepts of smart growth to make their communities cleaner and more livable."⁵¹

Projects XL⁵² and XLC,⁵³ the EPA's reinvention programs, test innovative ways of achieving public health and environmental improvements.⁵⁴ The primary purpose of the programs is to provide flexibility for various development projects. The programs do not provide direct funding, but rather allow EPA staff to work with state and local governments for the purpose of clearing various regulatory hurdles that often impede a project from efficiently moving forward.⁵⁵

The EPA has also funded the development of a Smart Growth Index, a geographic information systems-based sketch planning tool designed to allow communities to compare different development and transportation scenarios according to a set of environmental and

⁴⁹ U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/greenkit/> (last revised Mar. 28, 2001).

⁵⁰ U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/ecocommunity/> (last updated Jan. 31, 2002).

⁵¹ U.S. Env'tl. Prot. Agency, Grants for More Livable Communities, at <http://www.epa.gov/livablecommunities/grants/overview.htm> (last visited Apr. 1, 2002). Although this program did not have funding in 2001, examples of funded efforts include 20/20 Vision for Concord (New Hampshire), an effort intended to realize air and water quality benefits associated with brownfields redevelopment and downtown revitalization, and the Delaware Department of Transportation's Corridor Capacity Preservation Workbook, formed to develop a workbook and website to help communities preserve farmland, improve air quality, and reduce the negative impacts on water quality.

⁵² Project XL stands for Excellence and Leadership. It allows states, local governments, businesses, or federal facilities to develop with the EPA innovative strategies that achieve more cost-efficient means of achieving health and environmental protection.

⁵³ Project XLC stands for Excellence and Leadership for Communities. It is designed to test environmental management actions that deliver better or more cost-effective environmental and public health protection.

⁵⁴ U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/projectxl/learnabt.htm> (last updated Dec. 2, 1999).

⁵⁵ U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/projectxl> (last updated Feb. 1, 2002).

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transportation indicators.⁵⁶ The output from the use of this software is expected to be an indicator of the future environmental performance of the region where it is applied.

The EPA website has extensive information on how the agency is helping to clean up brownfields and on programs to assist state and local governments.⁵⁷ From the agency's Brownfields Economic Redevelopment Initiative, designed to empower states and communities in economic redevelopment,⁵⁸ to pilot projects under the Resource Conservation and Recovery Act,⁵⁹ the EPA is "committed to building partnerships with States, cities and community representatives and among Federal agencies to develop strategies for promoting public participation and community involvement in Brownfields decision-making."⁶⁰

2. Growing Smart Interests HUD

For decades, HUD has touted itself as a lead agency on livability and regional development, having worked on issues that include smart growth at the neighborhood, city, regional, and state levels.⁶¹ HUD's website contains links to a number of livable communities and smart

⁵⁶ See Smart Growth Index Pilot Program, at <http://www.epa.gov/livablecommunities/index/sgi-home.html> (last updated Sept. 24, 2001); see also *Smart Growth INDEX Model Pilot: Empowering Community Decision-Making*, GETTING SMART! (Smart Growth Network, Washington, D.C.), Feb. 2001. The INDEX enables sketches to be prepared and analyzed for regional growth management plans, comprehensive land use plans, transportation plans, neighborhood plans, land development proposals, environmental impact reports, and special projects (e.g., brownfield redevelopment, annexation, etc.). *Id.* at 15. In Phase I, which is currently underway, twenty pilot sites are using the Index. After evaluation by the EPA, they had planned to initiate Phase II in the fall of 2001.

⁵⁷ U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/brownfields/> (last updated Feb. 28, 2002).

⁵⁸ U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/region02/cgp/brownfields/> (last updated Feb. 21, 2002).

⁵⁹ U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/region5/defs/html/rcra.htm> (last updated Mar. 11, 2002).

⁶⁰ U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/swerosps/bf/partnr.htm> (last updated Feb. 28, 2002). Recent funding initiatives under the Brownfields Cleanup Revolving Loan Pilot Program include a one million dollar grant to the State of West Virginia in April 2001 for aid in cleaning up brownfield sites throughout the state to help direct development away from greenfields and \$350,000 to the State of Indiana for similar clean-ups. Pilot funds for these programs are dispersed in accordance with the same rules that govern the Superfund (CERCLA) program.

⁶¹ U.S. Dep't of Housing & Urban Dev., at <http://www.hud.gov:80/live1.cfm> (last visited July 31, 2001).

growth websites.⁶² In addition, HUD (with the EPA, the United States Department of Transportation, the Federal Highway Administration, the Federal Transit Administration, the Federal Emergency Management Agency, and the Rural Economic and Community Development Administration of the United States Department of Agriculture) was one of the project sponsors of the American Planning Association's Growing Smart initiative.⁶³

The Hope VI⁶⁴ program, originally called the "Urban Revitalization Demonstration," was created through an appropriation bill in 1993. Typically, federal programs are both authorized and appropriated by Congress; however, Hope VI operated only through appropriations until 1999. In 1999, the program was authorized under the Quality Housing and Work Responsibility Act of 1998.⁶⁵ In the past, public housing programs tended to segregate or isolate low-income persons.⁶⁶ The Hope program evolved over the years from "a simple model of low-rise residences meant solely for public housing residents . . . [to an] approach that seeks to create entire neighborhoods attracting a range of incomes."⁶⁷ Designed to integrate low-income persons with other economic groups to form mixed-income communities, the program strives to:

change the physical shape of public housing, establishing positive incentives for resident self-sufficiency and comprehensive services that empower residents, lessening concentrations of poverty by placing public housing in non-poverty neighborhoods and promoting mixed-income communities; and forging partnerships with other agencies, local governments,

⁶² *Id.*

⁶³ See Growing Smart, at <http://www.planning.org/growingsmart> (last updated Feb. 13, 2002).

⁶⁴ Hope VI, U.S. Dep't of Housing & Urban Dev., at http://www.hud.gov/pih/programs/ph/hope6/hope6_site.html (last updated Feb. 22, 2001).

⁶⁵ Hope VI, U.S. Dep't of Housing & Urban Dev., at <http://www.hud.gov/offices/pih/programs/ph/hope6/about/> (last updated Jan. 2, 2000).

⁶⁶ Michael S. Fitzpatrick, Note, *A Disaster in Every Generation: An Analysis of Hope VI: HUD's Newest Big Budget Development Plan*, 7 GEO. J. ON POVERTY L. & POL'Y 421, 424-32 (2000) (providing a history of public housing in America).

⁶⁷ Blair Karmir, *Public Housing in 1999: A Hard Assessment*, ARCHITECTURAL RECORD, Nov. 1999, at 77, 81.

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nonprofit organizations, and private businesses to leverage support and resources.⁶⁸

Hope VI revitalization grants include funding for the capital costs of major rehabilitation, new construction, and other physical improvements; demolition of severely distressed public housing; and planning and technical assistance.⁶⁹

The Community Development Block Grant (CDBG) program strives to ensure decent, affordable housing for all; services to the most vulnerable; the creation of jobs; and expansion of business opportunities. The program has two components: Entitlement Communities⁷⁰ and Non-Entitlement Communities,⁷¹ which includes both the state-administered CDBG program⁷² and the HUD Small Cities program.⁷³

⁶⁸ Hope VI, U.S. Dep't of Housing & Urban Dev., at http://www.hud.gov/pih/programs/ph/hope6/hope6_about.html (last updated Mar. 12, 2001).

⁶⁹ An example of a recently funded Hope VI project is the City of Tucson Community Services Department's redevelopment of the Robert F. Kennedy Homes public housing development. The grant of almost thirteen million dollars will be used to replace the existing 80 severely distressed public housing units with 28 public housing units, 20 public housing lease-to-purchase units, 30 elderly or disabled affordable housing units, and 50 in-fill affordable homeownership units in the neighborhood. In addition, the plan includes a new South Park Library with a state-of-the-art computer and technology lab and the Neighborhood Cultural Center, which will provide performance, gallery, and classroom space for public education. This grant will leverage an additional forty-seven million dollars in public and private funds. Another grant was awarded to the Tacoma Housing Authority in the amount of thirty-five million dollars to enable the redevelopment of the Salishan Housing Development. The development was originally built as temporary housing for shipyard workers during World War II and included over 2000 units. Today, only 835 units remain. The Hope VI revitalization plan calls for the demolition of 815 units and historic preservation and revitalization of the remaining 20 units. The new development will include 585 public housing rental units, 262 affordable rental units, 125 market rental units, and 228 homeownership units. Future plans include 165 units of senior housing, including assisted living or congregate care, and a 60-unit apartment building with priority for the disabled. The plan also calls for a number of new community facilities including a 5000 square foot dental clinic added to the existing Eastside Health Clinic, expanded gymnasium space at the Eastside Neighborhood Center, and expansion and rehabilitation of both the Day/Evening Child Care Center and the existing Family Investment Center. Tacoma's Hope VI Grant will leverage an additional one-hundred and four million dollars in public and private funds. See U.S. Dep't of Housing & Urban Dev., at http://www.hud.gov/pih/documents/hope6/fy2000/fy2000_tuscon.pdf (last visited Sept. 30, 2001).

⁷⁰ U.S. Dept. of Housing & Urban Dev., at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/entitlement/index.cfm> (last updated Mar. 3, 2001).

⁷¹ U.S. Dept. of Housing & Urban Dev., at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/nonentitlement.cfm> (last updated Feb. 22, 2001).

⁷² U.S. Dept. of Housing & Urban Dev., at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/stateadmin/index.cfm> (last updated Apr. 3, 2001).

Grant funds can be used in many ways to revitalize urban areas and older suburbs. Permissible uses of funds include: relocation and demolition; rehabilitation of residential and non-residential structures; construction of public facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes; and provision of assistance to profit-motivated businesses to carry out economic development and job creation or retention activities.

3. United States Department of Commerce

Within the United States Department of Commerce⁷⁴ is the Office of Sustainable Development and Intergovernmental Affairs (Office).⁷⁵ The Office was created "to promote sustainable development solutions to advance NOAA's [National Oceanic and Atmospheric Administration] Strategic Goals, environmental stewardship, and environmental assessment and prediction."⁷⁶ While this agency does not presently offer funding to states and localities, it strives to bridge "the gaps of information and coordination between the many stakeholders that influence the nature and extent of development impacts through their investment, consumption, and regulatory decisions."⁷⁷ The Office intends to measure its success "by bringing new constituencies and new perspectives to the task of integrating social, economic and environmental activities to build stronger communities and a stronger society."⁷⁸ NOAA works closely with the Joint Center for Sustainable Communities, a collaboration of the National Association of Counties and the United States Conference of Mayors, created to assist local governments with the development of policies and programs that

⁷³ U.S. Dept. of Housing & Urban Dev., at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/smallcities/index.cfm> (last updated Apr. 3, 2001).

⁷⁴ U.S. Dep't of Commerce, at <http://www.doc.gov/> (last visited Mar. 1, 2002).

⁷⁵ Office of Sustainable Dev. & Intergovernmental Affairs, NOAA, at <http://www.susdev.noaa.gov/> (last visited Mar. 17, 2002).

⁷⁶ NOAA is part of the United States Department of Commerce. NOAA is responsible for United States weather and climate forecasting, monitoring and archiving of oceanic and atmospheric data, management of marine fisheries and mammals, mapping and charting of all United States waters, coastal zone management, and research and development in all of these areas. NOAA is the largest part of the Department of Commerce and manages the United States' operational weather and environmental satellites, a fleet of ships and aircraft for oceanographic surveying, fisheries, coastal and atmospheric studies, twelve environmental research laboratories, and several large supercomputers.

⁷⁷ Office of Sustainable Dev. & Intergovernmental Affairs, NOAA, at <http://www.susdev.noaa.gov/partner.html> (last visited July 31, 2001).

⁷⁸ *Id.*

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promote job growth, environmental stewardship, and social equity. This is accomplished by promoting community leadership initiatives, providing technical assistance and training, and conducting community policy and educational forums.⁷⁹

One initiative of the Office of Sustainable Development and Intergovernmental Affairs and the EPA is the Community and University Partnerships for Smart Growth program, formerly known as the University Consortium.⁸⁰ Although no funding is currently available to support this initiative, the Office points out that the project is still in its infancy and, when fully functional, will “provide a clearinghouse of information where researchers can share ideas and receive feedback from other leaders in this emerging inter-disciplinary field” of smart growth practices and sustainable development.⁸¹

The NOAA website has information on how to build sustainable communities on the coast.⁸² “Living on the Coast” links natural resource managers, community planners, and developers to tools and information about smart growth. The site contains six guidelines for balancing coastal communities’ needs for economic growth, environmental protection, and social health and well-being; a database with links to techniques that can be used to implement smart growth; and resources on smart growth, sustainable development, and coastal management.⁸³ This information is provided as a free resource to states and communities.

The Commerce Department’s Economic Development Administration (EDA) assists state and local governments, regional economic development districts, public and private nonprofit organizations, and Native American tribes. EDA helps distressed communities identify and address problems associated with long-term economic distress and sudden and severe economic dislocations, including natural disasters, closure of military installations and other

⁷⁹ Office of Sustainable Dev. & Intergovernmental Affairs, NOAA, at <http://www.susdev.noaa.gov/joint.html> (last visited July 31, 2001).

⁸⁰ Office of Sustainable Dev. & Intergovernmental Affairs, NOAA, at <http://www.susdev.noaa.gov/smgrowth.html> (last visited Mar. 31, 2001).

⁸¹ *Id.*

⁸² See Coastal Servs. Ctr., NOAA, at <http://www.csc.noaa.gov/smartgrowth/> (last updated Feb. 27, 2001).

⁸³ Office of Coastal Servs. Ctr., NOAA, at <http://www.csc.noaa.gov/smartgrowth/text/guidelines.html> (last updated Feb. 27, 2001); see also Office of Coastal Servs. Ctr., NOAA, at <http://www.csc.noaa.gov/smartgrowth/text/techniques.html> (last updated Apr. 11, 2001).

federal facilities, changing trade patterns, and the depletion of natural resources.⁸⁴ EDA funds a variety of smart growth⁸⁵ and brownfields initiatives.⁸⁶ Their website has extensive information about EDA's programs in this area as well as links to government resources on smart growth (including national, state, and local sites).⁸⁷ In addition, EDA has a University Center program, a government and academic partnership designed to make resources at institutions of higher education available to the economic development community.⁸⁸

⁸⁴ Econ. Dev. Admin., U.S. Dep't of Commerce, at http://www.doc.gov/eda/html/1a1_mission.htm (last visited June 30, 2001).

⁸⁵ According to their website, EDA has provided a \$100,000 planning grant to Hudson County, New Jersey, for the development of a county-wide comprehensive real estate database. In support of Florida's Eastward Ho! Initiative, EDA provided \$24,000 to the South Florida Regional Planning Council to provide technical assistance to local governments and private economic developers. Support was also given for the Southeastern Mass Vision 20/20 Project, a regional growth management project to develop recommendations to improve the management of land use, protect the natural environment, and foster sustainable economic growth in the region. See Econ. Dev. Admin., U.S. Dep't of Commerce, at http://www.doc.gov/eda/html/2b2_2_smartgrowth.htm (last visited June 30, 2001).

⁸⁶ The EDA website reports that they have provided a \$400,000 grant to Northampton County, Virginia, for construction of infrastructure (roadways, storm sewer lines, water mains, a pumping station, and other assorted improvements) to allow for the development of the Port of Cape Charles Sustainable Technologies Industrial Park, located on a brownfield site. A grant of \$955,000 was awarded to the County Commissioners of Alleghany County, Maryland, to rehabilitate approximately half of the 500,000 square feet of space in the former Pittsburgh Plate Glass plant in Cumerberland, Maryland. See Econ. Dev. Admin., U.S. Dep't of Commerce, at http://www.doc.gov/eda/html/2b4_3_brownfields.htm (last revised June 18, 2001).

⁸⁷ Econ. Dev. Admin., U.S. Dep't of Commerce, at http://www.doc.gov/eda/html/2b2_2_smartgrowth.htm (last visited June 30, 2001). Among the federal government links are the United States Energy Office's Center for Sustainable Development and the United States Government Services Administration's Center for Urban Development ("[c]reated in 1999 to help GSA spur local development activities through its real estate activities. The Center works with cities and other stakeholders, through technical assistance, place-based projects, and outreach to build stronger community relationships and create more livable communities."). *Id.*

⁸⁸ Econ. Dev. Admin., U.S. Dep't of Commerce, at <http://www.doc.gov/eda/pdf/GPO26198.PDF> (last visited June 30, 2001). In February 2001, almost \$200,000 in grants was awarded to St. Cloud State University and Hampton University to help local governments and nonprofit organizations better analyze the economic needs of distressed communities. In July 2001, grants totaling more than \$500,000 were awarded to the Regents of New Mexico State University, Washington State University, Penn State, the University of Nevada at Reno, and the University of Southern Mississippi. In addition to economic needs analysis, the grants will be used to help plan and implement development projects that create jobs. See Econ. Dev. Admin., U.S. Dep't of Commerce, at http://www.doc.gov/eda/HTML/1h_grantreq.htm (last visited July 31, 2001).

4. Department of Transportation

In May 1999, the United States Department of Transportation, through the Federal Highway Administration, announced the creation of the Transportation and Community and System Preservation (TCSP) program as a key component of the Clinton administration's livability agenda.⁸⁹ Established in the Transportation Equity Act for the 21st Century (TEA-21), the program has been a "financial tool to help make communities more livable by preserving green space, easing traffic congestion and employing smart growth strategies."⁹⁰ According to Transportation Secretary Norman Mineta, his goal to get more people off the roads and into public transit is consistent with the smart growth agenda.⁹¹ There is a program appropriation of twenty-five million dollars for each fiscal year from 2000 to 2003, and states and localities are eligible to apply.⁹²

The Federal Transit Administration (FTA) has developed the Livable Communities Initiative (LCI) as an experiment in the use of sustainable design concepts, including transit-oriented development, mixed-use development, and traffic management techniques.⁹³ Under the heading of smart growth, the FTA announced that it would support "research into the interaction between transportation investments and land use decision-making within the context of sustainable development."⁹⁴

⁸⁹ Press Release, U.S. Dep't of Transp., Deputy Federal Highway Administrator Invites Community Applications for "Smart Growth" Grants (May 12, 1999), at <http://www.dot.gov/affairs/1999/fhwa3299.htm>.

⁹⁰ *Id.*

⁹¹ Nat'l Governors Ass'n, *New Cabinet Members Speak to Governors on Smart Growth at NGA Winter Meeting* (Feb. 26, 2001), at <http://www.nga.org/nga/newsroom>.

⁹² Fed. Highway Admin., U.S. Dep't of Transp., at www.fhwa.dot.gov/tcsp/fedreg01/sec1.html (last updated Dec. 8, 2000). Examples of projects that have been funded include the integration of land use and housing alternatives to support the development of the Mission Street Transit Corridor in San Francisco, California, and an alternative land use assessment in Port St. Lucie, Florida. See Fed. Highway Admin., U.S. Dep't of Transp., at <http://www.fhwa.dot.gov/tcsp/projects.html>. (last modified Nov. 8, 2001).

⁹³ Fed. Transit Admin., U.S. Dep't of Transp., at <http://www.fta.dot.gov/research/polplan/susdev/livcom/livcom.htm> (last visited July 31, 2001).

⁹⁴ Fed. Transit Admin., U.S. Dep't of Transp., at <http://www.fta.dot.gov/research/polplan/susdev/smgrow/smgro.htm> (last visited July 31, 2001). One example of recently funded initiatives is the "Picture it Better Together Project" in Hartford, Connecticut, which is designed to set up a bus and light rail system to connect communities in the region. Projects are typically funded at the \$200,000 to \$300,000 range, and applications are available at the FTA regional offices. See *id.*

5. Department of Agriculture

The United States Department of Agriculture (USDA) boasts a number of programs that fit squarely within the smart growth agenda. For example, the Farmland Protection Program has traditionally provided funding to help purchase development rights to keep productive farmland in agricultural use.⁹⁵ Working through existing programs, the USDA joins with state governments and others to acquire conservation easements or other interests from landowners.⁹⁶ The federal funding (up to fifty percent of the cost) typically has been awarded to state departments of agriculture to administer. The Resource Conservation and Development Program (RC&D) is designed to “accelerate the conservation, development and utilization of natural resources, improve the general level of economic activity, and to enhance the environmental and standard of living in authorized RC&D areas.”⁹⁷ Current program objectives focus on improving the quality of life through natural resources conservation and community development that leads to sustainable communities, prudent use, and the management and conservation of natural resources.⁹⁸

The Rural Economic Area Partnership (REAP) Zones is a program designed to address “critical issues related to economic activity and growth, low density settlement patterns, stagnant or declining employment, and isolation that has led to disconnection from markets, suppliers, and centers of information and finance.”⁹⁹ The USDA’s Office of Community Development leads the implementation of pilot projects that are collaborative, citizen-led efforts. Five REAP Zones exist (two in North Dakota, two in New York, and one in Vermont) with strategic plans for economic development. The USDA provides modest funding to the zones for planning, and the funding is augmented by the USDA’s community development technical assistance. As a further incentive, priority consideration is given for zone applications submitted for funding through the USDA’s Rural Development programs.¹⁰⁰

⁹⁵ Natural Res. Conservation Serv., U.S. Dep’t of Agric., at <http://www.info.usda.gov/nrcs/fpcp/fpp.htm> (last visited Mar. 17, 2002). It should be noted that for the current fiscal year there is no funding for this popular program.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Office of Cmty. Dev., U.S. Dep’t of Agric.-Rural Dev., at <http://www.ezec.gov/News/reap.html> (last revised Dec. 11, 2000).

¹⁰⁰ *Id.*

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6. Department of Energy

The United States Department of Energy created the Center of Excellence for Sustainable Development, a web-based clearinghouse featuring topics in sustainability, urban sprawl, and green development.¹⁰¹ The website contains links to various reports and studies as well as other publications about sprawl, smart growth, and sustainable development.

B. *The White House Claims Ownership: A Campaign Agenda*

In January 1999, Vice President Al Gore announced the White House Livability Agenda, a set of fiscal year 2000 budget initiatives designed to, among other things, empower communities to sustain prosperity and economic activity and to enhance the quality of life.¹⁰² The Livable Communities approach follows the principle that: "Communities know best - every community is different. Decisions about how they grow are best made by the communities themselves. Therefore, it is the responsibility of the federal government to assist and inform, not direct, patterns of future growth."¹⁰³ The four primary roles set out by and for the federal government are: expanding community choices by providing incentives, expanding community choices by providing information, being a good neighbor, and building partnerships.¹⁰⁴

In June 2000, the Clinton-Gore administration released their revised report, *Building Livable Communities: Sustaining Prosperity, Improving Quality of Life, Building a Sense of Community*.¹⁰⁵ The report outlines the Livable Communities Initiative, a comprehensive thirty-point package of policies designed to support local efforts to revitalize existing communities, protect farmland and open space, and, among other things, generally encourage economic prosperity consistent with a high quality of life. Among the announcements in the report is the establishment of a national livability resource center, an internet-based clearinghouse, supported by the following federal agencies: the EPA; the General Services Administration (GSA); the United States Army Corps of

¹⁰¹ Ctr. of Excellence for Sustainable Dev., U.S. Dep't of Energy, at <http://www.sustainable.doe.gov/> (last visited June 30, 2001).

¹⁰² U.S. Dep't of Housing & Urban Dev., *Livable Communities*, at <http://www.hud.gov/80/livel.cfm> (last updated Aug. 8, 2000).

¹⁰³ Fed. Transit Admin., *Livable Communities Initiative*, at <http://www.fta.dot.gov/library/planning/livbro.html> (last visited July 31, 2001).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

Engineers; the Departments of Commerce, Energy, Interior, and Transportation; and HUD.¹⁰⁶ The report also announced a study by the GSA's Center for Urban Development, in partnership with the National Trust for Historic Preservation's National Main Street Center, to develop a model to assess the economic impacts of federal location decisions in communities.¹⁰⁷

Established in June 1993 as an advisory committee, the President's Council on Sustainable Development was created to address development and growth issues and to advise the President "on sustainable development and to develop new approaches to integrate economic, environmental, and equity issues."¹⁰⁸ The Council issued reports in 1996 and 1999.

C. Congress Asserts Unprecedented Interest: Reviving the National Land Use Policy Act

1. The Community Character Act of 2001

In April and May of 2001, Representative Blumenauer and Senator Chafee introduced the Community Character Act of 2001 (Character Act) "to assist States with land use planning in order to promote improved quality of life, regionalism, sustainable economic development, and environmental stewardship . . ." ¹⁰⁹ Reiterating the federal government's belief that land use planning should be conducted at the state and local level, the Character Act asserts that there is an important role for the federal government in supporting state and local comprehensive planning and community development.¹¹⁰

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See Office of Sustainable Dev. & Intergovernmental Affairs, NOAA, at <http://www.susdev.noaa.gov/pcsd.html> (last visited Mar. 31, 2001).

¹⁰⁹ S. 2995, 106th Cong. (2000); see also H.R. 1433, 107th Cong. (2001); S. 975, 107th Cong. (2001).

¹¹⁰ The Act makes the following findings in Section 2:

(1) inadequate land use planning at the State and tribal levels contributes to-

- (a) increased public and private capital costs for public works infrastructure development;
- (b) environmental degradation;
- (c) weakened regional economic development; and
- (d) loss of community character;

(2) land use planning is rightfully within the jurisdiction of State, tribal and local governments;

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The two bills have the common goal of revamping outmoded land use policy, but the programs would be administered differently. The Senate bill charges the Secretary of Commerce with the responsibility of establishing a program to award grants to the states. In the House bill, the Secretary of Housing and Urban Development is responsible for enacting the program. Both bills cap an award at one million dollars. However, under the Senate's bill, the Secretary may award an additional \$100,000 to fund pilot programs. The cap was raised over the 2000 proposal, which would have authorized grants of up to \$500,000 to states for the purpose of assisting in the development or revision of land use planning legislation. The grants could support the creation or revision of state comprehensive land use plans and plan elements in states where enabling acts are inadequate or outmoded and, as a second priority, in states that have updated land use planning legislation.¹¹¹

It is clear that the proposed legislation was influenced by the American Planning Association's sustained Growing Smart initiative.¹¹² For example, to be eligible for funding, the Character Act requires that states demonstrate consistency with the following: active citizen participation in the development, adoption, and updating of land use plans; a routine schedule of plan updates; multi-jurisdictional cooperation in the development of the plans to provide for resource

(3) comprehensive land use planning and community development should be supported by the Federal, State and tribal governments;

(4) State and tribal governments should provide a proper climate and context through legislation in order for comprehensive land use planning, community development, and environmental protection to occur;

(5) (A) many States and tribal governments have outmoded land use planning legislation, and

(B) many States and tribal governments are undertaking efforts to update and reform land use planning legislation;

(6) the federal government and States should support the efforts of tribal governments to develop and implement land use plans to improve environmental protection, housing opportunities, and socioeconomic conditions for Indian tribes; and

(7) the coordination of use of State and tribal resources with local land use plans requires additional planning at the State and tribal levels.

S. 975, 107th Cong. § 2 (2001).

¹¹¹ S. 2995, 106th Cong. § 4 (2000).

¹¹² The American Planning Association established the Growing Smart initiative in 1994 with funding from a variety of sources, including the United States Department of Housing and Urban Development. The Growing Smart initiative, guided by a national directorate, has produced a series of publications, including a legislative guidebook on land use reform for states and two Planning Advisory Service reports containing a series of commissioned background papers on a variety of critical smart growth and land use reform topics.

sustainability; an implementation element in the state plan that provides timetables for action, definition of roles, consistency with state capital budget objectives, and future infrastructure needs; and land use plans that are consistent with established professional planning standards. The Character Act also requires that states demonstrate comprehensive planning that would promote sustainable economic development and social equity; enhance community character; coordinate transportation, housing, education, and social equity; conserve historic resources, scenic resources, and the environment; and sustainably manage natural resources. These are many of the themes contained in *The Growing Smart Working Papers* and in the *Legislative Guidebook* produced by the American Planning Association.¹¹³

2. Senate Smart Growth Task Force

In January 1999, a twenty-four member bi-partisan, multi-regional Senate Smart Growth Task Force was established by Senators Jim Jeffords, then a Vermont Republican (now an Independent), and Carl Levin, a Michigan Democrat, with the overall goal of determining and promoting ways in which the federal government can assist states and localities in addressing growth management issues.¹¹⁴ Senator Jefford's interest in smart growth is now perhaps more significant following his recent appointment as Chair of the Senate Environment and Public Works Committee.

¹¹³ See 1 AMER. PLANNING ASS'N, PAS 462/463, MODERNIZING STATE PLANNING STATUTES: THE GROWING SMART WORKING PAPERS (1996) (including: "Reforming the Federal, State, and Local Land-Use Regulation Connection"; "Interlocal Approaches to Land-Use Decisionmaking"; "State Agency Coordination in State Growth Management Programs"; "State and Regional Roles in Transportation and Land Use"; and "State and Regional Fair Share Housing Planning"); see also 1 AMER. PLANNING ASS'N, PAS 480/481, MODERNIZING STATE PLANNING STATUTES: THE GROWING SMART WORKING PAPERS (1998) (including: "Toward Modern Statutes: A Survey of State Laws on Local Land-Use Planning"; "Toward Model Statutes for the Economic Development of a Comprehensive Plan"; "Toward a Model Statutory Plan Element: Transportation"; "Creating Effective State and Local Telecommunications Plans, Regulations, and Networks: Models and Recommendations"; "Melding State Environmental Policy Acts with Land Use Planning and Regulation"; and "Model-Acts: Integrating Federal Permitting with Local Land-Use Planning and Regulation").

¹¹⁴ Northeast Midwest Inst., *Senate Smart Growth Task Force Initiatives in the 106th Congress* (Nov. 19, 2001), at <http://www.nemw.org/SGsenate.htm>. Task Force members in the 106th Congress include sixteen Democrats and three Republicans from eighteen states.

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3. House Sustainable Development Caucus

More than thirty members strong, the House Sustainable Development Caucus, formed at the start of the 105th Congress, is a bipartisan congressional caucus created to educate congressional members and staff on what sustainable development is and where it is happening around the country.¹¹⁵ The goal is for members to then use the knowledge "when looking at legislation to ensure that federal policies promote rather than impede sustainability efforts."¹¹⁶

4. House Livability Communities Task Force

In 1996, Congressman Earl Blumenauer, an Oregon Democrat, founded the Livable Communities Task Force. The task force, with over fifty members, supports legislation that requires local community involvement in government decisions at all levels; provides communities with the tools to solve their own local problems; promotes cheaper, more environmentally friendly solutions to infrastructure problems, thereby preserving and conserving resources; encourages multi-objective management; prepares communities to function in a global environment; and focuses on partnerships among and between local governments, private companies, the federal government, nonprofit organizations, and citizen groups for funding solutions.¹¹⁷

During recent Livable Communities Task Force meetings, members have discussed smart growth at the ballot box, metropolitan Chicago's Campaign for Sensible Growth, the costs of sprawl, housing America's working families, the role of the military in a livable community, and opportunities for rail in a livable community.¹¹⁸ In June 2001, the connection between energy policy and smart growth was examined by the task force.¹¹⁹ The task force's website contains links to dozens of studies and reports and links to livable community and smart growth

¹¹⁵ Caucus Information, at <http://www.house.gov/meehan/sdc.about.htm> (last visited Mar. 17, 2002). The caucus is co-chaired by Marty Meehan (D-MA) and Wayne Gilchrest (R-MD), with representation from more than two dozen states.

¹¹⁶ *Id.* The caucus has identified the following sustainable development issues: urban sprawl and loss of open space, transportation planning, brownfields redevelopment and urban revitalization, sustainable taxation policies, reduction of non-sustainable subsidies, post-disaster rebuilding, watershed-based planning efforts, and renewable energy and energy conservation. *Id.*

¹¹⁷ Congressman Earl Blumenauer, at <http://www.house.gov/blumenauer/lctf.html> (last visited Mar. 31, 2001).

¹¹⁸ *Id.*

¹¹⁹ PLANNING MAGAZINE, July 2001, at 45.

resources.¹²⁰ It also summarizes sample Task Force legislation in the 107th Congress.¹²¹

5. General Accounting Office (GAO) Studies

At the request of Congress, the GAO has conducted two studies on smart growth. For the first study, the GAO was asked to review the research on the origins and implications of urban sprawl, describe the existing evidence on the influence of current federal programs and policies on sprawl, and identify regulatory review and coordination mechanisms for evaluating and mitigating the effects of federal influence on urban sprawl.¹²² The report states that “[a]ccording to the literature, the federal government has not adopted a comprehensive national growth plan or land-use policy to balance the nation’s competing needs for economic growth, environmental conservation, and urban reinvestment. However, the federal government does influence land-use decisions through federal laws”¹²³ The report notes that “[c]oordination among federal agencies on growth-related issues is increasing”¹²⁴ As support for this finding, the GAO cites the work of the President’s Council on Sustainable Development,¹²⁵ the Federal Interagency Working Group on Brownfields, the Community Empowerment Boards, and the Clean Water Action Board.¹²⁶

In September 2000, the GAO released a second report detailing the findings of a nationwide survey of municipal officials on local growth

¹²⁰ Congressman Earl Blumenauer, at <http://www.house.gov/blumenauer/livlinks.html> (last visited Mar. 31, 2001).

¹²¹ See Congressman Earl Blumenauer, at <http://www.house.gov/blumenauer/lctf.html> (last visited Mar. 17, 2002). Examples of legislation cited include: The Community Character Act of 2001 (H.R. 1433, 107th Cong. (2001)); The Land Conservation Incentives Act (H.R. 1309, 107th Cong. (2001)); The Bike Commuter Act (H.R. 1265, 107th Cong. (2001)); Historic Homeownership Assistance Act (H.R. 1172, 107th Cong. (2001)); The High Performance Schools Research Act (H.R. 1130, 107th Cong. (2001)); The High Performance Schools Act of 2001 (H.R. 1129, 107th Cong. (2001)); The Revitalizing Cities Through Parks Enhancement Act (H.R. 994, 107th Cong. (2001)); Mass Transit Tax Credit Act of 2001 (H.R. 906, 107th Cong. (2001)); The Housing Preservation Matching Grant Act (H.R. 425, 107th Cong. (2001)); and The Commuter Benefits Equity Act (H.R. 318, 107th Cong. (2001)). *Id.*

¹²² U.S. GEN. ACCOUNTING OFFICE, *supra* note 47.

¹²³ *Id.* at 5.

¹²⁴ *Id.* at 16.

¹²⁵ See THE PRESIDENT’S COUNCIL ON SUSTAINABLE DEV., SUSTAINABLE AMERICA: A NEW CONSENSUS FOR PROSPERITY, OPPORTUNITY, AND A HEALTHY ENVIRONMENT FOR THE FUTURE (1996).

¹²⁶ U.S. GEN. ACCOUNTING OFFICE, *supra* note 47, at 18.

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issues.¹²⁷ A third study to evaluate the environmental link to sprawl has been requested by the co-chairs of the Senate Smart Growth Task Force and the House Sustainable Development Caucus.¹²⁸

6. The Urban Sprawl and Smart Growth Study Act

In May 2001, Representative Mark Udall of Colorado introduced the Urban Sprawl and Smart Growth Study Act.¹²⁹ As another effort by the federal government to be a better partner with state and local governments in preventing urban sprawl, the Act would require the Council on Environmental Quality to study and report on urban sprawl and smart growth, examining a minimum of fifteen federal agencies' environmental impact statements and assessments that were completed after 1995.¹³⁰ In remarks to the full House, Representative Udall declared: "This bill is designed to shine a bright light on the influence of federal actions on urban sprawl and to assure that federal agencies consider how their actions add to this problem."¹³¹ He adds:

A well-developed plan by a local community can be swept aside by the routing of a major highway or the construction of a poorly sited post office. The cumulative effects of a number of small federal actions and policies together may create or foster the very sprawl that communities have fought so hard to control.¹³²

The bill requires, among other things, that the public be involved in the review. The Council must hold hearings in at least five different regions throughout the country. A report, due to Congress within eighteen months, is to include findings concerning the economic,

¹²⁷ U.S. GEN. ACCOUNTING OFFICE, GAO RCED-00-178, COMMUNITY DEVELOPMENT: LOCAL GROWTH ISSUES-FEDERAL OPPORTUNITIES AND CHALLENGES (2000).

¹²⁸ Northeast Midwest Inst., *Senate Smart Growth Task Force Initiatives in the 106th Congress* (Nov. 19, 2001), at <http://www.nemw.org/SGsenate.htm>.

¹²⁹ H.R. 1739, 107th Cong. (2001). It should be noted that unlike the other initiatives described in this Part, at the present time this legislative proposal has three co-sponsors, all of whom are Democrats. On May 3, 2001, the bill was referred to the House Committee on Energy and Commerce.

¹³⁰ 147 CONG. REC. E729 (daily ed. May 4, 2001) (statement of Rep. Udall). Among the programs to be reviewed are land and facility management programs, transportation programs, infrastructure programs, regulatory programs, and development assistance programs. *Id.*

¹³¹ *Id.*

¹³² *Id.*

environmental, and land use effects of sprawl.¹³³ Significantly, the bill requires the Council to “make recommendations for nonregulatory actions that Federal agencies can take to assist States and local communities in promoting the beneficial effects of smart growth and to minimize actions by the agencies that result in adverse effects of urban sprawl.”¹³⁴ Further, the bill requires greater interaction between the federal government and the states to ensure that potential growth and sprawl effects are addressed in federal environmental reviews.¹³⁵

7. The Post Office and Community Partnership Act of 2001

In May 2001, the Post Office and Community Partnership Act of 2001 was introduced in both the House and Senate.¹³⁶ The bill aims to make “the federal government a better partner with communities and local governments.” Currently, the Postal Service is not required to follow a community’s growth management plan, nor land use, traffic management, or environmental protection rules. As a result, it is believed that the Postal Service contributes to urban sprawl and adversely affects local communities. The bill requires notice to and consultation with local communities when the Postal Service proposes to close, consolidate, relocate, or construct a post office. This will, arguably, enable local community leaders and citizens to have input into decisions that will have an impact on the livability of their communities. In addition, the Postal Service will be required to follow local planning, zoning, and other land use laws.¹³⁷ The recent shift in committee chairmanships now has Senator Baucus leading the Finance Committee. Senator Baucus has been a champion of the Post Office Community

¹³³ 147 CONG. REC. E730 (daily ed. May 4, 2001) (statement of Rep. Udall).

¹³⁴ *Id.*

¹³⁵ *Id.* This is accomplished by requiring federal agencies to be more open early in the process of preparing the necessary environmental reviews. The agencies would be required to reach out to affected state and local governments, discuss the proposed actions and alternatives, and seek to address concerns. Arguably, this could lead to enhanced state empowerment in the siting of federal facilities and infrastructure.

¹³⁶ H.R. 1861, 107th Cong. (2001); S. 897, 107th Cong. (2001). This legislation is similar to unsuccessful proposals in the 105th and 106th Congresses. In the 106th Congress, the bill had 240 bi-partisan co-sponsors. At the time of its introduction in May 2001, the new effort was introduced with the 57 bi-partisan original co-sponsors. See 147 CONG. REC. E822 (daily ed. May 17, 2001) (statement of Rep. Blumenauer).

¹³⁷ The primary sponsor of the bill, Rep. Earl Blumenauer, suggested: “Why, since the post office is such a critical part of our community, should the community not be as involved with potential relocation issues as they are in helping pick which version of the Elvis stamp we are going to have?” 145 CONG. REC. H829 (daily ed. Mar. 2, 1999) (statement of Rep. Blumenauer).

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Partnership Act and a supporter of legislation aimed at offering conservation tax incentives.¹³⁸

8. Proposed Constitutional Amendment

In March 2001, Representative Jesse L. Jackson, Jr., of Illinois, introduced a joint resolution proposing a constitutional amendment respecting the right to a clean, safe, and sustainable environment.¹³⁹ Referred to the House Committee on the Judiciary, the proposal is unlikely to advance in the near future given the fact that it is a single house resolution and there are no co-sponsors. However, it does demonstrate yet another potential federal approach to sustainable development, and it is a further indication of congressional interest in many of the principles of the smart growth movement.

V. THE PROGNOSIS DURING THE BUSH YEARS

Dating back to the Reagan-Bush era in the 1980s, the so-called "devolution revolution" triggered a regulatory reform movement that included efforts to streamline regulations and downsize government.¹⁴⁰ In October 1987, President Reagan issued an Executive Order designed to restore the "division of governmental responsibilities between the national government and the states that was intended by the Framers of the Constitution."¹⁴¹ The order required that state and local officials be consulted by executive departments and agencies in possible cases of pre-emption or conflict between federal and state law.¹⁴² The Clinton Executive Order on federalism supported pre-emption in cases where the intent of the law is clear and manifest or the exercise of the state or municipal authority directly conflicts with the exercise of federal authority.¹⁴³

A. *The Bush Administration Approaches Federalism: The Texas Influence?*

The Bush administration began to focus its agenda on federalism with a February 26, 2001, memorandum to senior staff that outlined the

¹³⁸ PLANNING MAGAZINE, *supra* note 119, at 45.

¹³⁹ H.R.J. Res. 33, 107th Cong. (2001).

¹⁴⁰ Oliver A. Pollard, III, *Smart Growth: The Promise, Politics, and Potential Pitfalls of Emerging Growth Management Strategies*, 19 VA. ENVTL. L.J. 247, 270 (2000).

¹⁴¹ Exec. Order No. 12612, 3 C.F.R. 252 (1988), *reprinted in* 5 U.S.C. § 601nt (2000).

¹⁴² *Id.*

¹⁴³ Exec. Order No. 13132, 3 C.F.R. 206 (2000), *reprinted in* 5 U.S.C. §601nt (2000).

creation of an Interagency Working Group on Federalism (Group).¹⁴⁴ The Group was directed to produce a report within six months with recommendations for promoting principles of federalism and draft a new executive order on federalism.¹⁴⁵ The Group was also directed to identify initiatives that promote principles of federalism, such as: federal endeavors that may be more appropriately carried out by state or local authorities; opportunities for flexible funding streams, regulatory waivers, and other opportunities that increase state and local flexibility, innovation, and accountability; measures for improving federal responsiveness to state and local concerns; and enforcement of rules, orders, and procedures that advance federalism.¹⁴⁶

B. Cabinet Appointments Signal Possible Smart Growth Agenda

Texas is not one of the states where there has been a hotbed of land use reform activity. Although this could be viewed as a lack of interest in or sensitivity to smart growth issues, it is significant that President Bush's cabinet appointments include at least three individuals who have roots in the smart growth and land use reform policy arena. The appointments of former New Jersey Governor Christine Todd Whitman to head the EPA and former Wisconsin Governor Tommy G. Thompson to lead the Department of Health and Human Services provide an opportunity for smart growth advocates to lobby the support of high-ranking Bush administration officials who have a proven smart growth record at the state level.¹⁴⁷ Furthermore, the appointment of HUD Secretary Mel Martinez, of Florida, signals potential continued interest on the part of HUD in land use reform efforts because Secretary

¹⁴⁴ See Veronique Pluviose-Fenton, *President Bush Touts Era of 'New Federalism,'* NATION'S CITIES WKLY., Mar. 5, 2001, at 3 (containing a reprint of the President's memorandum).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ During her tenure as governor, Whitman was responsible for, among other things, an agenda of making air and water cleaner, developing the most comprehensive beach monitoring system in the nation, making New Jersey a national leader in brownfields redevelopment, and establishing a conservation program that will preserve about one million acres. In addition, she is an advocate for smart growth. See Office of the Admin., U.S. Env'tl. Prot. Agency, at <http://www.epa.gov/adminweb/about/htm> (last updated Feb. 7, 2002); see also 147 CONG. REC. S655-05 (daily ed. Jan. 30, 2001) (statement of Sen. Smith). During his tenure as Wisconsin governor, Thompson advocated for the recycling of brownfields to decrease urban sprawl, introduced an executive order, and later supported legislation that encourages smart growth. Thomas Still, *The Woodstock of Land Use Planning*, WIS. ST. J., Jan. 9, 2000, at 3B.

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Martinez was active in growth management issues during his recent tenure as Chairman of the Orange County (Florida) Commission.¹⁴⁸

C. *Brownfields Revitalization and Restoration Act of 2001*

In April 2001, the Brownfields Revitalization and Restoration Act of 2001 was unanimously passed by the Senate.¹⁴⁹ The bill amends the Comprehensive Environmental Response, Compensation and Liability Act of 1980. It promotes the clean up and reuse of brownfields, funds programs for revitalizing brownfields, and is designed to enhance state response programs. The legislation provides funds to both state and local governments to assess and clean up brownfields. Funding is authorized for establishment and enhancement of state brownfields programs, including the conversion of brownfields into parks or open space.¹⁵⁰ President Bush's comments in support of the clean up of toxic brownfields has drawn support from a number of smart growth proponents, including the National Association of Home Builders.¹⁵¹ The brownfields issue has remained on the agenda of governors.¹⁵²

VI. OPPORTUNITIES FOR STATE AND LOCAL GOVERNMENTS

State and local governments should be aware of the diverse federal interest in promoting smart growth, sustainable development, and livable communities. Governors, mayors, and other elected municipal officials have an opportunity to influence the national smart growth agenda with concepts of federalism in mind. To keep an agenda focused on empowering, not directing, state and local land use decision making, advocacy could effectively focus on:

(1) supporting programs that provide funding to state and local governments for state and locally identified smart growth initiatives;

¹⁴⁸ See Christine Becker, *Cabinet Members to Speak at CCC*, NATION'S CITIES WKLY., Feb. 26, 2001, at 1.

¹⁴⁹ S. 350, 107th Cong. (2001) (Sen. Chafee). The legislation passed the Senate on April 25, 2001, and was referred to the House Committee on Energy and Commerce.

¹⁵⁰ See 147 CONG. REC. S1481 (daily ed. Feb. 15, 2001) (comments of Rep. Chafee).

¹⁵¹ Nat'l Ass'n of Home Builders, *Bush's Comments on Brownfields Draw Praise From Home Builders* (Feb. 28, 2001), at <http://www.nahb.com/news/brownfieldscomments.html>.

¹⁵² Nat'l Governor's Ass'n, *New Mission for Brownfields: Attacking Sprawl by Revitalizing Older Communities*, in WHERE DO WE GROW FROM HERE? GOVERNORS STRATEGIES FOR GROWTH AND QUALITY OF LIFE (2000).

(2) advocating for a commitment that the federal government acknowledge and respect state and local land use and environmental laws;

(3) working with the various related congressional task forces to present nationally endorsed agendas that make state and local roles stronger in some of the proposed federal legislative approaches;

(4) calling for an interagency task force to examine the existing relevant programs from a position of promoting coordination and consistency, as opposed to duplication, overlap, and omission of key opportunities;

(5) developing a mechanism to create supportive links between the federal government and existing state programs;

(6) recommending the establishment of a federal-state working group to further explore the ways in which the federal government can best invest its resources in furthering the states' economic, environmental, and social sustainability agendas; and

(7) pursuing legislation requiring that, prior to the implementation of any federal policy or action deemed to have an impact on state land use policy, the agency responsible for such policy or action must coordinate the policy or action with the relevant state governor or designee.

VII. CONCLUSION

It is clear that Congress is continuing with a 2001 odyssey into a land use reform agenda. Existing staff in the executive agencies have been vested in the sustainable development and smart growth movements, so much so that it may be difficult to quickly change course. That is not to say that the current administration desires any major changes at all.¹⁵³ It is likely that national land use policies, through a series of laws, regulations, grants and funding programs, and other types of technical assistance, will be a part of the Bush federalism agenda. It is not too

¹⁵³ Wesley Warren, of the Natural Resources Defense Council, offers the view that although the fiscal year 2002 budget proposal contains progress on smart growth in certain areas, it (not surprisingly) fails to follow through on many of the major smart growth proposals from the previous administration. See Wesley Warren, *Smart Growth and the FY 2002 Bush Budget: Highlights of Key Programs* (June 6, 2001), at <http://www.sprawlwatch.org/bushbud.html>.

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soon for public sector advocates at state and local levels to help draft the shape of these initiatives.