



Part 4

* Example Applications

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Part Four of this User Manual provides seven example applications of the Growing SmartSM model statutes for states to consider. They take the reader through a hypothetical scenario of how a state or other entity that is promoting statute reform might logically approach a particular goal by using provisions of the *Legislative Guidebook*. References to the model statutes are provided.

Scenario No. 1: Local Governments Need to Develop a Minimum Capacity in Comprehensive Planning

The state creates a special joint study commission composed of state legislators to investigate how the capacity of local government for planning can be increased. A state legislative commission is selected because the study involves an examination of state laws that may need to be changed. The study commission finds that some localities have established local planning agencies but others have not. It decides the state needs to provide better guidance in organizing local planning agencies and commissions (7-101 et seq.). It also recognizes that state aid to existing regional planning agencies (6-502) will help develop the planning capacities of local governments.

It reviews Table 2-1 and evaluates four different approaches to state directives for local planning: (1) advisory only; (2) encouraged with incentives; (3) a mandatory activity; and (4) mandatory as part of a state-regional-local planning system. The study commission decides that if planning were advisory only, some of the cities and counties in the state might not begin planning. The commission decides to provide a mix of carrots and sticks to promote planning; that is, it decides a combination of mandates and a program of state technical assistance are needed.

After reviewing the pros and cons of mandatory local planning as described in Table 7-4, the commission recommends amending the state statutes to require local governments to prepare comprehensive plans. It also elects to prescribe the substantive content of local comprehensive plans in the statute. It reviews Table 7-3 to determine whether various comprehensive plan elements should be mandated, mandated with an “opt-out” alternative, or optional. It frames the substantive content of local plans based on the various Sections in Chapter 7 of the *Legislative Guidebook*. The commission also clarifies the relationship of local plans to existing regional plans (6-401).

After reviewing the several alternatives for review of local and regional plans by the state, the commission decides that, to ensure quality, a state planning agency needs to be established to review all local comprehensive plans for compliance with the content requirements. After reviewing the *Legislative*

Guidebook's discussion of various types of state agencies (Chapter 4), it decides to recommend reorganization of existing state bureaus into a state planning agency (4-I01) that will provide direct technical assistance to local governments, in addition to technical assistance provided by regional planning agencies to local governments. The commission recommends statutory provisions on state review of local comprehensive plans based on model statutory language found in the *Legislative Guidebook* (7-402.2). It also recommends certain specific statutory sections on adoption (7-403), filing (7-404), amendment (7-405), and periodic review (7-406) of local comprehensive plans.

The special study commission of state legislators recognizes that localities will need technical assistance to prepare comprehensive plans. It formally delineates substate regional districts (6-60I) and strengthens the roles of regional planning agencies in each substate region as a way of delivering technical planning assistance to local governments. It also contemplates a role for regional agencies in preparing a regional comprehensive plan (6-20I) and convening local governments to solve intergovernmental planning issues. It recommends a "Smart Growth Technical Assistance Act" based on the model provided in the *Legislative Guidebook* (I3-20I), which provides for the state to provide grants, model ordinances, and educational and training programs to local governments. In addition, to help partially offset the costs of local planning that will not be met by the programs of the new technical assistance act, the special study commission recommends preparation of a bill authorizing local governments to impose a real property transfer tax (I3-I03) or development excise tax (I3-I04) to finance planning.

Scenario No. 2: A State Wants to Direct Development and Investment to Designated Areas

A growth strategies commission that was formed by executive order of the governor two years ago has just released its report. The state, like many others, has seen too many acres of open space and productive

farmland being lost to haphazard development. It wants to control sprawl. There is a mismatch between the rapid pace of development in metropolitan areas and the local and state provision of infrastructure to serve the new development. In some places where infrastructure has been extended to new development, it has been done inefficiently. Private development is driving state investment decisions, not vice versa. The commission finds that it must ensure the provision of adequate and equitable educational, health, cultural, and recreational facilities through state policy. The timing, location, and intensity of development do not match but need to be linked with the existing and planned infrastructure in the state.

The commission reviews the "Smart Growth Act" (4-40I), which is designed to encourage compact and contiguous patterns of growth. It decides to establish "smart growth areas" (patterned after the State of Maryland's "priority funding areas") and to prohibit state growth-related infrastructure and facility spending outside of them.

The growth strategies commission finds that it must protect agricultural and forest resources by directing future development away from prime farm and forest lands. To do this, the commission believes the state needs to be directly engaged in land development planning and to clearly define its interests. After reviewing "A Note on State Planning Goals" in Chapter 4, the commission drafts state goals for directing development and statewide capital investments. It recommends also that a stronger state planning agency be established to develop a state land development plan (4-204), which will then be submitted by the governor to the state legislature (Table 4-4). The state land development plan is not effective until adopted by the legislature. The growth strategies commission also recognizes the important role that regional planning agencies can play in the growth management process, and it authorizes the preparation of regional comprehensive plans (6-20I).

The commission's review of past state facility siting practices reveals that the state economic development plan (4-206) promotes locations for state facilities that will help bolster poor economies. While some local economies have been stimulated by state investments pursuant to the state economic development plan, the commission finds that there is much inefficiency resulting from the dispersion of major state investments. It also finds that public opposition has frustrated the state facility siting process at times. It examines

the *Legislative Guidebook's* approaches to siting state facilities and the model statute for bringing equity to the facility-siting process (5-101 et seq.).

The commission decides that the state needs much better planning with regard to state investments. To ensure state agencies work together in pursuing common state investment strategies, the commission recommends that a cabinet coordinating committee be established (4-101). Furthermore, the commission recommends that a division of geographic information (15-101) be established to provide data and analysis on land uses and infrastructure systems in the state.

It recommends that the state prepare and adopt a capital improvement program and capital improvement budget (4-301) as recommended in the *Legislative Guidebook*, that state agencies must observe strict consistency with the state capital improvement program (4-212) and the smart growth areas (4-401) designated pursuant to the Smart Growth Act, and that the existing state transportation plan (4-205) and regional transportation plans (6-204) be amended to be consistent with the state capital improvement program. Without these requirements, the state transportation department and regional agencies might pursue investment strategies that are counterproductive to adopted state goals and investment strategies.

The commission also reviews the pros and cons of urban growth areas and the experiences in Oregon, Washington, Tennessee, and other states as summarized in Chapter 6 (Table 6-1). It reviews the optional model statute on urban growth areas (6-201.1) and the “Note on Urban Growth Areas and Regional Planning” in Chapter 6. It finds that the prerequisites of pursuing urban containment strategies are complex and that the capacity of regional and local planning agencies needs to be increased before such policies can be implemented. For instance, local governments would need to establish land market monitoring systems (7-204.1) that may require substantial state funding to implement. The commission finds that the smart growth areas designated under the Smart Growth Act (4-401) will serve some of the same purposes as urban growth areas. Besides, the commission observes that shorter-range objectives of guiding state investment are more pressing and will consume the state legislature’s attention in the next legislative session. It recommends further consideration of urban growth areas as a second phase of modernizing the state’s planning statutes, along with programs to increase the capacity of regional planning agencies and local governments to plan.

Local governments must do more to provide infrastructure and essential public facilities to serve new development. The commission recommends that local governments be authorized to adopt development impact fees (8-602) and concurrency or adequate public facilities ordinances (8-603) so that they can complement state investment and infrastructure provision.

Scenario No. 3: Local Governments Have Only Minimal Authority for Zoning and Subdivision Regulations, and No Authority for Innovative Mechanisms and Incentives

A state establishes a special independent study commission to consider whether local governments have adequate land-use controls to manage growth and change. It finds that local governments need to be empowered with a range of regulatory tools to manage growth and change locally in order to create quality communities. Questions exist as to the legal validity of local governments to adopt certain types of land development regulations.

Consulting the *Legislative Guidebook*, the commission tells its staff to draft a bill that provides local governments with the basic structure for zoning ordinances (8-201) and guides how local governments must address nonconforming uses (8-502). It also directs staff that the bill must authorize local governments to adopt regulations governing corridor maps (7-501), site plan review (8-302), planned unit development and traditional neighborhood development (8-303), development agreements (8-701), historic preservation and design review (9-301), transfer of development rights (9-401), purchase of development rights (9-402), conservation easements (9-402.1), land-use incentives (9-501), and other tools.

The commission would also like to examine further the idea of having uniform development standards (8-401) that apply across the state, so as to avoid inappropriate and excessively burdensome standards. Recognizing that several other states are way ahead when it comes to authorizing local government adoption of development impact fees, the commission also recommends that the state adopt a development impact fee statute (8-602) based on the model in the *Legislative Guidebook*. The existing zoning enabling statute has some regulations

governing the establishment of local planning commissions. However, local governments are unsure whether a hearing examiner (10-301) should be authorized as an alternative to having a planning commission.

Scenario No. 4: Local Development Review Procedures and Judicial Review Procedures Have Serious Problems and Need Reform

Private development interests have combined in a coalition to bring pressure on the state legislature to bring order and more certainty to local development processes. Certainty and efficiency in the development review and approval process need to be improved, the coalition finds. It points to several local abuses of land-use regulations and argues that the state should anticipate the potential for abuse of planning tools and correct for it.

For instance, there are no limitations on how much time goes by before a local government acts on a development permit (see 10-210). There is a beginning, but no one seems to know exactly when the middle and end of local development permitting occur. There seems to be too many opportunities for backroom agreements or even corruption in certain local development review procedures.

The coalition points out how desperately the state's zoning and subdivision enabling statutes need modernization. Existing statutes were based on models written in the 1920s, and they have not been updated. There is great variation in the way local governments process permits and appeals due to the lack of guidance inherent in the state's planning and zoning statutes. To ensure due process, the coalition asks for new statutory language governing the adoption and amendment of local land development regulations so that standard notice and hearing provisions are clearly required (8-103). They recommend that the state completely overhaul the administrative and judicial review procedures of local governments using Chapter 10 as a model or basis of departure. They ask that particular attention be paid to: (1) adopting the unified development permit review process for land-use decisions, as provided in Section 10-201, and (2) providing for consolidated permit review processes (10-208).

Over time, most local land development regulations have become a patchwork of amendments that don't fit together well. Local regulations and procedures are hard for the sophisticated developer or home builder to understand, much less the average citizen. Developers have been unable to obtain copies of some land development regulations from some local governments because they have not published updated versions that contain all recent amendments. They underscore the difficulty of complying with local regulations that are moving targets. Developers urge that local governments be required to record copies of all land development regulations (15-202) and establish requirements for local land-use decisions to be filed in a timely fashion (15-201). They also urge that the state require local governments to periodically review their land development regulations and update them at least every five to ten years, as suggested in Section 8-107.

Local governments make zoning decisions without consulting the comprehensive plan. The relationship between zoning decisions and the comprehensive plan are altogether unclear in the statute. Developers who try to rely on the local government's comprehensive plan find that local governments are not always updating and following them. Several states require that zoning regulations be consistent with and implement local comprehensive plans. The coalition works with certain legislators who are taking a hard look at the consistency issue (Chapter 8, "Commentary: Gauging Regulatory Consistency with a Local Comprehensive Plan").

Private development interests are concerned that the state's vested rights statute is unclear, if not altogether unfair. They seek greater certainty about when development is vested in the process. After considering alternatives in the *Legislative Guidebook*, the coalition seeks sponsorship of a legislative bill based on the vested rights model (8-501). They are also concerned about the possibility of local governments imposing development moratoria (8-604) and ask that amendments be prepared to the state statutes governing when a moratorium on development is warranted.

Yet another issue the state needs to confront, according to the coalition, is that certain local government regulations do not fit with state regulations and federal programs (8-105). Local governments may be making decisions that are flatly prohibited by state and federal statutes.

The legal structure for the judicial review of land-use decisions is chaotic. Procedures are incomplete and unclear, and important land-use disputes often cannot get to court.

The coalition asks that the state provide for more timely and appropriate methods of judicial review (10-603).

The coalition finds also that there is another layer of duplication in the development review and approval process—there have been stories told about “turf wars” between local and state permit-issuing agencies. After consulting Chapter 12, the coalition urges the state to integrate more appropriately its existing state environmental policy act (SEPA) into local development regulatory processes to reconcile duplicate, parallel permit processes.

The coalition also urges that there be more flexibility in planning administration. Standards on which land-use decisions are based must be clear and predictable, but they must also allow for creativity and flexibility. It would also like to see some land-use incentives (9-501), as opposed to the state relying on the “stick” approach of regulation all the time.

Scenario No. 5: *Critical Resources Need Protection*

A joint legislative study committee is formed. Its task is to examine the issue of critical areas being lost to development or damaged by other development practices. Indeed, there is broad consensus that the state must protect its significant natural resources, such as wetlands and coastal estuaries. Before making decisions, the study committee reviews the experience of the state of Florida with regard to its longstanding critical areas program (Chapter 5). It also examines the “ad hoc” approaches used in some other states like New York, Massachusetts, New Jersey, and North Carolina as described in the *Legislative Guidebook*.

The joint legislative study commission decides it wants to propose an “areas of critical state concern” program. Staff of the commission consult the Growing SmartSM *Legislative Guidebook* and find that preparation of a state land development plan (Table 4-3 and model statute section 4-204), consisting of goals and policies, is needed to provide an overall framework for critical resource protection. The commission provides an outline of a new statute for designating areas of critical state concern based on the model provided in the *Legislative Guidebook* (5-201 et seq.). The outline of a new statute also authorizes regional planning agencies to prepare regional comprehensive plans (6-201) and regional functional plans (6-202) to identify and protect critical

resources of a regional nature. An areas of critical state concern statute is drafted and passed by the legislature, based largely on the Growing SmartSM model.

The new statute requires that local governments with areas of critical state concern within their jurisdictions amend their comprehensive plans and land development regulations to be consistent with the goals of the state land development plan and designations of areas of critical state concern (5-209) and to include a critical and sensitive areas element (7-209). In addition, local governments need authority to adopt their own ordinances regulating critical and sensitive areas (9-101), the commission finds. Furthermore, the legislative study commission finds that provisions need to be added to the planning and zoning statutes of the state so that local governments clearly have the authority to transfer development rights (9-401) and purchase development rights (9-402) to protect open spaces.

Testimony before the joint legislative study commission reveals that, even with the state program of designating areas of critical state concern and the preparation of regional comprehensive plans and regional functional plans, more efforts are needed. The commission, after hearing the testimony, recommends legislation that will require the preparation of a state biodiversity plan (4-204.I).

Scenario No. 6: *An Affordable Housing Shortage Exists in the State*

A private coalition brings to the attention of several state legislators that there is a lack of affordable housing in the metropolitan areas of the state. It also simultaneously pushes the governor to begin putting state administrative machinery and programs in place to provide a full range of housing opportunities for persons of all income levels. To clarify the term “affordable housing” for lawmakers, the coalition consults definitions provided in the *Legislative Guidebook* and explains to state officials the specific housing needs in the state.

Several state legislators, who have met numerous times with representatives of the coalition, review the “Note on State Planning Approaches to Promote Affordable Housing” in Chapter 4. They conclude that a state housing plan is needed first (i.e., a “top-down” approach). The state legislator chairing the committee that oversees state housing programs reviews the two alternatives for state planning for affordable housing, as

provided in the *Legislative Guidebook* (4-208 and 4-208.I). She considers the alternatives of (1) establishing a state housing appeals board and (2) following the model “Balanced and Affordable Housing Act” provided in the *Legislative Guidebook*. Furthermore, she considers the merits of requiring or encouraging regional housing plans (6-203). She directs her staff to prepare an affordable housing statute for the state that takes all or the most appropriate parts of these recommendations into consideration. Her bill is prepared, favorably reported from committee, and passed by the legislature.

The new affordable housing law establishes an affordable housing council which is responsible for preparing a state housing plan, designating housing regions in the state, preparing estimates of present and future needs for low- and moderate-income housing by region, developing regional fair-share allocations of such needs to local government, and reviewing and approving housing elements of comprehensive plans submitted by local governments. Local comprehensive plans now are required to contain a housing element that identifies how the local government will address the housing needs for all income groups, especially its allocated regional fair share. The state planning agency’s staffing levels are increased so as to review local comprehensive plans, particularly housing elements, and to help the affordable housing council ensure that local housing policies are consistent with the state housing plan and regional fair-share allocations.

The coalition also points out that regulatory reform can have a significant impact on encouraging affordable housing. It finds that local government zoning and land development regulations are unduly burdensome, and exclusionary in some cases, particularly with regard to manufactured homes. Local governments are using large lot requirements, minimum floor areas, roof pitch requirements, and other tools to exclude manufactured homes from the community. The coalition urges that manufactured housing, a key to future affordability policies, be treated the same as site-built housing and that manufactured single-family housing be permitted in any single-family residential use district established by local government zoning ordinances (8-201). It argues for uniform development standards (8-401) to avoid excessively burdensome development requirements that raise the costs of land and housing.

The coalition also finds that impact fees in some jurisdictions are disproportionately high with the intent of excluding some classes of housing. It argues for changes to the state’s development impact fee statute (8-602) to provide for exemptions of affordable housing from the payment of

impact fees. And the coalition asks that the state require local governments to adopt land-use incentives for affordable housing (9-501).

Scenario No. 7: A State Finds the Need to Encourage Redevelopment

Redevelopment areas are those parts of communities that have deteriorated socially or physically, or that contain development that has become obsolete. Most states have several statutes for creating, financing, and operating redevelopment areas. These separate statutes were often created to receive or transmit funding or other assistance from particular federal or state programs. Many of these separate laws overlap; several different statutory schemes potentially apply to the same area in need of redevelopment.

More and more, attention is being focused on “brownfields,” which are abandoned, idled, or underused industrial and commercial facilities where redevelopment is complicated by a real or perceived environmental contamination.

The director of the state redevelopment agency recommends that the state legislative committee on redevelopment and brownfields consider comprehensively overhauling the state’s duplicative and confusing statutes on redevelopment. The director suggests that the legislative committee use the redevelopment area statute in the *Legislative Guidebook* (14-301) as a model or basis of departure. The state redevelopment director seeks clearer authorization for local governments to adopt redevelopment area plans (7-303).

Certain redevelopment areas are unlikely to become revitalized unless the state empowers local governments to provide tax increment financing (14-302) and tax abatement (14-303). The legislative committee asks for a detailed report from the state redevelopment director on the use of these tools, and he consults Chapter 14 of the *Legislative Guidebook* in preparing a redevelopment statute that is expected to be introduced in next year’s session of the state legislature.

