

# Locally Grown: Statewide Land Use Planning in Northern New England

by

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B.A., History and English Literature  
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Submitted to the Department of Urban Studies and Planning  
In Partial Fulfillment of the Requirements for the Degree of  
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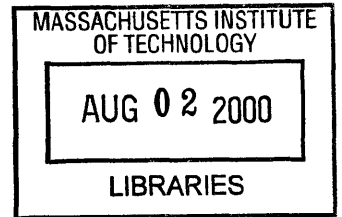
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## Abstract

A popular movement against urban sprawl and its attendant problems has emerged in the U.S. over the last several years. The problems associated with sprawl are caused, at least in part, by local government fragmentation and uncoordinated land use decision making. Recognizing that local control has failed to manage growth in a coordinated and effective way, state governments have stepped in to intervene. Loosely organized under the banner of “Smart Growth,” states are re-asserting some of their power to encourage more orderly development and to resolve inter-local conflicts.

Yet Americans also have a longstanding passion for local government and distrust of state intervention in land use decisions. Despite the failure of local governments to manage regional patterns of growth, citizens are reluctant to give back land use regulatory power to states. This project explores state growth management programs in the context of this central tension: the desire for local control and the need for greater-than-local solutions.

Maine, New Hampshire, and Vermont have similar demographic profiles but substantially different statewide land use planning programs. This study describes the history and politics of state-level planning in each state. Further, this study examines the effect of state policies by looking more closely at state planning’s influence on one city in each of the states: Portland, Maine; Portsmouth, New Hampshire; and Burlington, Vermont.

The case studies reveal that statewide planning programs in all three states are actually quite weak, and have suffered from inconsistent political support, erratic funding, and sporadic citizen opposition. Local control is an important counterweight to state action, but does not preclude effective state intervention. Besides land use planning, state tax and infrastructure policy play the most important role in influencing development patterns.

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# Part I: Statewide Land Use Planning

## Introduction: Growing Interest

By any measure, America is in the midst of a popular movement against urban sprawl. In the last several years, citizens nationwide have identified and blamed development patterns for a variety of ills: traffic congestion, rising housing prices and property taxes, loss of greenspace, environmental degradation, and urban decline. With rates of new construction lifted by a buoyant national economy, change has become more apparent on the landscape. The frantic pace of land development has altered or destroyed many of the amenities people have taken for granted. In a recent national poll, Americans identified sprawl more than any other issue as “the most important problem” facing local communities (Pew Center for Civic Journalism 1999).

Citizens and elected officials are turning to land use planning as the solution to this problem in growing numbers. On Election Day 1998, voters considered 240 ballot measures related to conservation, parks, or development controls at both state and local levels. Seventy-two percent of these initiatives passed, triggering \$7.5 billion in new funding (Myers 1999). The popular demand for land use reform has bubbled up through the political system, generating an enormous amount of legislation at the state level. In 1999, state governments saw approximately 1,000 proposals for new land use related legislation; 20 percent of them were enacted (APA 1999).

Governors have been paying attention, as well. In half of all “State of the State” speeches given through February 2000, governors—including those in Maine, New Hampshire, and Vermont—explicitly addressed growth and its potential negative impacts (National Governor’s Association 2000). Just in the first three months of 2000, at least 11 states have proposed serious, comprehensive land use reform, in addition to the nine that already have statewide land use planning programs in place. According to one close observer of state land use law, 38 of the 50 states are somehow engaged with the issue of land use reform, and all continue to push for a wide variety of remedies (Salkin 2000). In their many forms, these state actions have rallied under the

banner of “Smart Growth,” a term first coined by Maryland and then adopted by the American Planning Association.

States have been the locus of reform during this wave of interest in land use. Most land use decisions are made at the local level, but people have become more conscious of the fact that land use impacts do not stop at political boundaries. Watersheds and highways, for example, rarely fall neatly within the borders of a single jurisdiction, and both can generally benefit from coordinated management that isolated local governments do not provide. As fragmented local governments fail to stop sprawl, many are looking to state governments for answers. Changes in state policy are more helpful in this respect, since many land use controversies cross city boundaries, but far fewer spill over state lines. Also, in the federal system, states hold the ultimate legal power to regulate land use.

Yet, as states move to insert themselves in land use policy, they collide with a deeply held political tradition of locally based land use decision-making. Americans love their local governments, regardless of their insularity and inability to deal with this broad ranging problem. In general, local governments have served local citizen interests in terms of protecting property values and providing services. Cities and towns are better informed about local land use conditions, and more responsive and accountable than state legislatures. Land use regulation as a purely local enterprise is a valued tradition in the U.S., and citizens are loath to return any of this power to the state.

### **Project Objective**

The purpose of this thesis, then, is to explore this central tension in statewide efforts to manage growth. How has statewide land use planning balanced two strongly competing interests—a desire for local control and the need for greater-than-local solutions? To answer this question, I have examined land use policies in three states, Maine, New Hampshire, and Vermont. These northern New England states are alike in many ways, but have had very different experiences with statewide land use planning. Maine and Vermont have statewide laws passed in



the late 1980s; New Hampshire has no statewide planning law. Focusing on each state in turn, the case studies will examine several issues: problems that generated new policies; how reforms were put in place; key features of the new systems; and the implementation record for any new changes.

The institutional framework for land use planning in each state is important, but it is only part of the story. More important is how these mechanisms actually operate in practice. This is especially true of the programs' influence on local government, since cities and towns still make most development decisions. In writing these case studies, I have attempted to weave together descriptions of state programs with an analysis of their effects.

Recognizing the inter-relationship between states and their local governments, I further examine the effect statewide land use planning has had on one city in each of the three states: Portland, Maine; Portsmouth, New Hampshire; and Burlington, Vermont. How states have influenced city planning in these three cities will provide a window on the usefulness of their respective state programs. Finally, a comparison of the different approaches taken by the three states, and the lessons learned, may provide guidance to other states that are either contemplating, or in the process of reforming their land use planning systems.

The focus of this work is on planning and politics; it describes state programs for land use and the problems and policy issues each raises. It is not meant to be analytical in the formal sense of measuring the effectiveness of these programs in an objective way. Shifting definitions of what constitutes success and unreliable data for measuring land uses make program evaluation inherently difficult. Nevertheless, I have made an attempt to quantify the overall record of these states in curbing sprawl and have included my results in an appendix (See Appendix A).

Finally, a note about terminology: I use "growth management" and "land use planning" somewhat interchangeably. Growth management has become the favored descriptive term because laws take an active role in altering the pace and character of new development. However, because land use planning is a term that encompasses all of the instruments that are most often employed to shape development patterns, and because it focuses on specifically on the spatial aspects of change, I use this term instead.

## **Framework**

Originally, I set out to test the claim that states with strongly articulated, broadly supported, interventionist policies related to land use have been more successful in dealing with sprawl than those states which give less guidance and support to local communities. In my conceptual model, Vermont had the strongest state-sponsored planning program, Maine's was somewhat weaker, and New Hampshire had none at all. Given this range of policy frameworks, had the results of different levels of government action shown itself on the landscape?

My research uncovered a considerably more complex story. None of the three states evidenced what I anticipated. Vermont and Maine's state programs were less influential than they appeared at first glance, and New Hampshire provided its cities and towns with more assistance than I had expected. In addition, planning efforts in all three states were beset by funding shortfalls that frustrated attempts to evaluate their success.

As the case studies that follow will show, I found that, overall, state-sponsored land use planning in northern New England is quite weak. Yet at the same time, many local governments in the three states—including the three cities on which I focused my attention—have done creative and innovative planning. The mantra of local control notwithstanding, some aspects of the state programs have been quite successful and accepted by cities and towns. In this project, I try to explain some of the reasons behind the successes and shortcomings of statewide land use planning, and show what other places might learn from the experiences of Maine, New Hampshire, and Vermont.

## **Methodology**

The topic of this thesis grew out of my general interest in the form of cities and the politics of land use, an interest refined by five years of living and working in Oregon. There, in spite of a pioneer tradition of independence and a general distrust of government, state level involvement in planning has established itself as part of the culture. Why, I wondered, has it been so hard for

other states to do the same? The answer, people told me over and over, *ad nauseum*, was local control.

New Englanders, the conventional wisdom says, have a 350-year tradition of local government behind them and an intractable sense of Yankee independence. They do not willingly turn power to make development decisions back to the states. Yet, to my surprise, I discovered that my home state of Maine had a statewide land use planning law, as did Vermont. How was this possible? My dear hometown of Bangor had, in my teenage years, experienced sprawl, just like so many American cities. In less than a decade, Bangor's northern edge changed from a landscape of pine forest, cow pastures, and two-lane roads into a gargantuan, indisputably ugly, auto-dominated commercial mess, replete with shopping malls, a multiplex cinema, and car dealerships.

With this dilemma in mind, I set out to find how statewide planning worked in northern New England. My field research consisted of a number of visits to each state in the spring of 2000, and of multiple interviews with directors of state planning, environmental advocates, city planners, and local citizens. I read plans and reports, gathered data on development patterns, asked about local concerns and political intrigue, and tried to get a subjective sense of each place. Back at MIT, I dug into demographic and geographic data, reviewed the literature on statewide planning and growth management, and consulted with colleagues who are familiar with the many issues.

It should be clear from the work that follows that my personal bias is in favor of land use planning. I believe that good planning is a messy, contentious, and democratic enterprise that gives people control over the future of their communities. My boosterism, though, does not blind me to the fact that some plans are unwise, and even more are merely ineffective. My analysis of the programs in Maine, New Hampshire, and Vermont will hopefully distinguish wheat from chaff.

## The Legal and Political Frameworks for Statewide Land Use Planning

Statewide programs for land use planning are most usefully seen as a movement by states to reclaim some control over the land use planning that happens within their borders. The story of state-level programs, including those in northern New England, has been the story of stitching back together the fragmented municipal regions around the issue of land use planning. The push toward a greater state role in land development requires an understanding of why it is so weak in the first place. Unlike in most other countries, the framework for land use planning in the United States is centered at the local level. This devolution of state power down to the smallest units of government is a peculiarity of American federalism, and derives from a political and legal history that bears some recounting.

### **Power to regulate land use**

Legally, the power to regulate land use in America derives from the tenth amendment to the U.S. Constitution. The amendment, a remarkably simple, one-sentence phrase, establishes states' rights and grants them control over, among other things, land use decisions. It reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

That state governments possess ultimate power to control land use seems counter to political reality. Local control over planning and zoning reigns supreme in most of the U.S., even among the limited number of states with statewide land use planning frameworks. How this system came to be derives from the spread of zoning as a locally based planning tool, and the subsequent devolution of land use regulatory power from the states.

Prior to the twentieth century, land use planning as we know it was essentially non-existent. Development was guided by a general sense of civic cooperation, and regulated locally through rules that focused on immediate safety and health impacts—building codes, fire codes, and the like. Governmental limits or restraints on development came through judicial power, especially

as expressed through the common law doctrine of nuisance. Individual conflicts between land uses were resolved in the courts through application of an ancient common law principle: *sic utere tuo...*, or, no property should be used in such a manner as to injure that of another owner. Other than that, the government role in land use planning was essentially restricted to assessing and collecting taxes, and enforcing bans on trespass. Land use decision-making was confined to isolated legal battles over specific parcels, and planning was unusual at a level broader than that of a single owner's property.

Conflicts over differing land uses increased at the turn of the century, as individual mobility improved and the country's economic base became more industrial and complex. Pressures mounted for society to regulate future land use decisions, rather than waiting for nuisance law conflicts to arise after the fact. San Francisco, for example, passed an ordinance in 1867 that prohibited the building of slaughterhouses, hog storage facilities, and hide-curing plants in certain districts of the city (Cullingworth 1997). Residential property owners, fearful of losing the value of their investment, agitated for some kind of land use framework that would protect them.

As the largest and most diverse American city by far, New York City was an epicenter for land use conflict because it had the widest variety of uses packed into the smallest land area. In response to residential property owners who were concerned about intrusion into their neighborhoods of Jewish garment-makers and immigrant workers, the city passed a law governing land use in 1916. As a complete and comprehensive system of building and land use control, it was the nation's first comprehensive zoning act. The New York law was not planning *per se*, since its primary concern was with protecting existing property interests and not providing for future needs. Nevertheless, it was unique in that it applied to buildings not yet constructed, established the concept of different use districts, and applied comprehensively to the whole city. Despite widespread concerns about the constitutionality of New York's zoning law, dozens of other cities quickly followed its example and adopted similar laws.

Recognizing that this groundswell of zoning satisfied a demand for orderly development, the federal government soon inserted itself into land use policy. The Department of Commerce

headed up the effort, under the leadership of its secretary, Herbert Hoover. Mindful of the limits put upon it by the tenth amendment, the federal government approach was to craft model legislation for the states. State legislatures could independently use this to empower local governments to do zoning. Published in 1924, the Standard State Zoning Enabling Act was a smashing success, selling more than 55,000 copies and filtering quickly through virtually all the states (Cullingworth 1997). Intergovernmental relationships were made quite clear in the model legislation. The first sentence of the act was a “grant of power” from a state to its local governments to control land use “for the purpose of promoting health, safety, morals, or the general welfare of the community” (U.S. Dept. of Commerce 1924).

The Standard State Zoning Enabling Act (SZEA) conferred legitimacy to local control of land use and touched off a stampede of regulation at both the state and local levels. Two years after publication of the model legislation, 43 of the then 48 states had adopted zoning enabling acts. Moreover, 420 local governments had adopted zoning ordinances, and hundreds more were in the process of preparing them (Mandelker 1995). Maine, New Hampshire, and Vermont all adopted the zoning enabling legislation during this period.

Despite its growing popularity, zoning as a tool for land use control stood on uncertain constitutional ground until 1926. In the landmark case *Village of Euclid vs. Ambler Realty Co.*, the U.S. Supreme Court affirmed the constitutionality of locally based zoning. The court held that a Cleveland, Ohio suburb’s zoning was indeed a valid exercise of the state’s police power, and refuted a developer’s claim that land use regulations had effectively “taken” his property. With authority granted to them from the states, and legal validity largely resolved by the highest court in the land, local jurisdictions quickly adopted zoning as the preferred method of controlling development. States had given local government *carte blanche* to develop land use regulations as they saw fit. Today, all 50 states have zoning enabling acts largely based on the SZEA model. Land use planning in the United States is, almost without exception, a local matter.

Ostensibly, local zoning is built on the foundation established by a local plan. The language of the SZEA says that zoning should be adopted “in accordance with a comprehensive plan.” In

practice, this is often not the case and the relationship between planning and zoning is weak. The model legislation produced by the Commerce Department never explicitly defined “comprehensive plan,” and did not make a concrete, enforceable link between planning and zoning. Thus many local governments either adopted zoning without undertaking planning, or let their zoning ordinances diverge from their plans. Even today, only 14 states explicitly require a land use plan as a basis for local zoning. At the other extreme, 24 states give local plans no legal standing whatsoever (Ziegler 1993). Planning is long range, general, and has no immediate legal effect on property, while zoning is short range and precise and does have a legal effect on property use. Given limited resources, most local governments have chosen the policy solution with the most immediate effect, to the neglect of long range planning.

With local control of land use such a dominant feature of the American regulatory landscape, it is often forgotten that the true source of this power comes from the states. States, through enabling legislation, delegate zoning power to municipalities, but they can always review or rescind this power. In upholding zoning in *Euclid*, the Supreme Court explicitly set limits on local control of land use. The court ruled in favor of *Euclid*’s right to enforce its land use regulations, but the majority opinion was careful not “to exclude the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way.” (*Euclid vs. Ambler Realty* 1926) Legally, if not practically, the system would give states the ultimate power to control land use.

“Nonetheless,” one author has correctly observed, “to conclude that municipal regulation of land use is at the mercy of the state is to confuse form with substance” (Wickersham 1994). States have traditionally left land use entirely in the hands of local government. Until the first wave of statewide environmental regulations was instituted in the early 1970s, states had virtually no oversight of local land use. Local governments have the best information about local circumstances, so goes the traditional thinking, and states should leave them alone to plan and zone as they wish.

## **Arguments for and against local control**

The argument for local control over land use has a long history, and continues to dominate public policy. Local officials may simply have better information about detailed and complex factors that go into the use and development of land. A city or town is the appropriate unit of regulatory power because of the intensely local need for information gathering. State governments are too far removed from the local situation to have an accurate understanding of a community's existing conditions and future needs. Moreover, the reasoning goes, decision-making authority should rest in the hands of people most affected by new decisions. Local government gives citizens greatest power in controlling land uses, because these same citizens will most acutely feel the effects of these decisions. Finally, local control has a strong tradition in American government on issues beyond land use. Political theory arguments defending the American passion for local government abound, the most common being that it grows naturally from our revolutionary history—liberty defined as freedom from central government.

Nevertheless, the failures of localism persist, especially as it applies to land use. Local governments have demonstrated an inability to deal with large projects. Small local governments often lack the expertise to manage the spillover effects of such problems. Decisions about land use that influence larger regions and have complex outcomes continue to be decided at a strictly local level. Transportation systems, watersheds, regional economic development, and housing patterns do not follow the centuries-old system of political boundaries. Moreover, the inefficiency of the current system is a serious issue, as all but the smallest towns have their own planning boards and land use controls. More than 36,000 municipal and town governments in the U.S. have control over local land use, most of them independent of guidance or coordination from state or regional bodies (Cullingworth 1997).

Even with perfect information, local jurisdictions have an incentive to make regionally inappropriate land use decisions. An example is the age-old tradition of locating undesirable uses like factories or landfills on the edges of towns where the benefits (jobs, tax base) accrue to one town and the harms (pollution, traffic congestion, visual blight) spill over on to its neighbors. This



fragmentation problem is especially acute with the protection of natural resources. Forests, wetlands, coastal zones, and lakes are rarely contained within one jurisdiction. Fiscal imperatives compel each town to develop and possibly degrade the shared resource, without regard to the effect on neighboring towns.

Moreover, local government planning is helpless to halt the cumulative effects of growth in the region. Pressures for growth are regional, so strong local resistance simply pushes development to a nearby towns with less stringent controls. With no coordination between local governments for managing the use of their land, a slow transformative process converts vast tracts of undeveloped land into urban and suburban uses. Moreover, uncoordinated infrastructure planning between towns has increased the overall cost of providing roads, sewer and water service, and even school facilities.

### **Weakness of regionalism**

Instead of a move toward greater state control of land use, it may be more sensible, from a strictly technocratic point of view, to promote greater *regional* control of land use. Local jurisdictions are apparently too small to address larger land use planning problems, but it seems that most states—with their diversity of urbanized cities, small villages, and rural areas—are too big. Unfortunately, regional governance, the level of government that may be the most logical place for land use planning, is also the weakest link in the federalist system. Regional government in most states is ineffective at best and non-existent at worst. Maine, New Hampshire, and Vermont all have regional planning agencies of some kind that address land use planning issues, but as in most states, they are largely without power to take strong action. Regional bodies would probably be in the best position to mediate inter-local conflicts and coordinate plans to reduce negative spillover effects, but they rarely are empowered to do so. Exceptions to this rule are becoming more numerous: Portland, Oregon's Metro, the Cape Cod Commission in Massachusetts, and the New Jersey Pinelands Commission have direct control over land use planning that stretches across municipal boundaries. Nevertheless, the political battles that were

required to establish such regional agencies and their rarity in American government show the persistent power of local control.

The primary reason for America's lack of regional focus is a legacy of 18th century federalism. The federalist system established powerful state governments, which passed many of their powers down to individual cities or towns. This was a logical structuring of governmental power at a time when most of one's activities were carried out within the bounds of an individual town. Since then the world has become much larger—interdependencies have deepened, economies and relationships become more complex—but the basic unit of governance, at least with respect to land use planning, has not changed. County governments have some influence, especially in the southern and western United States, but they are almost completely irrelevant in New England.

States have authority to give regional bodies power to control land use, but the existing power base in individual cities and towns resists such a change. Unlike both state and local governments, popular constituencies for regions must be developed from scratch. Some regional planning agencies, like those in Maine, are composed of elected officials from each of the region's towns. Often, members are less interested in cooperation than they are in defending local interests. Regional governments have no directly elected constituencies to back their decisions or assert political power. As one analysis has noted (So, Hand, and McDowell 1986), both state and local governments are generally unwilling to vest regionalism with the resources and authority to plan effectively at the multi-jurisdictional, sub-state level. In a region with three centuries of history behind local control of land use, New England is particularly attached to this model.

A common thread binds recent efforts for statewide land use planning: recognition that the impacts of local land use decisions extend beyond political boundaries. With the shortcomings of absolute local control over land use, and the weakness of regional governance, states have stepped into the breach to address this problem. Legally, statewide land use planning acts take back from local government some of the powers delegated to them in 1920s-era enabling legislation. This delicate policy making process requires balancing the need for greater inter-local cooperation with

the valued tradition of local self-determination. The challenge is great: 80 years of institutional power and 350 years of political tradition are not easily changed.

## Choosing States, Choosing Cities

Northern New England provides an interesting laboratory for studying statewide planning. Maine, New Hampshire, and Vermont are quite similar in many ways, including landscape, history, demographics, and urbanization. Despite these similarities, different political cultures have resulted in varying approaches to land use planning. By grouping three similar states together and studying them comparatively, this analysis may reveal something about the structure of statewide land use planning in general.

The three states are places of rare natural beauty. Pine forests, fast moving rivers, placid inland lakes, rocky coastline, rolling green hills, and abundant wildlife are some of the treasures they offer. An understanding and appreciation for this beauty lies at the heart of nearly every long time resident of the three states. The scenic vistas and quiet isolation of northern New England draw visitors from all over the country and give those who live there good reason to stay.

In population terms, the three states are very small, with a combined population of less than 3 million. They are primarily rural in character, and have no large metropolitan areas on the scale of a Boston or even a Hartford. The northeast states are the slowest growing of any region in the country. Especially when compared with fast growing American states in the south and west, northern New England has seen only moderate increases in population since World War II.

Each state has a long history of settlement and civic organization, going back to the colonial period. Because of this history, local governments incorporated very early with very small land areas. This had the dual effect of creating hundreds of very small local jurisdictions with long traditions of home rule. Unlike in many other states, the vast majority of populated land area in New England falls under some kind of local government control.

Politically, natives of the three states exhibit an odd brand of Yankee independence, neither exactly conservative nor liberal. Vermont was the only of the original 13 colonies to proclaim its independence from the union, and was its own country from 1777 to 1791. Its only congressional representative identifies as a socialist. Maine has been regarded as a place where the seeds of change are planted, evidenced in the political maxim, "As Maine goes, so goes the nation." The

state's popular second-term governor identifies neither as Democrat nor Republican, but as an Independent. New Hampshire's well-known political conservatism is an unusual strain of libertarian independence, typified by its strident state motto, "Live Free or Die." Most towns in all three states make municipal decisions through the uniquely New England format of a yearly open town meeting. Town meeting is a fascinating New England political institution, and the oldest form of participatory local democracy in America.

The three states are racially homogenous, that is, overwhelmingly white. With a population mostly descended from French Canadian, Irish, and English stock, racial minorities are especially so in northern New England. In fact, by rank, Maine, Vermont, and New Hampshire are the three whitest states in America.

#### **Characteristics of Northern New England States**

	<b>Maine</b>	<b>New Hampshire</b>	<b>Vermont</b>	<b>U.S.</b>
Population, 1999 estimate	1,253,000	1,201,000	594,000	272,000,000
Growth rate, 1980-1999	11.4%	30.4%	16.2%	20.4%
Median household income (rank)	\$35,640 (37)	\$44,958 (8)	\$39,372 (22)	\$38,885
Population below poverty level	10.4%	9.8%	9.9%	12.7%
Racial composition	98.4% white 0.5% black 0.7% Asian	98.0% white 0.7% black 1.1% Asian	98.2% white 0.6% black 0.9% Asian	82.8% white 12.6% black 3.7% Asian
Population living inside metropolitan areas	36%	60%	28%	80%
Land area, square miles	35,387	9,351	9,615	
Developed land area (federal lands excluded), 1997	3.8%	13.0%	6.3%	7.1%

Sources: U.S. Bureau of the Census, *State and Metropolitan Area Data Book*; U.S. Department of Agriculture, Natural Resources Conservation Service, *1997 Natural Resources Inventory*.

## **Local Effects**

Considering that land use policy is largely carried out at the local level, statewide policies only have meaning to the extent that cities and towns carry out the state's directives. Decisions to grant or deny building permits, to change municipal zoning, or to adopt land use plans still focus on local jurisdictions. Even though, legally, the state holds ultimate power over land use, the implementation mechanism for state policy clearly lies in the hands of cities and towns. Hundreds of local governments, exercising control over thousands of individual development decisions, will determine an overall pattern in the state. Policy making at the state level addresses only half of the picture; local government response to the policies is just as important. To understand the influence and effectiveness of state policies for land use planning, it is necessary to evaluate how the policies are carried out within communities.

Key questions that need to be asked of the statewide plans include: How many towns are following the state planning process? Are towns actually following the guidelines set out for them by the state? Does a state-level process make a difference in local development decisions?

## **Looking Up, Looking Down**

Assuming that answers lie at the local level, a methodology for evaluating state programs could take two approaches. One could, in theory, undertake a comprehensive study of all the towns in each of the three states to evaluate the ways local governments have responded to state programs. Given the wide variation in local conditions within a state, different local experiences would need to be evaluated and categorized. Finally, one would need to aggregate the information from this research to make some kind of generalization about the influence of state planning in the three states. With this approach one would begin with a close reading of state policy, then "look down" at its impact on local government.

Considering that Maine, New Hampshire and Vermont together have nearly 1,000 individual local jurisdictions, this kind of comprehensive approach would be prohibitively complex

and time-consuming. Such a method might account for differences between rural, suburban, and urban areas of the state, but it would generate more information than could be usefully analyzed.

This paper takes a much simpler approach: the individual case study method. This methodology selects one local jurisdiction within each state, explores its response to and experience with state planning, and uses that information to generalize about the effectiveness of each program. For the purposes of my analysis, I focus on three cities: Portland, Maine; Portsmouth, New Hampshire; and Burlington, Vermont. Essentially, I will study these three cities and “look up” at how state policy affects them. This limited, focused approach allows for a richer and more detailed account of how land use planning policies have been carried out at the local level, and avoids burying the reader in a mountain of data about hundreds of individual cities and towns.

### **Choosing cities**

Though certainly more manageable and hopefully more interesting, the case study method is fraught with difficulties. Two that are most pertinent to this project can be posed as questions: Are these cities *comparable*? and, Are these cities *typical*?

The first of these questions asks if Portsmouth, Portland, and Burlington are similar enough. The chosen cities should be alike enough so that their experiences may be usefully compared to one another. It would have made little sense, for example, to compare the land use planning experiences of Portland—a historic urban center of 63,000 people —with Stratton, Vermont —a wealthy ski resort community of mostly seasonal visitors. Of course, it is impossible to completely control for differences between cities. Policy analysis is not cell biology. Nevertheless, the choices should be fairly consistent across some important categories.

Portland, Portsmouth, and Burlington are quite similar in a number of respects. At least by northern New England standards, they are all populous urban centers. Geographically, they are relatively small in land area, and bounded on at least one side by a major body of water. They are old, historically important cities, and among the earliest towns in the area to be settled by European

colonists. Because of this, all three have established, historic downtowns. All are the effective centers of their economic regions, both historically and to this day. A connection to water is a significant part of the economy, history, and identity of all three cities. Each is densely settled in comparison to its surrounding towns. In recent years, the three cities have established regional reputations as attractive, desirable, thriving communities. Also, functionally, the three cities have had longstanding traditions of city government, which includes local land use planning. In fact, all three cities did land use planning before the states became more directly involved in the process. The table below provides a general outline of some of the three cities' key characteristics.

**Characteristics of Portland, Portsmouth, and Burlington**

	<b>Portland, Maine</b>	<b>Portsmouth, New Hampshire</b>	<b>Burlington, Vermont</b>
Population, 1998 estimate	64,000	25,000	38,000
Metropolitan area population, 1998	232,000	236,000	164,000
Change in city's population since 1960	-13%	-8%	6%

Sources: Cities of Portland, Portsmouth, and Burlington; U. S. Bureau of the Census, *State and Metropolitan Area Data Book*.

One could point to differences between Portland, Burlington, and Portsmouth, but overall, their similarities are more striking.

The second question about the choice of these three cities (i.e., Are they typical?) requires a careful response. Since I am examining these cities to say something broadly about state policy, the places should be comparable to each other, but also somehow representative of the states in which they are located. Why, I have been asked, did you choose three urban jurisdictions, when so many people within and outside of northern New England associate the area with rural areas and small



towns? Perhaps I should have examined small towns of comparable size, such as Tamworth, New Hampshire; Tunbridge, Vermont; and Passadumkeag, Maine.

Or, as others have suggested, if land use planning and growth management is the lens, perhaps I should have examined the fastest-changing towns in the states? The effect of state policy may be more evident in once-small towns that have changed rapidly under the force of tremendous development pressures. So, why not look at burgeoning Derry, New Hampshire; Scarborough, Maine; and Williston, Vermont?

Fair enough. Choosing other cities, or other categories of cities, would have provided a different lens through which to look at the issue of statewide land use planning. Undoubtedly, small towns, rural areas, and suburbs experience growth management differently from the state's urban centers. My natural curiosity, however, lay with the older cities. How do they respond to the unique challenges that growth and change present to them? If statewide land use planning programs are to be effective, they must address the needs of every local community within a state, not just those with the most development pressure.

Already a great deal of research work has been done about decision making at the urban fringe, especially in areas where new development is most imminent. Smaller, more rural places experience unmanaged growth and urban sprawl more suddenly because they are physically and indelibly written on the landscape in the form of subdivisions, gas stations, and highways. Nonetheless, the sprawl from which statewide land use planning programs have explicitly tried to shield rural areas has had an equally significant effect on traditional urban centers. The spread into the suburbs and the intrusion into small towns frequently come at the expense of the historic centers.

All of these jurisdictions—rural or urban, old or new—are subject to the same state laws for land use planning. One of the greatest challenges of state programs is how to craft a law that applies equally across the state when local conditions differ so greatly. Though states offer some flexibility in their frameworks for planning, their programs for land use planning apply equally across all jurisdictions. In Maine, for instance, tiny, rural Milo must plan according to essentially

the same standards as old, industrial Lewiston. The slice of local government I will examine—older, historic urban centers—can reveal truths about statewide programs just as clearly as if I had chosen a different set of cities. To respond directly to my own question: no, these cities may not be typical of the states in which they are located, but they are still valid as a way to find out more about statewide programs.

Finally, it will be useful to look at cities with histories of land use planning. Burlington, Portland, and Portsmouth have all done planning in the past, and all have experienced and able professional staffs to carry out this task. In this respect they are different from most cities and towns in Maine, New Hampshire, and Vermont where only about one in ten municipalities have a professional planner. Focusing attention on these three cities will show how and if state policy affects these planners and the local development they oversee.

## Part II: Northern New England

### Features of Statewide Planning

The objectives of growth management programs will be spelled out in each of the case studies. Before delving into the details of each study, it will be useful to understand generically the goals of such programs. From state to state, the list of 10 to 12 aspiration goals is very much the same. One author (Neumann, in Wickersham 1994) has cleverly condensed them into an archetypal list, common to nearly all state statutes. State programs for growth management may aim to:

1. Protect natural resources
2. Improve or maintain water quality
3. Preserve forests and farmlands
4. Preserve historic resources
5. Preserve or create open space
6. Encourage economic development
7. Develop a multi-modal transportation system
8. Preserve or create affordable housing

Maine, New Hampshire and Vermont follow this pattern very closely. These goals are extremely broad and non-controversial. Consequently, they provide hardly any insight into the actual structure of the programs.

To remedy this, I have developed a table summarizing the key aspects of the three states' land use planning programs. This table will be a useful point of reference for the case study chapters that follow. Further details on the programs can be found in the full text of states' enabling legislation referenced in the bibliography.

## Key Features of Statewide Land Use Planning Programs

	Maine	New Hampshire	Vermont
Statewide planning legislation	Community Planning and Land Use Regulation Act: MRSA Title 30-A, Chapter 187	None	Vermont Planning and Development Act (Act 200): VSA Title 24, Part II, Chapter 117.
Date enacted	1988, repealed 1991, partially reinstated 1992	N/A	1988
State agency oversight	State Planning Office, Governor's Office	Office of State Planning, Executive Branch	Department of Housing and Community Affairs
Plans prepared at which level	Local	Local	Local and regional
Number of communities eligible to plan	495	234	246, plus 12 regional commissions
Local plan preparation mandatory or voluntary	Voluntary	Voluntary	Voluntary
Incentives	Planning assistance grants; Priority treatment for certain state funds	Authority to implement growth controls	Municipal planning grants; Authority to levy impact fees
Sanctions	State can void land use regulations	None	Lose standing under Act 250; state can review affordable housing requirements
Primary plan review at which level	State	Local	Regional
Regional planning organizations (number)	Regional Planning Agencies (10)	Regional Planning Commissions (9)	Regional Planning Councils (12)
Role of regional organizations	Local plan review and comment, technical assistance to municipalities	Technical assistance to municipalities	Preparation of regional plan; local plan review and approval; technical assistance to municipalities
State requires agency plans	No	No	Yes (but not enforced)

Note: The format of this table is adapted from Gale (1992).

## Maine

Maine's land regulation framework reflects a balance between the state's stubborn independence and a desire to be a good steward of its remarkable natural resources. A state land use planning law, passed in 1988 and still mostly in place today, encourages cities and towns to plan with an eye on future growth and development. However, more than either New Hampshire or Vermont, Maine's fragile economic base has given it less reason to bask in the good times and more reason to rue the bad. Unlike New Hampshire, which has seen a stunning increase in population, business development, and per capita income, Maine has not seen any of these over the last 20 years.

With a land area nearly as large as all the other New England states combined, Maine's geography is an essential component of its cultural identity. The vast pine forests in the northern half of the state, mostly privately held by paper companies, comprise some of the wildest and least populated land in the northeast United States. Inland lakes, fast-flowing rivers, and a famously beautiful rocky coastline project the popular image of Maine and contribute to its residents' conception of themselves. Overall, Maine is more sparsely populated than any other state east of the Mississippi River. While nearly every other square inch of the other New England states is organized into government jurisdictions, nearly half the land area of Maine is not. More than 10.6 million acres in the North Woods is divided into sections called, for example, T5 R7—signifying township five, region seven. (Also unlike other states, Maine has a state-level commission that directly regulates land use in these unorganized areas.)

For all this natural beauty, Maine is also the most rural, impoverished, and economically fragile state in New England. Per capita income is significantly lower than in either New Hampshire or Vermont, and its poverty rate is higher. The rural poor are more isolated than their urban counterparts, and have less access to social services and public assistance. With logging and farming on the decline, and since the last wave of manufacturing (shoes, as it happens) left the state for overseas, Maine has become more dependent than ever on tourism and on the small scale

local economy. This gradual shift away from fishing, farming, and logging, the historic mainstays of Maine's economic health, has been a difficult one.

The state's two congressional districts neatly divide the state into northern and southern sections and accentuate a difference that has always received a great deal of attention. The "two Maines" problem contrasts a prosperous, populous, urbanized southern part of the state, anchored by Portland, the state's largest urban center, with a rural, isolated, and economically moribund northern part of the state. While the two Maines formulation likely overstates the success and wealth of the southern towns, northern Maine has, in fact, been struggling to retain population, jobs, and investment over the last several decades. Aroostook County, for example, Maine's largest and northernmost county has suffered population losses for 45 years, as young people travel south for economic opportunity. The northern, central, and eastern parts of the state have all seen either small losses in population or minor increases. Only in the southernmost counties—including Cumberland County, which is home to the greater Portland area—has there been significant growth in population and economic development.

Maine makes a particularly interesting case study of growth management since, in terms of people, it has hardly grown at all over the last two decades. In fact, over the last half-century population has been either declining or stagnant in nine of the state's 16 counties. Maine's growth rate is well below the national average and also lower than either New Hampshire's or Vermont's. Nevertheless, while growth in population has been slow, the state has not avoided development pressures and land consumption patterns typical of faster growing states. A steady population has not changed an increase in out-migration from the cities to rural areas, or in vacation home development. The gradual recognition of this land development pattern, and a fear of how new development could change the natural environment that Maine residents so treasure encouraged a rethinking of land use planning.

## **Struggle over the 1988 law**

The current role of state-sponsored growth management is currently based on a wide-ranging law passed in 1988, the Comprehensive Planning and Land Use Regulation Act. Though the act was officially repealed in 1991 as the result of a series of draconian budget cuts, growth management was partially reinstated in 1992 in a form quite similar to the original act. Since the 1992 reinstatement still remains in force today, a review of the conditions that led to the law's passage is instructive in understanding the state's position on growth management.

Maine's foray into statewide land use planning symbolizes what has been called part of the "second wave" of growth management regulation. Earlier legislation of the "first wave" variety had focused almost exclusively on reducing the environmental damage of physical development, protecting sensitive lands on a project-by-project basis. In contrast, the handful of states that passed new laws during the late 1980s and early 1990s looked more comprehensively at planning as a tool by which they could balance economic health and environmental protection. While most of the first wave laws, like Vermont's Act 250, focused strictly on environmental protection, the second wave of growth management laws, beginning with Florida's in 1985, tried to use long-range planning to consider the benefits and costs of growth (DeGrove 1992).

Population growth during the 1980s in Maine was hardly at a level that one would expect to spur comprehensive government intervention. Still, the hot real estate market of the mid-1980s generated a surge of development, especially in the south: new retail and commercial development along main thoroughfares, and many more second homes. Along Maine's rugged coastline, land with ocean views was abundant and cheap by national standards, and local development controls tended to be weak. In the 1980s increasing tourism and the acceleration of this vacation home trend created a level of concern that gradually forged into a consensus for some kind of policy intervention. The state's regulations for environmental protection, passed in the early 1970s, were clearly insufficient to manage the powerful new wave of growth. For several years prior to the new law, media outlets statewide reported on the costs of new growth and its threat to the traditional Maine landscape. Some local governments were overwhelmed with development pressures and

faced rising citizen discontent; many turned to moratoria or outright bans on new development as a stopgap solution.

The Maine State Planning Office had been researching new approaches to protecting natural resources since 1984. Concern over the cumulative impacts of small-scale development on the landscape drew the office to look for different policy solutions. For the first time, the state began to look more broadly at comprehensive land use planning as a complement to the project-specific nature of Maine's environmental laws. As public concern over the pace of development rose, the office floated legislative proposals to develop a statewide system of land use planning that would manage the detrimental impacts of growth while still accommodating its economic benefits. By the time public hearings were held before a legislative study commission in 1987, it was clear that there was widespread support for a strengthened regulatory system, and virtually no organized opposition.

The force and breadth of the coalition supporting growth management surprised even those without much sympathy for new regulation, including first-term Republican Governor John McKernan and the Maine Municipal Association, which advocated for absolute local control. Among supporters of the new legislation, the leading advocates were environmentalists who found an unusual ally in the Maine Real Estate Development Association, an association of builders and developers. The developer's group was spurred into action by a brick wall of resistance in many of the towns where they did business, i.e., the more than 60 moratoria that had completely stymied development in the fastest growing towns. The strength of their support for a state-directed system of growth management reflected their desire to have some kind of certainty in the development process. Faced with citizen antipathy to new development and a maze of different local regulations for managing it, builders joined the environmentalists to push for a more rational system. After months of tinkering and compromise, the popular support for action and the unwillingness of project opponents to derail the bill led to the passage of the law.

Drawing components from laws already in place in Oregon and Florida, the 1988 act put comprehensive planning in the hands of individual cities and towns, but brought them together



under a coordinated system of state goals and guidelines. Under the new law, local jurisdictions were required to develop comprehensive land use plans that addressed growth issues and to submit those plans to a newly formed state Office of Comprehensive Planning for review and comment. The law set out 10 goals and guidelines that the local communities needed to follow in preparing their plans. A system of regional planning commissions was also established to help towns with technical assistance, to provide another layer of plan review, and to encourage inter-local cooperation. Money in the bill was to be distributed to the first group of individual communities to support creation of their local plans. More funding was set aside to hire staff for the state and regional offices to review them.

Though preparing a comprehensive land use plan and submitting it to the state was mandatory, towns could choose whether or not to take the final step of “certification.” A certified plan was one that had been reviewed and declared consistent with the statewide goals in the legislation. Certification entitled towns to have priority in certain state funding and grant-making programs. In this sense, towns had a dual financial incentive to do planning: grant money that would cover up to 75 percent of the costs of preparing the plan itself, and following its certification, preferential treatment in state grant programs.

Moreover, the law installed a number of sanctions for non-compliance that were forceful enough to stimulate local planning. The one that alarmed local officials most was the state’s threat to eventually invalidate local zoning, subdivision, site review, and impact fee ordinances for towns without state-approved plans. Communities were divided into three groups, or “tiers,” according to their rates of population growth, and given deadlines by which plans had to be submitted. The fastest-growing towns were required to have their plans in place first, with slower growing communities to follow. Once they received money from the state, towns were given two years to prepare and submit their local comprehensive plans.

## **Implementing the law**

At the time of the law's enactment, fewer than half of the state's communities had comprehensive plans of any kind, only one quarter had zoning ordinances, and only six percent had professional planning staffs (Maine Municipal Association, in Howitt 1993). Not only did the newly established Office of Comprehensive Planning need to distribute grants for local land use planning, it also needed to build the capacity for these governments to do planning at all. Many local plans had not been updated in years or were not based on current conditions.

In spite of the dire predictions of observers during the drafting of the law, 99 percent of towns in the first group that were offered state planning grants accepted the money and set to work. Helped either by consultants or by staff from their regional planning agency, towns worked with citizen committees to develop local plans in accordance with the state goals. Financial incentives, combined with tough sanctions for non-compliance, had persuaded all but the most obstinate of towns to begin local comprehensive planning.

When the time came for the first batch of plans to be submitted to the state, nearly all of the towns met the state's deadline. The majority of these plans were locally adopted and were, after some negotiation, eventually judged consistent with the goals of the act. The assessment process involved direct meetings between town and state officials and allowed the state to make various recommendations for corrective measures. These ranged from "objections" for severe inconsistencies to "suggestions" for minor diversions from the goals. Plans would be revised by the towns, often more than once, before they were finally approved.

Overall, the implementation of the 1988 law was a success, inasmuch as it stimulated local action and raised the profile of land use planning, while avoiding a backlash from the towns. A survey conducted in late 1989 by researchers at the University of Southern Maine (Gale and Hart 1992) showed popular support for the principles of the act. In the study, 83% of respondents answered yes when asked if local governments should prepare local growth management plans. Moreover, support for local planning did not vary with differences in age, income, occupation, or political affiliation. Most respondents were unaware that Maine had a growth management law, but

this did not affect their support for its principles. The study's authors concluded: "For the moment at least, the growth management law has forged an exceedingly broad consensus."

### **Repeal and reinstatement**

As the decade turned, the state's economy soured. The real estate bubble of the 1980s had burst, investment dropped off, and tax revenues fell. The change in economic circumstances precipitated the need for drastic budget cuts at the state level that completely commanded the attention of the state's political structure. A series of bitter battles between the governor and the legislature in the spring and summer of 1991 culminated in a weeklong government shutdown. A mid-year agreement was reached that both sides hoped would resolve the shortfall in the state's budget, but, only a few months later, new estimates of higher costs and loss of revenue required calling a special session of the legislature to find another \$125 million in cuts. Though Governor McKernan had been a supporter of the growth management program, the need for a resolution to the crisis placed funding for the program squarely on the chopping block.

Popular support for the program could not withstand the extraordinary political and budgetary pressures. In December 1991, only three and a half years after its passage, a legislative agreement effectively repealed the 1988 act. The budget bill abolished the state Office of Comprehensive Planning and all its staff positions, while simultaneously eliminating the primary fiscal incentive to local governments: all planning grant money. As a result, plan preparation became voluntary rather than mandatory, deadlines for approval from the state were removed, and local plans no longer had to be consistent with statewide goals. The tattered remains of the act left state-coordinated planning as an option that local government could pursue, but gave them no financial support, and no penalties for non-compliance. Local planning—or that part of it that was stimulated by the state—was stopped dead in its tracks.

Supporters of growth management worked through the early part of the next year to restore some kind of program at the state level. A scaled-down and weakened version of the 1988 law emerged from legislature in early 1992, with a much-reduced amount of money for planning

grants, looser deadlines for plan submittal, and language saying that local planning would be voluntary rather than mandatory.

Nevertheless, some of the key provisions of the old law remained in place. Despite the fact that the program was now optional, lawmakers still wanted to hold local governments responsible for the any state money they received. Under the revised plan, any plans submitted to the state had to be reviewed for consistency with the old goals. Furthermore, while strong financial incentives for planning had melted away in the heat of budget cutting, the state's powerful sanction remained in place for those who did not submit their plans to state review. Towns who did not submit an approved plan by the new, more permissive deadlines still risked having their land use ordinances invalidated. This did give towns with no land use ordinances a real choice of opting out of statewide planning altogether with no penalty, but for most towns, planning was back on the agenda. A more lenient program that required less pressure on the towns and on the state budget became more politically palatable. Signed into law in April 1992, this version of the law remains largely in place to this day.

The essential character of Maine's current statewide planning law, then, is built on the same foundation as the 1988 act, with the key difference being that towns are not required to submit their plans to the state for approval. Responsibility to undertake planning rests entirely on individual cities and towns, but is coordinated by a statewide system of goals and policies. Regional planning agencies still exist to assist communities in their planning efforts, and, ostensibly, to resolve inter-local conflicts. Local plans, to meet consistency requirements, must identify "growth areas" and "rural areas" in an effort to limit the unmanaged spread of development. After state approval, towns are expected to change their land use regulations in ways that will help implement the plan.

### **Growth management in the 1990s**

Though the content and character of the law has remained similar to the original program, the trajectory of state funding for Maine's planning programs reflects the low level of importance land use planning has had for most of the decade. The lack of money to support local planning,

and towns' subsequent lack of effort, has been a fixture of the program. Until recently, the program has been largely dormant, the twin victim of slow economic growth and parsimonious state support. Maine has been slower than most states in emerging from the recession of the early 1990s, with very little rebound until the last several years. As a result, lack of money for the comprehensive planning law kept the program largely ineffective. During the mid-1990s, only a small number of towns worked their way through the state process. Due to lack of funding, nearly a third of Maine's communities have never been offered state help for comprehensive planning—12 years after the initial passage of the law.

In 1994, the legislature made significant changes to the act that allowed more flexibility for slower-growing towns. Towns that faced little or no population growth, or that had demonstrated natural resource constraints, could dispense with designating residential growth areas and still have their plans certified by the state. This move recognized the futility of requiring towns to plan for growth if they were not having any.

Only in the past few years has planning once again moved to the forefront. As smart growth initiatives build momentum around the country, Maine has also seen a flurry of activity around land use planning issues. With the newfound interest of Governor Angus King, another wave of development pressure in a quickening economy, and larger budget allocations from the state, the program has again achieved the prominence it had in the late 1980s.

### **The state program today**

Next door to the governor's mansion, and in the shadow of the state house, Evan Richert sits in his office and reflects on the successes and failures of Maine's land use planning act. Richert is director of the Maine State Planning Office, which oversees the comprehensive planning program. He recounts the rocky past of statewide planning in the 1990s and remarks, "it's still actually relatively active, surprisingly."

Currently, 172 of the state's 495 communities (35%) have state-certified plans, with 150 more in the process of creating or revising their local comprehensive plans for state submittal.

Making up the balance are 140 towns that, through lack of funding, have never been offered a municipal planning grant (Richert interview). Only a very few communities have declined an offer from the state to help develop a comprehensive plan. This shows that financial incentives have persuaded the majority of towns to follow a state-sponsored planning process.

Another surge of growth happening in the state has generated renewed interest in planning to manage that growth, just as the development pressures of the mid 1980s led to passage of the first comprehensive planning act. "Especially in southern Maine," Richert notes, "the reappearance of growth and of local concerns about the burdens of that growth have led to an interest in comprehensive planning." Even the fast-growing communities that were the first to have their plans certified before the 1991 repeal are growing again, and seeking help from the state to renew and update their comprehensive plans.

It appears that the state's growth management program has become a natural part of the state political structure, as it generally encounters little opposition from local communities. Richert attributes the lack of organized opposition to the collaborative relationships his staff has tried to develop with town officials. In addition, the law itself takes a delicate view of the power relationship between state and local government, giving communities a great deal of freedom in preparing their plans. Richert explains: "The model is one where the state sets forth some standards, provides some money, and then holds the local governments to those standards, with a lot of leeway in how to do it. That seems to be a reasonable balance everybody buys. Sure, there's certainly bitching about impinging on home rule, but the voluntary nature of the program deflates that."

State-sponsored land use planning has been very effective, Richert says, in raising the level of awareness about land development issues and in protecting specific natural resources. The quantity of planning has increased, the quality of most of those plans has improved, and level of citizen interest and involvement in development issues has gone up. On the plus side, local plans, "have led to very good protection of specific environmental resources, such as wetlands, shorelands, ponds, aquifers. Through heightened awareness, facts, mapping, and so forth,

comprehensive planning has made a whole generation of citizens aware of components of both the natural and built environment.”

### **The downside**

Unfortunately, Richert says, the program has largely failed in achieving one of its primary goals, “preventing development sprawl.” Planning was to be a means, not an end. The act was not passed to increase the amount of planning in the state, but to use comprehensive planning as a tool to curb sprawling development. The framework for the planning law, with its strong emphasis on local government and its weak system of regional cooperation, could not effectively discourage the spread of population out of traditional centers and into rural areas. The act’s main failure, Richert says matter-of-factly, “is that it has done nothing, virtually nothing, to alter expensive and destructive patterns of development. I think that is the case for several reasons. One is that these plans are all town-by-town plans. There is virtually no regional perspective when it comes to land use planning in Maine, because most of the decisions are at the local level. Even when there is the will, there is no mechanism to do anything about it.”

Likewise, even within town boundaries there has been a migration from the traditional village centers into rural land. Within the confines of the state’s locally-oriented planning law, the state should at least have the power to influence sprawl within town boundaries. The State Planning Office tries to encourage better plans through its review and certification process, but the law’s balance of power allows the towns substantial latitude in shaping their local plans. “The ethic of the two-acre lot is alive and well,” Richert sighs. Most plans, he adds, “are not courageous, are largely business as usual. There are some very good elements to them—don’t get me wrong—but they tend to be: ‘There is an important recreation area we ought to preserve. There is an important wetland area we ought to preserve. Everywhere else you can build.’ We’re trying, through education and public conversation, to offer an alternative.”

Through its review and approval process, the state planning office in Maine can shape local plans to discourage costly and environmentally damaging patterns of development. At the same

time, the office faces several constraints that restrict its ability to effect real change. The goals and guidelines in the law are very broad and were originally written to apply to the diversity of circumstances in all 495 of Maine's communities. The law's breadth leaves individual towns with the freedom to follow the state mandate without making substantial changes to their land development patterns. Examples of towns that have followed the state goals and developed innovative approaches abound—Richert mentions Kennebunk, Richmond, and Freeport as standouts—but just as many comprehensive plans have been approved that break little new ground.

For example, the directive to towns to clearly designate “growth areas” and “rural areas” in their plans ought to have a direct impact on limiting development in a community. Yet the standards for what constitutes these areas is subject to interpretation. Some towns have taken “rural area” to mean farm-sized, 40-acre lots, while others have zoned their rural areas to allow for lots as small as two acres.

Moreover, the political balance of power in the state is still very much centered in the towns. The state's land use planning act is delicately worded to grant the state power to coordinate and review local planning, while trying to leave towns as much power as possible. The dance between trying to impose a state framework on individual towns and letting them make all their own decisions has been a feature of the program since its inception. This structure was a necessity in political terms, and has contributed to the wide acceptance of the program, but it has also allowed towns to move ahead with uninspiring local plans.

### **Implementation of the statewide program**

Another problem with the state's guiding hand is its relative inability to enforce implementation of the plans that have been approved. After a plan is reviewed and approved by the state, the town is expected to change its land use ordinances to be consistent with the plan. Yet, as Richert notes, “I think there are lot of towns out there with decent comprehensive plans, but not yet ordinances that follow them.” In some cases this disconnect between the plan and its



implementation may be simply a matter of finding the time and money to revise local land use laws. For towns that are intentionally dragging their feet, the only relief is for a local developer to challenge local zoning and force the issue. “Most developers,” Richert says flatly, “are not going to do that.” So, even among towns that follow the state’s planning process, delays in plan implementation can weaken the overall state effort.

A 1993 comprehensive plan for the town of Windham, for example, has been largely ignored by the community. Tony Plante, the city manager, acknowledged that the impetus behind Windham’s plan was satisfying state requirements, not establishing a vision for the town. “We went through the motions and really didn’t take it seriously,” he said, though adding that recent efforts to revise that plan have been different. One byproduct of the lack of attention to Windham’s 1993 plan has been that a local developer faced serious opposition to a 41-lot subdivision, in spite of its location within one of the town’s designated growth areas. (Bell 1999)

### **Regional picture**

An important but under-performing aspect of the state’s comprehensive planning law is its 10 regional planning councils. Some of these regional commissions pre-dated the 1988 legislation, but a new state framework solidified the expectations and funding for the regional bodies. The state would continue to support them in their traditional role of providing technical planning assistance to towns without professional planners. Submitted local plans are sent to the relevant regional council for review, to determine if they address regional needs and promote regional policies. The regional councils do not have direct power to block or object to the provisions of the local plans, but their critical comments are forwarded to the state to be considered in the review process.

In addition to regional review, the planning law specifically directs local towns to address regional concerns. Maine expects adjacent communities to submit plans that do not substantially conflict with each other. Local growth management should include a regional coordination program, the law says, “to manage shared resources and facilities, such as rivers, aquifers,

transportation facilities and others.” Planners are directed to consider the regional impacts of development.

In spite of this mandate, Maine’s record of regional cooperation and inter-local agreement has been poor. Between adjacent towns, major differences in policies for land use planning and growth management persist. For instance, Kennebunk requires lots of either five or 10 acres in its rural zones, while neighboring Wells requires only two acre lots for its rural zones. Towns cling tenaciously to their responsibility for local planning and zoning and have generally shunned regional cooperation.

Part of the reason is that the regional councils have been badly under-funded. State Planning Office director Richert recalls that under the 1988 law, regional councils were supposed to have developed a set of regional goals. Local plans would also have to be consistent with these regional goals, as well as the state goals. “But that went by the boards,” Richert recalls. “With the demise of the budget, the regional agencies got severely cut back, and that was one of the casualties.”

But the regional councils’ lack of clout in the state’s land use planning process springs from a deeper source. Regional governments have no directly elected constituencies to hold them accountable or assert political power. In Maine, regional councils have divided allegiances—they are usually governed by representatives of local communities who have voluntarily joined and paid dues. This institutional structure makes the staff of the regional councils extremely reluctant to be critical of local plans for fear of alienating their membership—local towns. Moreover, their capacity to be objective is further weakened because local plans reviewed by the regional councils have often been prepared with the active help of council staff. Consequently, regional cooperation in Maine has been quite weak.

### **State planning today**

Especially during Richert’s five-year tenure with the State Planning Office, state land use planning and growth management has taken on a new, broader meaning. The office has been

pushing for state-level interventions that go beyond what is outlined in the comprehensive planning act. While continuing its support for the preparation of local plans, the state planning office has made efforts to attack the problem of sprawl with what Richert calls “non-regulatory, marketplace, fiscal, incentive-based stuff.” Many state and local planning officials believe that, ultimately, the cumulative impact of these kinds of factors have a greater effect on land development patterns than more traditional land use planning.

One part of this approach has been an information campaign based on original research. The State Planning Office has published a report (Maine SPO 1997) documenting the fiscal impact of sprawl on individuals, on municipalities and on the state budget. Among its findings were that sprawl increases state government costs in terms of school construction and busing, road construction and maintenance, state police coverage, and pollution control. Moreover, scattered development increases individual transportation costs and tax rates. One of the aims of this information is to communicate to people the real financial impacts of their choices, both to themselves and to the public sector.

Efforts from the State Planning Office have found common cause with many developers, just as they did in the late 1980s during the last surge of interest. Anti-sprawl advocates are pushing for “traditional neighborhood design,” or the development of houses on smaller lots, closer to traditional town centers. Builders could make more money with higher residential densities, but local zoning often requires them to build on large lots. Constraints local government places on developers have increased their frustration level to such an extent that even the Maine Home Builders and Remodelers Association has become a vocal supporter of the state’s smart growth initiatives.

The State Planning Office has also taken an active role in responding to skeptics who claim “traditional neighborhood development” does not interest buyers. Market research appears to show otherwise. Researchers found that 43% of recent homebuyers who moved outward to suburban or rural settings would have been—based on their expressed preferences—good targets for traditional neighborhood development (Maine SPO 1999). State planners hope to use the information from

this study to persuade local jurisdictions to allow traditional neighborhood design, and to get local developers to build it.

Finally, Maine has started to address broadly the role state policies play in affecting land use. In fact, the significant difference between the state's recent efforts to influence patterns of development and the focus in 1987 and 1988 has been the internal emphasis on state policy. State education policy, transportation policy, and tax policy all significantly influence land use, but are rarely considered in those terms. A popular example is the favoritism the state shows towards new school construction rather than existing school renovation. This policy has caused physical spread by encouraging the construction of schools away from traditional centers, and it has been costly besides. Even though the state's student population fell by 27,000 between 1970 to 1995, the state spent \$750 million on new schools during the same period (Maine SPO 1997). In bussing fewer students longer distances, school transportation costs have also skyrocketed.

At the time of this writing, a comprehensive bill addressing state policies that affect land use is moving through the legislature. If passed, LD 2600 would establish a link between state investments and local planning. State agencies would be required to focus infrastructure spending on schools, roads, or other "growth-related capital investments" in the growth centers identified in local plans. This would prevent the state from siting a state office building on the rural edge of a town, for instance, or building a new road through a locally-designated rural area. Moreover, the bill provides a significant increase in funding for comprehensive planning grants to cities and towns, and for regionally provided technical assistance. This money would enable the state planning office to offer money to the group of 140 communities that have never been offered planning grants. At the current rate of funding, the planning office could not offer a planning and implementation grant to every town in the state until 2031, well beyond the statutory deadline of 2003 (Maine SPO 1999).

Maine's governor, Angus King, has been a supporter of planning and preservation issues and has described Maine's livability as its competitive advantage. King convened the cabinet committee on smart growth in 1999 that led to the current bill before the legislature. In his 2000

State of the State address, he warned that sprawl threatens Maine's greatest asset. He said, "there are signs that we may be squandering this asset—congestion and commercial sprawl at the gateways to our spectacular natural resources; residential development leapfrogging to the headwaters of lakes, slowly turning them algae-green; downtowns traded away for strip development at the next highway interchange, and farms, woodlots and wildlife traded for large-lot subdivisions. These are some of the costs of sprawl, and unless we reverse course now, while there is still time, we will have lost something precious and irreplaceable about Maine" (King 2000).

Another key difference between the recent activity around growth management and that of the 1980s has been the emergence of a statewide advocacy group. The Eco-Eco Civic Forum was founded in the late-1980s to address controversies over environmental regulations (Eco-Eco stands for "ecology and economics"). When a risk assessment analysis concluded that that patterns of land development were the primary threat to the state's ecological health, the group's focus shifted to land use. Since then, it has been seeking ways to influence development patterns and reduce the environmental costs of growth in Maine. The organization's source of power lies in its breadth. The coalition includes the Sierra Club, the Maine Home Builders and Remodelers Association, the Maine Municipal Association, the Maine Farm Bureau, the Small Woodland Owners of Maine, and the Maine Chamber and Business Alliance, as well as preservationists, developers, planners, and architects (Koffman interview). The formation of this group and its support for legislative action will be a crucial factor in the future of land use planning policy in Maine. Eco-Eco appears poised to play the role of non-governmental advocates for growth management. Such advocacy groups in other states, such as 1000 Friends of Oregon, have been instrumental in the longevity of growth management programs. They have both pressured states for legislative reform and organized to protect good policy from the vicissitudes of yearly budget changes.

With the many parallels between interest in growth management today and the earlier wave of activity that led to the passage of the 1988 law, advocates show concern that their efforts could meet the same fate. For now, the state budget has a sizable surplus, the economy is healthy,

popular support for growth management seems high, and new legislation is moving through the legislature. These circumstances are not expected to last indefinitely. Richert asks rhetorically, “If we had a recession tomorrow, would this go away?” He answers: “It’s a good question. We’ve got to take advantage of this time to raise awareness, and to institutionalize things that might influence individual decisions. Because the worst situation is when you’ve got no growth, and you’ve got less revenue, and you still have sprawl.”

Peter Cox, a journalist and member of the Eco-Eco Forum on Sprawl, says that this time around, the movement against sprawl will have more staying power because it has focused on the fiscal impacts of land development decisions. The planning office and others have shown, he says, that sprawl patterns are ugly, environmentally harmful, and expensive. Because sprawl wastes money, he argues, policies that discourage it may be looked at even more favorably in a weak economy.

## **Portland**



Downtown Portland, Maine, looking across Back Cove.

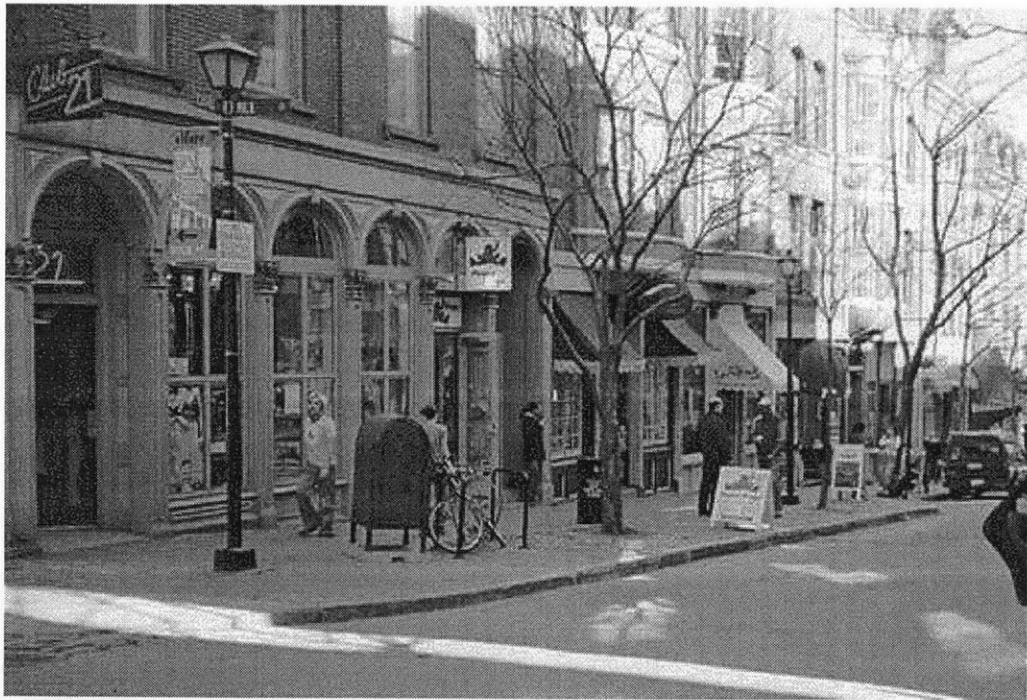
Alex Jaegerman, chief planner for the city of Portland, says the state's comprehensive planning act reinforces some of the city's pre-existing goals. Jaegerman tries to quantify how much influence Maine's land use planning program has had on the city. "We respect the goals and policies" of the state, he says carefully, "we think they're good, we agree with them, and most of them are relevant. But we're not driven by them. We're driven by our own goals and policies." The state framework, he adds, probably has a greater effect on smaller Maine towns with less planning experience and expertise. "We have a history of planning, and generally we're responsive and responsible about the way we plan," he adds, "So, I'm not sure how highly influenced we are by the state goals." The reason that broadly-written state goals do not drive the planning process in Portland, he says, is because Portland is unique in many ways.

Though only 63,000 people call it home, Portland is Maine's largest city by far, and the most urbanized. The oldest and most densely settled part of the city is located on a peninsula bounded by Casco Bay, and the form and identity of the city has always been a reflection of its relationship with the water. The narrow peninsula was long inhabited by Micmac Indians who called it Machigonne, a word meaning "shaped like a great knee." When white settlers arrived in 1632, they named the area Casco, then Old Falmouth, and finally Portland. The city expanded inland in 1899 and substantially increased its land area by annexing the neighboring city of Deering. Even with this expansion, and including the islands in Casco Bay that are technically part of the city, Portland still comprises a relatively small 19 square miles.

Historically focused on seaport interests such as fishing, warehousing, and shipbuilding, Portland maintains the centuries-old tradition of a working waterfront. As the urban hub of southern Maine, Portland has also established its place as the region's leading industrial, commercial, and cultural center. For example, the largest hospital in the state and the region's biggest private employer, Maine Medical Center, is located downtown, high on a hill on the peninsula. Yet even as the city's economy has diversified into health services, insurance, and banking, Portland's residents continue to identify closely with their heritage as a port city. In a

1987 referendum, Portland residents voted to maintain their working waterfront by strictly limiting development of non-marine businesses, such as waterfront hotels or condominiums.

Especially in the last two years, indicators of Portland’s economic health are very positive. The unemployment rate in Portland is a rock-bottom two percent—half of the statewide average. Per capita incomes are significantly higher than in the rest of the state. The popularity of the downtown as a cultural and commercial center has continued with the now 30-year-long rehabilitation of the Old Port, a former shipping and warehouse district on the slope above Portland’s waterfront. Transformed from commercial hub to urban slum to artist colony to upscale shopping and entertainment district, the Old Port neighborhood has a historic charm that attracts tens of thousands of people each year. The district has prospered to such an extent that its vitality has spilled over to other parts of downtown.



Exchange Street in Portland’s Old Port district

Harbor View Block, the city’s first new downtown office building constructed in more than a decade, is set to join the cluster of buildings at the top of the peninsula’s hill that make up the city’s financial district. Demand for office space in Portland is very high. A brokerage company’s office market survey claims that “the market has, for the first time in recent history,



witnessed prospective tenants proposing to lease space at rates *higher* than actually quoted by landlords” (Boulos Company 1999). With the help of a wealthy benefactor, the city built an architecturally magnificent public market downtown, which opened in 1997 to widespread acclaim.

Residential construction—which mostly occurs “off-peninsula”—has rebounded as well. Most of the development opportunities in Portland are small projects situated in or near existing neighborhoods, a result of the city’s long history of settlement. After a decade of flat or declining activity, the city issued nearly twice as many building permits last year as it did in 1998. Close to downtown, a federal and state-supported brownfields project in the city’s Bayside neighborhood promises to convert long-abandoned metal scrap yards into a dense mix of housing and retail.

### **Troubling signs**

Yet, among these signs of vigor and vitality, Portland still faces urban problems common to many other U.S. cities. First among these is a long process of decentralization, both in residences and jobs. Population in Portland actually declined slightly in the last 20 years and has only just begun to rise again in recent years. In contrast, Cumberland County’s population has increased by 12%. Virtually all of the major residential development in the Greater Portland region has occurred in towns outside of Portland, in fast growing suburbs like Scarborough, Windham, and Brunswick.

The current spike of investment and activity has been very slow to come to Maine and to Portland. While southern New Hampshire and the Boston metropolitan area have been buoyed by a vibrant national economy for almost seven years, Portland’s indicators have only begun to follow in the last two. Not only has New England lagged behind the rest of the country in economic growth, Maine has lagged behind the rest of New England.

Moreover, the city has become less of a focus for the economic activity of the metropolitan area. In 1971, the Maine Mall opened in nearby South Portland on the site of a former pig farm and proceeded to draw the majority of the region’s general merchandise retail sales with it. Unable to withstand the competition, Porteous, Mitchell & Braun, downtown’s last major department store,

shuttered in 1991. In addition, the mall area attracted new office development to such an extent that today it almost matches downtown in its quantity of “class A” office space. Booming commercial development along Route 1 in nearby Scarborough and at the highway interchange in Falmouth has absorbed most of the regional demand in the last two decades.

Internally, Portland is faced with problems that confound its efforts to keep population and job base within the city. As an urban center, Portland has become a dumping ground for special needs populations from all over the region. Portland is home to a disproportionate number of the region’s homeless shelters, mental health clinics, alcohol and drug treatment centers, special needs schools, and other social service facilities. With the state’s policy of de-institutionalizing the mentally ill, many of the community-based care facilities have located in Portland, especially downtown, near where the clients can easily access other social services. The presence of such a large needy population is a dual drain on the city’s finances. Directly, the city spends money to provide services for these populations in the form of tax-funded programs. Indirectly, the city loses out because non-profit institutions that house these programs are exempt from local property taxes. With hospitals, educational institutions, museums, and other non-profit groups, Portland has inordinately large supply of tax-exempt properties: 23 percent of the city’s real estate and nine percent of its total valuation is off of the tax rolls. In neighboring Falmouth, by comparison, only two percent of its total valuation is tax exempt.

These factors combine to increase the tax burden on existing property owners. Portland provides a high level of municipal services, and it must draw resources from a reduced pool of property tax payers. As a result, Portland’s property tax rate is the highest of any community in Maine—2.5 percent of assessed value. Again, by comparison, Falmouth’s rate is 1.7%, Windham’s is 1.6%, and Scarborough’s is 1.9% (equalized 1995 rate). Since property taxes can be half again as high in Portland as in some of the surrounding communities, taxation provides a further incentive to leave the city for the suburbs. State revenue sharing helps Portland offset some of its costs, but not nearly to a level that makes up for its expenditures.

City planners are aware of these pressures on Portland and its competitive disadvantages within the region. Still, local policy makers try to build on the city's strengths. "What we have is certain kinds of quality-of-life factors," Jaegerman notes, "a great downtown, parks and recreation, and actually our schools are good. We take a lot of pride in the services we provide and work very hard and tax ourselves extensively to provide them, because we know that if we don't, we could be on a spiral where the center would empty out into the outskirts."

The Greater Portland Council of Governments is the regional body that could provide a forum for city and suburb to coordinate planning, but by and large, it does not. The council hosted a sprawl conference in October 1999, and has been coordinating transportation planning for the region, but it has very limited ability to influence planning within cities and towns.

### **State role**

Currently, the Portland planning office is at work on a revised comprehensive plan, but not necessarily because of the state's planning law. As a slow-growing city that was presumably not under severe development pressure, state law placed Portland at the end of the line for cities and towns to be offered planning assistance, and gave them the longest timeline for submitting their plans. In all likelihood, Portland's own internal schedule will result in a completed plan ahead of the state's deadline. The city expects to go through the state review process—"Because state certification is available, we'll do it," says Jaegerman—and does not foresee many areas of disagreement.

Barbara Barhydt, a planner for the city, says the influence on Portland's comprehensive planning process has not been as great as it might be on other towns. "Portland already has a long history of doing comprehensive planning, so a lot of the state goals already mesh very nicely." Still, she adds, "In our case it's more locally-driven than state-driven."

Moreover, the goals and guidelines in the state law do not address some of the more pressing issues of an urban center. Since the legislation was crafted to fit with the broadest range of towns within the state, most of which are rural, a developed city like Portland finds some of the

goals are not an exact fit with its unique needs. For example, the law's primary technique for restricting unplanned growth is to have towns designated growth areas and rural areas. For a densely settled city like Portland, the latter is hard to identify. "If we didn't have our islands, I don't know what I'd call our rural areas," Jaegerman muses. Still, he says, the review process will likely grant the city leeway in interpretation.

In fact, say Portland officials, other state policies that do not directly address planning may have a much greater affect on land use. Two notable examples are the state's lack of support for school renovation, and its siting policy for state offices. Unlike urban school systems in many other states, Portland's schools are still well regarded and high performing. Middle class families have not fled the city in large numbers and still send their children to public schools. This, too, comes at a considerable cost in the municipal budget. The state's funding formula has long tilted toward new school construction, and away from existing facilities. Jaegerman explains: "The scoring system for capital investment hasn't historically supported renovation. We have done Portland High School completely 100 percent city funded, all the middle school renovations completely 100 percent city funded, and now all the elementary schools, each of which is dire need of renovation. The expectation is that we will not get state aid for any of those projects." This policy widens the tax burden between Portland and its newer-developed neighbors, providing a "push" out of the city (higher taxes), and a "pull" into outlying towns (brand new school facilities).

Siting of state office buildings is also a state action that has a significant effect. The state's Department of Human Services recently chose a Portland site for the construction of a new building. Initially, the state chose inexpensive land on the edge of the city, inaccessible to public transit and far from other services that the agency's clients might need. After aggressive lobbying by city officials, the state was persuaded to move the building to a site on Marginal Way, close to downtown, in an area the city had targeted for new commercial development. If passed, the planning bill currently before the legislature would require state agencies to consider land use impacts as a decision-making criterion when siting new facilities.

In this respect, Maine's policy about taxes and education funding may have a greater influence on Portland than the state comprehensive planning act. To a developed urban center like Portland, the state's land use planning law is both over-inclusive and under-inclusive. Portland appears to be ahead of the game in terms of its own planning process and therefore not as needy of assistance or prodding as other towns might be. At the same time, the language of the comprehensive planning act does not provide guidance regarding some of Portland's unique urban problems—brownfields redevelopment, for example. Portland's place within the region has changed substantially over the last several decades, as the city has been buffeted by market forces and government policies that influence development decisions. The state's land use planning law, in contrast, seems only to have played a small role in shaping the city's economic and physical landscape.

## New Hampshire

True to its state motto, “Live Free or Die,” the New Hampshire state government hands over complete control to its 234 cities and towns to do their own planning, zoning, and growth management. The very first clause in the state’s enabling legislation on planning and zoning makes the inter-governmental relationship quite clear: “Planning, zoning and related regulations have been and should continue to be the responsibility of municipal government” (N.H. Revised Statutes Annotated 672:1, I).

The political culture of the state is far more conservative than its neighbors to the east and west, and its citizens are widely recognized as being wary of government intervention of any kind. This is doubly true for intervention from higher levels of government. Leaving regulations for land development in the hands of local officials is quite in character with state policy in this respect, as governmental structure is decentralized for most all but a handful of issues. Public schools, part of the criminal justice system, and even many social services are dealt with at a local level.

Local planning and zoning boards make decisions on individual proposals as they come forward and develop master plans for their communities, as the guiding legislation says, “from time to time.” New Hampshire law states that “proper regulations enhance the public health, safety and general welfare and encourage the appropriate and wise use of land,” (RSA 672:1, II) yet it makes no requirement of local government to follow any guidelines. Furthermore, cities and towns are expected to pay for their own planning. Virtually all of the money that pays for growth management or other planning initiatives comes out of local tax revenues. None of the people interviewed for this project could identify or remember the state directly contributing funding to a local plan.

### **Taxes**

To understand the patterns of land development in New Hampshire and the rate of its growth in comparison to its geographic neighbors, one needs to recognize how dramatically

different its tax structure is as compared to other states. New Hampshire has neither a state income tax nor a state sales tax. The major source of revenue for every level of state government comes almost entirely from a locally assessed tax on property. This fiscal structure makes New Hampshire unique in the region and in the nation. Of the 50 states, only nine shun the income tax, and only five have no sales tax. (Oil-rich Alaska is the only state that, like New Hampshire, foregoes both.) In contrast, every other state in New England has all three major sources of state tax revenue: income, sales, and property. The combined result is that New Hampshire residents enjoy the lowest tax burden of any state in the U.S., less than half of the national average in both in dollars and in percent of personal income (FTA 1998). The tax advantages of living and shopping in New Hampshire strongly affect the economy and land development in the state.

From the state government's perspective, a lack of tax dollars flowing into state coffers means that new or expensive state programs are difficult or impossible to support. Levels of funding for government of any kind are quite low, a policy that sits well with most residents. As the director of planning in the city of Portsmouth, New Hampshire remarked, "Basically, what you are doing is government as efficiently and cheaply as possible." The majority of New Hampshire residents evidently believe in the maxim that "that which governs best, governs least" and have repeatedly and vocally supported candidates, ballot initiatives, and local measures that support this view. Even if state-sponsored land use planning was desired by local communities, it would be severely limited by the lack of fiscal resources.

This has been even more true since 1997, when the New Hampshire Supreme Court ruled in *Claremont School District vs. Governor* that the state's locally based system for funding its public schools unconstitutional. (In terms of percent of direct support for public education, New Hampshire had ranked 50th among U.S. states.) Holding that New Hampshire's financing system did not meet the constitutional requirement for "adequate" education funding, the court ordered the state to develop a more equitable system (N.H. Supreme Court 1997). Since then, the governor and the state legislature have been locked in a bitter battle over how to restructure the tax system to meet the requirements of the judicial order. With so many elected officials having pledged eternal

opposition to the income tax, solutions have revolved around redistributing local property taxes. At this writing, a still-contested system for leveling funding between school districts has divided the state into wealthier “donor” towns and poorer “receiver” towns, deepening municipal divisions and pinching budgets even further.

The lack of sales and income taxes also has a direct, tangible impact on the development of the landscape, particularly in cities and towns on the state’s borders. Most noticeably in the southern part of the state, both residential and commercial development pressures have been intense. Due to its philosophy about regulation and taxation, New Hampshire has generated a real and prolonged period of economic expansion that outshines any state in the region. Between 1990 and 1998, New Hampshire’s population grew 6.6 percent annually, far above the New England average of 1.6 percent. New Hampshire’s economy in the last 20 years has been a regional juggernaut: it ranks first among all 50 states in growth in per capita income, first in growth in gross state product, first in growth in non-manufacturing jobs, and has the 13th fastest growing job market in the country (Barry 1999).

Driving the hot housing market in the southernmost towns of New Hampshire are a large number of people who commute over the border to work in Massachusetts, while avoiding state income tax on their wages. Moreover, goods and services these residents buy in New Hampshire are free from sales taxes, and housing costs are generally lower. The creep of suburban Boston has accelerated into New Hampshire, especially as many jobs move to the north and west of the city, around portions of the Interstate 495 ring. From an individual choice standpoint, the financial incentives to live in New Hampshire are very clear.

The lack of sales tax has driven a substantial increase in retail activity as well, as residents from all three neighboring states flock over the border in search of cheaper goods. The imbalance is most apparent between otherwise similar towns on either side of a clear border, like Bellows Falls, Vermont and Walpole, New Hampshire, where a preponderance of retail stores has located on the New Hampshire side of the river. One study estimates that retail sales have gone from essentially equal on either side of the Connecticut River in the 1960s to 40 percent higher on the



New Hampshire side by the mid-1990s (Woolf 1997). In brief, most of the region's new residential and retail development that is within easy driving distance of the New Hampshire border is inexorably lured within the state's boundaries.

The combination of a fast-growing job base and an increasing population has meant a wave of residential construction and commercial development has come to towns that were quite small not so long ago. The Massachusetts border town of Derry, for example, nearly doubled in population over the last two decades: from 19,000 in 1980 to 33,000 today. While the current boom has been focused on the southern part of the state—generating some resentment among the more sparsely populated and poorer towns of the north—many areas have seen remarkable changes from the effects of population and job growth. On the whole, each of these towns is responsible for directing its own growth and for doing its own planning to manage the influx.

### **State planning**

Legislation directs the New Hampshire Office of State Planning to “plan for the orderly development of the state and the wise management of the state's resources” (RSA 4C:1, IIa). Jeff Taylor, the director of the office, is characteristically blunt when describing what real power his organization has in influencing local planning and development decisions. In spite of the mission statement, says Taylor, “if you thumb through the RSAs looking for the enabling legislation that gives us regulatory authority to actually do that, there is none. We have no regulatory power whatsoever.”

The state has not invested its state planning office with any authority to dictate development decisions, yet the OSP staff based in the state capital of Concord work diligently to further good local planning. “I have taken the position that the only way we can really accomplish our goal,” Taylor says, “is to be an educational vehicle—to provide whatever technical assistance, model ordinances, training, statistics, data, whatever we can do. The way we're going to have a positive impact is by working with the local boards.”

Indeed, the office produces an impressive amount of high-quality information for use by local towns and assists planning boards all over the state in everything from subdivision regulations to growth control ordinances to capital improvements planning. Particularly notable is a highly regarded annual conference that draws hundreds of local board members from all parts of the state to discuss local planning issues. Planners from New Hampshire cities and towns acknowledge the state's limited role in planning issues but speak highly of the state office's work. Craig Wheeler, planning director of Concord, New Hampshire and former planning director for Portsmouth, describes the office as "a very credible agency," and adds, "OSP has tremendous rapport with all the communities."

Within its capacity, New Hampshire's state planning office plays a significant role in influencing local plans. Particularly among towns that lack planning staffs, information resources provided by the state office prove invaluable. A comprehensive web site and a vigorous listserv provide model ordinances, advice on methods for local planning, and a forum where New Hampshire planners can discuss problems. One sign of the state office's influence is the large number of towns that have used, almost verbatim, OSP's suggested language in their local planning and zoning laws.

Still, local jurisdictions and the state planning office both recognize that the state plays only an advisory role in planning and development decisions. Direct financial incentives and regulation, two main policy interventions that governments use to influence behavior, are missing from the state's framework for land use planning. From the incentive side, state financial support for planning at the local level is virtually non-existent. From a regulatory standpoint, state law has given the planning office no authority to restrain towns from pursuing development policies contrary to the "orderly development" and "wise management" credos found in OSP's mission.

A system of nine regional planning agencies, or RPCs, provide technical assistance to local communities, particularly those without planning staffs of their own. Like the state planning office, the RPCs are well-regarded, thinly staffed, and essentially powerless to require the towns within their boundaries to cooperate regionally. Towns "do have the authority to develop a regional plan,"

Jeff Taylor of the state office adds, “but unlike the folks in Vermont, there are no planning dollars *per se* to go for that effort, no penalty for the failure to comply with it. So where you get communities working together it’s really not because of any mandate, but because they see it’s in their interest to work together.”

State policy may, however, play an indirect role in development decisions. Certain state laws and activities do influence land development in other ways, such as the regulations for the size and location of public school buildings, soil and water protection standards, and state transportation investments. In response to concern about sprawl, New Hampshire Governor Jeanne Shaheen recently ordered and received a thorough internal review of state agency activities that promote or limit sprawl.

Most all New Hampshire towns have a master plan in place, even if it has not been updated in many years. As of 1999, 96% of the state’s municipalities had a master plan in place to guide development. Furthermore, state enabling legislation provides much more leeway than most states in the tools that towns can use to shape development. If they wish, local jurisdictions are permitted to use a variety of tools to control the form and rate of development within their boundaries. State law explicitly allows towns to use “innovative land use controls” such as impact fees, transfer of development rights, inclusionary zoning, cluster zoning, and performance standards. Neither Maine nor Vermont law permits its towns such wide discretion in local planning.

Local growth management is, in fact, quite popular among towns in New Hampshire. Twenty-three towns, virtually all of them in the fast-growing southern part of the state, have adopted growth control ordinances as permitted by state law. But planning consultant Phil Herr, who has worked in many of these New Hampshire towns, notes that the town-by-town framework for growth management can have an unfortunate consequence. In some instances, Herr says, regional growth simply relocates from towns with effective land use controls into towns without them. Chester, New Hampshire, for example, currently bears the brunt of development pressures deflected by nearly all of its neighbors (Herr interview). The Supreme Court of New Hampshire recognized this problem with local growth control 22 years ago in its landmark case, *Beck vs.*

*Town of Raymond*. In that case, the court wrote that “an ideal solution to the problem of parochial growth restrictions is effective regional or statewide land use planning. Such planning could coordinate responses to population escalation in New Hampshire, thereby eliminating the present disparities existing between towns, and insuring that each municipality bears its fair share of the burden of increased growth” (N.H. Supreme Court 1978). This “ideal solution” is still far from being implemented. The court in *Beck* concluded, “communities may wish to examine the feasibility of seeking greater State participation in solving what is essentially a state problem.”

New Hampshire’s decentralized system of land use is simply a reflection of its overall philosophy toward government. Taylor harbors no delusions that his role will change dramatically anytime soon: “Sitting here as the planning czar of New Hampshire and saying, you know, ‘Thou shalt not Wal-Mart’? No. That just doesn’t fit with the mentality. It’s not the state’s approach to doing things.” Moreover, Taylor says the current system brings a level of involvement in local planning and growth management that might not otherwise be the case with a state-mandated system. Like most New Hampshire residents, he sees that the development boom of the last decade has strained the capacities of some local towns to deal with the costs of growth. At the same time, he remains unconvinced of the desirability of a more interventionist approach like the ones currently in place in Maine and Vermont. “I don’t see regulatory authority here. I just don’t see it happening. I’m not sure it’s appropriate. What we’re doing works reasonably well. This idea of leaving decision making as close as possible to those folks who are going to be impacted by the decision is a sound policy. Having said that, would I look for other ways to help them make those decisions in a different manner? Yeah, I think that’s an issue. The thrust here is on the education and on the incentive side.”

In the last few years, the state’s attitude toward direct government intervention to restrain sprawl has started to shift. Two decades of economic growth and voracious land development has left a legacy that concerns some within the state. In a survey of 616 New Hampshire residents done in late 1998, 82 percent said they were extremely or somewhat concerned about the loss of open space, or historic or cultural resources in the state (N.H. Land and Community Heritage

Commission 1999). Around the same time, a legislative panel identified sprawl as “a threat to the traditional character of New Hampshire communities” and delivered a report recommending reforms in state policy.

Governor Shaheen, with prodding from the legislature, recently ordered state government investigate its influences on “the preservation of New Hampshire’s traditional communities and landscapes.” An initial sprawl report from the Office of State Planning catalogues how state government may be contributing to sprawl (N.H. OSP 1999). The office is currently working on a more comprehensive sprawl study, to try to assess the depth and breadth of the problem.

In her 2000 State of the State address, Shaheen referred to her executive order and said, “state government should serve as a role model for smart growth.” Expressing a broader vision, she added, “Our rich history, abundant natural resources, our clean air and clean water, are the very things driving our economic growth. But as we grow, we must preserve what is special about New Hampshire, the traditional character of our communities, our forests and farms, and our historic buildings and downtowns” (Shaheen 2000).

None of the governor’s initiatives advocate for a comprehensive statewide planning or growth management policy. Yet, driven by popular concern and nationwide surge of interest, land development issues have certainly moved higher up on New Hampshire’s policy agenda.

## **Portsmouth**

As its name implies, the coastal town of Portsmouth, New Hampshire has long been defined by its relationship to the water. Portsmouth is one of the oldest non-native settlements in America, founded in 1623 by English merchants who chose the site for its access to fishing, timber, and the profusion of wild berries that grew on its land. Located at the mouth of the Piscataqua River—which also marks New Hampshire’s border with Maine—the city’s key asset in that period was a deep-water harbor. Portsmouth incorporated in 1631 and developed rapidly as a seaport throughout the colonial and revolutionary periods. Many of the city’s historic buildings from this era still stand, including, amazingly, a post and beam residence built in 1664. In fact, a

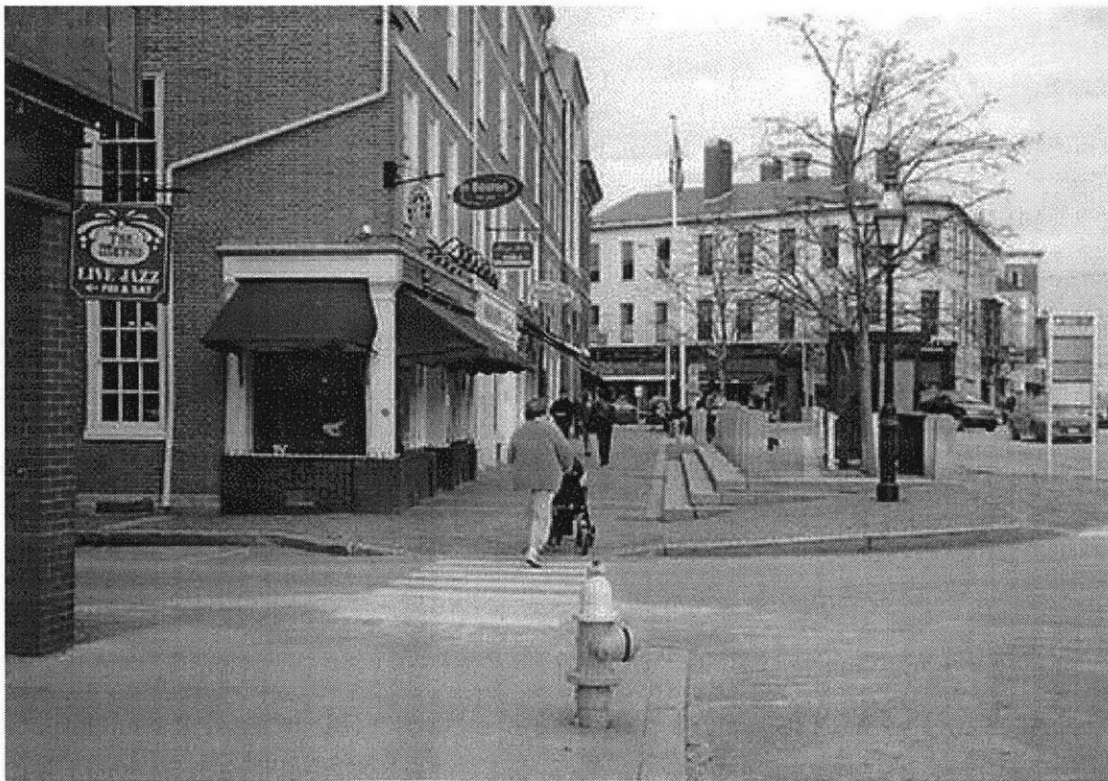
key factor in understanding Portsmouth's current approach towards planning and land development lies in its remarkable inventory of historic buildings from the past 250 years.

Portsmouth was a regional center for trade through the colonial and post-colonial periods. Residents of smaller towns from all around the region would come to Portsmouth for shopping or for work in the harbor-related industries. In 1800, the U.S. Congress established the Portsmouth Naval Shipyard on a large island in the Piscataqua River, an installation that was to become the region's largest employer and a mainstay of the economy. At its peak in World War II, the shipyard employed 24,000 workers. Still in operation today—though with many fewer workers—the shipyard refurbishes nuclear submarines as a main part of its business. The military's presence has been significant to Portsmouth on its inland side as well. Pease Air Force Base was built on the site of an old municipal airport in the 1950s, its 4,200 acres straddling the border of Portsmouth and neighboring Newington. When the federal government decided to close the base in 1989, Pease had 5,000 civilian and military employees and an on-site population of 10,000 (PDA 2000). A state development agency has taken over the land and is successfully promoting and redeveloping the area for industrial sites.



Portsmouth, New Hampshire, across South Mill Pond.

Portsmouth's downtown continues to be the historic heart of the city and an engine of economic activity. Exactly halfway between the larger cities of Boston, Massachusetts and Portland, Maine, Portsmouth's status as a regional hub for the seacoast region of the state has always made it seem larger than population figures show. Historically, downtown businesses followed a trajectory that began with supporting the local seaport economy with trade and warehousing, then moved to becoming a regional center for beer brewing and other industries, and today attracts office workers, shoppers, and tourists from all over the area. Employment swells a stable night-time population of 25,000 to nearly 40,000 during the day. The city has also positioned itself as the arts and cultural center of the area, with theaters, movie houses and restaurants. The city currently counts 88 restaurant licensees, an astounding number of establishments for a city its size. The current robust economy has shone on Portsmouth: vacancies in the downtown core are low, rents are high, and the streets are busy with people, early and late, weekday and weekend.



Market Square in downtown Portsmouth.

Just as important to the history of development in Portsmouth has been its historic preservation. Even at the end of the 19th century, people had come to Portsmouth to enjoy its architecture and its historic buildings. Because of this unique character, and city leaders' longstanding recognition of existing buildings as an economic asset, the face of the downtown is still quite similar to how it might have been 80 years ago.

Portsmouth's downtown was touched by the wave of large-scale, federally subsidized, urban renewal programs of the 1950s and 1960s, but in a different way than most cities. Shunning the typical concrete mega-projects of that era, Portsmouth citizens resisted reconstruction in favor of restoration. Federal dollars were used to restore existing historic buildings in the Strawberry Banke and Puddle Dock neighborhoods, establishing a 10-acre, 40-building outdoor history museum, opened in 1965 and now attracting 60,000 visitors a year. Current Portsmouth residents point to the fight for and the establishment of the Strawberry Banke as a key event in the development of a strong and lasting preservation ethic.

Another key factor in Portsmouth's growth profile is the environmental constraints of its geography. Of the city's 16 square miles of land area, nearly one third of that is classified as wet, making it either impossible or difficult to build on. Much of this low-lying land area is conservation land. In a recent notable example of the difficulty associated with construction in Portsmouth, a development proposal to build 25 houses on a swampy tract named the "Great Bog" has been stymied by New Hampshire state environmental regulators, who claim the development does not meet water quality standards (Giordano 2000). The developer has charged local interference with the state permit approval process, but the conflict over a relatively small project shows the marginal nature of building activity in the city.

In this respect, Portsmouth has not seen the same levels of construction either for residential or commercial space in the last 20 years that have been common in many other parts of the state. To begin with, Portsmouth's early development as a city means that its land is mostly built out. Population densities are high, for New Hampshire, and there is scant room under current zoning to grow within the city limits. The large parcels that do exist are often regarded by



developers as marginal and not worth the environmental permits they might require. Commercial development, likewise, has not consumed much land. Instead, new businesses have either occupied existing office space in the downtown or newly available industrial space in the burgeoning Pease Tradeport. Economic activity in Portsmouth has grown substantially, but even as it solidified its place as an employment center in the last decade, actual land consumption and population have remained steady. Unlike most towns in New Hampshire, Portsmouth's population has not changed appreciably since 1960.

### **State role**

David Holden, Portsmouth's director of planning and community and economic development, is as straightforward as his state-level counterpart when considering the state government's role in local planning: "The state has minimal involvement in what we do. Basically, the state of New Hampshire does not have a lot of funds to devote to any particular concern. They are pretty good with passing information along, and issuing reports that assist the process. But in terms of fiscal support to a city for planning purposes? It would largely be zero. The staff here are totally supported by local tax revenues."

From a local perspective, it's a money issue. New Hampshire's role in land use planning is only as influential as its ability to provide funding. Holden praises the state planning office's expertise and their work in conveying useful information about a range of planning topics. But, he adds, "in terms of state participation in local planning, to me it's largely advisory, assistance. And very appropriate, but not with any strong fiscal commitment." Furthermore, he says, state technical assistance tends to be directed toward smaller towns with little or no staff. Portsmouth, as well as other larger New Hampshire cities like Manchester and Nashua, has different land use problems and more resources to deal with them than most towns in the state.

Clearly, planners in Portsmouth look first to local interests when developing policies for growth. The planning staff answers to a board made up of local citizens, salaries are paid entirely from local tax revenues, and state law does not direct the city to look outside its boundaries for

planning purposes. Even if Portsmouth decided it should create a plan that accorded with state or regional goals, there would be no money to do the extra work. Holden pinpoints the state's lack of influence on his city: "What resources does the state bring to the equation? They don't bring a lot." Considering that there are no financial incentives to plan in a larger context, no sanctions for planning outside of city boundaries, and no legislative power to influence the land use decisions of other municipalities, it comes as no surprise that land use planning Portsmouth is little influenced by the state.

Indirectly, though, state policy does have a real effect on the patterns of development. New Hampshire has established environmental standards that regulate coastal zone management, soil standards for septic systems, and water quality protection. (Its intervention with the Great Bog development mentioned earlier is one such example.) The state has a low-income housing program with a fair share component. State transportation officials routinely make decisions on roadways that affect the form and location of development. While these policies do not directly address planning or growth in cities like Portsmouth, city officials point to their secondary effects as important factors in influencing land development.

### **Regional picture**

Despite its strongly local orientation, Portsmouth has seen its place in the region change significantly with the last two decades of growth. Pressures on the city have been felt most dramatically by its neighbors, who have absorbed the new population and new housing that the city itself was unable to accommodate. Like other cities in New Hampshire, and indeed in the U.S., Portsmouth has seen the effects of decentralization from the historic center. While its population remained essentially flat over the last 20 years, even losing population with the base closure, the region has surged. Other employment and industrial centers have cropped up around the region. People live further away and commute longer distances, some even to work in Boston, 60 miles to the south. Holden, who grew up in Portsmouth, sees the difference: "All you have to do is look at the commuting patterns on Route 16 to see it. People are coming here from Rochester,

Wakefield, Conway, Boston. There's a commuting shed that has changed drastically in the last 20 years. All you have to do is look at the Spaulding Turnpike. It's our version of a traffic jam every morning."

A small land area, historic preservation, and environmental constraints have kept Portsmouth from feeling the effects of sprawl within the city limits, but its neighbors have chosen a different path. Newington, just west of the city line, has aggressively and less selectively pursued commercial development. It competes with Portsmouth's downtown retail in the form of a large shopping mall. Recently renovated, only a few hundred yards from a highway interchange, and with acres of free parking, the Newington Mall was busy on several recent visits. Newington's tax rates, like all of the towns surrounding Portsmouth, are quite low when compared to the historic center. Because of their development patterns, newer building stock, fewer public facilities, and fewer town-funded social services, Portsmouth's regional neighbors demand less money from local property owners. In turn, this drives residential development in the outlying areas even more. These towns, many of which do not have full time planners, are feeling the effects of sprawl that Portsmouth has been able to avoid. As residential development increases in these towns, so do tax rates and demands on infrastructure. Portsmouth High School draws students from these regions and has traditionally been able to handle the capacity. However, city officials foresee a time when the its school will fill, and one of the neighboring jurisdictions will need to build its own high school, at considerable expense.

"They are in a battle to control sprawl," says Holden. "We don't have that as a concern because we're already developed. I'm afraid that battle is getting lost in all of the surrounding communities, as they try to grapple with growth," he adds.

Growth has exerted substantial development pressures on the smaller towns around Portsmouth. In nearby Stratham, for example, citizens recently won a two-year long battle to keep a proposed five-acre Wal-Mart store out of the community. Company officials confronted strong local opposition, and their permission to build was ultimately rejected on environmental grounds (the company had asked to fill in two acres of wetlands on the proposed site). Undaunted, Wal-

Mart turned to nearby Exeter, where local protest again stymied their plans. Taking advantage of the town-by-town nature of land use decisions, the company has simply redirected its energies on other towns in the area, and is now considering Portsmouth neighbors such as Epping and Newmarket.

The institutional structure for addressing regional issues is likewise very weak. The underfunded system of regional planning commissions has two main roles: to distribute federal transportation dollars and to contract for planning support to towns without professional staff. They have no authority from the state to do regional planning. Though Portsmouth is represented in the Rockingham Regional Planning Commission, their influence on development patterns is very minor. As Craig Wheeler, who worked as a planner in Portsmouth from 1982 to 1996 says of the RPCs, “What do they bring to the table? Nothing.”

Holden sees a potential role for the Regional Commission in coordinating issues that may lend themselves more to regional thinking. Water resources planning, transportation planning, and even regional tax base sharing are possibilities for a broader perspective. Nevertheless, no legislative direction promotes or allows this kind of regional cooperation. Despite the recent surge of interest in the costs associated with unmanaged growth, devising a system for equitable school funding has dominated political discourse in New Hampshire, making it difficult for other issues to come to the fore. The state and the region will not be receptive to a new governance structure without full resolution of the divisive and difficult schools issue.

In the near term, it appears that New Hampshire will continue the sprawling land patterns it has established over the last 20 years. The system that drives this land development paradigm—an aggressive push for economic development, huge tax advantages, and exclusively local control over land use planning—do not appear to be headed for reform. Nonetheless, awareness about the costs and benefits of different development patterns continues to rise, in part due to the work of the state planning office.

State policy, or the lack thereof, has not had much influence on small, historic, built-out Portsmouth. Still, the city is not immune to statewide patterns of rapid growth and development.

Neighboring towns continue to surge in population and development, traffic is worsening, and the job base has begun to focus on other parts of the region. The strictly local focus of land use decision making in New Hampshire sets Portsmouth on its own path. Without direction from the state, the city has fought, thus far with some success, to resist the problems of decentralization and to maintain its prominence in the region.

## Vermont

Vermont's state land use system is divided into two main parts, each of which has had a different level of success and implementation. Act 250 is the state's development permitting law. Passed in 1970, it reviews all new building projects above a certain size against state criteria for environmental protection. Act 250 was written as a stopgap environmental protection measure. A second stage called for a future-oriented, land use planning component, but this was never incorporated into the law. To remedy this omission, Vermont passed Act 200 in 1988, the same year Maine enacted its statewide planning law. Act 200 established a framework for locally-based land use plans that would be reviewed by regional agencies for consistency with state goals. In the 12 years since its passage, Vermont's statewide planning law has been weakened by funding cuts, a backlash from property rights activists, and lax enforcement of many of its provisions. Local response to the state law has been mixed, though the accommodating nature of the law has encouraged most towns to follow state guidelines in planning for future growth and change. Fluctuating political, administrative, and financial support for Act 200 make assessment of its effectiveness difficult. Yet, other states have much to learn from a careful review of how the law was born, how it is practically applied, and where it has succeeded and failed.

Land and land use have always been of paramount importance in Vermont, where residents uniformly express a special pride in the natural beauty of the state. Vermont's place in the popular imagination revolves around the appearance of its land. The state projects out to the rest of the country an identity composed of natural landscapes: mountains covered in green, old New England town villages, cow pastures, and farmland. Such is the power of its landscape that Vermont has even become a brand, synonymous with "natural" or "wholesome." Because of their association with the state, products sold with a "Made in Vermont" label command significantly higher prices in the marketplace.

Vermonters are fiercely protective of their state and its heritage. A strange mix of progressive politics, Yankee independence, neighborliness, and xenophobia has always characterized Vermont culture. “Flatlanders,” as out-of-state visitors are called, have always been regarded with a certain wariness. Like many places with a substantial tourist industry, Vermont has a love/hate relationship with outsiders.

The image of the state is closely tied to its size and its rural character. With just over a half million residents, Vermont is the second least populous state in the country, after Wyoming. An extraordinary 68% of its population, the highest of any state, live outside of areas defined as urban. Two-thirds of Vermont’s population live in towns with less than 2,500 people. Until only recently, when metropolitan Burlington reached a statistical threshold, the state had no census-defined metropolitan areas. Well into the middle of the 20th century, Vermont’s economy revolved around dairy cows, lumber, farms, and small-scale tourism. Traditionally, Vermont’s chief economic asset has been the bounty and beauty of its land, so the passion residents have for land use issues grows from deep historical roots.

### **Responding to a perceived crisis**

A changing economy and new infrastructure in the 1960s created a wave of development pressure that ultimately led to statewide development controls. The construction of federal interstate highways (Interstates 89 and 90) through the state in the 1960s suddenly made Vermont an easy drive from the homes of some 40 million northeastern urban dwellers. For a state that has long depended on its rural isolation as a hedge against rapid change, the transportation system changed everything. More people were added to Vermont’s population in the decade of the 1960s than had been added to the state in the six decades previous to that. In addition, dairy and other farming industries began a rapid decline, and newer industry came to the state. In 1957 IBM occupied a new manufacturing plant in Essex Junction, near Burlington, and within a few short years the company had become the state’s largest private employer. The ski industry expanded significantly, bringing an influx of seasonal visitors. The year-round population rose dramatically, and new

residents brought new residential and commercial development with them. New development began to take its toll on the cherished Vermont landscape, swelling local concern for the state's ability to handle growth.

Development activity was strongest in the southern half of the state, and a mammoth proposal there in 1968 may have been the catalyst for statewide legislation. A subsidiary of International Paper Company proposed a huge recreational and second home development on 20,000 acres of environmentally fragile land. Public response was swift and negative and the proposal was ultimately withdrawn, but only after direct intervention from the governor. The project's developers assumed the role of archetypal Vermont villains: wealthy out-of-staters, damaging the Vermont's beloved natural environment, and eroding a traditional way of life. The proposal exposed some Vermonters' most deeply held beliefs and fears and galvanized citizens and legislators to take action to stop similar large-scale projects. As with growth management programs in other states during the 1970s, supporters mainly rallied around the issue of environmental protection.

Policy makers responded to the sense of crisis with a bill that would immediately adopt broad regulations with which large subdivisions and developments would have to comply. The bill also called for a statewide land use plan that could be used to guide future development, but only after the current crisis was under control. With the vigorous support of Governor Philip Hoff, and remarkably little opposition, Act 250 was passed in 1970.

### **Provisions of Act 250**

Essentially unchanged since then, Act 250 is a review process for any large development project within the state. It is not planning *per se*, but the law is a kind of land use control, and has had a substantial effect on the development process. The law's innovation lay in its applicability to projects statewide, regardless of location. Act 250 applies to all projects larger than 10 acres or "involving" more than 10 housing units. The threshold for review is really quite low, and by one estimate includes almost one-third of all development proposals in the state. Clearly, the law



responds to concern over the environmental damage caused by large projects, especially those with regional impact. The groundbreaking Vermont legislation was the genesis of the idea of a “big cases” approach. More commonly known as developments of regional impact, this planning concept was appropriated by the American Law Institute in their highly influential 1975 *Model Land Development Code*. This key idea was later used in systems in Florida, Cape Cod, and many other state and regional agencies (Healy 1976). Neither Maine nor New Hampshire has such an environmental review process for large projects.

Once a development falls under Act 250 review, it must meet a number of state-established criteria. The project applicant must show that the development will not cause undue air or water pollution, soil erosion, or strain on water supplies, and that it conforms with local or regional land use plans. Opponents, on the other hand, must show that a project would unreasonably affect roads and other public services, or that it would harm natural, aesthetic, or historic sites.

Decision making power rests with one of nine regional Environmental District Commissions, each made up of three local citizens who usually hold no other elected or appointed office. Developers and opponents have the right to appeal their decisions to a state environmental board. Finally, Act 250 is a “double veto” system. That is, even if a project receives a permit from its district commission, the developer still must comply with all local and state regulations.

In practice, district commissions rarely deny Act 250 permits outright, but most projects are approved subject to certain conditions. There is a widespread (and untestable) belief that the very existence of the law improves the quality of large-scale development proposals. Shoddy or unscrupulous developers, the argument goes, fear Vermont’s heightened scrutiny and go elsewhere. (Privately, a number of Vermonters say elsewhere means New Hampshire.) Over its 30-year history, Act 250 has faced frequent attacks and several legislative attempts to weaken or repeal it, but the law has remained in place and has become an accepted part of the development process. Act 250 has a high profile among Vermont residents and has enjoyed considerable popular support for its ability to weed out the biggest and most damaging development projects. A

recent, highly publicized example of the law in action was the denial of a permit to build the state's first Wal-Mart store on the outskirts of St. Albans, in northern Vermont.

Act 250 is both a challenge to and a step away from local control of land use. The state inserted itself into local land use decision-making but restricted its role to the largest development projects. State policy makers knew there would be neither political will nor administrative capacity to take back all land use control from the local level. Act 250, then, is the result of political compromise, allowing the state to intervene in the development process, but only where its interests are most at stake, i.e., in the largest projects. Conveniently, the larger development projects are more likely to be those proposed by out-of-state developers.

Moreover, the citizen-run district commissions that administer the law deftly strike a balance between local discretion and mandated state requirements. Besides allowing for regional variation in the application of state criteria, regional commissions usually take time to negotiate with developers to modify their proposals. Such give-and-take defuses antagonism toward state intervention, except in the most adversarial instances.

The drafters of Act 250 saw the now 30 year-old environmental permitting function of the law as an interim measure. Eventually, the creation of a statewide land use plan would regulate where development was appropriate before it was proposed. The development of a state land use plan (fundamentally different from the statewide planning *process* eventually put in place years later) was the casualty of interagency squabbles, a weakening economy, and public relations mishaps. In 1972, the state environmental board sent a small, blurry, low-resolution, state-scaled map showing an idea for the land use plan to every household in the state. While the written description of the project goals that accompanied it persuaded some Vermonters, the visual specificity of the map alarmed many others. Leonard Wilson, a former chair of the state environmental board, recalls how the publicity materials did more harm than good in generating support for the plan: "Practically every landowner in the state believed his land was going to be restricted" (Vermont DHCA 1999). The dreaded specter of state-level zoning generated its own natural resistance. When combined with internal disagreement in state agencies, sporadic interest

group opposition, and a softening economy, the process was doomed to failure. Legislative efforts to adopt a state land use plan stalled three times in 1974, 1975, and 1976, and eventually the idea was abandoned.

### **The birth of statewide planning**

Another surge in the economy came to the state in the mid-1980s, causing Vermonters to revisit the idea of statewide land use planning. The inability of Act 250 to shape overall development patterns became increasingly clear. While state environmental review improved the *quality* of new development, it had no ability to regulate the *quantity* of development. The sprouting of houses and commercial strips on the fringes of towns and on highways between towns was evidence that state land use regulation had very little effect on the location of new development. Moreover, because it only regulated developments of regional impact, Act 250 lacked jurisdiction over the small-scale development that was incrementally eating up hillsides and forestland. Clever developers could dodge the law by subdividing into parcels just small enough to avoid review.

At the high point of the development boom, in response to increasing public concern, Governor Madeleine Kunin appointed a high-profile commission to seek the opinions of Vermonters on a variety of growth related issues and to make recommendations as to how the state could make planning more effective. More than 2,000 citizens attended 11 hearings held all over the state to voice their opinions. The summary report, *Guidelines for Growth*, identified eight problems that most significantly affected Vermonters, including a decline in community spirit, out-of-control development pressures, a deterioration of natural and historic resources, and a lack of affordable housing. Many of these problems were laid at the feet of new development. The report made a broad series of recommendations for growth management and provided a solid basis for state action. Having finished its work, the commission disbanded, turning over the actual drafting of the law to the legislature.

Pressured by the governor and viewing the commission's findings as a mandate to act, legislators quickly developed and passed a comprehensive land use planning program. Governor Kunin happily signed Act 200 into law in May 1988, only five months after the release of *Guidelines for Growth*. As with the earlier Act 250, any early opposition to Act 200 was no match for the political momentum that had built up behind its passage. Negative reaction would come later, but only after the law began to be implemented.

### **Provisions of Act 200**

Act 200's primary function was to establish a system for local comprehensive planning, guided by statewide goals, and reviewed by regional commissions. Overall, the law relies on a decentralized approach that vests authority for planning with local towns and regional commissions. Still, the state brings together the diverse plans of these numerous groups under a statewide framework and organizes them under a defined review system.

The act set out the required components of local comprehensive plans and guidelines for preparing them. The guidelines were ultimately distilled into 12 substantive, but very broad, goals which local plans had to follow. For example, two of these are: "maintain Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside," and "preserve important natural and historic features of the Vermont landscape." The law required all municipal plans to be consistent with these goals.

In addition, the act greatly increased the power of the regional planning commissions. While regional planning had been in place since 1965, their role was limited to technical assistance, and they were subservient to the interests of individual towns. Under Act 200, the regional planning commissions are the primary reviewers of local plans, checking towns for their consistency with the state's goals. Moreover, regional commissions were directed to develop *regional* plans and then ensure that local plans did not conflict with the regional strategy. These regional plans would, among other things, determine which areas in the region were "growth centers" and best suited to accommodate future development.

State agencies were also brought into the state land use planning framework. Act 200 required every agency within the state government to develop a plan for how their actions affected land use. These plans, too, were to be consistent with the 12 goals, compatible with approved regional and municipal plans, and updated every two years.

Finally, the law created the Council of Regional Commissions, a body comprised of state agency heads, regional commission representatives, and two gubernatorial appointees. This group was to resolve disagreements between agencies, regions, or municipalities, check regional plans for consistency with the statewide goals, and review state agency plans. The focus of this commission was clearly intended to be that of a mediator and to iron out differences between the varying levels of government.

Money for the new local and regional planning efforts was to be drawn from a state fund supported by proceeds from a dedicated tax. The statewide property transfer tax was increased from 0.5 percent to 1.25 percent, with the increase in revenue going to pay for planning grants and new staff. The rationale for the tax was to tie the revenue source to the problem: since real estate changed hands as the result of growth and change, taxing this activity would generate money for citizens to help manage growth. Furthermore, the law permitted towns with approved local plans to charge developers impact fees that would offset the costs of necessary infrastructure such as roads and sewer lines.

## **Backlash**

Though well-funded and structurally coherent, Act 200 had only a very brief honeymoon among Vermonters before a serious backlash developed, ultimately weakening the law. The popular mandate that seemed to be behind the law quickly turned to mistrust and conflict. Ironically, the strongest opposition to the new law came from people who had very little idea of what it did. A libertarian-minded group called Citizens for Property Rights organized in 1989 mostly to oppose government intervention of any kind in land use decision making. Started in the rural, economically depressed, upstate town of Sheffield, the property rights group argued that Act

200 represented domineering state control of local governance and that regional commissions had no right to approve local plans. Besides making a general argument that planning and zoning amounted to illegal confiscation of property, they also claimed the law would dampen the economy and give environmentalists too much control.

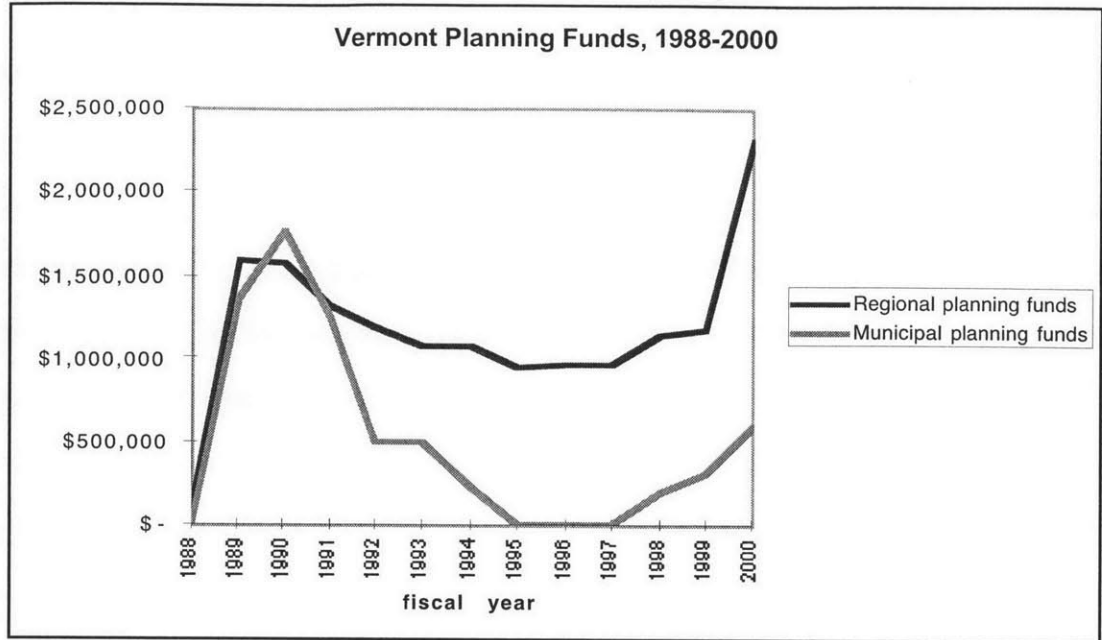
In fact, the law's decentralized structure gave local governments considerably more development control and access to resources than had previously been the case. Act 250 had long given towns with local plans more standing than those without plans, and Act 200 opened up a new source of funding and technical assistance for local government to do planning. Contrary to the arguments of the property rights group, towns with planning actually have more control over their own development than without it. In fact, towns with Act 200 approved plans had new power to challenge state actions—say, the location of a new road—as inconsistent with local planning. This little-known aspect of the law strengthens the power of local government against the state, but has never been used. In the heat of the debate, many citizens opposed the law but were unable to articulate reasons why.

In the absence of a widely shared consensus as to the meaning of the law, opposing arguments proved resilient. Opponents had effectively imparted values to Act 200 that were not actually in the law, including the stripping of local land use control. The revolt against the law broadened to become a more general attack on government and regulation of all kinds. Lawn signs sprouted up around the state saying, "Act 200 is a Bad Law." Worse yet for the law's supporters, hardly anyone outside of state government came to Act 200's defense. The governor's commission that began the process had disbanded, and environmental groups in the state did not find reason to rally behind an untested and increasingly unpopular law. Furthermore, Act 250 had already dealt with the most environmentally damaging projects, reducing visual symbols of planning failures.

On town meeting day in 1989, nearly half of the towns in the state voted not to participate in Act 200. In response, the legislature removed the requirement for local plans to be consistent with state guidelines. Towns still had to follow the state established goals to be eligible for state funding, but municipalities now had the option of planning on their own without any help or

guidance from the state. Hoping to head off further conflict, the legislature established a working committee of stakeholders, including Citizens for Property Rights, to discuss the law. Without a clear goal, the group fell into bickering, and published a divided report that both supported the law (the majority view) and urged its repeal.

An even more serious blow to Act 200 was struck by the economic recession that hit New England in the early 1990s. The revolt had already weakened Act 200 by allowing towns to opt out of the planning process, but left the language of the law and its funding stream largely intact. As the regional economy foundered and state budgets became strained, legislators found it easy to cut funding on a law that had already proved unpopular. Also, with a dragging economy, development pressures eased, lessening the urgency for planning. Neither of Governor Kunin's successors were advocates of Act 200, and the administration ultimately disbanded the state planning office. Legislators "un-dedicated" the property transfer tax, moving it over to the general fund, and forced planning to compete with other state programs in the annual budget process. Funding both for local planning and for the regional commissions declined precipitously. In 1994, the legislature voted to eliminate money for municipal planning entirely and did not restore any money until 1998. Since financial incentives were the main motivator for local governments to do comprehensive planning, budget cuts drastically weakened Act 200's ability to influence the planning process.



Likewise, the regional commissions and the Council of Regional Commissions were battered by financial woes. Beth Humstone, associate director of the non-profit Vermont Forum on Sprawl and a longtime planner in Vermont, recalls visiting the Council of Regional Commissions office in 1994 when “they couldn’t even make copies of things” for lack of money. With no enforcement and no pressure from the governor’s office, state agencies stopped producing their Act 200 plans every two years, openly flouting the statutory requirements of the law.

The 1990s were a tumultuous time for statewide land use planning in Vermont. Though the essence of Act 200 remains on the books, its effectiveness has been severely compromised by a lack of awareness and severe cuts in funding. Its current form in statute is very similar to the promising law passed 12 years ago, but the history of its implementation has been fraught with difficulty.

### **Review of Act 200**

Greg Brown, the Commissioner of Housing and Community Affairs for the state, oversees Act 200 at the state level and agrees that “there was never any real opportunity to make the machine



work as it was designed.” Passed in Governor Kunin’s last term of office, statewide land use planning began strongly, but faltered quickly in the face of budget cuts and political opposition.

Planning is now purely voluntary, meaning towns can either plan and not submit their plans to the state, or they can choose not to plan at all. Nevertheless, Brown says, about 75% of towns in the state have some kind of plan, and 50% of the towns have plans that have been approved by regional commissions under the Act 200 guidelines. Even a majority of towns that pledged to resist state planning in the midst of the 1989 revolt have received planning grants and have followed the state guidelines. Money for planning, which has recently been restored to nearly the same level as at the Act’s beginning, has proven a powerful incentive. Greater standing in Act 250 hearings for towns with approved plans has been another big incentive for local planning. Brown claims that since 1988 Act 200 has made local planning more sophisticated, more consistent, and more participatory than before.

Allowing towns to opt out of Act 200 has also created an unintended divide between towns that do thorough planning and towns that do not. “Towns are interested in planning in direct proportion to the amount of change going on in the town,” Brown says, “In places where not much change is happening, what’s to plan for?” The most sophisticated planning happens “in those communities of any size where there is substantial development pressure,” he adds, because citizen support is strongest and local governments are more aggressive about regulating development. Trying to accommodate the needs of both high-growth and low-growth towns has been a challenge. “If you try to do a one-size-fits-all state law, you are going to lose people at either edge,” Brown says of the law. “If you build a growth management law that responds to pressures only in certain parts of the state, it’s irrelevant to parts of the state where there is no development going on.”

In retrospect, the continuing success and popularity of Act 250 may be one of the reasons for the struggles of Act 200. Though merely reactive, the environmental permitting function of Act 250 protects towns from the worst development projects, whether they have a comprehensive plan or not. As a result, many towns abdicate their planning responsibility to Act 250. Brown explains:

“There’s no question Act 250 has taken a lot of the pressure off. I’ve heard municipal officials say flat out that they depend on Act 250 to protect them, and anything that doesn’t trigger Act 250 probably isn’t worth worrying about. It’s kind of a security blanket.”

### **The Regional Role**

One of the greatest disappointments in the Act 200 process has been how the regional planning commissions have played their role. The regional emphasis of Act 200 was intended to empower regions to solve the problem of inter-town conflicts and to hold towns accountable to state and regional standards. Much more than either in New Hampshire or Maine, Vermont’s land use planning framework vested power in its regional planning commissions.

In practice, the regional commissions have not been as rigorous in their review of local plans as early supporters had hoped. The regional commissions have not been strong players in growth management because of the lack of funding and a flawed organizational structure. As Greg Brown of the state housing and community affairs office says, the regional commissions “are neither fish nor fowl.” That is, they consist of representatives of constituent towns and depend on them in part for their funding, while at the same time, they are expected to enforce state regulations against them. The delicate political balance means that, to avoid conflict from the town representatives, the vast majority of local plans are approved for consistency with state goals. The general language of the law, which does not specifically define “growth centers,” allows for broad interpretation. Only plans that are baldly contrary to state planning goals are rejected. While the enforcement of Act 200 ought to take place at the regional commission level, power relationships encourage a culture of permissiveness.

“State government has been very reluctant to use the RPCs as a tool to discipline towns,” Brown explains, “because the politics would be horrendous.” He adds, “We could, because we control the purse strings, but I can’t conceive of a situation where that would happen, because the backlash from the towns would be appalling. In effect, unless the other municipalities support [the RPCs], they are not in a position to impose discipline on a single town for a bad plan.”

This points to a serious problem in the implementation of Act 200. If those enforcing state standards have neither the financial nor the political support to do their job, the effectiveness of the law is greatly diminished. Regional commissions routinely approve local plans with huge amounts of their land area dedicated for future commercial and industrial development, essentially ignoring the “growth center” objectives of the law. In addition, the virtual collapse of the Council of Regional Commissions has taken away the mechanism for reviewing the performance of the regional commissions.

Beth Humstone of the Vermont Forum on Sprawl points to less-than-rigorous review as the key weakness of the system: “I think the biggest failure is the lack of enforcement.” On the whole, local governments in Vermont still hold the ultimate power in land use decision making. As Greg Brown says about the fast-growing commercial sprawl in Williston and South Burlington, two cities that have Act 200 approved plans, “There are places where local politics and policies drive development, regardless of what state policy and state law says.”

### **Leadership, Advocacy Missing**

Finally, in addition to the structural weaknesses of the law and the paucity of planning funds from the state, there is a widely recognized lack of leadership from the governor’s office on this issue. Howard Dean, who has been governor of the state since 1991, has largely disregarded Act 200 and openly expressed his disdain for land use planning. He has been very supportive of narrower planning issues such as land conservation and affordable housing, but comprehensive local land use planning does not interest him.

Stephen Holmes, director of the environmental advocacy group Vermont Natural Resources Council, expresses his disappointment with Dean’s commitment to Act 200, and recalls the governor once saying, “I hate planning; I like doing.” According to Holmes, this attitude trickles down in terms of financial and political support for planning within state agencies. They have followed the governor’s lead and have, until recently, paid little attention to the land use implications of their decisions.

Another major gap in the land use planning framework in Vermont has been the lack of organized support for a statewide system. Though the idea of growth management seems to enjoy tacit approval among a majority of Vermonters, no advocacy group has taken on the role of defending the state program against attack. Environmental groups have focused their energy on supporting Act 250 and on the numerous other immediate threats to Vermont's natural environment. The incremental sprawl that results from the lack of planning has not been a high priority for them. Supporters of growth management lost an early opportunity to capitalize on the community response to the issue in 1988, when popular support was arguably at its peak. With the only organized voices of support for Act 200 coming from Montpelier, the state capital, the program has struggled to maintain its base. With almost no one standing behind it, Act 200 has become a political punching bag.

### **Recent developments**

Despite the sad history of statewide growth management, recent developments show signs of a rebound. Governor Dean has shown greater interest in comprehensive planning lately than in his first term of office, as the incremental effects of development have again become obvious. In January 2000, he signed an executive order establishing a "development cabinet" made up of state agency heads who were to take on a number of planning-related responsibilities. The order requires the development cabinet to adhere to a set of policies when making land use decisions, to focus any state agency investments in existing centers, and to coordinate among each other on major development projects. Remarkably, this executive order essentially repeats requirements already codified in state law. The governor's actions mirror Act 200's mandate to state agencies to develop land use plans, a part of the law that has been ignored for at least seven years. As in both Maine and New Hampshire, Vermont's recent foray into growth management has focused on direct state investments that cause undesirable development patterns.

Dean has also taken an active role in the state's bubbling controversy over the siting of "big box" stores, even traveling to Wal-Mart's corporate headquarters in Arkansas to voice concerns

about the effect of proposed stores on existing service centers. In a related move, Dean also pushed for 1998 passage of the Downtown Bill, which provides designated downtowns tax advantages, planning grants, and transportation funding. The mayor of Burlington and some others praised the bill but criticized the meager funding that accompanied it—\$400,000 for the whole state.

Finally, Dean's public statements show that he genuinely feels strongly about land use and preserving Vermont's traditional landscapes. He clearly sees land conservation, not planning, as the right tool for the job. In his 1999 inaugural address, he said, "We have an extraordinary opportunity to preserve what we value about Vermont's landscape and keep our sense of community. If you think these values are not at risk, look around you at other states: forest lands stripped, big-box stores turning downtowns into ghost towns; grazing fields now supporting condominiums. We in Vermont have a rare gift, a chance to encourage the best growth possible, while holding off the worst aspects of urbanization paving over too much of America" (Dean 1999). While none of Dean's actions signal strong support for statewide land use planning, the administration has demonstrated renewed attention to issues of growth and change.

A new state tax policy may have a big effect on land use, as well. As in New Hampshire, Vermont's Supreme Court ruled that funding public schools strictly from the local property tax was unconstitutional. In response, the legislature passed Act 60 in 1997. Act 60 establishes a statewide system for revenue sharing, transferring tax revenues from the wealthier towns to the poorer ones. Since local officials often compete for new commercial development as a way to increase the tax base that will help pay for local schools, a redistributive system may take away some of the incentive to grasp for any and all commercial development. It is too early to show that Act 60 has had a demonstrated effect on local land use decisions. One theory, though, is that absent a pressing need for the tax dollars that new commercial development brings, towns will be more selective about what gets built in their communities.

New interest in planning comes at a time of accelerated development in Vermont, when new construction is on the rise and the economy is expanding. The corresponding inflow of tax revenues has allowed more money to be dedicated for local and regional planning. Money for

planning grants and regional commissions has just this year reached levels of funding comparable to the late 1980s. Local governments, increasingly under pressure from development, have shown greater interest in planning and are applying for Act 200 grants in greater numbers. With these new resources, the state can help a greater number of towns with technical assistance.

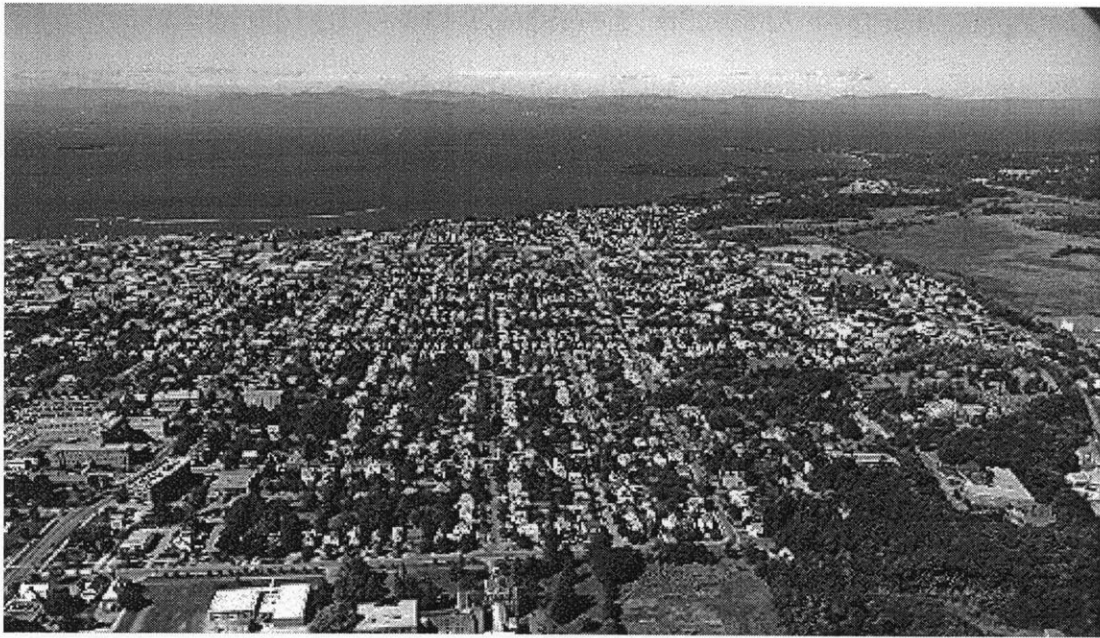
The establishment of a privately-funded education and lobbying group, the Vermont Forum on Sprawl, has also been a boon for statewide planning. By examining growth issues particular to Vermont, and publishing well-researched reports on the costs and benefits of development in the state, the organization is raising awareness that may lead to new policy solutions. Public concern about development pressures is rising once again, as it did in the late 1960s and the late 1980s, and there is a sense of growing support for some kind of action.

Most long-time observers of land use planning in Vermont have not missed the parallels between the current surge of interest in growth management and those of years past. The risk is very real that solid programs established in response to this wave of development will fall away in the next economic downturn. Greg Brown, of the state office of Housing and Community Affairs, hopes that this time Vermont will seize the opportunity to make smart planning less cyclical. He says, "Planning, in my view, is always going to be vulnerable to swings in the economy. It's one of the first things to fall out of interest as the economy softens. One of my campaigns is to get the word 'growth' out of the lexicon. Act 200 got into deep trouble early on because it was couched in terms of growth management, and as soon as growth stopped, it became irrelevant. Planning is not about growth, really, it's about change. And I think if we're smart, we'll put planning on equal footing with both growing and contracting economies."

## **Burlington**

"The nicest thing about Burlington," the joke goes, "is that it's so close to Vermont." As a metropolis in a mostly rural state, Burlington's importance is often overlooked by observers focused on the traditional images of Vermont, i.e., the tiny village in the hills, covered bridges, maple trees. Yet as the state's largest city, Burlington provides the state with characteristics found

nowhere else in Vermont: a substantial urban center, its flagship university campus, and a thriving arts and cultural scene.



Burlington, Vermont, looking toward Lake Champlain.

Burlington occupies land of dramatic natural beauty, hugging the eastern shore of Lake Champlain and looking over the water to the Adirondack Mountains on the other side in New York state. The waterfront orientation of the town has also been its economic *raison d'être*, providing a job base for hundreds of years, primarily around large, prosperous lumber mills. In the early years of its growth, Burlington's natural harbor attracted a substantial wood-products industry, which in turn produced other commerce and financial services, and spurred other industries from textiles to glass manufacturing. The concentration of economic activity brought rail connections that led to Boston and Montreal, giving Burlington access to the biggest markets in the northeast. By 1860, 400 steamer ships plied Lake Champlain, bringing mostly Canadian lumber to the mills on Burlington's waterfront. Church Street in the downtown had grown into the most important mercantile center for hundreds of miles in any direction, and the city entered a golden era of commercial and industrial prominence (Univ. of Vermont Historic Preservation Program 1980).

An influx of Irish and French Canadian immigrants, many of whom settled in the working class neighborhoods of the North End, provided ample labor for the new industry. The city's

commercial center stayed close to the industrial harbor, but residential neighborhoods—working classes to the north, wealthier families to the east—expanded away from the lake. Burlington finally incorporated in 1864. At this time, the original land area was split into urbanized sections, which became the City of Burlington, and the more rural sections, which became the town of South Burlington. A portion of the original acreage had already been drawn off to form the outlying hamlet of Williston.

The University of Vermont (UVM) first opened its doors in Burlington in the late 1700s, and the school has grown in tandem with the city. When the pace of industrial growth slowed around the turn of the century, the education sector of Burlington's economy continued to thrive. Expanding incrementally since then, the university became a major influence on the city, both in terms of urban development and local culture. The university's presence sometimes seems overwhelming to a relatively small city, both in terms of its 9,000 students and its steadily expanding campus. Official relationships between town and gown can be strained. Like any city with a large not-for-profit institution, Burlington officials are rankled that they cannot tax UVM's 90 buildings and more than 400 acres of urban land. Occasional spats between the city and the university are commonplace and are usually over the provision of urban services or campus expansion. Nevertheless, the net effect on the city of having the largest higher education institution in the state is positive. Even the most prickly city dweller will admit the university brings a welcome youth and vibrancy to Burlington.

Burlington's 20th century history of urban development followed the pattern of many other eastern U.S. cities. A pre-World War II slump was followed by a post-war housing boom and increasing suburbanization. Drawn to the lure of federal money for "urban renewal" in the mid-1960s, the city razed 27 acres of its historic downtown for a hotel, parking garage, office buildings, and underground shopping mall. Disillusionment with the results led to renewed interest in historic preservation, which has carried through today's downtown and neighborhood revitalization efforts. In the late 1970s, Burlington redesigned the downtown's main shopping street into a pedestrian-only way. Closing downtown shopping streets to auto traffic was popular



in smaller cities all over the U.S. in the 1970s, but the Church Street Marketplace appears to be a rare example of where such an intervention has actually worked. Perhaps partly due to the city's student population, Church Street almost always bustles with people sitting, strolling, or frequenting its art galleries, restaurants, and coffee shops.



Church Street Marketplace in downtown Burlington.

Numerous big development battles were waged in Burlington in the 1980s and 1990s, among them disputes over the Southern Connector, new waterfront development, and a new Filene's department store. The first two proposals ran into considerable opposition from then-mayor Bernie Sanders, elected to office in 1981 and currently Vermont's only representative to the United States Congress. Throughout the 1980s and early 1990s, developers battled with neighborhood groups and the Sanders administration to build what they initially proposed as two 18-story condominium towers on the lakefront. After years of political and legal stalemate, a smaller-scaled development has finally been built back from the edge of the lakefront, which now boasts a seven-mile long bike path and a community boathouse. Burlington's long-planned Southern Connector, a link to Interstate 89 from the south, remains on the drawing board after more than twenty years of political infighting and environmental snafus. Finally, amid much controversy, a Filene's department store with an accompanying parking garage was recently constructed in the heart of the downtown, only one block from Church Street. Peter Clavelle,

Burlington's current mayor (who was previously Sanders' director of community and economic development), strongly supported the Filene's proposal as a strike back at the rapid growth of suburban retail outlets.

In the 1980s, the Sanders administration stripped power from the Planning Board, which he perceived as staunchly reactionary and unresponsive, and transferred it to a newly created Community and Economic Development Office. In addition, the administration created Neighborhood Planning Assemblies to address development issues of local concern. These groups are loosely organized city-wide and have become a powerful voice for the city's lower income residents.

The upshot of this all activity is a healthy city with a stable job base, housing at a range of incomes, and an active arts and culture scene. The city's economy has diversified into hundreds of retail, education, banking, and manufacturing businesses. In addition to a variety of small businesses like bookstores and catering services, Burlington is also home to the world's largest snowboard factory, which occupies a plant that used to build machine guns. In 1991, *Inc.* magazine named Burlington as one of America's ten best cities for starting a new business. Construction and renovation activity has picked up in recent years, so much so that one city planning official calls the rush of permit applications "almost unmanageable."

Even though it provides the lion's share of social services and affordable housing for the region, household incomes in Burlington are rising and neighborhood revitalization efforts have spread around the city. Two decades of local governance by progressives, first Sanders and then Clavelle, have energized local politics. Careful planning and an attention to unique urban pressures have undoubtedly played a role in the city's success. For all these reasons, Burlington continues to receive accolades for its quality of life, including *Outside* (July 1995) and *Utne Reader*'s (June/July 1997) best-places-to-live lists.

## **Spread at the edges**

Yet Burlington's careful planning is only as effective as its political boundaries. The difference between the city and its neighbors, in a planning context, is stark. Every major arterial into the city is characterized by strip commercial development, most of which stops abruptly at the city boundary. Shelburne Road into South Burlington is a particularly dramatic example of this linear pattern of auto-dominated sprawl. A lot of business investment bypasses Burlington for its more prosperous suburbs, causing the city to lose out both on jobs and tax revenues. Whatever its aspirations, Burlington is still only one city in an economic region, and new economic activity in recent years has spun out toward the region's edges, not its center.

Williston, just five miles outside of Burlington on Interstate 89, is the most egregious example of sprawl in the state. Town officials pursued an aggressively pro-development policy that transformed it from a sleepy rural town to a regional retail powerhouse. With economic development and tax base as the central policy goal, and easy highway access to their advantage, Williston zoned hundreds of acres outside of its town center for commercial development. After years of legal conflict, changing proposals, and a rejected Act 250 environmental permit, a wave of construction finally crashed to shore in the 1990s. The Taft Corners development is anchored by Maple Tree Place, a multi-purpose mall that has been joined in recent years by a hulking Wal-Mart store, Home Depot, Circuit City, Toys 'R' Us, Ikea, and acres of parking lots. Once a meadow, with farms and hay fields nearby, the development has become a destination spot for discount shoppers from all over the region. The agglomeration of "big box" stores in Williston has been an economic bonanza, but most Vermonters see it as an aesthetic failure. When in a recent survey 2,300 residents were asked where they had noticed sprawl in Vermont, by far the leading response (44%) was Williston (Vt. Forum on Sprawl 1999).

In Milton, just north of Burlington, the state's interest in economic development recently took priority over careful land use planning. In 1997, the state lured a Canadian plastic injection molding facility to a greenfield site, one well away from any designated growth areas. Governor Dean personally intervened to ensure this company got its preferred location, smoothing financing

snags and permit problems as they came up. While the new facility brought hundreds of jobs to the greater Burlington area, land use impacts were completely disregarded. This arrangement prompted a disgusted Stephen Holmes of the Vermont Natural Resources Council to observe, “There is no zoning; there are only deals.”

Burlington has also seen its share of housing in the region decrease. Since the city itself is mostly built out, much of the new housing in the region occurs in suburban areas. New housing is generally higher income development, drawn by cheap land and low tax rates. Because of the student population and a concentration of low-income residents, Burlington holds a disproportionate share of the rental market. Though the rental market has always been tight, prices have been rising quickly in recent years, spurring an affordability crisis.

### **Local Effects of State Planning**

“It’s hard to say how the state has affected our planning,” says Mark Eldridge, Burlington’s director of planning and zoning. More bluntly, he explains, “Vermont does not really have state land use planning.” The city, he says, has pursued its own goals for many years regardless of any state mandate.

Burlington’s strong interest in land use planning pre-dates the statewide legislation was passed in 1988. The city established its first Municipal Planning Commission in 1925 and has had comprehensive zoning regulations for nearly 50 years. What smaller and slower growing towns may have been able to avoid, Burlington has chosen to address directly. Unlike most towns in the state, Burlington has an array of genuinely urban concerns, from homelessness to affordable housing policy to industrial redevelopment. An active city land trust and numerous design control districts are just some of the ways Burlington exceeds the basic requirements of the statewide planning law. The city even has its own “major impact development review,” that exceeds Act 250 standards for large projects.

Statewide planning is compatible with local goals, Eldridge says, but city development decisions are still driven more by local concerns. Burlington’s comprehensive plan has Act 200

approval, but Eldridge says the plan was barely influenced by state planning guidelines. The process for meeting Act 200 goals was “a very soft review” that Burlington plan easily passed. Regional planning commissions do not have the power or resources to do a meaningful review of local plans, he adds. Eldridge describes the Act 200 rubber stamp: “You show your plan to the RPC, and they say, ‘OK.’” The governance problem is key, he says; strong traditions of local control are the default, making meaningful regional or state intervention very difficult. While Eldridge thinks Act 200 got off to a good start in the late 1980s, funding cuts have weakened the program almost to the point of irrelevancy.

For Burlington, the center of a metropolitan region, greater coordination on a state or regional level would be useful. The city has felt the pressure from planning decisions over which it has no control. “What I fear,” says Eldridge, “is that we’ll do great planning, but we’ll have gridlock at our borders.” South Burlington, Williston, and Colchester all organize their commercial activity into strip development on arterials leading into Burlington, a zoning approach Burlington has eschewed. When asked why the regional planning commissions have not played a stronger role in coordinating local plans, Eldridge chuckles. “There are really no incentives and no sticks,” he says, to get Burlington’s neighbors to cooperate. Cooperation on land use matters sometimes occurs, he says, but only on an *ad hoc* basis and around specific development proposals.

Statewide planning in Vermont has had virtually no effect on Burlington or its place in the region. Localism continues to be the order of the day. Regional commissions have little influence, jurisdictions continue to battle for development and tax base, and planning issues are seen through a strictly local lens.



## Part III: Findings and Conclusions

### Asserting state power, preserving local control

John DeGrove, a longtime scholar of state growth management programs, has remarked that in every state he has studied, citizens tell him that they have a unique and insurmountable tradition of local control over land use planning (DeGrove interview). In spite of this, many states across the country, including two of the three studied here, have successfully adopted land use planning frameworks that confer at least some of the power for land use planning upon the state. Simply imposing a top-down system of statewide zoning on local governments is politically impossible, administratively unfeasible, and functionally undesirable. As mentioned earlier, there is a strong case to be made for the local control of land use. Local officials often have better information about the minutiae of specific land use conditions and in most cases will be more responsive to local needs than state governments. Nevertheless, the land use failures of localism are equally apparent.

My case studies show that the passage of statewide land use planning frameworks has generated some resistance from those who ideologically oppose greater state involvement. Nevertheless, it would be wrong to conclude from this that a strong desire for local control *necessarily precludes* effective statewide land use planning. The desire for local control is real, but it does not justify a total abdication of state responsibility over land use, especially when so many land use decisions cross jurisdictional boundaries. An important counterweight to citizens' desire for local control is their recognition of the inadequacy of the current fragmented system of land use governance to address regional land use issues. Most people are aware that a purely local approach cannot effectively manage transportation systems, shared natural resources, or regional economic development. The current "smart growth" movement, just as planning efforts before it, is driven in part by citizen dissatisfaction with current patterns of development, and the narrow land use governance structure that promotes it.

Henry Richmond, one of the founders of 1000 Friends of Oregon and chair of the National Growth Management Leadership Project, recently offered a clear analysis of the local-versus-state-power debate. Speaking at a sprawl conference in Bar Harbor, Maine, Richmond said flatly, “Land use reform is not antithetical to local control or local government.” Reform, he added, “cannot be couched or perceived on the basis that local governments are screwing up and somehow we have to get the state to come in and beat them up with some new regulations and standards that constrain what they want to do” (Richmond 1997). Instead, well-crafted statewide land use planning should enhance both the legislative discretion and fiscal stability of local governments.

Resolving this desire to have local control over land without having to suffer from the spillover effect of poor decisions by one’s neighbor requires careful compromise. States must be able to define situations in which their intervention is most needed and most justified. They should devise a system that asserts their control in these circumstances, and leave the rest of the work to local governments. For instance, most would agree that granting an individual homeowner a variance to build a tool shed in his back yard ought to be a local decision but that where to site a landfill or a regional shopping mall ought to be made at a higher level. A political approach that taps into popular concern about runaway growth—and that identifies localism as ill-equipped to handle it—will be likely to succeed.

Furthermore, as both the Maine and Vermont examples have shown, systems of state land use planning hardly usurp the power of local government. Most statewide programs bring separate jurisdictions together under a common set of guidelines. Instead of taking something away from local government, an effective state framework is actually a form of power sharing. The state provides guidelines, standards, technical assistance, and money, while the actual formulation of the plan is left to local boards. This structure accounts for variation in local circumstances, and plays to the strengths of both levels of government.



## Land Use Planning as One Strategy

The influence of other factors—taxes, funding, consumer preference—also shows the interdependence of different policies. Land use planning is only one tool states use to shape development. From the studies of the three states, we find evidence that traditional land use planning is incapable of managing growth in isolation. Several other public policy arenas have had a significant effect on development, including state infrastructure financing, local public finance, and state transportation policy.

Traditional land use planning is merely one among three systems of land use controls, each tending to work against the others (Williams 1970). The first of these systems is the dependence of local government on the property tax. To provide for schools and other public services, local officials inevitably consider the revenue-generating impacts of land uses—favoring “good ratables” like shopping malls and discouraging “bad ratables” like affordable housing. A land use strategy that focuses on chasing tax dollars can exacerbate sprawl. As one author has written, “regions whose local governments rely on ad valorem property taxes to fund services and infrastructure tend to sprawl more than those that rely on a broader tax base” (Pendall 1999).

Secondly, land use is shaped by infrastructure investments, especially in sewers and highways. Often heavily subsidized by state government, these infrastructure connections exert a strong influence on development patterns. Highway interchanges are an almost irresistible magnet for commercial development (e.g., Williston, Vermont or West Lebanon, New Hampshire), and sewer infrastructure likewise attracts residential development.

Land use planning, zoning, subdivision regulations and the like thus comprise a third system of land use control, often the least important one. Ideally, planning coordinates the tax base needs of a community and its capital investments, but frequently this is not the case. If property tax and infrastructure investment considerations dominate development decisions, land use planning can be only influential at the margins.

Maine, New Hampshire, and Vermont are rife with examples of the interplay of various state policies on land use. In Maine, for example, the policy of favoring new school construction

over renovation of existing schools undoubtedly has had a decentralizing effect. In New Hampshire, state tax policy and highway access has driven rapid growth in the southern part of the state. In both Vermont and New Hampshire, new statewide revenue sharing laws for public schools may alter the way local governments pursue commercial development. None of these state policies are specifically concerned with land use planning, but their effect on land use can be as great as laws put in place for that purpose.

States have recognized that effective growth management must be approached from multiple angles. Land use governance and traditional comprehensive planning may be an important part of the solution, but conditions of public finance and public infrastructure have an equally important role. Recently, Maine has been especially effective in addressing the lesser known aspects of state policy that promote undesirable development. For example, the state recently changed its transportation policy to limit the number of driveway openings along major arterials. While some property owners objected to this policy on the claim that it reduces the value of their land, the state hopes it will ease congestion and contain the spread of strip development along arterials. Many small policy changes along these lines are needed if states are to be effective in shaping of development.

### **Growth management movements are cyclical**

Without a doubt, all three states are now in a period of heightened interest around issues of urban sprawl. After years of *laissez faire* land use, New Hampshire is studying the costs and benefits of sprawl. Governors in Maine and Vermont are taking positive steps to address popular concern about out-of-control development. The surge of interest in managing growth in northern New England obviously stems from the fact that for the first time in more than a decade, there is actually new growth to manage. Land development has accelerated, and, in response, elected officials in the three states have shown greater interest in policy solutions.

The situation today clearly parallels the real estate boom of the late 1980s that led to statewide planning programs in Maine and Vermont. Vermont's history of land use controls can go

back one economic cycle further, to the late 1960s, when a surge in second home development generated popular support for Act 250. Each of these building booms created political pressure for government intervention, but not long after new policies were put in place, market conditions shifted. The sagging state and national economies of the early 1970s and early 1990s slowed development pressures, cut state government budgets, and diminished support for statewide planning. New Hampshire's aggressive economic development policy helped it escape the worst of New England's 1990s recession, but the slump in Maine and Vermont led to budget cuts that eviscerated their statewide planning programs. After promising starts in both states, the planning programs in Maine and Vermont have been moribund until the current period of economic recovery.

Dependence on annual state budgets has its perils. Programs in Maine, New Hampshire, and Vermont uniformly use a decentralized, collaborative, incentive-based approach to encourage local governments to carry out comprehensive land use planning. For the most part, these states use grants and technical assistance as incentives to get towns to comply with state standards. Because of political pressures from towns and their resistance to unfunded mandates, state governments have turned away from the pure regulatory approach popular in the 1970s and moved toward one based on financial incentives for planning. This may prove more politically palatable, but such a system becomes extremely vulnerable when resources are scarce. Stripped of the money that makes up its incentives, a purely incentive-based system becomes virtually worthless. Where compliance with statewide planning goals depends on access to state money, programs will continue to wax and wane with the state's economic health.

Planning officials in northern New England are not ignorant of the opportunity presented by the current wave of public concern. Pressures may ease during periods of slow economic growth, but change continues and typically leads to citizen discontent that surfaces in good times. The challenge, they say, will be to institutionalize systems that shape development patterns and protect the environment over the long term. Looking ahead to the next economic downturn, state-level planning officials are also trying to build popular support for the argument that good planning

is necessary for both slow-growing and fast-growing communities. For instance, even in parts of northern New England where population and economic activity have been stagnant or falling, land consumption is on the rise.

### **Current push is for state agency reform**

Unlike the last push in the late 1980s, recent efforts to influence land development patterns in all three states has centered on the impact of state agency decisions. New Hampshire's governor recently ordered an assessment of the state's role in causing sprawl. Vermont's governor has appointed a "development cabinet" of agency chiefs to review state decisions that affect land use and to coordinate large projects. Maine's anti-sprawl education and policy push has focused on state finance and infrastructure decisions, recently focusing on transportation policy. None of the states has completely abandoned trying to coordinate local land use planning. This time around, though, the thrust of new state actions has been on the direct influence of state investment and policy.

The emphasis on "getting our own house in order," as one state planning director called it, comes partly from a recognition that state infrastructure and tax policy have a significant effect on local land use. In addition, governors find they can have a greater and more immediate impact on development patterns by reforming the actions of state agencies. The job of coordinating land use planning among hundreds of different communities within a state is a more politically treacherous task. Locally-based, state-coordinated planning requires a delicate balance of power, long timelines, consistent funding, and the risk of a popular backlash. Given a choice of where to invest time and resources, it is no surprise that state governments are starting closer to home: changes within state agencies.

Effective and long-lasting growth management programs will inevitably require attention to both sides of the equation. Locally-determined patterns of planning and zoning have as much power to shape development forces as state infrastructure investments and tax policies. Tackling

the ways in which each contributes to undesirable land use patterns will ensure that planning functions of state and local government do not work at cross purposes.

### **Perceived threat, strong leadership kickstart planning**

In all three states the interest in growth management only gains a foothold when citizens see some kind of threat to their way of life. In Vermont in the 1960s, it was the fear of a flood of second-home developments. In Maine, the development boom of the 1980s threatened the state's coastline. The destruction of natural resources and the deterioration of a certain quality of life provide a justification for government intervention. Yet land use planning is not, in itself, an issue that spurs people to action. Rather, this study of the three states reveals that planning is a policy response to undesirable development patterns. Conditions have to be right for a state to adopt statewide land use planning, and that usually requires dissatisfaction with existing development.

Another condition for the success for statewide land use planning seems to be support from the governor's office. State level planning programs in northern New England states seem to rise and fall with the economy, but gubernatorial support plays a major role. In Vermont, Act 200's passage is usually credited to strong support by the state's former governor Madeleine Kunin. Many observers explain its mixed record of success to the antipathy and disregard for the law shown by her successors, Richard Snelling and Howard Dean. In Maine, a strong push for statewide land use planning from legislators overcame an indifferent governor. When hard budget decisions had to be made two years later, though, the lack of governor John McKernan's strong support was one reason why it was repealed. In New Hampshire, current governor Jeanne Shaheen has been the motivating force behind recent inquiries into the costs of sprawl.

The long-term nature of land use planning demands a consistent level of political and financial support in state government. The shifting sands of political power in state houses in northern New England has made this a challenge. Maintaining staff to coordinate programs and funding to keep them afloat is essential to their success. Neither Maine nor Vermont really allowed planning programs to mature before political priorities fundamentally changed them.

## **Effect on Portsmouth, Portland, and Burlington**

Closer examination of a major city in each state exposed a common flaw in the three states' frameworks for land use planning. Overall, the influence of statewide land use planning programs on these three places has been extremely weak. Development decisions are made in these cities based on local priorities, local funding needs, and local zoning. Neither planners nor developers in these cities identify state-level programs as influential.

Part of the reason for this is the long history of planning in these major cities. Unlike the majority of towns in northern New England, Portland, Portsmouth, and Burlington have hundreds of years of development and have established a tradition of land use planning long before the recent passage of state legislation. Also, unlike most towns in their respective states, they have full-time planning staffs that can devote time and resources to planning issues. With traditions of planning and people to do it, major cities are often many steps ahead of the basic state planning guidelines.

In fact, state programs have not generally acknowledged the diverse range of local planning needs. While a uniform set of state goals and procedures creates a common framework, it does not account for the wide variation among local jurisdictions. In largely rural states like Maine, New Hampshire, and Vermont, the common framework provides a good fit for the average small town, not for the exceptional large city. For example, statewide programs do not help cities address some of their most pressing problems like the redevelopment of abandoned industrial sites. In order to apply broadly to all the cities and towns within a state, planning goals are set out in very general terms. This also helps them pass muster politically, but also weakens their ability to have a strong impact on development patterns. Since they have greater access to resources and more sophistication in the planning process, large cities in northern New England find statewide programs mostly irrelevant.

Unfortunately, older central cities in the three states are as much in need of regional cooperation as fast growing small towns. In spite of their long histories and dedicated planning staffs, the failures of local land use planning have changed cities as much as they have changed

small towns and rural areas. Ideally, state programs could help metropolitan areas work together to coordinate land uses and guide development, but generally they do not. In all three cities studied here, populations have been stagnant or falling over the last 20 years, and their economic prominence has been diminished in relation to its suburbs. Inter-local competition has shifted the balance of power to suburbs, which often make land use decisions that are directly contrary to the interests of the central city.

Still, these northern New England cities have fared much better than other states' historic centers of industry and commerce (e.g., Baltimore, Philadelphia, Detroit). Taking advantage of their assets—historic neighborhoods, arts and culture, gorgeous natural settings—the cities have repositioned themselves in the last 20 years as an urban alternative to the burgeoning suburbs. Though their economic primacy has been challenged, their flexibility has enabled them to adapt. Portland, Portsmouth, and Burlington are both smart and lucky. Their size has allowed them to avoid some of the problems associated with the bigger cities in other states. Moreover, good government and citizen action has preserved some of their most desirable physical attributes.

### **Regional role is very weak**

Despite the existence of regional planning commissions in all three states, the influence of regional bodies on the planning process has been very small. Sandwiched between constitutionally powerful states and strong traditions of home rule, regions form the weakest link in the system. Maine, New Hampshire, and Vermont all have regional agencies that focus on land use planning and that have been in place for many years. However, their ability to shape development patterns on a regional basis has been minor because of a narrow role, fiscal instability, and a structural defect.

Since around 90 percent of towns in northern New England have no professional planning staff, the primary role of the regional agencies is to provide technical assistance to those towns interested in developing local plans. Traditionally, this has been the main purpose of the regional planning commissions: to be the planning staff for towns that do not have any. While the regional

commissions have been quite adept at functioning as a kind of circuit planner, low funding levels have made this difficult. Without their own revenue source, regional commissions depend on handouts from state government or membership dues from local towns to stay in business. Money from the states has fluctuated, often making it hard for regional commissions to achieve their goals.

Although it would appear to be the ideal place for coordinating local planning into a coherent regional plan, regional commissions are generally ill-equipped for this task. Structurally, they have little clout to settle differences between the towns within their region. Their dependence on membership dues from their towns forces them to be conservative. In many instances, the staff of regional commissions answer to a board composed of elected officials from the constituent towns. This makes the commissions understandably reluctant to criticize any local plan as being inconsistent with a regional strategy. Though Maine and Vermont both give their regional commissions review power over local plans, this review is often little more than a rubber stamp of approval. Even in Vermont, which endowed its regional commissions with ultimate power of approval or rejection, plans of neighboring jurisdictions continue to have major areas of incompatibility.

### **Lessons learned**

What can other states learn from the experiences of Maine, New Hampshire and Vermont? The unevenness and struggle with the programs in Maine and Vermont may be partly the result of one-size-fits-all approaches that do not adequately take into account local circumstances. The legislation that was passed in these states was designed to lay a common groundwork for planning and to hold all local governments to the same standard, regardless of size. While the frameworks permitted considerable local latitude in developing plans, the same set of general guidelines applied to every town, and all had to follow the same process for preparing plans.

This has proven problematic for a number of reasons. First, towns vary widely in their capacity to plan. Places like the Portland, Portsmouth, and Burlington have done well with their local plans because of their history and the sophistication of a well-trained, well-funded staff. Each



of these cities has a groundwork of successes and failures on which local planning can build, and they usually have an involved citizenry who can participate in the local planning process with some measure of institutional memory. The situation is often quite different in smaller towns or more rural areas. These areas, which have seen the most rapid change, have no staff and must rely on outside help for the preparation of a local plan. These first-generation land use plans can be somewhat formulaic, and rarely consider the impacts on the region. For example, a common response to growth in a fast-growing town is to introduce large-lot zoning, which may reduce the overall number of units within the town's borders, but inevitably increases the pressures for growth on neighboring jurisdictions.

In some towns, a uniform set of state guidelines may not provide enough attention to the most pressing local problems of land use. The older, established urban centers examined in this paper demonstrate one side of this problem, as none of the three states were able to provide much assistance with these cities' uniquely urban land use issues—industrial land redevelopment, historic preservation, reconstruction of existing school and sewer infrastructure, etc. On the other side, poorer, more isolated towns have a different, but no less important, set of needs that the state laws might not meet—shrinking populations, slumping town centers, dwindling tax base. Growth management laws are generally focused on those areas that are growing the fastest, usually at the fringes of the metropolitan areas. While these towns may need the most help, and are seeing the greatest rates of change, a system for addressing their problems is not easily transposed to other cities and towns in a state. As one state planning director astutely observed, “If you build a growth management law that responds to pressures only in certain parts of the state, it's irrelevant to parts of the state where there is no development going on.”

State policies need to find a way to make planning more place-based and centered around the unique characteristics and needs of each community. At the same time, states should not give up trying to coordinate the plans of local governments. The state has a compelling interest in seeing that neighboring towns do not adopt land use plans that openly contradict one another, and that sprawl is managed on a level greater than that of the individual town. Nevertheless, a state

framework for planning must acknowledge the diversity of needs among towns and try to encourage place-specific solutions that address them. Such laws are not impossible to achieve. The general success of Act 250 in Vermont shows how a clearly-defined, flexible, locally-administered program of state involvement in land use can be sustained over time.

Local control of land use is a double-edged sword. On the one hand, localism fragments ecological and metropolitan regions into units that manage growth poorly and fail to protect shared natural resources. A narrow, self-defeating parochialism is the order of the day. On the other hand, local control in northern New England is also motivated by a deep affection for place and is driven by citizen energy to protect and improve the places where they live.

In my case studies, I also discovered the bright side of local control in each state. In each of the three cities, a locally grown variety of activism had at some point confronted development proposals and had won out. Historic preservationists tenaciously watch over Portsmouth's current wave of downtown redevelopment. Faced with condos and private yacht clubs, a coalition of citizens in Portland successfully agitated for planning that mandated a working waterfront. Civic involvement in Burlington, starting with Neighborhood Planning Assemblies and often focused on development issues, is something of a local religion.

State-sponsored land use planning programs need to find a way to harness this local passion and interest in the quality of place, while still insuring that governments work together on issues of regional or state importance. Besides bringing specialized knowledge to planning issues, local citizens provide the meaning behind the plan and the instrument for it to succeed over the long term. State intervention will be more successful if it can simultaneously allow for the difference and creativity of these hundreds of local communities while encouraging or requiring that they work together to address issues of greater-than-local significance. In this way, state programs could build on the assets of local planning while still promoting greater regional cooperation. No single set of solutions can satisfy the diverse interests of individual communities.

Ultimately, the adoption of effective statewide planning programs may depend on a rising tide of dissatisfaction with the current system of planning and zoning. As problems aggravated by

local fragmentation worsen—uneven traffic burdens, loss of valued open space, degradation of shared natural resources—people start to demand greater intervention from higher levels of government. Though yet untried in any of the three states of northern New England, a carefully crafted program might channel local knowledge and energy into a regionally coherent set of land use plans.



## Part IV: Appendix and Bibliography

### Appendix A: Measuring Success

The very process of planning, regardless of its results, has a democratic function that may be more important than any document that comes out of it. Land use planning can provide a forum within which citizens, helped by their elected officials and various experts, may debate, disagree, and establish a consensus on the desired future character of the community. In this sense, planning is the embodiment of democracy—disorganized, inclusive, participatory.

But plans also have purpose: they guide land development in an uncertain and rapidly changing future. States do not pass land use planning legislation in order to have their citizens engage in and feel the thrill of local democracy, or even just to generate more plans. Rather, states intervene in land use planning to achieve certain goals—open space preservation, environmental protection, and economic development, among others. In the introductory chapter, I listed eight goals that are common to nearly all statewide growth management programs. From a policy analysis standpoint, advocates should be able to demonstrate the effectiveness of state programs in showing measurable progress towards these goals.

For many reasons, gauging the relative success or failure of statewide land use planning is a formidable challenge. The programs set out broad, general goals for statewide planning, but they lack objective standards for measuring success. While growth management legislation addresses multiple issues, a common enemy to all planning programs is urban sprawl. Shouldn't one measure of the effectiveness of these programs be their ability to reduce sprawl?

Unfortunately, this is an easier question to ask than it is to answer. Though the term sprawl has been part of the planning lexicon since William H. Whyte, Jr. coined the phrase in 1958, it is notoriously difficult to define. One distressed planner has written, "If it [sprawl] is hard to define, it is hard to measure. And if it is hard to measure, it is difficult to know how to attack it or when the attack has succeeded" (Olshansky 2000). A recent, comprehensive review of over 500 sprawl

studies published in the last 30 years concludes that the debate's primary limitation is a lack of definition of key concepts (Burchell 1998). Another planning researcher has also cogently argued that discussions of sprawl frequently mix cause and effect, use mushy definitions, and do not agree on which patterns or densities constitute "good" development and which constitute "bad" suburban sprawl (Landis 1999).

Setting aside for a moment the problem of definition, a rigorous evaluation of land use control policies also suffers from the influence of exogenous factors. Changes in real estate markets, tax policy, consumer preferences, and environmental regulation all influence development patterns. These factors can not be held constant in order to isolate and identify the effect of a state's growth management policy. The argument has been made, for example, that New Hampshire's economic success is *caused* by its free wheeling development policy. Conversely, advocates of Vermont's Act 250 argue that its more restrictive attitude toward development preserves the state's natural beauty and causes vacationers and residents to be drawn there.

In a review of the literature on the effectiveness of growth management programs in achieving their stated goals, Elizabeth Deakin writes that at the surface level, the answer is obvious. In most places where these laws have been instituted, one can find examples of lands protected, open space preserved, or development proposals altered or defeated. Nevertheless, she found few systematic evaluations of growth management programs at a broader level. Deakin acknowledges the numerous barriers to such a comprehensive evaluation. First among these obstacles is the complexity of carrying out a carefully structured study that accounts for all variables: local market conditions, regional and national economic trends, and primary, secondary and cumulative impacts (Deakin 1999).

With so little clear evidence to support or deny the effectiveness of statewide planning programs, both advocates and detractors can marshal persuasive arguments. Anecdotes begin to take on power in the political arena, whether it is a story of a beautiful hillside paved over with condominiums or the state denial of a local farmer's wish to subdivide his land. The aggregate

impacts of development decisions, and what they might be with a different regulatory framework, are much harder to judge.

The erratic funding history of statewide planning programs in northern New England creates another barrier to effective evaluation. Policy changes, especially those pertaining to land use, take time before their results are measurable on the ground. Because of severe cuts in Maine and Vermont's planning programs after only a few years of operation, one would not expect them to have generated easily observable effects. Critics point to the absence of hard evidence that statewide planning actually works; supporters say the programs were never given the chance to succeed.

Though not specifically a measure of the success of a public policy initiative, federal government data allow us to take an imperfect and limited measure of sprawl at the state level. Every five years, the United States Department of Agriculture takes an inventory of land conditions at over 800,000 sample points across the country. Using the classification scheme they have established, one can calculate the amount of developed land in each state. Obviously, the amount of land in every state has been increasing over time. By comparing the rate of this increase of developed land in each state with the rate of increase in population (using Census Bureau estimates) over the same time period, one is left with rough measure of land consumption. That is, if developed land is increasing at a greater rate than population, a place can be said to be sprawling. To gauge this difference, I have calculated a simple "sprawl index," which is equal to the rate of land developed divided by the rate of population growth over the same time period.

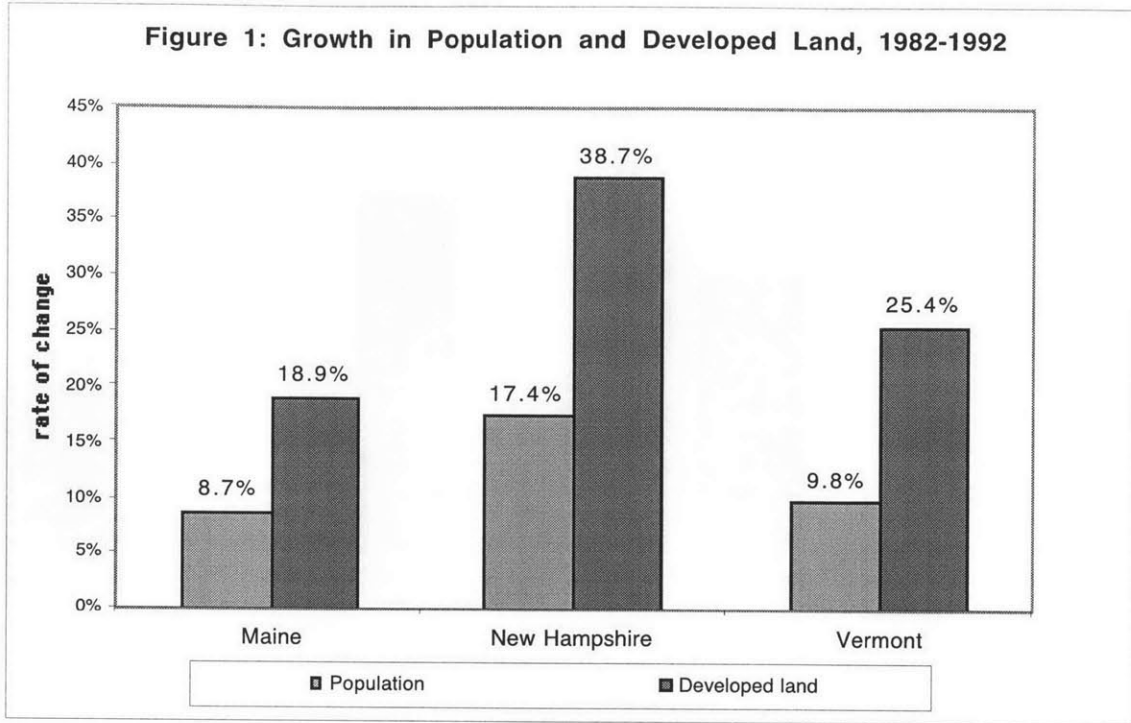
Though this method is commonly used as a way to evaluate per capita land consumption over time, it has several problems. John Landis has leveled the clearest critique (Landis 1999), primarily based on the claim that the Natural Resources Inventory measurements of land uses are too coarse. Since the primary use of the Agriculture Department data is an analysis of soil conditions, the Natural Resources Inventory partitions land into sections of 10 square miles. These units may be small enough for analyzing soils, but urban development patterns usually change at a

much smaller level. Using a sophisticated system of satellite imagery, aerial photography, and ground surveys, Landis has analyzed the state of California at a much finer grain. With these techniques, he has effectively shrunk the unit of analysis down to soccer field size, 100 meter by 100 meter “grid cells” (Landis 1999). The Montgomery County Planning Commission, in southeastern Pennsylvania, developed a similar approach for the county that relies on a careful analysis of aerial photography (Montgomery County Planning Commission 1993). In time series, these methods are probably the best land use analysis tools being developed today.

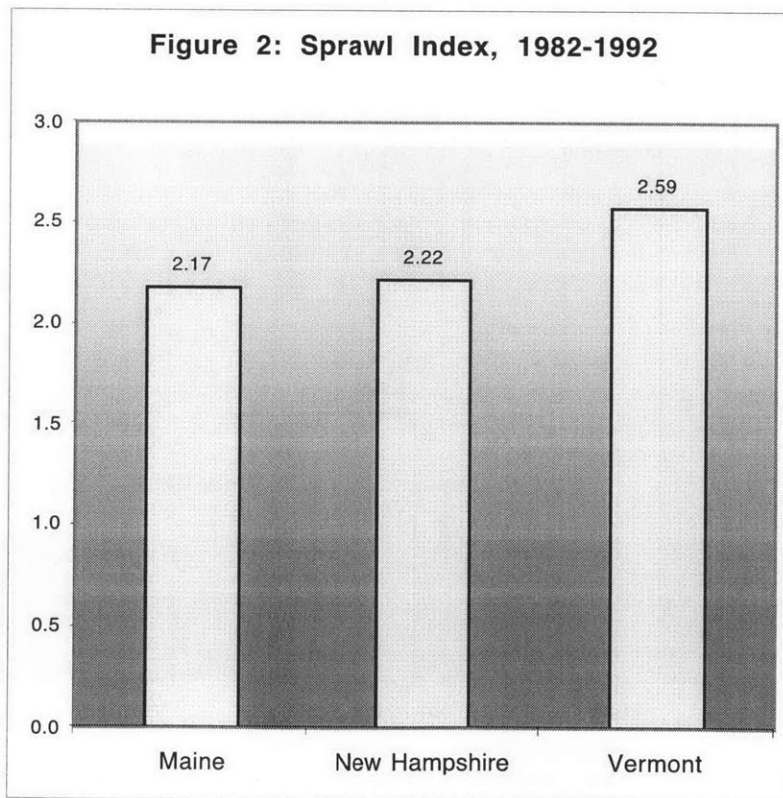
Obviously, constructing such an exacting and detailed analysis of Maine, New Hampshire and Vermont is well beyond the scope of this study. Still, I think the data from the Natural Resources Inventory and the Census Bureau are useful, at least in a comparative sense. While I agree that the method of measurement is unrefined, it is at least consistent across the three states. As such, it should still serve comparative purpose, showing relative differences between northern New England states.

Finally, it should be noted that as this thesis was being completed in April 2000 the U.S. Agriculture Department announced it had found some errors in the NRI data for 1997, the most recent year an inventory was taken. Corrected data will not be released until June 2000. For this reason, I did calculations for two time periods. The first time frame, 1982 to 1992, does not bring us very close to the present, but the data used for these calculations are more reliable. The second time frame, 1982 to 1997, shows a longer time period, but can only be considered preliminary until the 1997 data are confirmed.



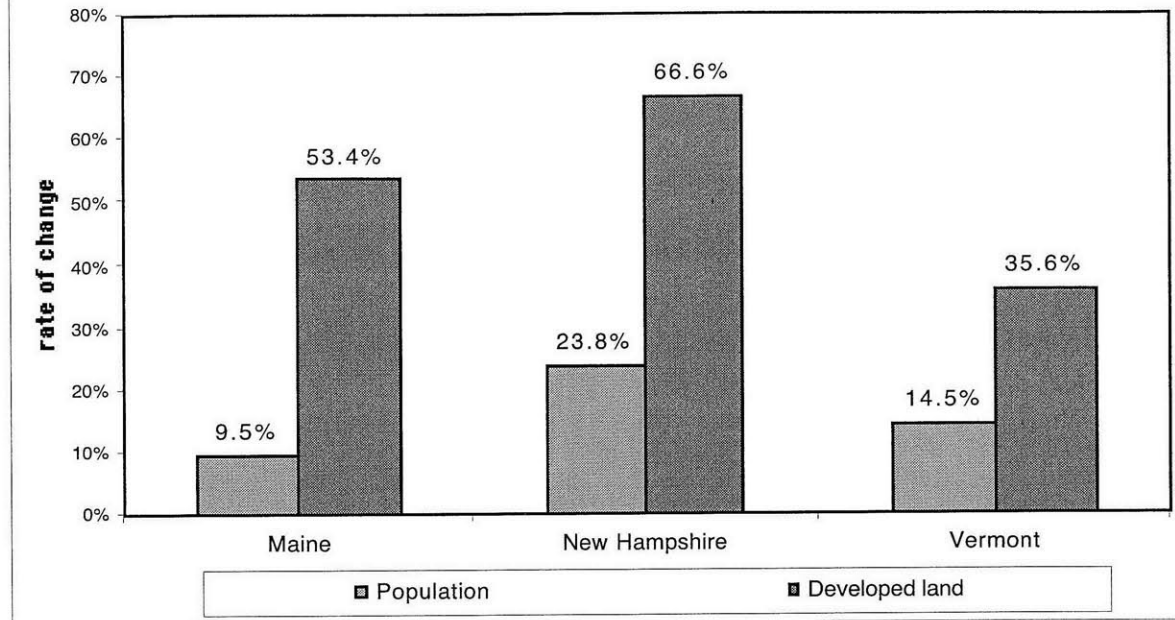


Source: U.S. Bureau of the Census; U.S. Dept. of Agriculture, Natural Resources Inventory



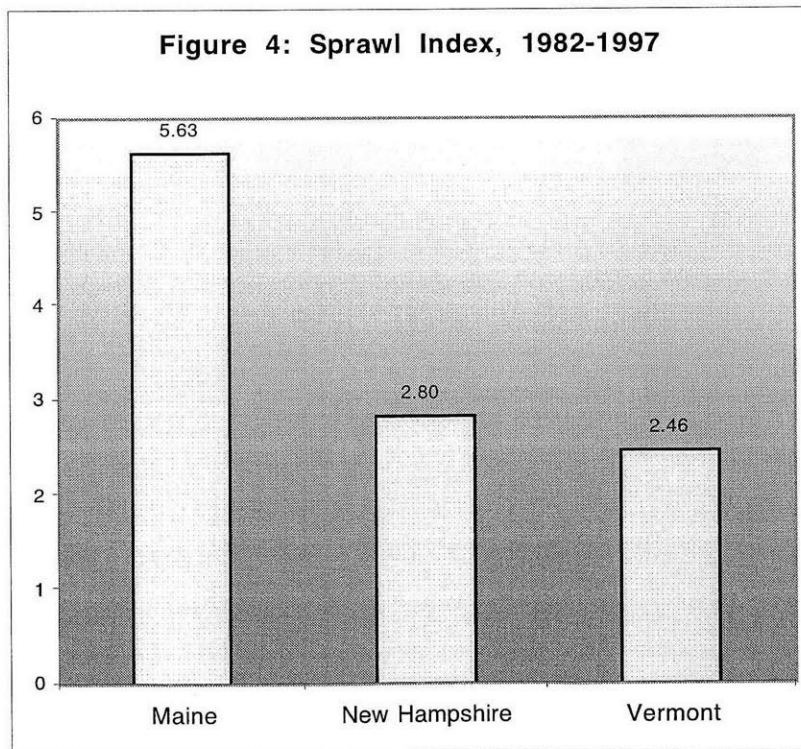
Source: U.S. Bureau of the Census; U.S. Dept. of Agriculture, Natural Resources Inventory

**Figure 3: Growth in Population and Developed Land, 1982-1997**



Source: U.S. Bureau of the Census; U.S. Dept. of Agriculture, Natural Resources Inventory

**Figure 4: Sprawl Index, 1982-1997**



Source: U.S. Bureau of the Census; U.S. Dept. of Agriculture, Natural Resources Inventory

In all three states, land consumption is outpacing population growth by at least two-to-one. New Hampshire has seen enormously more growth in land development and population than either of its neighbors to the east and west. In terms of pace of land development, New Hampshire's nearly doubles the rate of Maine or Vermont (See Figure 1). New Hampshire's own analysis of the NRI data shows that most of the new development has come out of forest land.

Yet when land development is matched to population growth, the differences between the states are less stark. For the period 1982 to 1992, the sprawl index—rate of land development divided by rate of population growth—for the three states is remarkably similar. Vermont, usually recognized as the state with the tightest development controls, actually leads the three in this measure of land consumption (See Figure 2).

A bigger change is evident in the less reliable 1997 data, especially with Maine. While New Hampshire and Vermont essentially continued their historic rates of increase between 1992 and 1997, Maine saw an enormous spike in the pace of land development. Though population rose less than one percent statewide in between 1992 and 1997, the amount of developed land increased by 29 percent. Perhaps this represents an error in the data that will be corrected later this year. Otherwise, a dramatic and unsustainable land rush is underway in Maine.

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