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Policy Tools for Smart Growth In New England

New England Environmental Finance Center

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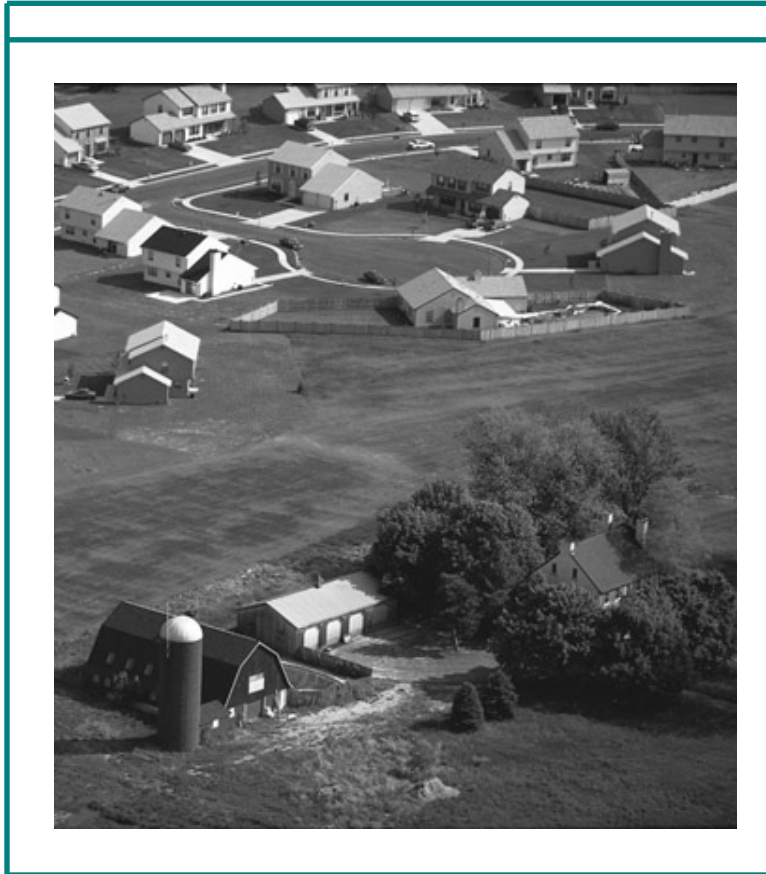
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Policy Tools for Smart Growth In New England



November 2006



New England Environmental Finance Center

Table of Contents

ACKNOWLEDGMENTS	3
INTRODUCTION	3
CONNECTICUT OPEN SPACE AND WATERSHED LAND ACQUISITION GRANT PROGRAM	4
CONNECTICUT VILLAGE DISTRICT ACT	7
MAINE AFFORDABLE HOUSING TAX INCENTIVE FINANCING PROGRAM	10
MAINE GREAT AMERICAN NEIGHBORHOOD SEWER EXTENSION LOAN PROGRAM	ERROR! BOOKMARK NOT DEFINED.
MASSACHUSETTS SMART GROWTH ZONING DISTRICTS	18
MASSACHUSETTS FIX IT FIRST POLICY	21
NEW HAMPSHIRE DOWNTOWN INITIATIVE PROGRAM	24
NEW HAMPSHIRE AGRICULTURAL LANDS CONSERVATION PROGRAM	27
RHODE ISLAND HISTORIC PRESERVATION INVESTMENT TAX CREDIT	30
VERMONT SCHOOL CONSTRUCTION AID	34
VERMONT LAND USE AND DEVELOPMENT LAW (ACT 250)	37
CONCLUSION	39

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Title page photo courtesy of **Alex MacLean**, Landslides Aerial Photography.

Introduction

Across New England communities have been experiencing a rapid outward surge of development away from our community and downtown centers. Effects of sprawl include a loss of wildlife habitat, farm and timber lands; increased costs of community services and higher taxes; auto-dependency, longer commutes, and increased congestion; increases in air and water pollution; a sedentary lifestyle and increased obesity; and losses to one's sense of place and social ties.

State-level responses to sprawl have surfaced throughout New England in recent years. This report describes 11 examples of these responses, representing all six New England states and a diversity of recent program types. Each summary includes information about program history, structure and implementation, status, potential for transferability to other states, and program resources. It is our hope that the report will serve as a useful reference work for other efforts to address sprawl in New England.

Connecticut Open Space and Watershed Land Acquisition Grant Program

Background

The State of Connecticut's "Open Space and Watershed Land Acquisition Grant Program" was created to aid the state and its municipalities in conserving land in a time of rapid and sprawling development. "The state's overall goal is to preserve 21 percent of Connecticut's land as open space by the year 2023, a total of 673,210 acres."¹

The program provides financial assistance to municipalities and nonprofit land conservation organizations to acquire land for open space, and to water companies to acquire land to be classified as Class I or Class II water supply property.² The program supports smart growth principles in that it promotes the purchase of agricultural lands, the addition to and/or creation of contiguous open space, open space adjacent to urban areas, and compliance with local and regional conservation and development plans.

The act establishing the program was passed by the Connecticut legislature in July of 1998. The act resulted from a governor's blue ribbon task force charged with studying open space and land preservation within the state. Upon completion of the study the act was drafted jointly by the Department of Environmental Protection, the Nature Conservancy, and the Trust for Public Land.

Administrative Structure & Implementation

The program is administered by the Connecticut Commissioner of Environmental Protection. Grant dispersals are held once per year depending on the availability of funding. A municipality, nonprofit land conservation organization, or water company may apply for funds. An applicant must submit proof of local planning agency and conservation commission support, an advisory report and recommendations from the regional planning agency; and "an application form and required supporting documentation such as maps, title searches, and appraisals..."³ Applicants are encouraged to submit applications for properties that can be closed on within one year.

¹ Connecticut Department of Environmental Protection. (1999). *DEP Awards \$4.9 Million in First Open Space Grants to Municipalities and Land Conservation Organizations Result is Enhanced Protection of Connecticut's Natural Resources*. Retrieved March 29, 2005, from <http://www.dep.state.ct.us/whatshap/press/1999/as0203.htm>.

² Connecticut Department of Environmental Protection. (2005). *Open Space and Watershed Land Acquisition Grant Program (C.G.S. Section 7-131d to 7-131k, inclusive)*. Retrieved February 16, 2005, from <http://dep.state.ct.us/rec/openspace/opensp31.htm>.

³ Ibid.

In determining the final grant awards the Commissioner is assisted by a Citizen Advisory Board. The Advisory Board is informed by a sole Environmental Analyst who in turn is informed by a twenty-one member Review Board comprised of personnel from the various resource management divisions of the Department of Environmental Protection⁴. Currently, the Environmental Analyst at the department is responsible for receiving and previewing grant applications for completeness.

Funding is bonded money secured by the state and awarded through the Department in exchange for conservation easements and public access for passive recreation (in some instances an exception to public access may be granted to working farmland).

Program Status

The first round of grants was completed in Fiscal Year 1999. Since that time over 350 applications have been submitted with grants approved to 265 projects in over 100 towns by over 100 different sponsors; and 17,000 acres have been protected with approximately 57 million dollars.

Program Replication

Connecticut's Open Space and Watershed Land Acquisition program could be replicated by another state willing to designate the staff resources and to pass bonds to support the program. The following recommendations concerning pricing standards and target properties should be considered.

When Connecticut began its program it used a state pricing standard, the Uniform Standards of Professional Appraisal Practice, to determine a property's value. The standard took into consideration a property's future value under other uses, significantly raising the potential value of the property. The state has now changed to a federal pricing mechanism, the Uniform Appraisal Standards for Federal Land Acquisition. This device determines a property's value based on current use. It is recommended that other states considering a similar program use the same federal pricing mechanism, or one similar.

In an effort to quickly secure a property some communities have been purchasing properties above their appraised market value. In turn, this has affected the ability of the program to negotiate a fair value when purchasing other properties. To deter communities from purchasing properties above market value, states might consider setting a maximum percentage above appraised market value that a piece of property may be purchased using program funds, or offer property sellers a tax break on gains made from the sale of the property to keep purchase prices closer to fair market value.

⁴ Ibid.

Finally, many of the properties purchased under Connecticut's program were not considered for purchase by the community until they were threatened by subdivision development. Communities find it less expensive to purchase properties than pay for expanded sewer, water, and school systems. Rather than use this program as a tool of last resort, other states might consider requiring communities to purchase properties previously identified as desirable for open space. This is accomplished either through their comprehensive plan or some extension of it such as an open space plan.

Program Resources

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Resources:

The Connecticut Department of Environmental Protection: <http://dep.state.ct.us/>

Site provides an overview of the program and its objectives, a link to the grant questionnaire and application, and links to numerous articles discussing the program. Includes significant detail about specific programs, grant amounts, and an email listserv that gives automatic updates of announcements regarding funding levels and grant approvals.

Connecticut Village District Act

Background

In May 1998, Connecticut Governor John Rowland signed into law Public Act 98-116, “An Act Authorizing the Establishment of Village Districts”. This amendment to Connecticut’s zoning enabling legislation passed through the State Legislature with surprisingly little opposition given the sweeping implications of the new law, which gives municipalities broad tools and authority to protect the “distinctive character, landscape or historic value that are specifically identified in the plan of conservation and development of the municipality.”⁵ The Act was amended as Public Act 01-195 in 2001, and is recorded in the Connecticut General Assembly as GSC 8-2j.⁶

Connecticut’s groundbreaking Village District Act was prompted by the desire of two towns, Brooklyn and Canterbury, to preserve community character in ways that existing laws did not allow. Brooklyn, a small town in northeast Connecticut, has a town green listed on the National Register of Historic Places, yet this designation did not provide any legal protection when the Connecticut Department of Transportation was considering changes to a state road that bisects the town. Canterbury is a larger town that faced similar regulatory shortfalls to protect scenic views in its commercial district. Each town had attempted and failed to establish a local historic district under the state’s enabling legislation for historic districts, leaving the towns without a mechanism to preserve rural character while enhancing economic development potential.⁷

Administrative Structure and Implementation

The Village District Act allows Zoning Commissions to establish “village districts” within which they have broad authority to regulate new construction, substantial reconstruction and rehabilitation. The Act is divided into three main sections: (1) Zoning Regulations; (2) Compatibility Objectives, and (3) Review by the Village District Architectural Consultant.⁸

The zoning regulations encourage the conversion and preservation of existing buildings and sites, and provide “that proposed buildings or modifications to existing buildings be harmoniously related to their surroundings, to the terrain and to the use, scale and

⁵ Public Act No. 00-145 “An Act Concerning Village Districts”, Sec 1(a)

⁶ CGA Chapter 124 Sec. 8-2j

⁷ Sitkowski, RJ, Breinich, AM and Ohm BW “Enabling Legislation for Traditional Neighborhood Development Regulations” *Planning and Environmental Law*, Oct 2001

⁸ Sitkowski, RJ “The Village Districts Act: What Does It Mean for Connecticut’s Historic Districts?” *Preservation Law Reporter*, 18:4, Oct-Dec 1999

architecture of existing buildings in the vicinity”.⁹ Furthermore, the regulations require “that all spaces and structures visible to the public from public roadways be designed to add to the visual amenities”¹⁰ and even that architectural design, building materials, landscaping, signage and lighting “is evaluated for compatibility with the local architectural motif and the maintenance of views, historic buildings, monuments and landscaping”.¹¹ Finally, the regulations require that the “removal or disruption of historic, traditional or significant structures or architectural elements ... (is) minimized.”¹²

The compatibility objectives outlined in the regulation require that all development in the village district is consistent with other uses. It allows for review of the arrangement and orientation of buildings, layout of parking lots, street placement and connectivity to existing roadways, form and siting of open spaces, landscape design, signage, lighting, scale and detailing of proposed buildings.¹³

The third section of the Act details how a planning commission reviews applications for new construction or renovation within a village district. Applications “shall be subject to review and recommendation by an architect or architecture firm, landscape architect or planner selected and contracted by the commission and designated as the village district consultant”¹⁴. Alternatively, the commission may designate ... an architectural review board to serve as the consultant.¹⁵ This consultant reviews the application and makes recommendations to the commission, which then grants or denies an application and records its decision. If the commission denies an application it must cite the specific regulations upon which the denial was based.¹⁶ Because village district regulations are subject to zoning laws, appeals are brought to the Zoning Board of Appeals and violations are handled by the zoning enforcement officer.¹⁷

Previous to this program, the only tools for historic preservation were Local Historic District and Historic Overlay Zoning regulations. The new Village District Act gives municipalities greater regulatory authority than either of these designations. First, the Village District can be established by the Zoning Commission and does not need to be voted upon by the town’s legislative body.¹⁸ Second, the designation of a village district does not require statewide approval, and does not require approval of two-thirds of the property owners who may be subject to the requirements of the Local Historic District. Village Districts are in essence a form of historic overlay zoning with additional scope to

⁹ Conn. Gen. Stat Sec 802(b)

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Conn. Gen. Stat. Sec. 802(c)

¹⁴ Ibid, Sec 1(d)

¹⁵ CGA Chapter 124 Sec. 8-2j

¹⁶ Sitkowski Oct 2001

¹⁷ Memo from Kevin McCarthy, Office of Legislative Research, CT General Assembly, Aug 27, 1998, p.6

¹⁸ Ibid

review landscaping, road design, maintenance of public views and all new construction and major reconstruction.¹⁹

Program Status

As of 2006 only a few communities in Connecticut had utilized the Village District Act, including Brooklyn, Middletown, Farmington and Preston.²⁰

Program Replication

The Connecticut Village District Act gives municipalities very broad authority to control the nature of change in their downtown core. Several other states have also passed enabling legislation that allows local municipalities to promote “traditional neighborhood design” (TND) and development that is consistent with existing architectural and landscape amenities. It is left to local governments to decide how to balance the right of individuals to express themselves and use their property with the right of the community to develop and function in a prescribed fashion.²¹

An alternative approach to service-center revitalization that has aesthetic components similar to Connecticut’s Village District Act is the Main Street Program of the National Trust for Historic Preservation. A voluntary program that involves economic development, historic preservation and community engagement, the Main Street program is now active in approximately 70 communities throughout New England. Voluntary or incentives-based programs like this offer an additional approach to consider in exploring approaches to maintaining community character.

Program Resources

Connecticut Trust for Historic Preservation: www.cttrust.org

The CT Trust for Historic Preservation website has a wealth of information and links about historic preservation and planning.

¹⁹ CT Trust for Historic Preservation, “Historic Overlay Zoning” www.cttrust.org/index.cgi/2075

²⁰ Personal conversation with Robert Sitkowski

²¹ Sitkowski, Oct 2001

Maine Affordable Housing Tax Incentive Financing Program

Background

The Maine Affordable Housing Tax Increment Financing Program is designed specifically to address issues related to the creation of affordable housing within municipalities at the same time as it addresses the issue of sprawl. Participating municipalities can use tax increment financing (TIF) to assist affordable housing projects and support related infrastructure and facilities, including local schools. To make use of TIF for affordable housing, a municipality designates an Affordable Housing Development District, approves an associated Affordable Housing Development Program, and applies to Maine State Housing Authority (MaineHousing) for approval. Though many states have economic development TIF's, Maine's approach to applying the tool to affordable housing is unique. The program encourages smart growth by requiring the district to be consistent with a municipality's comprehensive plan and located in a designated growth area. The program also encourages the targeting of blighted areas or areas in need of rehabilitation/redevelopment.

The Affordable Housing Tax Increment Financing Program was authored by staff of the Maine State Housing Authority, Maine Department of Economic and Community Development (DECD), and other involved parties. The DECD's economic development tax increment financing program was used as a model for the affordable housing TIF program. It was then submitted to the Maine Legislature by Rep. Peter Mills where it was reviewed by the Community Preservation Advisory Committee before being enacted in 2003.

Administrative Structure & Implementation

The program is administered by MaineHousing. A municipality is responsible for proposing an affordable housing district and accompanying development program. During this process, MaineHousing provides informal review and technical assistance to ensure that the district and development program meet the program's guidelines.

The municipality's legislative body must then approve the affordable housing development district and adopt the accompanying development program. The municipality then submits an application for approval of its district and development program to MaineHousing. The district and development program become effective once they have been approved by the Director of the Maine State Housing Authority. Two MaineHousing employees are available as needed to provide technical assistance and guidance to municipalities.

Program Status

Six municipalities have received approval for affordable housing TIFs to date. These include:

- Augusta, for redevelopment of a former downtown warehouse into affordable rental units.
- Fairfield, for redevelopment of a former nursing home into affordable rental units, and development of affordable single family homes and condominiums.
- Lewiston, for affordable senior housing at the former St. Dominic High School.
- Machias, for development of a self-help affordable subdivision.
- Portland, for development of affordable rental units near downtown.
- South Portland, for redevelopment of the former Maine Youth Center Property to include affordable rental units, senior housing units, and condominiums.

Program Replication

Tax increment financing programs are available in most areas. However, they are generally tools for economic development. The use of TIF's for affordable housing would need to be supported and administered by a state's housing authority or similar office. Replication of the program would require enabling legislation and formation of Affordable Housing TIF zones.

One aspect that makes Maine's program exceptionally attractive to municipalities is that the increased taxable value within a TIF district can be excluded from the municipality's total assessed value. In effect, the municipality can avoid the decreases in state revenue sharing and education subsidies and increases in county taxes that would otherwise result from increased property values.

Program Resources

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Resources:

Maine State Housing Authority: www.mainehousing.org

This site provides links to downloadable versions of the Program Guide (pdf file), a checklist for the approval of an Affordable Housing Development District and Affordable Housing Development Program (Microsoft Word), and an Application Cover Sheet (Microsoft Word).

Maine Great American Neighborhood Sewer Extension Loan Program

Background

To support efforts to create new, or expand upon existing “Great American Neighborhoods” Maine has developed a pilot program, the Great American Neighborhood Sewer Extension Loan Program. The program is a cooperative endeavor between the Maine Municipal Bond Bank, Maine Department of Environmental Protection, Maine Department of Economic and Community Development, Maine State Planning Office, and the U.S. Environmental Protection Agency. The program “provides low-interest rate loans covering the cost of sewer extensions to eligible areas with a graduated or “patient” payback provision that keeps payments low at the start of the project. Interest rates and loan terms are intended to be attractive enough that the program represents a significant incentive for communities and developers.”²² In addition, the program will help fill a gap in the housing market for the segment of home buyers interested in the traditional Great American Neighborhood. Great American Neighborhoods are often found in older villages or town centers, and urban areas. The neighborhoods are walkable, contain both civic and mixed use elements, interconnected streets, distinct boundaries, human scale developments, and enhance residence’s personal connections and privacy through their design.

The program was developed in 2003 as a part of the “Hometown Maine” initiative, and evolved from collaborative work between the supporting agencies and developers. No legislative action was required to create the program, because it falls under the Department of Environmental Protection’s authority over wastewater and sewer extensions.

Administrative Structure & Implementation

The different phases of the application and construction process are managed by three of the cooperating agencies. The State Planning Office is responsible for Phase I, oversight of the design application; the Municipal Bond Bank is responsible for Phase II, oversight of the loan application; and the Department of Environmental Protection is responsible for monitoring the sewer extension construction. Municipalities and sewer districts are eligible to apply for the program. Although private developers are ineligible, municipalities and sewer districts are encouraged to demonstrate partnerships within the private sector. Loan funds can be used for construction of sewer lines both on the project site and connecting to existing sewer lines; and for “limited upgrade to downstream infrastructure to

²² Maine State Planning Office (n.d.). *Great American Neighborhood Sewer Extension Loan Program: “Supporting Walkable Neighborhoods and Communities*. Retrieved February 16, 2005, from <http://www.state.me.us/spo/landuse/finassist/sewer.php>.

accommodate expansion, e.g. additional pumping station would be allowed but overhaul of treatment facility to increase capacity would not.”²³

Again, the Design Application submitted to the State Planning Office is Phase I of the project, and will be reviewed by a Design Review Committee chaired by the Director of the State Planning Office. Before submitting a Design Application an applicant can apply for a Great American Neighborhood Partnership Grant to assist with the initial costs of the design process and public involvement. The Design Application is used to determine if a project meets the Great American Neighborhood development model; and is broken into two applications, a pre-application and a final application.

The pre-application requires that an applicant submit confirmation of meeting the five threshold criteria; a narrative of the project that may include copies of sketch plans, maps, or site designs; identification of any necessary zoning changes, permits, or environmental reviews required by the project; the scope of the sewer improvements and related costs; and a plan for public participation. The five threshold criteria are as follows:

1. The city or town in which the project is located must have an adopted local comprehensive land use plan that has been reviewed and found by the State Planning Office to be consistent with Maine’s Planning And Land Use Regulation Act (30-A MRSA Sec. 4312 et. Seq.), “Growth Management Act”.
2. 100% of the area to be served by the extension must be within the comprehensive land use plan’s designated growth area.
3. The municipality or district must have sufficient or planned capacity to accept downstream flow from the proposed development.
4. Areas to be served by the extension must allow residential development densities of at least 3 units per gross acre (includes wetlands, steep slopes, roadways, sidewalks, utility rights of way, parks and open spaces).
5. Areas to be served must allow for mixed-use traditional neighborhood – Great American Neighborhood - type development²⁴

The Design Review Committee will review the pre-application, and if the applicant has met the previously cited requirement pre-approval will be granted on the condition that the applicant will obtain any necessary zoning changes, permits or environmental reviews before submitting the final application.

The final application of Phase I requires submission of a permit processing schedule, an infrastructure plan and schedule, a final neighborhood design, and an environmental

²³ Maine State Planning Office (n.d.). Great American Neighborhood Sewer Extension Loan Program: Program Statement and Application Materials (pp.4). Retrieved February 16, 2005, from <http://mainegov-images.informe.org/spo/landuse/docs/PatientSewerApp.pdf#xml>

²⁴ Ibid, pp.4-5.

assessment form. Upon completion of all design requirements the applicant is granted Project Authorization approval from both the State Planning Office and the Department of Environmental Protection.

After receiving Project Authorization an applicant completes Phase II, a loan application submitted to the Maine Municipal Bond Bank. The application requires information about financial and economic status of the sewer district and/or municipality, sources of revenue for repayment of loan, a statement of default; and copies of the sewer district charter and amendments, last three audit reports or demonstration of financial feasibility, most recent unaudited financials, latest budget, schedule of rates required for financing the project, most recent proposed construction drawdown schedule, and the Project Authorization from the State Planning Office and the Department of Environmental Protection.

Additionally, the sewer extension must be built before any lots in the development can be sold. Also, the payment of interest on funds is required before receiving a return on the lots, and as the lots sell the rate of payback on the loan increases.

Program Status

To date, there have been no applications for the program. Some developers and municipalities have shown interest in the program.

Program Replication

The Great American Neighborhood Sewer Extension Loan Program can be duplicated by other states that possess the cooperating agencies and staff to run the program. The program is supported through the state's revolving sewer loan fund. Each of the 50 states has such a fund. A state would need to apply this fund within the context of a smart growth neighborhood. The US EPA helps to support this loan fund. A state's department of environmental protection would need to provide technical oversight for such a program.

An obstacle to the program has been found in a loan repayment requirement. If the municipality or sewer district has collaborated with a private developer on the project then both parties may enter into the loan agreement. However, if the developer goes bankrupt and is unable to complete the project it is the responsibility of the municipality or sewer district to repay of the loan. This clause has represented too much risk to some towns. Since this risk is present, ongoing public education of the benefits of smart growth vs. the cost of sprawl should be considered prerequisite. Another possibility is to make the loan directly to the developer. However, federal rules for the EPA revolving sewer loan fund do not allow patient loans to be made to a private entity. Therefore, as long as that fund is the instrument of funding, and federal rules remain the same (which is very likely), this requirement will not change.

Another possible reason for the lack of interest in this project is the time consuming application and approval process. For most developers, time is money. The potential cost and uncertainties of delays that ensue from local political opposition and approval process outweigh the costs of a developer using traditional loan sources. It seems that the patient loan repayment is not as big an incentive for developers as crafters of the program had hoped. This perception may change as more developers become more used to these incentive programs.

The biggest potential for this program may exist in the affordable housing market. Affordable housing developers are generally more accustomed to being patient with the funding aid process, and therefore may have a bigger appetite for the risk that is inherent. Additionally, the margins are generally tighter in affordable housing developments, so benefits of a patient loan repayment may be comparatively greater.

Program Resources

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Resources

Maine State Planning Office

Land Use and Planning Resources

<http://www.state.me.us/spo>

A search of the site using “Great American Neighborhood” as search term produces links to program description, design guidelines for Great American Neighborhoods, and Phase I & II applications and instructions.

Massachusetts Smart Growth Zoning Districts

Background

The State of Massachusetts' Smart Growth Zoning Districts program is intended to help address the state's shortage of affordable housing. It is "a measure that grants municipalities financial rewards for adopting special zoning districts for the construction of multifamily and single-family housing."²⁵

The measure was designed by Ted Carman, president of the Concord Square Development Company; Eleanor White, a housing specialist; and Barry Bluestone, director of Northeastern University's Center for Urban and Regional Policy. It was signed into law by the state's governor in June of 2004.

A municipality must first adopt a smart growth zoning district that is "close to transportation nodes, town centers, or ... retail and commercial sites"²⁶ and then the municipality is entitled to an incentive payment for new housing created and a bonus payment for each building permit issued for a new residential unit. Communities with smart growth zoning districts will also be given priority for receiving other state funds for expansion of water, sewer, and transportation infrastructure.

Administrative Structure & Implementation

The Massachusetts Department of Housing and Community Development administers the program and is responsible for its annual assessment. A single administrator handles the program for the department.

"Before adopting a smart growth zoning district, a municipality would apply to the Department." The department must determine if the proposed location is an eligible site for smart growth development. Once the application has been approved, a municipality then adopts the smart growth zoning district through its own governing body. Municipalities that adopted the zoning district would receive a letter of approval from the Department. The municipality is then eligible for an incentive payment and a bonus payment. The amount of the incentive payment depends on the number of new housing units that can be constructed in the smart growth district. The incentive payment ranges from \$10,000 for up to 20 units, up to \$600,000 for 501 units or more. Payments would be disbursed to the municipality upon the issuance of the approval letter by the

²⁵ The Federal Loan Home Bank. (2004) *A Tool to Expand the Supply of Housing*. Retrieved February 8, 2005, from

http://www.fhlbboston.com/communitydevelopment/tools/current/40r_tool.jsp

²⁶ Ibid.

Department. The municipality receives a bonus payment of \$3,000 for each new housing unit built in the smart growth district. This incentive is payable to the municipality once the building permit has been issued for the housing unit.

Funding for the program comes from the Smart Growth Housing Trust Fund created by the same act. Money for the fund comes from the sale of surplus state properties.

Program Status

The Department of Housing and Community Development has not yet processed an application for a smart growth zoning district. The agency and the state adopted the new regulations for the program in March of 2005. At least a dozen municipalities have expressed interest in participating in the program.

Program Replication

Massachusetts' Smart Growth Zoning Districts program is transferable to any state willing to undertake a similar program. Massachusetts has experienced opposition to the program focused on two areas of concern. The first questions the appropriateness of the program for suburban and rural communities; and the second questions the program's impact on school enrollment and funding.

Suburban and rural communities have argued that the program's density requirements are inappropriate for their communities. Other states considering duplication of Massachusetts' program may wish to engage in outreach and education about smart growth and its pertinence to all locations, especially suburban communities. Separate density requirements could also be created for communities depending on their population and rates of growth.

Communities have also expressed concern over inadequate school funding to offset the costs of increased school enrollment caused by the additional housing. Program duplication might consider creating a fund to offset these increases, or perhaps a tax incentive financing program for the Smart Growth Zoning District to meet financial demands placed on the local school system created by the district.

It is also recommended that other states consider funding options that are more sustainable such as creating a tax applied to new housing construction that occurs outside the Smart Growth Zoning District or the community's growth boundary.

Program Resources

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Resources:

Massachusetts Department of Housing and Community Development:
<http://www.mass.gov/dhcd/>

Site contains a copy of the statute and the regulations; and links to *Tools*, a publication of the Federal Loan Home Bank, the Massachusetts chapter of the American Planning Association, Summary of M.G.L. Chapter 40R Smart Growth Zoning Districts Passed into Law as Part of the FY 2005 Budget by the Metropolitan Area Planning Council, Smart Growth Online website, and Sustainable Development Principles accepted by the Massachusetts Office for Commonwealth Development.

Massachusetts Fix It First Policy

Background

In 2003, the newly elected Governor of Massachusetts Mitt Romney created the Office of Commonwealth Development, a cross-departmental hybrid tasked “to care for the built and natural environment by promoting sustainable development through the integration of energy, environment, housing, and transportation agencies’ policies, programs and regulations.”²⁷ Douglas Foy, former president of the Conservation Law Foundation, was appointed the OCD chief. One of the policy directives of the OCD is Fix It First, “a statewide commitment to the repair and maintenance of our existing infrastructure – our roads and bridges, our transit system, our public housing, our historic structures, our parks, our brownfields and greyfields, our skating rinks and our swimming pools. Fix It First is NOT about no growth – it’s about smart growth.”²⁸

Fix-it-First is not an approach invented in Massachusetts. It is a term used to describe a wide range of state investment strategies that utilize planning, development incentives, and other tools to better leverage limited state funds. The explicit goal of these strategies is to build upon and maintain previous asset investments before building new. These approaches focus on three main themes including efficiency, economic and community development, and quality of life.²⁹ Governors in six other states have, like Massachusetts, adopted Fix it First policies to guide state investments in infrastructure and community development.

Program Structure and Implementation

The Office of Commonwealth Development created by Governor Romney is a “super agency” that oversees the Division of Energy Resources, the Executive Office of Environmental Affairs, Department of Housing and Community Development, and the Executive Office of Transportation and Construction. OCD occupies a central position as coordinator of the state’s development policies and manages cumulative annual state and federal spending of approximately \$2 billion.³⁰

²⁷ Office for Commonwealth Development website
<http://commpres.env.state.ma.us/content/ocd.htm>

²⁸ www.mass.gov/portal/site/massgovportal

²⁹ NGA Center for Best Practices Issue Brief, [Fixing it First: Targeting Infrastructure Investments to Improve State Economies and Invigorate Existing Communities](#)

³⁰ [ibid](#), p.4

Under the Governor's direction and OCD's coordination, state agencies allocate resources to encourage development in areas that are supported by existing infrastructure.³¹ An example of the way in which the Fix it First policy has been implemented is embodied in the Commonwealth's Statewide Road and Bridge Policy, issued on January 27, 2004. Fix it First is a guiding principle of the policy, the purpose of which is to "prevent sprawl; ...Avoid the costs associated with unnecessary road widenings and the conflicts they entail...; and provide enhanced mobility for sustainable transportation modes (walking, bicycling, and public transportation).³² Guided by these principles, Romney issued a \$1.15 billion blueprint for capital transportation spending that guarantees at least \$400 million per year until 2012 for upgrading the Commonwealth's roads and bridges.³³ It also included a specific set-aside for a transit-oriented development fund that will be used to encourage economic and residential development around existing transit stations.

An analysis of the record of OCD after its first year was conducted by the Conservation Law Foundation in 2004. It found that while the Office had made substantial progress in developing Sustainable Development Principles, policy initiatives, creating task forces and commissions, "what largely remains to be seen is whether OCD can build on this foundation to create effective and durable legislation, regulatory changes, and government investment decisions based on the new policy framework of sustainable development".³⁴ The CLF analysis also found that in its first year, some of the newly developed policies were not being applied to "business as usual" decision-making within agencies. The Fix it First policy was not applied to several road widening and rotary-expansion decisions.³⁵

Program Status

In February 2006 Douglas Foy resigned as Secretary of the Office of Commonwealth Development. The Governor thanked Foy for his work to create "a structure that integrates housing, transportation and environmental policy...that rewired the state for more sensible growth"³⁶. It remains to be seen how durable this rewiring will be as State administration changes.

³¹ *ibid*, p.4

³² Commonwealth of Massachusetts Statewide Road and Bridge Policy, Jan 23, 2003

³³ www.mass.gov/portal/site/massgovportal

³⁴ Pollack, S. "Great Wind Up, But Where's the Follow Through?" *Boston Business Journal*, Feb 2, 2004

³⁵ "The Office of Commonwealth Development at the One-Year Mark - A "Report Card" by the Conservation Law Foundation" Feb 6, 2004

³⁶ on Smart Growth News from The Boston Globe 2/21/2006

Program Replication

The creation of the Office of Commonwealth Development indicates a desire to use state investments as more effective levers for smart growth and deterrents to sprawl. The Office's Sustainability Guidelines, Fix it First policy, and other smart growth initiatives like 40R are its tools for achieving this goal.. Other states have also examined the ways in which state policies and investments have governed development and transportation patterns, but perhaps without the comprehensiveness and inter-agency rigor that has occurred in Massachusetts. The Fix it First approach is transferable to other states where there is the leadership and vision to restructure agencies, programs and budgets to achieve more sustainable growth. Any state considering a Fix it First policy should consider creating a non-partisan, apolitical commission that oversees the decision making process. This commission should use a broad view to consider best choices for the entire state in order to offset inter-agency competition. States considering implementing this policy should study the NGA Center for Best Practices Issue Brief- Fixing it First (website shown below).

Program Resources

Massachusetts Office of Commonwealth Development web site:

<http://www.mass.gov/?pageID=ocdhomepage&L=1&L0=Home&sid=Eocd>

Outlines OCD mission and practices, ranging from environmental planning through planning to housing and transit-oriented design, including information about Fix it First.

NGA Center for Best Practices Issue Brief – Fixing it First:

www.nga.org/cda/files/0408FIXINGFIRST.pdf

This site contains examples of other ways in which several states have used Fix it First policies to guide infrastructure outlays. The approaches are different for each case, but the theme is to purposefully target spending towards existing areas in need of revitalization. Fix it First monies have also been directed towards communities that are seeking to coordinate and plan development with smart growth concepts in mind. ³⁷

³⁷ NGA Center for Best Practices Issue Brief, Fixing it First: Targeting Infrastructure Investments to Improve State Economies and Invigorate Existing Communities

New Hampshire Downtown Initiative Program

Background

Initiated in 2001, the Downtown Initiative Program was

“a three-year initiative to encourage downtown redevelopment by providing financial support and incentives to encourage reinvestment into New Hampshire's downtowns through extensive renovations to multi-use structures that contain commercial or retail spaces on the ground floor and residential units on the upper floors. The Downtown Initiative focuses on renovation of underutilized properties that are integral to a community's downtown commercial center. The Downtown Initiative is targeted at communities throughout the state that have a plan for their downtowns. The goal is to create new housing units across the housing market in the form of market-rate rental units, affordable first home condominiums and subsidized rental units. A second goal is to enhance the economic vitality of downtowns by allowing funds to be used for retail and commercial development on the first and second floors of buildings that include housing units on upper floors. In this way, the program is directly addressing the smart growth goal of promoting mixed-use development.”³⁸

The program was the result of discussions among several state agencies, advocacy groups, and the governor's office, concerning Smart Growth planning, workforce housing, and Main Street Program initiatives. The initiative was approved by Governor Jean Shaheen as a three year pilot program, a joint effort among the New Hampshire Community Development Finance Authority (CDFA), the New Hampshire Housing Finance Authority (NHHFA), the New Hampshire Department of Resources and Economic Development (DRED), and the New Hampshire Office of State Planning (now the Office of Energy and Planning, OEP). The program was conducted during 2001, 2002 and 2003.

Administrative Structure & Implementation

Each of the four agencies involved was to donate both financing and staff resources to the program. Due to budgetary constraints, however, none of the agencies has been able to dedicate staff to work primarily on the program. Agency members who have committed time to the project have done so in addition to their routine responsibilities.

The CDFA reserved a total of \$600,000 in funds per year of the program, \$500,000 of which was used to purchase tax credits from program recipients wishing to sell their

³⁸ New England Environmental Finance Center. (2003). *Financial Incentives for Developers Initiating Smart Growth Projects*. Retrieved November 22, 2004, from <http://efc.muskie.usm.maine.edu/Developer%20Incentives.htm>

credits. The NHHFA arranged for long-term financing of units that met program requirements in the form of 4% Low Income Housing Tax Credits; it also reserved funds for feasibility studies on select projects in each of the three program years. The DRED was responsible for promoting the program to the various host communities' businesses, and for developing collaborations between the program and for-profit entities. The OEP designated \$500,000 per year in Community Development Block Grant funds to the program.

Program Status

The three year pilot for the Downtown Initiative program was completed in 2003 and is now undergoing evaluation. It appears that the projects approved under the program have taken longer to structure, finance, and construct than had been expected.

A total of four projects were approved under the program, in four different communities:

Claremont, NH – the rehabilitated Oscar Brown Block will include retail and office space, and six units of housing.

Laconia, NH – a rehabilitated manufacturing building will include a daycare facility, fifty units of housing, office and retail.

Somersworth, NH – rehabilitation of the Allman and Fraternal Order of Eagles Buildings will result in both housing and retail space.

Jaffrey, NH – the rehabilitated Jaffrey Mill will include 36 housing units, retail and office spaces.

Program Replication

The program's collaborative structure may pose a challenge to its replication in other states. States would need multiple agencies similar to those collaborating in New Hampshire to donate both funding and staffing. The collaboration has posed a particular challenge for New Hampshire, in that each agency has a different set of requirements that must be met to receive funding through the program. States looking to duplicate the program might consider all funding being administered through one agency with a single application for funding comprised of the various funding requirements.

New Hampshire has also experienced difficulties due to lack of experience with the sale of tax credits. It is suggested that a state looking to use this type of incentive also invest in educating those responsible for carrying out that portion of the program.

Since New Hampshire found that projects were exceeding the expected time allotment, funding for projects might better be made on a minimum two year cycle.

New Hampshire's Downtown Initiative is still in the process of completing its initial projects, and is currently undergoing program evaluation. The continuation of New Hampshire's program is subject to the results of these first projects and whether current and future legislatures choose to commit resources to it. To better secure a program's success a commitment to the program of at least twelve years is desirable. A time commitment of this length would allow for three year funding blocks, three rounds of funding, and three to four program evaluations.

Program Resources

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Richard Weaver, Assistant Director, Management and Development
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<http://nhcdfa.org/downtowninitiative/index.htm>

Site contains history and structure of program, including links to application forms.

NEW HAMPSHIRE AGRICULTURAL LANDS CONSERVATION PROGRAM

Background

In 1979 the State of New Hampshire first appropriated \$3 million to purchase development rights on prime agricultural lands through the Agricultural Land Preservation Program. The program was funded again in 1985 with \$2 million, but discontinued when those funds were expended in 1988.³⁹ While programmatic structure and funding for farmland preservation in New Hampshire has waxed and waned in the years since, there are nearly eleven thousand acres⁴⁰ of permanently protected farmland in the State as a result of this and subsequent farmland conservation programs.

New Hampshire has had the fastest rate of growth of any New England state for the last 20 years. The state's prime farmland has been a victim of this growth rate; between 1982 and 1997, approximately 16% of the state's crop and pasture land was converted to non-agricultural uses, with the state's prime farmland converting at a rate 2-4 times greater than less productive land.⁴¹

Program Structure and Implementation

Funding for farmland conservation in New Hampshire has been intermittent at best. When the Agricultural Lands Preservation Program was first adopted in 1979, \$3 million was dedicated to the purchase of agricultural easements through the real estate transfer tax. In 1985, another \$2 million was dedicated to purchase of agricultural easements, though the revenue from the real estate transfer tax was diverted to the general fund, and money for easements on agricultural land dried up.⁴² (The real estate transfer tax now generates \$170 million/year⁴³)

In 1987/1988, New Hampshire adopted the Land Conservation Investment Program with \$5 million in state funding. Between 1988-1993, 34 agricultural easements were acquired through LCIP. When LCIP sunset, there was another period of inactivity until the passage of the Land and Community Heritage Investment Program (LCHIP) in 2000/2001.

³⁹ Steve Taylor, Commissioner, NH Department of Agriculture, written communication

⁴⁰ American Farmland Trust, Farmland Information Center Fact Sheet Status of State PACE Programs 2005

⁴¹ Natural Resources Conservation Service Farmland Protection Program, NH Summary, Dec 2001

⁴² Pete Helm, NH Office of Energy and Planning, verbal communication 3/30/06

⁴³ Steve Taylor, written communication

Since LCHIP began, the state has bonded a total of \$18 million, of which \$3.45 million has been directed toward the conservation of 1541 acres of agricultural land in 22 easements. LCHIP has been a powerful leverage of other funding – for every dollar of state money, \$5.80 of federal, local and private money has been raised.⁴⁴

Federal funding through the USDA Farm and Ranchland Preservation Program has helped to finance nearly half of the agricultural land conserved in New Hampshire. Started in 1997, USDA has provided \$11.8 million, which has helped to conserve 5657 acres in 70 easements.⁴⁵ The federal program requires a 50/50 match with state or local funds, some of which has been provided through LCHIP. Easements acquired through the program are held by local land trusts or town conservation commissions.⁴⁶

Program Status

In combination, the state and federal programs since 1979 have led to the conservation of nearly 11,000 acres of farmland in 86 easements.⁴⁷ While this is a significant achievement, the loss of productive agricultural lands continues at a steady rate. The number of dairy farms in New Hampshire has dropped from 380 in 1985 to 135 today, yet they have increased in size from an average herd of 43 in 1983 to 129 in 2006.⁴⁸ There are many conditions that are threatening the future of agriculture in New Hampshire. The drop in commodity prices for milk are driving dairy farmers out of business, while the development pressure in parts of the state has driven up property values so as to make conversion nearly irresistible to farmers struggling to make a living. Furthermore, as more towns shift towards soils-based zoning where drainage determines lot sizes, prime farmland, which is generally flat with good drainage, again becomes the target for highest density development.⁴⁹ In the words of LCHIP Executive Director Rachel Rouillard, “we’re not even making a drop in the bucket”.

Program Replication

As of June 2005, there were 26 states in the US with laws authorizing state-level purchase of agricultural conservation easement (PACE) programs⁵⁰. While New Hampshire has made significant gains in permanent conservation of agricultural lands, it has not been as aggressive as some other New England states. As discussed above, LCHIP is continually struggling for funding in a climate of surging land prices and flagging agricultural economy. New Hampshire has traditionally had less of an agricultural economy and identity than neighboring Vermont, which has had a far more

⁴⁴ LCHIP web site

⁴⁵ Steve Hundley, USDA personal communication 3/21/06

⁴⁶ Ibid

⁴⁷ Status of State PACE programs, American Farmland Trust, June 2005

⁴⁸ Steve Taylor, written communication

⁴⁹ Rachel Rouillard, LCHIP Executive Director, verbal communication 4/3/06.

⁵⁰ Ibid

ambitious and significant farmland conservation program over the years.⁵¹ Massachusetts adopted the Farm Viability Enhancement Program in 1996, in which short-term easements are paid for by the state to farms that are diversifying, modernizing or converting from one use to another, for example from commodity dairy to retail. The program has helped 246 farms and has placed 23,430 acres under protective covenants.⁵² Innovative programs like this might be an approach for other states to consider.

Program Resources

Land and Community Heritage Program Website – www.lcip.org

American Farmland Trust, New Hampshire chapter website -
www.farmland.org/programs/states/NH.asp

⁵¹ Rachel Rouillard, op. cit.

⁵² Mass. Dept of Agricultural Resources, Farm Viability Enhancement Program
www.mass.gov/agr/programs/farmviability/index.htm

Rhode Island Historic Preservation Investment Tax Credit

Background

“The Rhode Island Historic Preservation Investment Tax Credit was created to stimulate economic development, as well as to preserve historic buildings.”⁵³ The act furnishes a credit of 30% that can be applied against Rhode Island income tax for qualified rehabilitation expenditures spent on an income-producing, certified historic structure. The majority of historic structures being renovated are found in existing downtowns and village centers. The program has also been found to be “effective at returning properties to the tax rolls, generating employment and housing in localities where opportunities had been limited. The State’s investment leverages substantial private investment, which otherwise would not have occurred in those localities.”⁵⁴

The State Historic Investment Tax Credit Act that created the Rhode Island Historic Preservation Investment Tax Credit was passed by the Rhode Island General Assembly during the 2000-2001 legislative session, and took effect January 1, 2002.

Administrative Structure & Implementation

The Historic Preservation Investment Tax Credit is administered by the Rhode Island Historical Preservation and Heritage Commission (RIHPHC), which adopted regulations and procedures for obtaining the tax credit. RIHPHC staff processes and reviews the applications, and provides architectural assistance when requested by an applicant. Applicants for the credit may be either the structure’s owner or a lessee; and an individual, corporation, bank insurance company, or public service corporation including non-profits. To be eligible for the credit projects must be complete in a 24 month period, although phased projects may be extended to 60 months.

A three-part application process is required to obtain the tax credit. “Part one of the application is used to determine whether a building is a certified historic structure.”⁵⁵ It

⁵³ Rhode Island Historic Preservation and Heritage Commission. (n.d.). *Historic Preservation Investment Tax Credit Application Instructions*. Retrieved February 16, 2005, from http://rihphc.state.ri.us/pdfs/credits_pdfs/hpitc_instructions.pdf .

⁵⁴ Lipman, Frizzell & Mitchell, LLC. (2005). *Rhode Island Historic Preservation Investment Tax Credit Economic and Fiscal Impact Analysis*. Retrieved April 29, 2005, from <http://growsmartri.com/pdfs/RI%20Final%20Report.pdf> .

⁵⁵ Rhode Island Historic Preservation and Heritage Commission. (n.d.). *Historic Preservation Investment Tax Credit Application Instructions*. Retrieved February 16, 2005 from http://rihphc.state.ri.us/pdfs/credits_pdfs/hpitc_instructions.pdf .

uses the same form as the Federal Historic Rehabilitation Tax Credit program, and it requires that the structure has been certified historic.

“Part two of the application is used to review proposed rehabilitation work.”⁵⁶ The application identifies the current condition of the property and the proposed rehabilitation work, which must be in line with the building’s historic character and consistent with the Secretary of the Interior’s Standards for Rehabilitation. During this phase an owner may request the assistance of an RIHPHC architect.

“Part three of the application is used to review completed rehabilitation work,”⁵⁷ and requires information such as proof that the cost of the rehabilitation project has been attested by a certified public accountant; a certificate of occupancy or similar permit; and who is to receive the credit, and what percentage of the credit. An RIHPHC architect will then conduct an on-site visit. The tax credit (30%) will be based on the qualified rehabilitation expenditures cited in the cost certification. Qualified rehabilitation expenditures may include expenses that are capitalized to the building in addition to soft costs. Before receipt of the tax credit the original recorded Declaration of Restrictive Covenants must be submitted with the land evidence records.

The tax credit may be assigned to another party only once, “because the Credit is assignable, a non-profit developer could assign a Credit to which it becomes entitled to a Rhode Island taxpayer who can offset the Credit against its Rhode Island income tax liability. The non-profit developer can use the proceeds of sale of the Credit to finance the development that generated the Credit.”⁵⁸ The credit may be carried forward for up to 10 years, and is not combinable with other tax credit options.

Program Status

In March of 2005 Lipman, Frizzell and Mitchell, LLC released their “Rhode Island Historic Preservation Investment Tax Credit Economic & Fiscal Impact Analysis,” completed at the request of Grow Smart Rhode Island. The executive summary follows:

LF&M finds that the Rhode Island Historic Preservation Investment Tax Credit Program is effective at returning properties to the tax rolls, generating employment and housing in localities where opportunities had been limited. The State's investment leverages substantial private investment, which otherwise would not have occurred in those localities.

The State has benefited in the following ways:

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Holland Knight LLP. (2003). *Using the Rhode Island Historic Preservation Investment Tax Credit: Clarifications from the Tax Division Provide Practical Guidance* (pp.5). Retrieved February 16, 2005, from http://www.rihphc.state.ri.us/pdfs/credits_pdfs/hpitc_guidance03-5-21.pdf

Preservation Portfolio - The 111 total projects representing \$484.91 million in investment are located across the State. Four-fifths (80.0%) of investment is represented by “Active” status projects, most of which are likely to be completed over a two to three year period. Applications made to the State for project eligibility seem to be relatively stable in the range of 18-26 semi-annually since June 2002. The large majority of projects involve rental housing component, with a total yield of 1,699 residential units anticipated including 409 low income housing units.

State Investment - The State's expense is estimated at \$145.47 million for the 111 projects. Understanding that the utilization of credits follows construction completion by one year, the average annual State expense over the 2004-2007 period is likely to be in the range of \$29.49 million for the 63 Active and 2004 projects examined. The State's investment has been leveraged with private financing and equity investments. Each \$1.0 million of State tax credits in fact leverages \$5.47 million in total economic output.

Economic Impact - The total direct construction employment generated by the \$484.9 million investment in historic rehabilitation is estimated at approximately 5,334 jobs, earning \$184.9 million in wages. Indirect employment impact within the State during the construction period is estimated at 3,394 jobs (sic), earning an estimated \$103.6 million in wages. Total permanent employment at these locations is anticipated to be over 3,000 jobs, earning \$154 million annually. The 111 projects are forecast to generate a total of \$795.25 million in economic activity throughout the State.

Fiscal Impact - LF&M estimates that approximately 20.0% of the State's tax credit expense has already been offset before it is incurred, through construction period taxes collected. In addition, the State benefits from income and sales tax revenues paid by new wage earners and resident households—an incremental revenue stream with an estimated present value of \$42.14 million (29.0% of the State's tax credit investment). The increase in local assessable bases is estimated at approximately \$242.5 million in current dollars, generating property tax revenue with an estimated present value of \$179.4 million.

Necessity for Credits - LF&M finds that cash flows of the tax credit projects will support values which are only 50%-60% of project cost and that, without the State tax credits, these projects would simply not happen. They would not meet the threshold requirement of a fair return on the developer's equity investment.

Return on State Investment - LF&M calculates that the State's estimated \$145.47 million up-front investment in tax credits for the rehabilitation projects is likely to be recouped from four sources: construction period taxes, real property taxes, plus post-construction sales and income taxes. New residents and employees drawn to Rhode Island by the rehabilitated space (many of those planning to live at Rising Sun and Riverfront Lofts, for example, are relocating from outside of Rhode

Island, according to the developers) will contribute significant net new income and sales tax revenues to the State's coffers.

The Rhode Island Historic Preservation Investment Tax Credit Program is effective at returning properties to the tax rolls, generating employment and housing in localities where opportunities had been limited. The State's investment leverages substantial private investment, which otherwise would not have occurred in those localities.

Program Replication

Because Rhode Island's Historic Preservation Investment Tax Credit program is modeled after the Federal Historic Rehabilitation Tax Credit program, it is easily transferable to other states seeking similar affordable housing incentives. The program could be administered through a state's existing historic preservation agency or organization.

Before the Lipman, Frizzell and Mitchell LLC economic and fiscal impact analysis, Rhode Island lawmakers were concerned about the program's impact on state revenues. In light of this, it is recommended that other states conduct an evaluation of their program after a three year trial.

Program Resources

Contacts:

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rrandall@preservation.ri.gov

Resources:

Rhode Island Historic Preservation and Heritage Commission:
<http://www.rihphc.state.ri.us/directory.html>

Site provides an overview of the tax credit program as well as application forms and instructions; information about possible causes for denial; form for declaration of restrictive covenant; links to legislation and regulations; links to an IRS and Rhode Island Taxation rulings concerning the program; and the Lipman, Frizzle, and Mitchell economic and fiscal impact analysis.

Vermont School Construction Aid

Background

Vermont's policy on School Construction Aid is contained within its Equal Education Act of 1997. The act was drafted by the Vermont legislature after the Vermont Supreme Court found the existing educational funding system unconstitutional. The act seeks to eliminate the disparity in per pupil spending created by municipal tax rate inequities. The School Construction Aid portion of the act is designed as a mechanism to provide "state funds to school districts that demonstrate an urgent need for construction that cannot be reasonably addressed by other means."⁵⁹

The Act promotes smart growth through "encourag[ing] "the use of existing infrastructure" in accordance with the State Board of Education policy on historic preservation. The policy states, "...funding for renovations, including major repairs, and additions to existing school buildings shall be given preference over new school development..."²¹ The state will not give aid to schools for projects that are the result of deferred maintenance.

There are other features, as well, that may help minimize sprawling locations for school projects. Applications for approval for state school construction funds must supply a facilities analysis that considers the availability of classrooms or other accommodations in neighboring schools as a reasonable means of meeting needs for the funds. Further, applicants may use land not owned by a school district but convenient to the site if the land is suitable for daily school use and the school has permanent unrestricted access. There are no specific minimum space requirements for facilities, including playing fields."

Finally, "a guidance document recommends that local school boards meet with the local planning officials and determine whether or not the school is located in a "designated growth center." The guidance document also states that schools should be located within growth centers."⁶⁰

⁵⁹ State of Vermont Department of Education. (2004) *Programs & Services: School Construction*. Retrieved February 8, 2005, from http://www.state.vt.us/educ/new/html/pgm_construction.html.

⁶⁰ The Vermont Smart Growth Collaborative. (2003). *State of Vermont Smart Growth Progress Report*. Retrieved September 27, 2004, from <http://www.vtsprawl.org/Initiatives/sgcollaborative/SGProgressReport.pdf>.

Administrative Structure & Implementation

Two positions are funded by the Vermont Department of Education to staff the program: a School Construction Coordinator, and an administrative assistant. All applications for construction aid are submitted to the School Construction Coordinator, who is responsible for “providing technical assistance to school districts planning construction projects”⁶¹ and ensuring that all applications comply with the regulations. Applications that comply are recommended for approval to the State Board of Education.

The Vermont Education Fund, including the School Construction Aid program, is financed through a variety of resources. Local and state property taxes provide the bulk of the funding. A standard statewide property tax rate is required of all property owners, regardless of whether their municipality operates a school or has students. The state also reallocated other tax revenues into the Education Fund, and created new taxes, including rooms and meals, gasoline, corporations and telecommunications taxes. Revenues from the state lottery and General Fund are included, as well.

Program Status

Between fiscal years 2000 and 2006 approximately \$141 million will have been spent on school facility maintenance and renovations, and another \$20 million on new school construction.

In addition to promoting more sustainable school site locations Vermont’s Equal Education Opportunity Act has helped to distribute the state property tax in a manner more consistent with actual property wealth, thus diminishing disparity between communities’ educational services. Many communities’ children are performing better on statewide assessments due to these improved services.^{62&63}

Program Replication

Vermont’s School Construction Aid program is transferable to any state with a state level mechanism for providing funds to schools for renovation and new school construction. States looking to duplicate Vermont’s program will need to include funding criteria

⁶¹ State of Vermont Department of Education. (2004) *Programs & Services: School Construction*. Retrieved February 8, 2005, from http://www.state.vt.us/educ/new/html/pgm_construction.html.

⁶² The Rural School and Community Trust. (2001). *Vermont’s Act 60 Improves Equity*. Retrieved January 18, 2005, from <http://www.ruraledu.org/rpm/rpm304b.htm>.

⁶³ The Rural School and Community Trust. (2002). *Vermont’s “Act 60” Continues to Improve Equity for State’s Students*. Retrieved January 18, 2005, from <http://www.ruraledu.org/rpm/rpm403b.htm>.

specific to prioritizing the renovation of schools within community centers over new school construction; choosing smart growth locations for new school construction; encouraging the renovation of historic structures; and abolishing minimum acreage requirements.

In addition, when considering funding for schools, states need to carefully consider the impacts of school consolidation resulting in school closings on community centers, and on a community's identity. States should encourage schools to explore other means to reduce budgets such as consolidating administrative personnel.

Program Resources

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Resources:

Vermont Department of Education
<http://www.state.vt.us/educ/>

Site provides historical context from which the Equal Education Opportunity Act evolved, an overview of the act and how the act is funded; and links to the text of the act and the *Measuring Equity Report 2001* (the first evaluation required by the act). It also contains an overview of the School Construction Aid program; and links to the Vermont School Construction Planning Guide, Construction Planning Guide and Standards (Technical Education Centers ONLY), Vermont State Board of Education Manual of Rules and Practices (Rule series 6000: School Buildings and Sites, and the Envision School Environmental Health Program.

Vermont Forum on Sprawl
State of Vermont Smart Growth Progress Report
<http://vtsprawl.org/Initiatives/sgcollabortive/SGPregressReport.pdf>

Report includes an overview of the School Construction Aid program, its connections to smart growth, results of the Vermont Smart Growth Collaborative's analysis of the program, their conclusions, and recommendations.

Vermont Land Use and Development Law (Act 250)

Background

In April 1970, Vermont became the first state in the nation to legislate a statewide land use planning program known as Act 250. The Act was passed in the wake of the construction of the state highway system and economic expansion around Burlington in the north and the ski areas in the south. These converging developments suddenly awakened Vermonters to the impacts that uncontrolled growth was having on the state's small towns and rural landscape.⁶⁴ The Act was declared “necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are suitable to the demands and needs of the people of this state.”⁶⁵

Program Structure and Implementation

Act 250 does not apply to all development in Vermont, only to large projects involving more than 10 acres of land in municipalities with zoning and subdivision bylaws or more than one acre of land in towns without such bylaws. It also applies to projects that involve ten or more units of housing or the subdivision of land into 10 or more lots.⁶⁶ (In designated downtowns (20 in the state) the housing threshold is higher depending on the population size⁶⁷) There are several other types of developments that trigger an Act 250 application, such as any construction about 2,500 feet, new roads, communications towers, and others. The Act specifically exempts farming and forestry uses.⁶⁸ Act 250 does not supersede local ordinances, rather it imposes an additional layer of permits the developer must acquire before proceeding.

The Vermont Legislature intended that the implementation of Act 250 be decentralized. To accomplish this, the Act established nine District Environmental Commissions around the state. Developers submit their proposals to the District Commission, which reviews each application and either grants a permit with or without conditions or denies it. Projects considered “minor” are decided without a public hearing, those deemed “major” do go through a hearing process.⁶⁹

⁶⁴ “Act 250, A Guide to Vermont’s Land Use Law”, VT Environmental Board, Nov 2000 p.2

⁶⁵ Act 250, Vermont’s Land Use and Development Law Title 10, Chapter 151, “Findings and Declaration of Intent”

⁶⁶ op cit Act 250, A Guide to Vermont’s Land Use Law, p. 7

⁶⁷ Beth Humstone, personal communication

⁶⁸ op cit, A Guide to Vermont’s Land Use Law p. 8

⁶⁹ op cit, A Guide to Vermont’s Land Use Law p. 16

District Commissions make permitting decisions based on ten criteria. These include the project's impact on water quality, water supplies, traffic, educational and municipal services, and historic and natural resources, including scenic beauty and wildlife habitat. Developments must also conform to local and regional plans.⁷⁰

The District Commissioners are lay people appointed by the Governor. They are compensated for their time and expenses but are not salaried. The Commissioners are supported by District coordinators and administrators in each regional office who process applications, answer questions, provide information and technical assistance, assist at hearings and draft Commission decisions.⁷¹

The Act also established the Vermont Environmental Board to provide statewide coordination of Act 250, and to review appeals of District Commission rulings.⁷² Like the District Commissioners, the Environmental Board is made up of non-salaried citizens appointed by the Governor who serve four-year terms.

Act 250 has been reviewed several times since its passage in 1970. The Waste Facility Board was created in 1990 to make decisions about the management of solid or hazardous waste.⁷³ In 1994 the VT Legislature adopted numerous process changes and new performance standards that enabled the District Commissions and Environmental Board to process applications and appeals in a more timely manner.⁷⁴ Most recently in 2005, the Legislature adopted Act 115 that created the Natural Resource Boards to replace the Environmental Board. All appeals by decisions made by the District Environmental Commissions are heard in Environmental Court.⁷⁵

Act 250 is viewed with widely divergent opinion. It has been hailed by many as a visionary piece of legislation that has buffered Vermont from the ravages of sprawl that so many other states are experiencing. Some smart growth advocates feel the act has not gone far enough, and does not provide adequate incentives to encourage growth in downtowns and growth centers.⁷⁶ Not surprisingly, it has also been assailed by many critics as unnecessarily bureaucratic, expensive and time consuming, and an impediment to economic development. The statistics indicate that over the 35 years of Act 250, nearly 98% of the 600-800 projects that are reviewed each year throughout the State are approved, most with conditions.⁷⁷ Even critics of the law concede that one of the benefits of the Act 250 is that it encourages early involvement of neighbors, interested citizens, local officials in large development projects and tends to foster greater collaboration and participation. Because of the extensive review required to satisfy to the

⁷⁰ op cit, A Guide to Vermont's Land Use Law p.6

⁷¹ op cit. A Guide to Vermont's Land Use Law p.9

⁷² op cit. A Guide to Vermont's Land Use Law p.10

⁷³ op cit, A Guide to Vermont's Land Use Law p. 10

⁷⁴ op cit., A Guide to Vermont's Land Use Law p.3

⁷⁵ Natural Resources Board website www.nrb.state.vt.us

⁷⁶ Beth Humstone, personal communication

⁷⁷ op cit, A Guide to Vermont's Land Use Law p. 16

ten criteria, projects that do go through tend to be better planned and constructed, and are able to withstand periods of economic downturn.⁷⁸

Program Replication

Act 250 is a uniquely Vermont creation that grew out of a convergence of pressures, personalities and moods of the late 1960s. While Cape Cod adopted the Cape Cod Commission in 1990 with similar characteristics to Act 250, there is no other New England state that has a statutory mechanism of its scope to promote regional planning and environmentally sound development. Many states have recognized the deficiencies of town-by-town permitting without a regulatory mechanism for regional impact assessment. However, it is difficult to imagine any state overcoming the economic and political resistance that would present itself if there were a push for legislation like Act 250. Perhaps as the impacts of unplanned growth continue to incur environmental, economic and social costs in communities, people will be more willing to overcome their stubborn attachments to “home rule” and be more receptive to legislation that would add a layer of regional review to large development projects.

Program Resources

Vermont Natural Resources Board website - www.nrb.state.vt.us

Act 250 – A Guide to Vermont’s Land Use Law, State of Vermont Environmental Board, Nov 2000

Conclusion

Sprawl is jeopardizing the character of New England towns and cities. It has eroded open spaces and natural resources, raised costs of living, and it continues to threaten public health in a variety of ways. These initiatives illustrate that sprawl can be addressed through an array of means, and show that positive change can be achieved through combining state-level incentives and education. It is our hope that the report serves as a useful reference for future efforts to address sprawl in New England.

⁷⁸ op cit., A Guide to Vermont’s Land Use Law p. 5