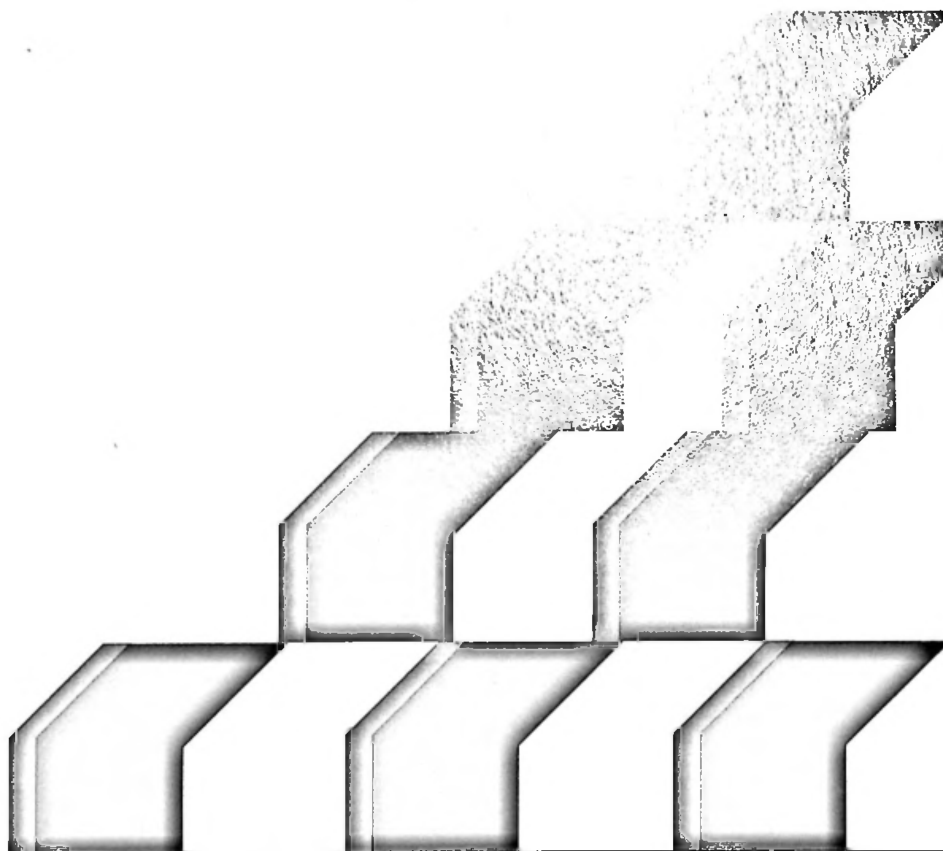
U.S. Department of Housing and Urban Development
Office of Policy Development and Research

Removing Regulatory Barriers to Affordable Housing:

How States and Localities Are Moving Ahead



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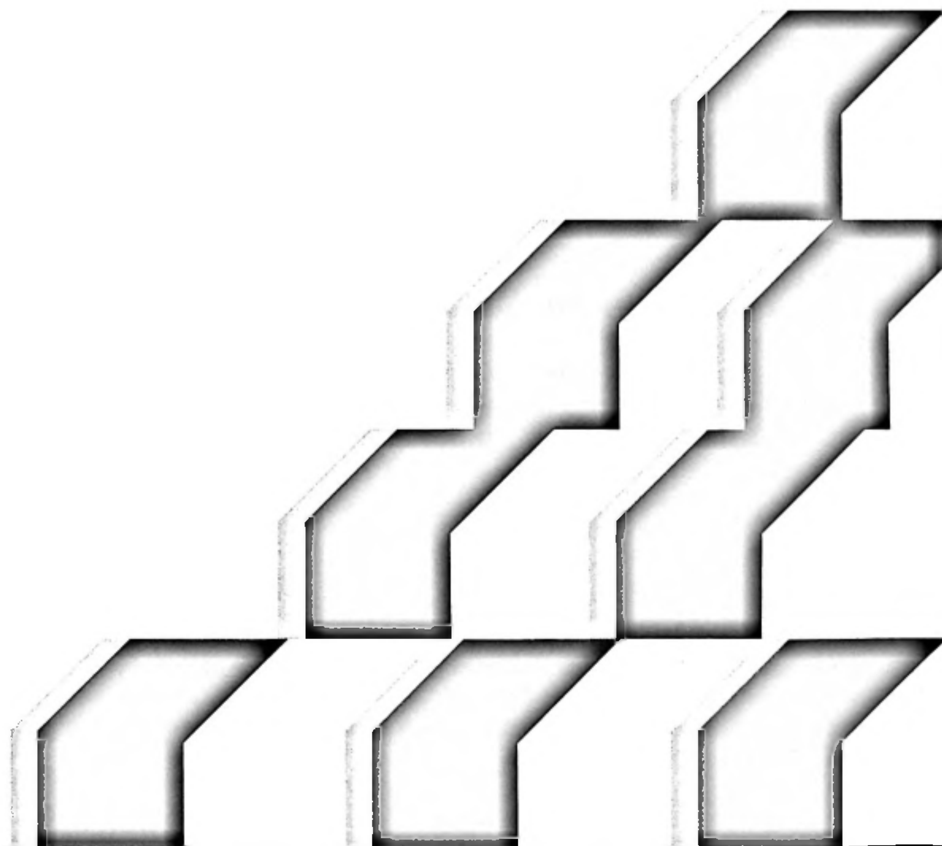

Acknowledgments

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Additional copies of this publication are available from:

Regulatory Reform for Affordable Housing Information Center
P.O. Box 6091
Rockville, MD 20850

The center provides information on efforts to revise government policies and procedures and eliminate barriers to the development of affordable housing. To learn more about the center, to have your name placed on its mailing list, or to share information on efforts your community has made toward regulatory reform, call 1–800–36–NIMBY.

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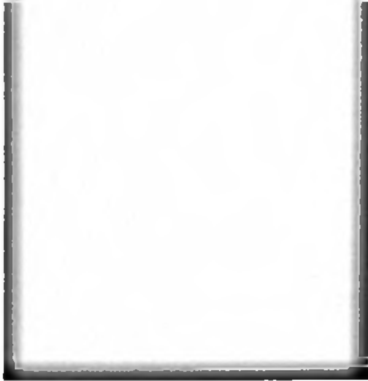

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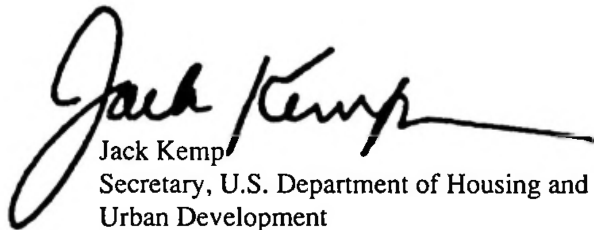
Foreword

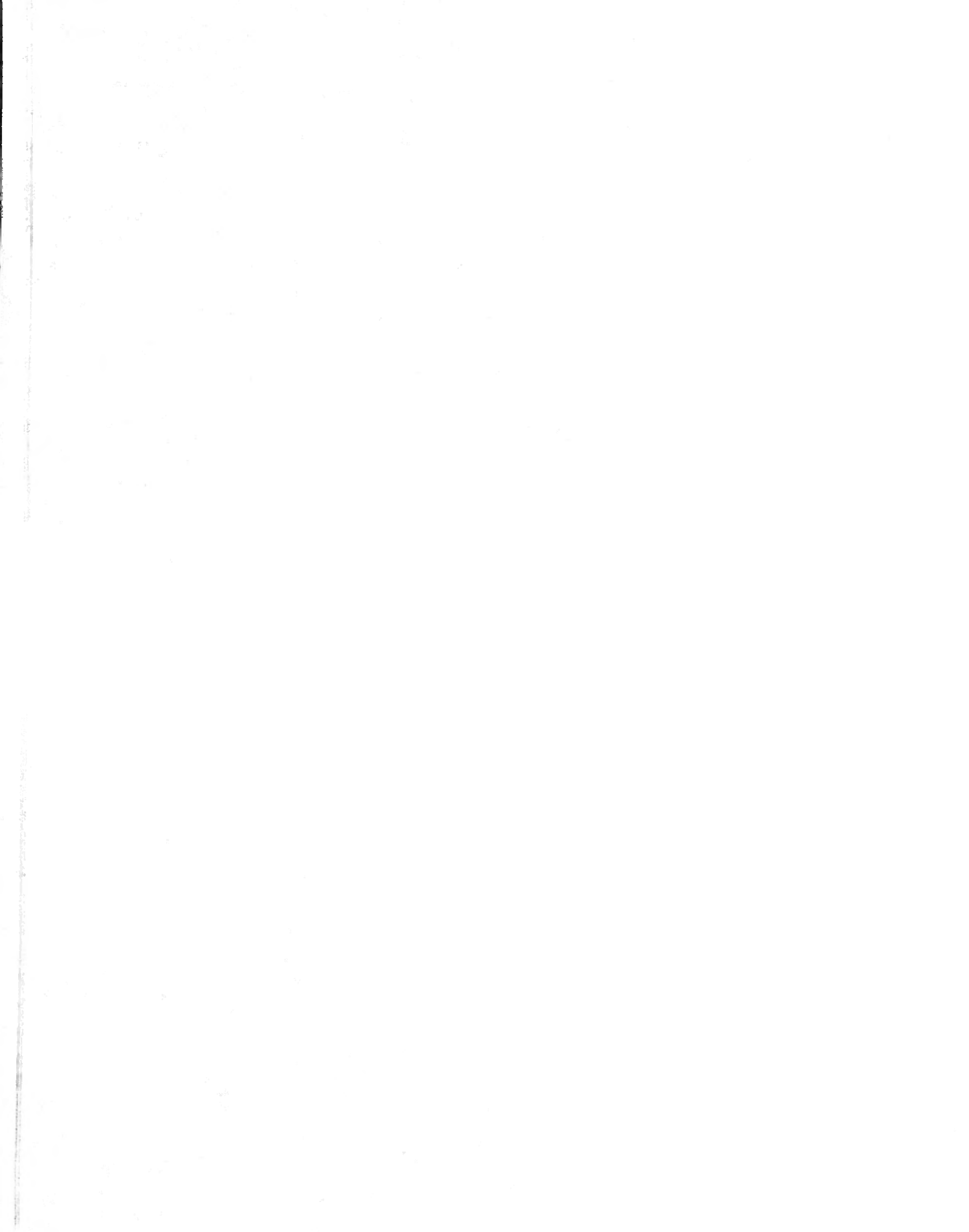
In its final report, the Advisory Commission on Regulatory Barriers to Affordable Housing found that exclusionary housing regulations, rules, and red tape increase the cost of housing by 20 to 35 percent in some regions of the Nation. Since the report's release in 1991, the U.S. Department of Housing and Urban Development (HUD) has worked to bring about swift implementation of the commission's 31 recommendations at the Federal, State, and local levels.

Among the commission's findings was the need for HUD to identify and publicize the important regulatory reform measures already being undertaken by States and localities. *Removing Regulatory Barriers to Affordable Housing: How States and Localities Are Moving Ahead* implements that recommendation. The product of months of intensive research, this publication shows that creative leadership at every level of government can succeed in clearing away some of the most egregious and destructive housing regulations. It describes—for the first time in one place—the diverse ways in which many States and communities have brought about regulatory change and expanded affordable housing and homeownership opportunities for low- and moderate-income families.

By following the progressive example of communities featured in this report, we can dramatically increase access to affordable housing all across America. My hope is that we can now begin to make housing regulations work *for* rather than *against* American families.



Jack Kemp
Secretary, U.S. Department of Housing and Urban Development



INTRODUCTION

REMOVING BARRIERS TO AFFORDABLE HOUSING:

How States and Localities Are Moving Ahead

In July 1991, the Advisory Commission on Regulatory Barriers to Affordable Housing presented its report, *"Not In My Back Yard": Removing Barriers to Affordable Housing*, to President Bush and U.S. Department of Housing and Urban Development (HUD) Secretary Kemp. Examining how burdensome development regulations have driven up housing costs, the bipartisan panel offered a bold and comprehensive blueprint for change. The commission made 31 specific recommendations for Federal, State, and local government and private action.

This followup publication reflects the potential of some of the advisory commission's recommendations. Presenting real world illustrations of what works and what can be accomplished, these profiles explore efforts by States and communities to improve the regulatory climate for affordable housing. The initiatives involve legislative, judicial, administrative, and policy changes that have had or can be expected to have long-term, demonstrable impacts.

The examples come from all parts of the country and address regulatory impediments from a variety of points of view, conditions, and needs. Despite their diversity, the approaches share three characteristics: determination, reasonableness, and responsiveness.

Models like these stand a better chance of being accepted, expanded, and applied elsewhere because of the advisory commission's work. The commission's report has been widely read by those on the front lines of State and local decisionmaking—by elected officials, code experts, developers, citizen and professional planners, lawyers, and others.

When these participants are willing to rethink and strive for balance, new options emerge. Goals that may have once seemed unconnected or mutually exclusive—such as economic growth, environmental preservation, and low-income housing development—prove to offer intersections of common concern. People are discovering ways to meet housing needs without sacrificing other goals. They have made changes to enable and encourage the housing industry to better meet the increasing demand for affordable rental and homeownership opportunities. In many places, this type of change is no longer regarded as a threat, but understood as a means to a necessary end.

How States Can Make a Difference

As the advisory commission pointed out, although most housing development regulations are enacted at the local level, there is a pivotal and growing role for State government. Where towns, cities, and counties do not exercise their authority in ways that promote affordable housing, or where State requirements add unnecessarily to housing costs, States must assume leadership in reform.

Because housing issues, as well as State and local traditions for sharing of power, vary greatly from place to place, there is no single correct response. This publication's profiles underscore the range of possibilities States have for improving their regulatory systems.

For instance, statewide land-use and growth-management planning can be used to make affordable housing an explicit goal and removal of regulatory barriers an expected means to address that goal. States can mandate that local jurisdictions plan for and assume responsibility for providing low- and moderate-income housing. Oregon is the classic example, inspiring several other States to plan for growth and affordable housing.

Hawaii, a pioneer in statewide planning, has used regulations to expedite affordable housing production and create public-private partnerships. Washington and Georgia are at the early stages of encouraging cities and counties to consider housing needs and appropriate development regulations through mandatory comprehensive planning. In Florida, growth management is being reconsidered with new emphasis on accommodating and fostering lower cost housing development. New York State's complicated, duplicative regulations have recently been reevaluated with the goal of designing a more reasonable, flexible land-development system.

Connecticut's Regional Fair Housing Compact approaches affordable housing through a process of negotiation and consensus. That State also has established a procedure for overriding exclusionary decisions and resolving conflicts between developers and localities. The preeminent example of how such a mechanism can succeed is Massachusetts' Anti-Snob Zoning Law—with more than 20,000 affordable units to its credit. Rhode Island has recently replicated the Massachusetts model.

New Jersey, in response to court rulings that require towns to assume a fair share of low- and moderate-income housing, established the Council on Affordable Housing to assign and oversee local fair shares of housing commitments, which now exceed 17,500 units. A 1991 court decision in New Hampshire may have broad impact on curtailing the powers of communities to zone against affordable housing because the ruling involves State enabling legislation that is the basis for local zoning in many States.

Statewide standards can help lower the cost of housing development. Examples are the comprehensive, preemptive building codes of Virginia and New Jersey. The latter also is moving ahead on uniform site-improvement standards for subdivisions.

To coordinate and streamline State and intergovernmental review and permitting, some States have set time limits on local land-use decisions and mandated one-stop permitting. In the area of development impact fees, States have clarified and limited the power of localities to levy fees, as well as provided fee waivers for affordable housing, as Georgia has done.

Other possibilities for State leadership involve establishing common definitions and standards for regulation of affordable alternatives like secondary units, manufactured homes, and modular housing. States can require that towns zone for such options, as California has done, or enact mandatory standards and oversight, as Michigan has done with its Mobile Home Commission. A newly created interstate compact offers the potential for eventual nationwide criteria for modular housing.

What Localities Can Do

Where the NIMBY ("not in my back yard") syndrome is ingrained, the bottom line is often that people simply do not want affordable housing in their midst. In such instances, regulatory barriers can become particularly pervasive, complex, and burdensome. Even in these places, inroads are being made in revising requirements, chiefly through changes in zoning ordinances; subdivision requirements; building codes; development impact fees; permitting and processing; environmental regulation; and restrictions on affordable options like accessory apartments, single-room-occupancy (SRO) dwellings, manufactured homes, and modular or industrialized housing.

Local governments have helped lower regulatory requirements for residential development without compromising safety or quality. The zero-lot-line concept has proved effective in Dade County, Florida,

and Bentonville, Arkansas. The cities of Fort Collins, Colorado, and Phoenix, Arizona, have experimented successfully with reducing density and easing building and subdivision restrictions. The Portland, Oregon, metropolitan area has used housing density and mix standards to increase multifamily development, decrease lot sizes, and foster overall housing affordability.

Like Orlando and Orange County, Florida, cities and counties can engage in multiple, coordinated efforts to help lower housing development costs—including systematically reviewing and revising zoning and building ordinances, and forming new coalitions. Louisville, Kentucky, and Victorville, California, have developed developer-friendly approaches that streamline procedures and reduce costs.

Localities can actively promote affordable alternatives that traditional zoning and building codes often thwart. San Diego, California, has an exemplary program that has created more than 2,000 units of highly affordable single-room-occupancy housing. Babylon, New York; Gloucester, Massachusetts; and Daly City, California, have succeeded in using accessory or secondary units to both increase the supply of affordable housing and provide homeowners with additional income. Facilitating manufactured housing on an infill basis has enabled San Pablo, California, to replace dilapidated structures with new units and provide homeownership opportunities for low-income residents.

Changes at the National Level

Accepting the role recommended by the advisory commission, HUD has undertaken new efforts to stimulate and encourage regulatory reform at the State and local levels and to strengthen the link between Federal housing assistance and removal of regulatory barriers. The centerpiece of these initiatives, proposed legislation entitled the Removal of Regulatory Barriers to Affordable Housing Act of 1992, was submitted to Congress on May 8, 1992.

The proposed legislation has several major elements. First, it would establish a new program of grants for States to develop and implement strategies for removing regulatory roadblocks. This would reinforce the significant role States must play in any successful reform effort.

Further, the legislation would amend the National Affordable Housing Act (NAHA) to require the barrier-removal component of the Comprehensive Housing Affordability Strategy (CHAS) to be subject to HUD review—just like the rest of this document required States and localities to receive certain Federal funds. In the interest of paperwork reduction, a provision in the bill would authorize a unit of local government to submit to HUD, to satisfy its CHAS requirement, the same regulatory barrier assessment it may be required to submit to the State.

Finally, the proposed measure would extend the Federal low-income housing tax credit and mortgage revenue bond programs, and would amend NAHA and the Internal Revenue Code to link these two important State-administered housing programs to the State CHAS.

In addition to these legislative proposals, HUD has acted on the advisory commission's recommendation for an expanded program of educational and technical assistance, model code development, and information dissemination to encourage State and local regulatory reform efforts. This began with the systematic distribution of more than 30,000 copies of the commission's report to Congress, State and locally elected and appointed officials, homebuilders, nonprofit personnel, and others with an interest in the affordable housing issue.

To ensure that there is centralized responsibility within HUD to oversee any further regulatory reform, the Assistant Secretary for Policy Development and Research (PD&R) was designated as HUD's Barrier-Removal Officer. Staff of the Office of PD&R, who provided technical expertise to the advisory commission, are responsible for implementing the commission's recommendations.

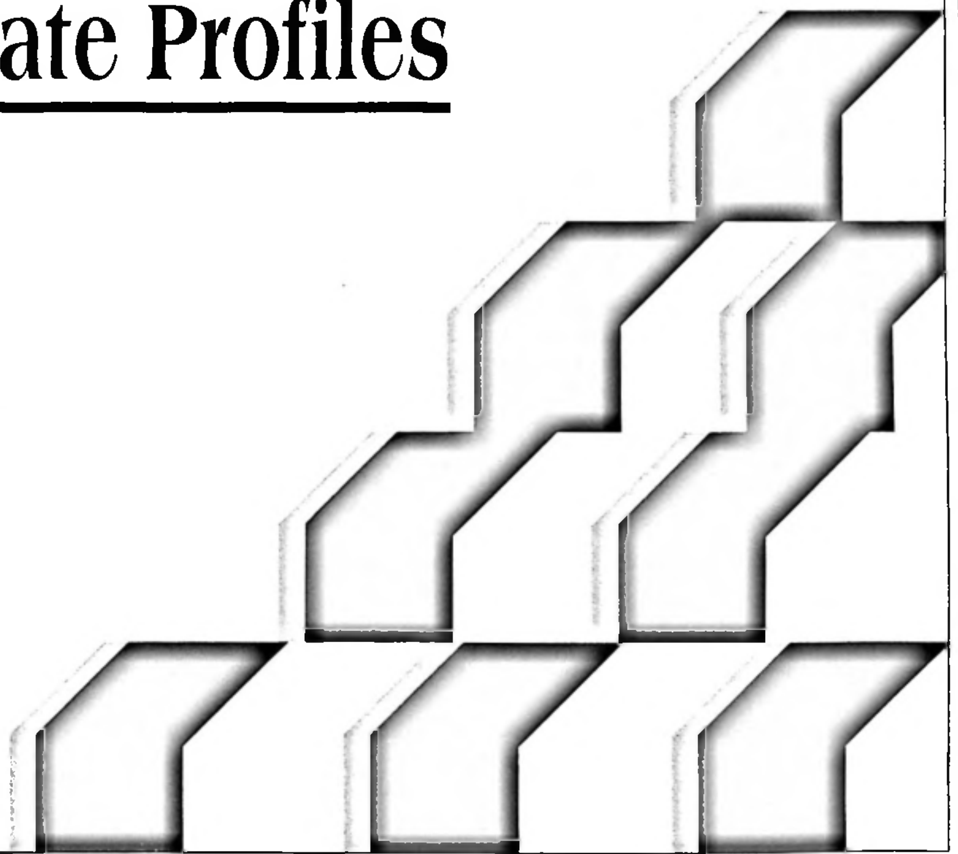
Early in 1992, HUD established the Regulatory Reform for Affordable Housing Information Center. Already providing technical assistance to State and local officials, the housing industry, and advocacy groups, the center is establishing a comprehensive

database of exemplary initiatives and relevant "how to" literature.

HUD has provided research funding to develop model land-development standards and statutes, and to assess the use of impact fees. HUD is also providing funding for the development of a self-assessment guide that States can use to identify and ameliorate regulatory barriers to affordable housing. In the meantime, the Department's recently issued manual, *Affordable Housing—Development Guidelines for State and Local Government*, offers proven cost-reduction measures and zoning changes.

With *Removing Regulatory Barriers to Affordable Housing: How States and Localities Are Moving Ahead*, HUD offers a glimpse of the varied ways in which States and communities are initiating regulatory reform—and early proof that these important first steps have had, and are having, an impact.

State Profiles



CONNECTICUT

Regional Fair Housing Compacts

Connecticut's Regional Fair Housing Compact Pilot Program was launched to test whether the need for more affordable housing could be addressed on a regional basis through a process of negotiation and consensus building. The experiment gave localities the opportunity to assess housing needs and plan cooperatively—without State mandate or court action. The two resulting pilot compacts incorporate voluntary town commitments to provide more than 9,000 units of affordable housing over a 5-year period, to be accomplished through regulatory changes and other actions.

Connecticut decided to use a carrot as well as a stick (see page 34) as it sought to remedy the problem of local resistance to affordable housing development in the late 1980s. By then almost a third of the State's towns had 1-acre minimum zoning for single-family houses, and 70 percent of communities stipulated a minimum size for such homes. Multifamily housing (except for the elderly) was not permitted in 23 percent of Connecticut localities, and more than three-fourths of towns banned accessory apartments, mobile homes, or both.

Recognizing that restrictive provisions were raising housing production costs, making affordable options impossible, and concentrating low-income housing in the State's inner cities, the legislature reviewed scores of proposed solutions in 1988. One bill passed in the wake of dozens of unsuccessful proposals, establishing the Blue Ribbon Commission on Housing. Receiving less fanfare was a provision that authorized a statewide pilot program to develop "through the process of a negotiated investment strategy . . . a regional fair housing compact to provide increased housing for low- and moderate-income families."

In addition to funding the pilot program, the statute offered financial incentive by empowering the State's Department of Housing (DOH) and the Connecticut Housing Finance Authority, when making housing grants and loans, to give higher priority to towns that joined fair housing compacts. And so the carrot became law.

As a result, in 1990 fair housing compacts pledging thousands of affordable new units took effect in the Hartford and Bridgeport metropolitan areas. Towns are now experimenting with cluster development, reduced lot sizes, secondary units, density bonuses, and relaxed subdivision standards—a cornucopia of options to facilitate lower cost housing.

Legislative Parameters

The pilot program legislation directed representatives of participating municipalities—chief executive officers or their designees—to negotiate a "compact containing regional goals for the development of adequate, affordable housing based on the need for such housing in the [region] . . . as balanced against environmental, economic, transportation, and infrastructure concerns, and the timeframes for achieving such goals." Participation was strictly voluntary, with the process to be completed within 6 months.

After reaching consensus and signing the agreement, each negotiator would bring the compact to his or her local government—the city council, board of selectmen, or town meeting—for ratification. To become binding, the agreement had to be formally adopted by *all* the towns, creating unanimous local commitment to meeting the regional needs. The legislation stated: "[A] compact shall not be included in the regional plan or plans of development until all of the legislative bodies within the planning regions have given such approval." Following adoption, towns would independently find ways to meet their agreed-upon needs.

Five of the State's 18 regional planning agencies responded to a request for proposals to join the pilot program, presenting letters of support from the local governments that would be potential participants. DOH and the State Office of Policy and Management selected two sites: the Capitol Region, encompassing Hartford and its environs, and the Greater Bridgeport Region.

The legislation called for outside mediators to help reach consensus and provided $50,000 for this purpose. A joint mediator search committee represented the State, the Capitol Region Council of Governments (CRCOG), the Greater Bridgeport Regional Planning Agency (GBRPA), and towns from both regions. Although separate mediators could have been chosen for each pilot program, the committee selected one team from Cambridge, Massachusetts, for both compacts.

Developing the Compacts

The mediators convened two working groups—one for the 29 municipalities comprising the Capitol Region, the other for the city of Bridgeport and five nearby suburbs. Both committees initiated a series of 12 bimonthly meetings in January 1989. After setting ground rules on decisionmaking and participant roles, each group addressed such concerns as defining affordable housing and fair share and the complexity of environmental and land-use constraints. By March the committees had agreed on these matters and on the responsibility to meet regional affordable housing needs. Just how to *distribute* the responsibility was the focus of the remaining work.

Capitol Region representatives, after weighing more than a dozen formulas for fair-share allocations, decided that each of their jurisdictions should try to meet 25 percent of the local affordable housing shortfall over a 5-year period. (The commitment was 12.5 percent for Hartford because of the city's history of providing low-income housing. No community's annual goal was required to exceed 35 percent of building permits issued annually over the past 5 years.) The committee set five courses of action to implement the goals, one of which was regulatory change. They specified 11 regulatory reforms to be used, including increased density, streamlined permitting, and accessory apartments.

The Greater Bridgeport group took a different approach. Its system gave each locality a certain number of credits to be earned over 5 years, based on population size. Thus, Bridgeport had a credit obligation of 1,430, while the smallest town had to accumulate 60 credits. Municipalities could earn two credits for each affordable housing initiative and one credit for each affordable unit delivered to the marketplace. The committee listed more than 50 strategies to foster affordable housing. These were then grouped into three categories of acceptable methods: production, leadership, and regulatory actions "whereby a municipality modifies its regulations and programs to encourage and expedite the creation of affordable housing."

By early June 1989, within the mandated 6-month timeframe, compacts were signed by all municipal representatives in both regions. The Capitol Region Fair Housing Compact on Affordable Housing pledged to increase the area's affordable housing stock by up to 6,421 units between 1990 and 1995. The Greater Bridgeport Affordable Housing Compact would create more than 3,000 units during the same 5-year period.

The compacts, which called on the towns to provide a leadership role and to take additional steps to meet affordable housing needs, specified each locality's responsibility. The next step was ratification, and here the legislation's requirement for unanimous approval became problematic. After the deadlines for local adoption were postponed repeatedly in both regions, the State legislature eventually reduced the approval requirement to three-fourths of the communities, then to two-thirds to enable the compacts to move ahead.

Concurrently, the State approved a provision that "no grant-in-aid loan or combination thereof shall be made to any municipality that has not approved a housing compact . . ." This referred to financial assistance from the Housing Infrastructure Fund that was established by the State for compact communities. With a $5 million set-aside, the fund provides municipalities with grants and loans for sewer, water, utilities, roadway, and other improvements required for affordable housing developments, and for planning, construction, or renovation of housing.

Results and Aftermath

As of 1992, 26 of the 29 Capitol Region municipalities and 5 of the 6 Greater Bridgeport communities have signed on. Even so, local adoption of agreements and their incorporation into regional plans do not guarantee that investments and regulatory changes on behalf of affordable housing will materialize. Implementation is left to the municipalities. The two respective regional planning organizations are charged with monitoring progress. Through annual reports and technical assistance, CRCOG and GBRPA can cajole and pressure, but they cannot compel compliance. Yet, there has been definite progress.

According to CRCOG's June 1991 report, 785 rental and 168 homeowner units for low- and moderate-income households were constructed or approved in the first year of the Capitol Region compact. Since it often takes at least 2 years to plan and build new housing, the figures are viewed as encouraging. Fourteen towns made regulatory changes during the first year. Four localities approved starter homes, cluster developments, or other small-lot single-family options. Three towns allowed second units or accessory apartments in existing homes. Wethersfield lowered its minimum-floor requirements, and Hebron revised subdivision road standards to lower infrastructure costs. Seven municipalities adopted inclusionary zoning provisions authorizing density bonuses in exchange for creation of affordable units.

Smaller and less affluent than the Hartford area, Greater Bridgeport also showed progress. According to GBRPA's first-year report, 262 affordable units had been completed by September 1991, and another 110 units were in the pipeline. All suburbs passed some type of zoning amendment in support of affordable housing. Three towns adopted provisions for accessory apartments, and one municipality created density bonus plans for affordable housing in residential and mixed-use districts. In two communities, task forces have formed to study housing issues and comprehensive zoning-code revisions.

These achievements are even more impressive in light of Connecticut's history of exclusionary zoning and strongly held local autonomy in land-use decisions. The experiment proved that diverse communities, through a concerted, cooperative process, can reach agreement and plan corrective action—without a court order or State law mandating fair shares of affordable housing.

Process itself is key, for joint assessment led to shared understanding. Participants learned that different jurisdictions have different problems and constraints, and that what works for one town may be inappropriate in another. Broadening their view of the affordability problem, suburban delegates became aware that the issue was not confined to inner cities, but affected their neighbors, town employees, and even their own children.

The State's role was critical in bringing people to the table. The legislation provided a mechanism that was flexible and sensitive to local prerogatives and concerns. It aimed at agreement on needs and goals, then left strategies to be a matter of local responsibility. The State did not mandate results or dictate regional coordination; it did not specify the nature of the negotiation process or the timing of implementing housing goals.

Also important was that the State established the Housing Infrastructure Fund. As of mid-1992, several towns in both regions have tapped the set-aside, and others are expected to do so in coming years. While a statewide fiscal crisis currently makes replication of the pilot program infeasible, officials foresee additional regional pilots as likely in future years.

The voluntary approach of the compact model in meeting regional housing needs was an effective starting point. It marks the first step for many of the compact communities in reconsidering their regulatory barriers and a real beginning to local housing policy change in Connecticut.

For More Information

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State of Connecticut
505 Hudson Street
Hartford, CT 06106
(203) 566–1715

Planning and Impact Fee Legislation

Recognizing the need to coordinate land use and development, the State of Georgia assumed a more prominent regulatory role in the late 1980s. Based on recommendations by the Growth Strategies Commission, the State legislated two important measures affecting housing. The first, the Georgia Planning Act, mandates comprehensive plans that include housing at the State, regional, and local levels. The second law, the Development Impact Fee Act, limits local latitude in levying impact fees and allows communities to waive those fees for affordable housing projects.

In 1987, Georgia Governor Joe Frank Harris appointed a 35-member Growth Strategies Commission and charged it with crafting a blueprint for future development. This was an unprecedented move in a State where localities are intensely protective of their governing prerogatives, where zoning is commonly referred to as "the Z word," and where opposition to land-use regulation is so strong that more than half of counties and more than three-quarters of cities lack zoning ordinances.

The Growth Strategies Commission made two recommendations related to affordable housing. One proposal became law as the Georgia Planning Act of 1989, instituting a process of comprehensive planning for the State, regions, and localities. The other measure, which emerged as the Development Impact Fee Act of 1990, requires jurisdictions that impose impact fees to follow specific standards and procedures, and also allows affordable housing to be exempt from such fees.

Through the two statutes, the State recognized for the first time that local land-use policies are key to addressing major regional and statewide issues like affordable housing. The laws underscored the State's intention to play a larger role in guiding development.

The Planning Act: A "Bottom-Up" Process

Although the Georgia Planning Act recognizes the importance of statewide planning and regional coordination, the legislation also respects political and historical traditions—in particular, the tenet of local autonomy in local matters. Rather than attempting to realign power, the approach begins with a sharing of information and awareness.

The law makes mandatory comprehensive planning a decidedly "bottom-up" process. Local governments take the first steps. All 530 cities and towns and 159

counties must complete comprehensive plans by September 1995 and submit these to Regional Development Centers. The centers will mediate any differences among communities, prepare regional plans, and submit regional and local plans to the State Department of Community Affairs (DCA) for review and approval. Only after all the town, county, and regional planning is accomplished will DCA, in conjunction with the Governor's office, begin to prepare a statewide plan. This last step is due to be completed in 1998.

DCA has set minimum local planning standards for housing, along with economic development, natural and historic resources, community facilities and services, and land use. For each of these five elements, there is to be (1) an inventory and assessment, (2) a statement of needs and goals for a 20-year period, and (3) an implementation strategy with a 5-year work plan of specific actions the local government will take.

In their housing elements, localities must identify the number and types of housing units required to meet the community's needs and must "consider whether there are problems (for example, over- or under-building, residential areas underserved by infrastructure and community facilities, concentrations of substandard housing, and low homeownership rates) with the local housing market that could be addressed by the local government." In tandem with the housing element, the land-use element is required to, among other things, inventory existing residential patterns and trends; estimate how much land will "accommodate projected growth in population, employment, and housing"; and set forth "regulations, incentives, and/or infrastructure the community intends to use or put in place to guide development."

The specifics are left to local discretion. DCA has the authority to demand that plans be submitted—but may not change the plans. (Municipalities and counties that fail to adopt comprehensive plans by their appointed deadlines will be ineligible for certain funds, including State water and sewer grants and HUD's Small Cities Community Development Block Grant program, operated by DCA.)

Georgia officials acknowledge that the legislation requires only rudimentary planning in support of developing affordable housing. The *process*, however, is viewed as a "ladder to the future," with the local effort being the critical first rung. It will force jurisdictions to examine, often for the first time, their housing needs and relevant land-use practices—an examination that could result in a variety of actions and policies. For example, if a suburb finds that its existing requirements for site amenities in subdivisions, minimum lot sizes, or energy conservation are unnecessarily driving up the price of home construction, the municipality might reduce the standards; if a county is at the formative stage of zoning, the planning process may lead to regulations that ensure that housing is built economically and to serve low-income residents.

Subsequently, the regional review process will encourage localities to begin to explore needs and policies from a less isolated point of view. The planning requirements also will provide housing advocates new leverage in focusing attention on their goals and gaining acceptance of them.

Impact Fees and Exemptions

By the 1980s, many communities in the metropolitan Atlanta area and other high-growth areas in Georgia were experiencing unprecedented demands to increase or improve existing infrastructure. At the same time, public funds were shrinking. Sewer moratoriums, water shortages, and unrepaired bridges became commonplace. Many local governments opted to finance some of their public facility gaps through exactions for new development. Before granting building or zoning permits, for example, officials might require contributions to the public roadway system or a set-aside of land for a park or school.

The levies were uneven from project to project and often had nothing to do with the impact that a development actually would create. In response to complaints that these practices were inequitable, arbitrary, and excessive, the Growth Strategies Commission and the Governor's staff crafted a proposal that was adopted in 1990 as the Development Impact Fee Act.

The measure establishes conditions that must be met by local governments before they may implement impact fee ordinances and charges. It sets guidelines for how the schedule of fees should be calculated, collected, spent, and, in some cases, refunded.

In the course of building consensus for this legislation—which entailed almost 2 years of work by a subcommittee of real estate developers, attorneys, lenders, and State and local officials—affordable housing became a prominent issue. Concurrently, the topic was a primary focus at DCA as the department worked on drawing up guidelines for statewide comprehensive planning. This relatively high profile for affordable housing led to a unique provision in Georgia's impact fee legislation, empowering municipalities and counties to exempt from payment of impact fees "projects that are determined to create extraordinary economic development, employment growth, or affordable housing."

Jurisdictions may give special consideration to low- and moderate-income housing development by simply stating this exemption as a policy in their comprehensive plans. The provision thus ties comprehensive planning to the structure and practice of levying impact fees. It also counteracts one of the most often noted disadvantages of impact fees—unnecessarily driving up the construction costs for developers and, in turn, homebuyers.

How the Impact Fee Law Works

Applying only to offsite improvements, the law defines an impact fee as "a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development." Municipalities and counties wishing to impose fees *must* separate the cost of building infrastructure for new developments from the cost of supporting existing development, so that a new project pays only for the expenses it generates. For example, if each proposed residential unit will need 350 gallons of sewer capacity, then a town may charge a developer for the cost of providing that capacity. Or a county could impose a fee of $100 per home for road improvements in the vicinity of a new subdivision.

The law sets forth seven eligible public facilities for which fees may be charged: water, waste water, storm water, roads, parks, public safety, and libraries. Importantly, school costs—typically a large percentage of local budgets—are not eligible. Impact fees must be accumulated separately from the general fund and spent on the category of infrastructure and in the geographical service area for which they were collected. If the money is not spent or encumbered for this purpose within 6 years, it is refunded to the developer with interest.

The act prescribes extensive requirements for a community wishing to impose impact fees. First, the jurisdiction must have in place its comprehensive plan, including a public facilities and services element that anticipates infrastructure needs, sets service levels, and designates service areas; a schedule for capital improvements; and a description of anticipated funding sources for each improvement. In addition, the locality must:

- Establish an Impact Fee Advisory Committee, of which at least 40 percent of the members represent the development, building, or real estate industries.
- Complete financial planning and fee calculation for any service area in which fees will be levied.
- Establish procedures for administrative appeals and provide for binding arbitration.
- Hold two public hearings on the impact fee ordinance and fee schedule, then vote the measure into law.

Counties and towns must stop exacting permit-by-permit offsite concessions by November 30, 1992, when the new rules take effect. Most observers believe that limitations on allowable fees and the rigorous planning requirements will dissuade local governments from imposing development impact fees. Others conjecture that the option to waive fees for affordable housing will be appealing, especially to jurisdictions actively seeking to promote growth. As of the summer of 1992, several localities had already voted to exempt affordable housing from development impact fees.

As with its comprehensive planning legislation, the State has decided on a first step and a middle ground with the Development Impact Fee Act. Striving to balance localities' needs for infrastructure funding with developers' contentions that these exactions thwart progress and are legally untenable, the statute aims to establish fair, predictable rules. The law should help avoid expensive, protracted court suits over impact fees. It offers the potential for these fees to play a clearer, positive role in housing and other development because it clarifies the purpose of such fees. That purpose is not to raise local public revenues, but to ensure that adequate public facilities for future growth are built.

For More Information

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MASSACHUSETTS

Diminishing the Force of "Snob Zoning"

Massachusetts' Anti-Snob Zoning Law has facilitated the building of tens of thousands of low- and moderate-income housing units. The measure has given developers access to a special permitting procedure at the local level, as well as to redress through a State Housing Appeals Committee (HAC) if a proposal to build affordable units is rejected in a community where less than 10 percent of the housing is affordable. Buttressed by other legislation and HAC's record of overturning local denials, the law has successfully led towns to negotiate with developers and allow exemptions to restrictive regulations.

After nearly a quarter century, the numbers attest to the success of Massachusetts' Anti-Snob Zoning Law. More than 20,000 new affordable housing units have been created through the statute's requirements and procedures; more than 90 percent of projects turned down by local officials and appealed to a State review board have ultimately been approved, and not one decision favoring a developer has been reversed by the courts. The measure has had a broad impact: it has literally changed the way Massachusetts towns and developers do business with one another.

The law, which facilitates construction of affordable housing in communities with restrictive land-use regulations, is essentially a laissez faire model. Builders retain control of the development process, deciding in which town to work and whether to seek approval through a special process or through customary procedures. Municipalities can either bend their rules to accommodate proposals (for example, allowing construction at a higher density) or determine that other considerations take precedence and expect to argue the matter before a State committee.

Since the statute operates on a case-by-case basis, it has not caused wholesale change in local zoning ordinances. Rather, it has weakened the force of these laws as regulatory barriers. Because localities know that developers seeking to build affordable housing have recourse to an appeals process, unreasonable rejection of permits is now relatively rare, and the impact of exclusionary zoning has been significantly curtailed.

Many towns have come to recognize that affordable housing does not sacrifice the physical, social, or economic fabric of the community, and that, through revised rules and negotiation, they can become exempt from legal action and gain control over future development. Although the law has not solved all housing problems, it has helped move Massachusetts forcefully toward the State's objective—to provide adequate affordable housing in *all* of its communities.

The Comprehensive Permit Process

The law evolved from recommendations made in a June 1969 report by the legislature's Committee on Urban Affairs, which attributed "an acute shortage of decent, safe low- and moderate-income housing" to zoning regulations and permit approval procedures "so protracted as to discourage all but the most determined and well-financed builders." Chapter 774 of the Acts of 1969, amending Chapter 40B of the Massachusetts General Laws, became the State's mechanism to counteract exclusionary practices. Dubbed the "Anti-Snob Zoning Law," the legislation set a goal for the State's municipalities—10 percent of the housing stock must be affordable to persons with low and moderate incomes.

The process created by the law begins when a public agency, nonprofit organization, or limited-dividend developer applies for a "comprehensive permit" to construct Federal- or State-subsidized housing. The developer submits an application to the community's zoning board of appeals (ZBA) and bypasses other entities normally involved in the permitting process such as the planning board, building department, board of health, city council, or selectmen.

The ZBA notifies other boards and departments and solicits their recommendations, but it has the sole authority to issue a comprehensive permit and thereby override any existing local requirements. The law requires the ZBA to convene a hearing within 30 days of receiving an application and render a decision within 40 days after the hearing's conclusion. The board may grant the permit as submitted, approve it with conditions, or deny the application.

If the permit is denied or granted with conditions making the project infeasible in a town where less than 10 percent of the housing is affordable, the developer may appeal to the State Housing Appeals Committee (HAC). Created by the Anti-Snob Zoning Law, this independent, five-member board is appointed by the Governor and the secretary of the Executive Office of Communities and Development (EOCD). The chair also serves as lead staff person, supported by counsel and a clerk.

HAC can uphold the local decision or overrule the ZBA and order it to issue a comprehensive permit. HAC deliberations are guided by whether a locally denied project was "consistent with local needs" or, for conditionally granted permits, whether such conditions render the "construction or operation of such housing uneconomic." For ZBA rulings based on health and safety factors or open space preservation, HAC weighs those needs against the regional and local need for low- and moderate-income housing, and whether the requirements and regulations apply equally to subsidized and unsubsidized housing.

Support for the Law's Objectives

To provide additional incentive for localities to meet their affordable housing obligations, Executive Order 215 was adopted in 1982. The measure allows withholding of State discretionary funds from communities found to be "unreasonably restrictive of new housing growth." The order directs EOCD to review local housing regulations and practices and to deny grants accordingly.

In early 1986, the Anti-Snob Zoning Law's impact was broadened by creation of the Homeownership Opportunity Program (HOP), which offered both for-profit and nonprofit developers the ability to use the comprehensive permit system to construct mixed-income ownership housing. Thus, the law expanded from the narrow realm of subsidized rental units to homeownership projects where at least 25 percent of the units would be purchased by low- and moderate-income buyers.

The Anti-Snob Zoning Law came under scrutiny in the late 1980s when the housing market was strong and some local governments envisioned administrative and planning chaos resulting from an onslaught of HOP comprehensive permit applications. The

Governor and legislature appointed a Special Commission Relative to the Implementation of Low and Moderate Housing Provisions. In April 1989, this bipartisan panel concluded a year of study and hearings. Its final report noted that 24 municipalities, mostly larger cities and towns, had met the 10-percent threshold; another 12 were at 9 percent or above. The report states that "Only 10.26 percent [of the State's 351 communities] have made a substantial investment in affordable housing. It is apparent that the bulk of the affordable housing is still being produced in the cities . . ."

Despite the shortfall in compliance, the commission believed that the law was an important force, concluding: "Most everyone agreed that without Chapter 774 there would be no affordable housing production in the Commonwealth and that efforts to weaken the law should be discouraged." The group recommended no major alterations in the statute, only "changes to increase the stock of affordable housing in all communities . . . while being more responsive to local concerns."

Chief among these changes is the Local Initiative Program, which addresses a major constraint of the Anti-Snob Zoning Law—the interpretation of subsidy as *financial* subsidy only. Because of this, communities had little incentive to support or undertake housing initiatives that did not involve direct Federal or State funding, but that in all other significant respects would reflect the intent of the statute.

The Local Initiative Program provides for a State subsidy in the form of technical assistance for housing developed through local government initiative. The program supports projects built through conventional zoning procedures as well as through the Anti-Snob Zoning Law process. Unlike typical housing subsidy programs, decisions involving design, financing, and construction are left to local officials, with EOCD overseeing only basic aspects such as the population to be served and restrictions to ensure long-term affordability. The low- and moderate-income units constructed through the program count toward a town's 10-percent goal.

A Look at the Results

During the Anti-Snob Zoning Law's first 17 years (1969 to 1986), 458 comprehensive permit applications were submitted to local ZBAs. The boards granted more than half (238), which indicates that the State-established local process leads to negotiation and compromise. Although each case's approval process would have varied, the law provided a mechanism for acknowledging and responding to housing needs. Often, it gave officials a way to work around not only restrictive ordinances but local politics.

Of the 220 unapproved comprehensive permits (131 denied outright and 89 granted with conditions), about 90 percent were appealed to HAC. Twenty were later dropped. Of the remaining 180 cases, HAC upheld 10 local ZBA denials and found in favor of the developer in 70 projects. Another 100 appeals resulted in issued permits through HAC-approved settlement—emphasizing the committee's role in leading opposing parties to mediation and compromises. Of 30 decisions favoring developers that were appealed to the courts, not one was overturned.

The 458 comprehensive permit applications between 1969 and 1986 proposed 33,884 housing units. By 1987, 12,036 were completed and occupied, 2,570 were in construction, and 6,017 were in the planning stage, totaling more than 20,600.

By 1991, HAC had heard more than 300 appeals, averaging about a dozen cases annually in recent years. Reversal of local permit denials and conditions has continued to be the most common outcome, with only 4 ZBA rulings upheld among the 27 appeals heard in 1990 and 1991.

Meanwhile, the Local Initiative Program is proving to be a positive influence, encouraging municipalities and builders to work together toward achieving the 10-percent goal—even in the difficult building climate of the early 1990s. In the program's first 15 months, EOCD approved 23 proposals, and 6 developments were being constructed.

Because the Anti-Snob Zoning Law partially preempts authority in a State where community autonomy is a strong tradition, the statute has been controversial. Its survival and positive impact can be attributed to the fact that the approach stops short of total State control. Indeed, the State's intervention was designed to leave as much choice as possible at the local level and still address the problem of insufficient affordable housing. As the Committee on Urban Affairs noted in 1969, "The measure provides the least interference with the power of a community to plan for its own future in accommodating the housing crisis which we face."

Once unique among State legislation to remedy local exclusionary provisions, the law recently was replicated in Rhode Island (see page 41) and served as the impetus for Connecticut's 1990 Affordable Housing Appeals Procedure (see page 34). Other States are studying how they might adopt a similar measure. The reason for the imitation is clear—time and experience have proven that the approach can make a difference.

For More Information

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MICHIGAN

Overseeing the Resource of Manufactured Housing

Challenged by exclusionary zoning practices, a scarcity of sites for manufactured housing, and consumer complaints, the State legislature created the Michigan Mobile Home Commission. The commission, which has authority to review and approve local zoning ordinances that regulate manufactured home parks, has developed preemptive standards for parks, as well as rules for all business practices involving manufactured housing. Working with both the industry and consumers, it has helped reduce local regulatory impediments to locating manufactured homes and enhanced the acceptance of this housing as a livable and affordable homeownership option.

In 1976, the Michigan legislature took a unique step to protect manufactured housing as a viable, economical alternative by establishing a statewide commission to oversee three aspects of this housing: availability, affordability, and quality. The Mobile Home Commission has preemptive authority over standards for leased-land or rental communities—familiarly known as mobile home parks—and governs the business practices of all manufactured home retailers, installers, and repairers.

Notwithstanding its regulatory responsibilities, the commission has assumed a cooperative rather than adversarial role with the manufactured housing industry. The collaborative spirit emanates from the need for such housing in a State where residents have strong preferences for both homeownership and detached single-family residences. More than 10,000 manufactured units are purchased annually—ranking Michigan seventh in the United States (after California and 5 southern States) in manufactured home sales. The popularity of this type of housing is in part due to the efforts of the Mobile Home Commission.

Establishing the Commission

As in the rest of the Nation, escalating housing costs made affordability a prominent issue in Michigan in the late 1970s. More and more of the State's residents, particularly young couples and retirees, began to turn from site-built to manufactured housing as a homeownership option. The number of manufactured units in Michigan increased by 95 percent between 1970

and 1980, while the overall housing supply grew by only 20 percent. The majority of these dwellings were placed in mobile home parks, typically situated on the fringes of built-up areas and along highways.

But with the growth of manufactured home sales came a shortage of spaces at rental communities, which in turn led to rapid rent increases at existing mobile home parks. Meanwhile, zoning provisions restricted park locations or created requirements that made their development prohibitively expensive; local laws also discriminated against placing manufactured homes on individual lots in existing neighborhoods. With lingering visions of auto-towed camping coaches and colonies of dilapidated trailers, government officials and the public continued to harbor reservations about this form of housing.

In response to these problems and a proliferation of consumer complaints regarding business practices, Michigan passed the Mobile Home Commission Act. This legislation established an independent, 11-member body operating through the State's Department of Commerce. Appointed by the Governor, the commission members represent a variety of interest groups involved in the availability, siting, and management of manufactured housing. They include housing manufacturers and retailers, owners and residents of small and large rental communities, lenders, organized labor, and local government.

The legislature charged the commission with establishing uniform policy relating to all phases of the manufactured housing business—providing standards for the industry and protection for the consumer. Among other responsibilities, the board was to determine the reasonableness of manufactured home ordinances proposed or adopted by local governments and planning bodies.

The commission's original purview encompassed both individually sited homes and rental communities. A decade later, revised legislation reiterated that "a local government ordinance shall not be designed as exclusionary to mobile homes generally whether the mobile homes are located inside or outside of mobile home parks or seasonal mobile home parks." However, the new statute limited the commission's authority over local regulations to parks only, "unless the standard relates to the business, sales, and service practices . . ."

In addition to legislation creating the commission, Michigan court cases strengthened the rights of manufactured homeowners in the late 1970s and early 1980s. Of particular importance was a State supreme court decision, *Robinson Township* v. *Knoll*, which found that a municipality could not exclude manufactured homes from residentially zoned districts, although it could apply reasonable standards for housing compatibility. In response to the verdict, the Michigan Township Association revised its model zoning ordinance for siting housing on individual lots by applying uniform standards to all residences, not just manufactured homes. Numerous towns have since adopted this model.

The Commission's Responsibilities

The Mobile Home Commission's rules address a broad range of construction and management matters in rental communities, including home spacing requirements, construction permits, safety measures, and site standards for roads, utilities, open space, and recreation facilities. All parks are initially required to be licensed after construction, then periodically reinspected and recertified for compliance with the standards of the commission and the Michigan Department of Public Health. Mobile Home Commission rules also govern the manufactured home business through the licensing of retailers, installers, and repairers and have established a process for handling consumer complaints.

Since the mid-1980s, the commission has had the power to bring punitive action for violation of the Mobile Home Act or its code, rescind certain transactions that breach its code, and recover damages. If the commission determines a violation, it may impose penalties, including censure; probation; limitation, suspension, revocation, or denial of a license; and a civil fine of up to $10,000. Sanctions and fines have been imposed only in a few instances—but the possibility of punitive action is credited with a positive impact on compliance.

Of particular importance to regulatory reform is the commission's authority to determine the reasonableness of local ordinances. The statewide standards can only be supplanted by more stringent local standards if the proposed local provisions are clearly *not exclusionary*. A community wishing to pass a higher standard must submit its proposed law, accompanied by a written justification, to the Manufactured Housing Division of the Department of Commerce. Serving as the commission's staff, the division reviews the proposal, provides the community with an advisory analysis of its legality, and dockets the ordinance for formal commission consideration.

The review procedure has served to reduce local barriers to developing new manufactured home parks—such as excessive site planning and construction requirements—by ensuring that local ordinances are evaluated against uniform criteria established by the commission. The effect has been to make construction of parks more feasible and diminish possibilities for discriminating against parks. Moreover, local ordinances not approved by the commission are considered void, which entitles developers to bypass the local process and seek approval of their plans directly from the commission.

Progress for Manufactured Housing

After the passage of the 1976 legislation, the Mobile Home Commission experienced a measure of suspicion and resistance from the manufactured housing sector. Some industry members were averse to regulation because of concerns about individual property rights. This initial opposition was overcome by the commission's close work with the industry and other key players over a period of 2 1/2 years to develop rules that would be fair to the industry, local governments, and the public. For the most part, it has not been the manufactured housing industry that has perceived the commission as an adversary, but rather local residents and officials resisting the development of new rental communities.

Annual sales of new manufactured homes in Michigan nearly doubled between 1980 and 1989 (from 5,293 to 10,054), and the number of licensed sites for locating manufactured homes in rental communities has increased dramatically. Observers attribute this growth to a number of factors, including:

- Increased consumer confidence in manufactured housing as a result of the Michigan Mobile Home Commission's standards and powers.
- The commission's successful education and awareness programs to reduce community opposition to manufactured homes and parks.
- Significant advances in product design that have helped overcome preconceptions about manufactured housing.

Government officials have learned to think about manufactured home parks positively, as not only residential neighborhoods for homeowners, but also as businesses for park owners and managers. The parks pay specific taxes and utility fees at the local level and provide the State with revenue through business tax payments. Manufactured housing producers located in Michigan also contribute by employing residents and paying taxes.

Five years ago the Michigan Department of Commerce established a Manufactured Housing Task Force to explore the potential for this type of housing to meet the needs of Michigan citizens and contribute to the State's economic development. The task force identified barriers affecting the placement of manufactured homes, consumer acceptance, and the viability of the industry. The task force's 1989 report has provided a blueprint for action for both the Department of Commerce and the Mobile Home Commission. Numerous recommendations have already been adopted, and others are being explored.

As of 1989, Michigan boasted a 73-percent homeownership rate, the second highest in the Nation. Among these households are tens of thousands of owners of manufactured homes. The manufactured unit located in a mobile home park has become a starter home for young families, as well as an affordable homeownership alternative for older people living on fixed incomes. The homes have proved to be good investments: according to recent research by the University of Michigan, residences in rental communities appreciate in value over time.

The preemptive role of the Michigan Mobile Home Commission has served to further an affordable option that provides both housing and homeownership opportunities to a population that would otherwise have to defer or forfeit the American dream. Statewide standards have combined with market pressures to improve the livability of these communities and the acceptance of manufactured housing throughout Michigan.

For More Information

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Council on Affordable Housing

The Council on Affordable Housing (COAH) was created in 1985 as a legislative response to decisions by the New Jersey Supreme Court, which found that municipalities are constitutionally obligated to assume their fair share of a region's need for low- and moderate-income housing. An alternative to court action, the COAH process offers localities the option to develop COAH-approved housing plans. The 136 municipalities now participating have created the potential for the development of more than 17,500 new and rehabilitated affordable units, and additional local plans under review could add another 14,000 units.

The Council on Affordable Housing (COAH) has become an important mechanism for increasing and dispersing affordable housing in New Jersey. Encouraging municipalities to provide a mix of housing types, COAH has opened opportunities for low- and moderate-income housing in suburban and rural communities, as well as cities. Through a voluntary planning process, scores of localities are taking more deliberate and realistic steps to meet their affordable housing obligations. Local plans approved or under review by COAH commit New Jersey communities to providing more than 31,000 new affordable units.

Court action filed by civil rights organizations pointing to racial and class discrimination through large-lot zoning laws and denial of building permits for high-density housing created the impetus for COAH. In a 1975 landmark case involving the township of Mount Laurel, the New Jersey Supreme Court ruled that the State constitution's general welfare provision is violated by municipalities that exclude housing for low- and moderate-income individuals. It also ruled that localities must provide their fair share of the present and future regional need for such housing. This ruling established what became known as the "Mount Laurel doctrine."

A subsequent ruling in 1983, referred to as Mount Laurel II, strengthened and expanded the doctrine by reaffirming the initial decision and applying it to every community in New Jersey. The court established a methodology to calculate a municipality's fair share, based on such factors as population, housing conditions, jobs, median income, and designated growth

areas. An obligation was then assigned to all cities and towns, which were then expected to modify their zoning laws to accommodate the housing requirements. To implement the decision, the court approved the "builder's remedy," which allowed developers to construct four market rate units for each Mount Laurel unit.

The mandate for local governments to reform exclusionary practices drew predictable complaints in a State where the tradition of municipal autonomy was strong and where NIMBY regulations had become ingrained. For example, several towns argued that higher densities would triple their populations in a few years. Nevertheless, a 3-judge panel established to hear developer-municipality disputes proceeded to order the construction of nearly 23,000 affordable units between 1983 and 1985.

The Legislative Solution: COAH

The State legislature responded to local opposition and the problem of lengthy and costly litigation by enacting the Fair Housing Act of 1985. This legislation transferred responsibility for implementing the Mount Laurel doctrine from the judicial arena to a new agency of the executive branch. Concurrent with the bill's passage, the Governor placed a 1-year moratorium on implementing any court decision that had awarded a builder's remedy.

The legislation had three main provisions. First, it created COAH, which is empowered to define the regional need for affordable housing, develop guidelines for municipalities to determine their fair share, and review local housing plans. The nine-member bipartisan council, appointed by the Governor with approval of the State senate, is selected to represent various interests, such as builders, local government, low-income households, and the public. The council operates within the Department of Community Affairs (DCA), but maintains its autonomy.

Second, the legislation established the regional contribution agreement (RCA), whereby a locality may transfer up to 50 percent of its fair-share housing obligation to another municipality willing to accept affordable housing. Finally, the act appropriated funds to help finance construction of affordable housing.

A city or town electing to participate in the COAH process files a housing plan with COAH and thereby is protected from the possibility of a builder's remedy. If a developer sues, jurisdiction is transferred to COAH, where the review process is set into motion. (Courts retain jurisdiction over development disputes that arise in communities that have chosen not to be covered by COAH rules.)

A community's housing plan must be made available for local public review. If citizens or boards have valid objections to the plan, a 60-day mediation period ensues. COAH can then either grant or deny "substantive certification," a declaration that the plan satisfies its affordable housing obligation. COAH-certified plans enjoy presumption of validity against allegations of exclusionary zoning. If mediation fails, the matter is transferred to the Office of Administrative Law for a decision and then returned to COAH for official approval.

The COAH process provides a locality with flexibility to respond to its specific affordable housing needs. Municipalities can address those needs in several ways, including:

- Granting density bonuses to developers in exchange for building affordable housing.
- Collecting development fees on residential and nonresidential projects to subsidize affordable housing.
- Rehabilitating substandard units.
- Subsidizing specific developments of low- and moderate-income housing to minimize or eliminate the number of permitted market value units.
- Transferring a portion of its obligation to another municipality through an RCA.
- Zoning vacant land for future residential use.

In assigning fair-share goals, COAH may grant credits for existing housing that meets certain criteria, such as building costs and occupancy by income-eligible residents. In addition, adjustments in the precredited need may be made for unique circumstances, such as lack of vacant land.

Council staff monitor and track the progress of each municipality's certified housing plan. There is a reporting schedule for each city and town, and localities must report any changes in their plans or their inability to comply. COAH works with DCA and the New Jersey Housing and Mortgage Finance Agency to verify that affordability controls are in place. Two basic requirements are that units must be occupied by, and remain affordable to, income-eligible households. Some municipalities instituted their own programs to oversee these controls; others have worked through DCA's Affordable Housing Management Service. These programs market units, determine applicant eligibility, maintain waiting lists, process applications, and handle resales.

COAH is revising its rules and housing-obligation numbers, originally estimated for a 6-year period from 1987 to 1993. Using 1990 Census data and the newly adopted State Plan, the council will set targets for 6 years beginning in mid-1993. Municipalities will then need to petition COAH for certification of their housing plans for that period.

COAH's Impact

As of July 1992, 136 local plans were certified, accounting for nearly one-fourth of New Jersey's 567 municipalities. The plans commit these localities to providing 17,568 affordable units of rehabilitated or newly constructed housing. Plans involving about 14,000 units in another 3 dozen towns are under review. Meanwhile, the courts have mandated nearly 30,000 additional units in about 80 municipalities under their jurisdictions. Thus, the process has created the potential for approximately 60,000 affordable units.

Although the total falls short of COAH's ambitious original goal of creating 145,000 units by 1993, the process is credited with abating exclusionary zoning. Many suburbs now provide housing opportunities that were previously unavailable to low- and moderate-income people. By assigning a local obligation that considers such variables as a region's growth and employment, COAH is dispersing affordable housing, as well as providing new opportunities for choice and mobility.

The threat of being sued by a developer serves as an incentive for towns to participate. However, because housing development is closely tied to the economy, recessionary times can mitigate that threat; all types of housing construction have witnessed a dramatic decline in New Jersey. Nonetheless, because of the Mount Laurel doctrine, developers can build at a higher density, and this has served as a catalyst for some projects that include affordable units to move forward, even in difficult economic times.

The COAH process enables a municipality, rather than the courts, to maintain control over its housing plans and zoning ordinances. The community determines the sites for its affordable housing and provides input into the density and type of housing on those sites. A municipality can choose to rehabilitate its existing stock, rely on private developers or nonprofit organizations to build new housing, or transfer part of its obligation to another locality. Almost 25 suburbs have opted for this last alternative, fulfilling their affordable housing obligations by funding development or rehabilitation of more than 3,200 homes outside their borders.

Another benefit COAH offers is using mediation instead of litigation to resolve disputes, thus reducing uncertainty, delay, and cost for government and developers alike. Also, COAH certification of housing plans gives municipalities priority access to funding through DCA's Balanced Housing programs and the collection of development fees to help implement plans.

The COAH option has proven to be a workable and acceptable mechanism for local governments, housing advocates, and developers. With its voluntary approach, COAH will continue to provide a framework of specific steps and guidelines that New Jersey communities can follow to develop adequate affordable housing opportunities.

For More Information

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Statewide Planning and Affordable Housing

Recognized as the Nation's preeminent example of statewide planning, Oregon's growth-guiding legislation has proved to be a mechanism to foster affordable housing. The law requires localities to prepare comprehensive plans that identify vacant land available for development, estimate what will be needed to meet future needs in housing and other areas, and allocate and zone to meet projected needs. Together with statutes that provide for settling land-use disputes and streamlining local permitting procedures, the Statewide Planning Program is helping Oregon developers create lower cost housing.

Modified and strengthened over the years—and enduring considerable early criticism, fears, and aggressive repeal attempts—Oregon's planning legislation is widely acknowledged as the Nation's most ambitious and effective State model. It has been lauded by conservationists, lawyers, planners, politicians, academicians, and the media for its success in preserving farmland, forests, coastal areas, and other natural resources vital to Oregon's quality of life and economy.

Praise also comes from the real estate development community. Indeed, the Home Builders Association of Metropolitan Portland wrote in an August 1991 letter to U.S. Department of Housing and Urban Development Secretary Jack Kemp: "Land-use regulation can, in fact, be a powerful force to reduce housing costs and red tape. In Oregon, it has done just that."

Although environmental concerns prompted creation of the Statewide Planning Program, the statute also has served the cause of affordable housing. Rather than sounding a no-growth or slow-growth theme, the program emphasizes responsiveness to future expansion. Indeed, the law contains no policies to restrict growth, but rather mandates that cities and counties plan for development.

Oregon requires local jurisdictions to prepare plans that identify land for growth and provide housing opportunities for people of all income levels through a full range of housing alternatives. Zoning ordinances and other policies must reflect State-approved local

plans. Along with a process to settle land-use disputes and laws that speed local permit approvals, Oregon's actions are reducing uncertainty and delay in housing development and contributing to affordable trends such as smaller sized lots. As a result, the State is enjoying continued growth—directed growth—that accommodates natural resource protection *and* housing affordability.

Charting Oregon's Future

With enabling legislation as early as 1919 allowing local governments to plan and zone within their boundaries, some Oregon communities enacted well-conceived policies and laws, others formulated ineffective or inappropriate ones, while still others had none at all. Coordination among jurisdictions was minimal. Then, in the early 1970s, people moved into the State at an unprecedented rate, and Oregon began to witness the early signs of urban sprawl and environmental degradation. This led the legislature to pass the Oregon Land Use Act in October 1973 and establish the Statewide Planning Program.

Requiring all of Oregon's 241 cities and 36 counties to adopt comprehensive plans and land-use regulations, the statute specified concerns that must be addressed, standards for local plans and ordinances, and a review process to ensure those standards are met. While this means that the State asserts greater authority in an area that has traditionally been a local province, the State also gave over some of its customary powers by pledging that the programs of State agencies would conform to approved local comprehensive plans.

A local plan has two parts. The first portion presents background information and data relating to 19 mandatory planning goals, 1 of which is housing. The second part, the policy element, is adopted by local ordinance and has the force of law. It establishes a community's long-range objectives and the methods whereby it intends to achieve them. A jurisdiction must also adopt appropriate "implementing measures," which typically include its zoning and subdivision ordinances, capital improvement programs, and tax policies.

State approval of local plans and ordinances rests with the Land Conservation and Development Commission (LCDC). Created by the Statewide Planning Program, this seven-member nonsalaried board is staffed by the Department of Land Conservation and Development (DLCD). A city or county submits its locally adopted comprehensive plan to DLCD, which reviews the document, solicits comments from State agencies and interest groups, and makes recommendations to LCDC. After a public hearing in Salem, the commission votes to approve or deny the jurisdiction's submission.

After LCDC approval, a comprehensive plan is said to be "acknowledged" and becomes the locality's controlling document for land use. Once a plan is acknowledged, the city or county need only consider its own standards in making land-use decisions, as the statewide goals are presumed to be embodied in the plan. Required to formally review their plans and regulations every 4 to 10 years to ensure continuing consistency, localities may make amendments at any time, pursuant to State approval.

Plans That Direct Housing Development

Goal 10 requires local plans "to provide for the housing needs of citizens of the State." It stipulates: "Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of housing units at price ranges and rent levels that are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type, and density."

The regulations define as buildable those "lands in urban and urbanizable areas that are suitable, available, and necessary for residential uses." Other statutory provisions explicitly prohibit local comprehensive plans from discriminating against needed housing *types*. In projecting future needs, towns and counties must account for a variety of appropriate housing alternatives—including multifamily and publicly assisted housing, mobile home parks, and manufactured units—and plan and zone accordingly.

Housing is inextricably tied to Goal 14, the urbanization goal. "To provide for an orderly and efficient transition from rural to urban land use," Goal 14 puts into action Oregon's main policy instrument for dissuading sprawl, the Urban Growth Boundary, or UGB. Each city, in cooperation with adjacent counties and relevant special districts (such as fire and water), is required to establish in its comprehensive plan a UGB to identify "urbanizable land." The need for housing is one of seven factors to be considered in drawing this boundary.

A UGB typically encompasses a ring of land just beyond the city limits and provides a 20-year supply of vacant land for development. (Rural land beyond the perimeter will be used primarily for farming, forestry, and very low-density housing.) New housing and other projects are to occur within the UGB border; roadways and sewer and water lines will be constructed, with the unincorporated areas likely being annexed by the city. Thus government officials, developers, financial institutions, residents, and other property owners know exactly where growth is expected to take place.

Enhancing and Supporting Goal 10

Goal 10 faced its first legal challenge in 1978 in an appeal that concerned Durham, a community of 237 acres and 250 residents in the fast-growing Portland metropolitan area. The town's comprehensive plan established minimum lot-size requirements of 8,000 and 15,000 square feet for single-family homes and 4,000 square feet per unit for duplexes and multifamily housing. In 1977 Durham adopted an amendment making the minimum single-family lot size 15,000 square feet townwide, eliminating the smaller option, and doubled the minimum for duplexes and multifamily lots to 8,000 square feet per unit.

Contending that the amendment was inconsistent with Goal 10, 18 Durham property owners appealed to LCDC. The commission found in their favor, stating that the revised ordinance "tightens area restrictions and raises the minimum cost of new housing, in a town where area restrictions were extremely tight to start with. It frustrates flexibility in housing types and promotes economic and social homogeneity."

LCDC's precedent-setting decision and order reiterated that local regulations must address the needs of the full spectrum of future residents. Communities must provide opportunities for a fair share of regional housing needs and "are not going to be able to pass the housing buck." In sum, Goal 10 can and will be used to remedy local actions that clearly thwart State affordable housing objectives.

To expedite land-use litigation and frame decisions explicitly within the context of the Statewide Planning Program, Oregon established the Land Use Board of Appeals (LUBA) in 1979. This independent tribunal rules on local zoning disputes. Its decisions may be appealed to the State Court of Appeals, then to the Oregon Supreme Court.

In addition to standing behind Goal 10, the State has provided support to developers by speeding up local permitting. Legislation enacted in 1983 requires cities and counties to take final action, including any local appeals, on applications for building approvals or zoning changes within 120 days. If a decision is not rendered in that time, the application is deemed approved. Another statute calls for consolidation of permit processing, so that most developments receive their planning, sanitation, and building permits at one local office. Also, Oregon does not require environmental impact statements that might entail a burdensome review process.

Looking Back on Two Decades

Oregon's planning program is often referred to as "a partnership between State and local governments." The intent, and the effect, of the law were not to dictate a statewide master plan. Rather, there are 277 highly individualized, State-approved plans that encompass all of Oregon. This accomplishment—where all city and county governments adopted comprehensive plans and zoning regulations, submitted them to the State, completed the review process, and became acknowledged—took 13 years.

Experience has shown the UGB concept to be a highly workable tool. UGBs create a decisive system, making it clear to all involved where growth will occur. The concept has enabled communities to

realistically plan expansions in services and infrastructure to support future housing needs. It has provided, in areas beyond traditional city limits, predictability for land-use changes and development.

Flexibility has been an important aspect of the Oregon model. Local plans are amended an average of a dozen times per year, often to accommodate growth that occurs more rapidly than anticipated. Between 1987 and 1990, 52 proposals to expand UGBs were adopted locally and accepted by the State. However, most cities have found that their original growth boundaries, by now a decade or so old, continue to be adequate, offering enough land to satisfy housing and other development needs to the year 2010.

Although the law does not require developing at higher densities within UGBs, that has been the logical tack taken by many communities and builders in striving to meet affordable housing needs. Officials note that average lot sizes in urban areas have decreased significantly and that blatant exclusionary zoning has virtually disappeared. The planning requirements have helped limit sprawl *and* keep housing costs down, although observers acknowledge inflationary effects on land prices just outside UGBs.

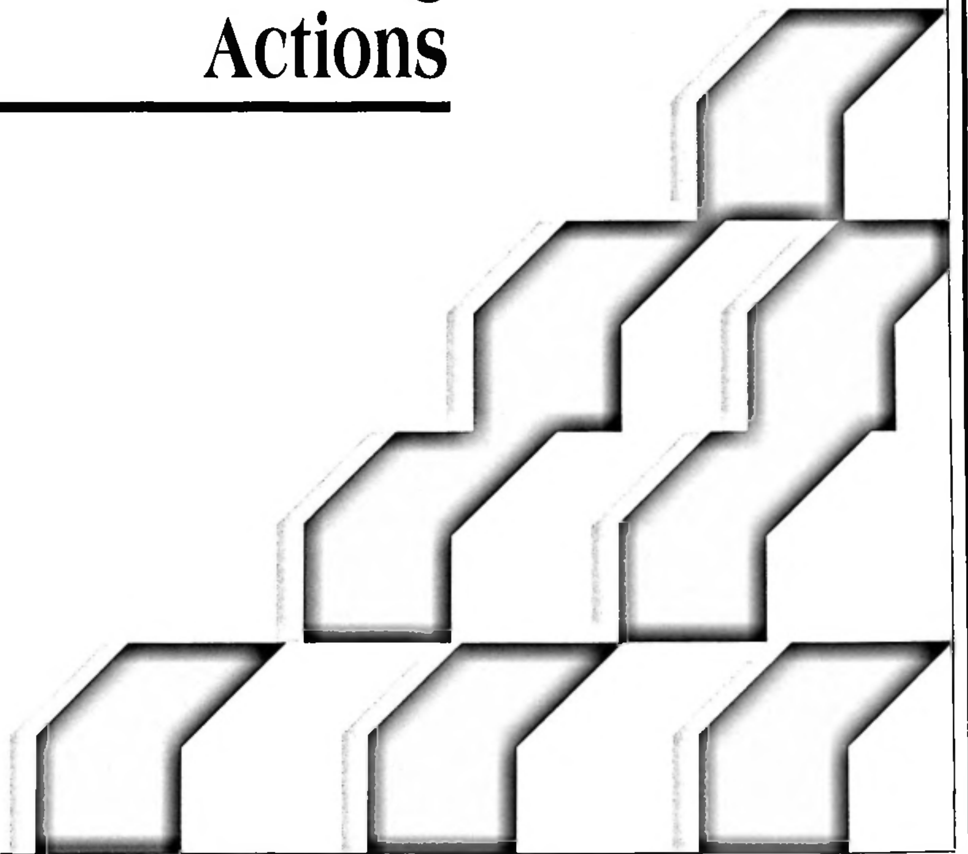
Actions complementing the Statewide Planning Program also have proven effective. LUBA has reduced the time needed to resolve land-use cases. Receiving about 200 appeals per year, LUBA acts on a typical appeal in about 100 days, twice as fast as the old system. Similarly, the requirement for cities and counties to make decisions within 120 days has dramatically reduced the time for permit approval.

Oregon has continued to grow, its population increasing at about twice the rate of the national average. But neither livability nor housing affordability is viewed as falling victim to expansion. Although serendipity and economic conditions have played a role in that accomplishment, it also is attributable to the State's proactive stance in establishing a realistic, enterprising framework for future development.

For More Information

Department of Land Conservation and Development
State of Oregon
1175 Court Street NE.
Salem, OR 97310
(503) 373–0050

Other Promising Actions



California: Embarking on Regulatory Reform

Nowhere have antigrowth sentiments created more fervor or greater impact than in the State of California. Voters sent the message in referendum after referendum during the past decade, and local officials responded with a variety of actions to slow or thwart development, including new affordable housing.

To counteract local resistance, the State enacted in the 1980s and early 1990s a variety of statutes intended to preempt local regulatory barriers to affordable housing options. The laws establish State standards for secondary units attached to, or in the same lot as, existing single-family units; prohibit cities and counties from excluding from single-family lots manufactured homes built to HUD standards and limit imposing additional architectural requirements or permit review for such housing; allow mobile home parks in all residentially zoned areas; and require communities to grant various incentives, including density bonuses, to developers who construct certain percentages of units for low- or very low-income households or the elderly.

The most comprehensive attack on regulatory barriers has been through a State law that requires all cities and counties to adopt a housing element as part of their general plans. First enacted in 1969 and significantly revised in 1980, the law requires, among other things, that local governments identify and reform "governmental constraints" and other barriers to the development of housing.

Unfortunately, the State laws have had little impact on regulatory reform because they can easily be circumvented—primarily by localities legislating their own rules after a State measure is enacted but before it takes effect. As a result, exclusionary zoning policies, restrictive growth-control plans, "gold-plated" subdivision regulations, and other controls continue to escalate the cost of home building in California. Delays for approval of development proposals and high local impact fees have become legendary. In response, Governor Pete Wilson and the Department of Housing and Community Development (HCD) have embarked on a series of legislative and administrative actions designed to eliminate unnecessary regulations.

New Approaches to Regulatory Change

First, the Governor established the Interagency Council on Growth Management and the California Council on Competitiveness. Among the goals and recommendations of both groups is the reduction of impediments to growth, including those inhibiting affordable housing development. Reforms of local land-use planning and development regulations, revisions to the California Environmental Quality Act, reductions in impact fees, and overcoming delays in the permit process are among the specific recommendations of the two groups. Legislation on some of these proposals has already been introduced and additional legislative action is expected in 1993.

Second, efforts are afoot to reform the housing element required in all city and county general plans. Originally intended as a means to foster local commitment to and construction of affordable housing, the elements are subject only to review for compliance with State law and with numeric regional housing goals. Implementation mechanisms and enforcement tools are lacking. In reality, jurisdictions basically have been left to articulate their own issues and responses, and noncompliance is at nearly 80 percent. HCD intends to reverse the "paper tiger" reputation of the housing element and make it a serious vehicle for advancing affordable housing and regulatory reform. A first modest step to reform is new legislation that requires local governments to annually report on their "efforts to remove governmental constraints to the maintenance, improvement, and development of housing."

Third, HCD has expanded its technical assistance to local governments on barrier reform through workshops, a new publication on the identification and reduction of local barriers, and extra effort on housing element reviews. The department is also developing a systematic database of local programs and regulations to highlight opportunities for reform.

For More Information

Department of Housing and Community Development
State of California
1800 Third Street
Sacramento, CA 94252
(916) 323–3177

Connecticut: Affordable Housing Appeals Procedure

In 1989, Connecticut passed landmark legislation to force communities with restrictive ordinances to consider the need for affordable housing more seriously when making their permit decisions. Like the Massachusetts Anti-Snob Zoning Law (see page 15), the legislation attempts to lead towns to negotiate with developers, rather than to impose a State-mandated solution.

The bill created the Affordable Housing Appeals Procedure, which took effect on July 1, 1990. The law is unique because it gives a developer the right to appeal to a court a local land-use or zoning board's rejection of an affordable housing application—thus shifting the burden of proof onto the denying board. To support its decision, the local commission must clearly articulate its reasoning and show that rejection is necessary to protect public interest with regard to health, safety, or other factors within its charge. Further, the board must prove that those concerns outweigh the local need for affordable housing, and that a proposed development cannot be modified to protect those interests and also maintain affordability.

The law applies to proposed housing developments that will be either publicly assisted or deed-restricted for 20 years and requires that 20 percent of the units be affordable (within the reach of households earning 80 percent of the regional median income). It exempts communities where 10 percent of existing housing is subsidized, financed by Connecticut Housing Finance Authority mortgages, or subject to deed restrictions that preserve units as affordable. The State commissioner of housing maintains a list of communities that qualify for exemption.

To expedite the appeals process and develop a consistent body of expertise, the legislation designated a single district (Hartford-New Britain) and a small number of judges to hear all cases. A judge can overturn the local ruling and order a development built, as can the statewide Housing Appeals Committee in the Massachusetts model. Appeals are treated as privileged cases, thus heard in a timely fashion.

First Contest: The Trumbull Case

The first challenge under the Affordable Housing Appeals Procedure involved Trumbull, an affluent community of 32,000 residents. Less than 2 percent of the town's housing qualifies as affordable, and Trumbull refused to join a regional fair housing compact (see page 7), making it the only holdout among the suburbs of Bridgeport.

A major national developer sought to construct 600 apartments, 120 of which would meet the definition of affordable, in Trumbull, on a 38-acre wooded site zoned for industrial development. Although no rationale was stated at the time, the application was denied. The zoning commission subsequently provided 19 reasons, including loss of potential jobs and tax benefits from an eventual office park development, and concern that the proposed housing would overwhelm the school system.

The developer's challenge was upheld by the Hartford Superior Court in March 1992. The judge found that the town's objections were less critical than the State's need for affordable housing. Noting that although certain circumstances "may indeed require 'judicial usurpation' of zoning powers . . . only judicial supervision is required at this time," the judge stopped short of ordering Trumbull to approve the development. Instead, he directed the zoning commission to reconsider the proposal within 3 months, thereby allowing town officials time to reassess amending zoning and site-plan regulations and rezoning the property to accommodate the proposed project.

Similar developer suits are pending against a half dozen towns as of mid-1992. The law's impact will rest on the outcome of these cases as well as on whether the measure can change attitudes and zoning traditions and increase affordable housing enough for Connecticut to avoid addressing the issue through mandatory local quotas.

For More Information

Department of Housing
State of Connecticut
505 Hudson Street
Hartford, CT 06106
(203) 566–1715

Florida: Rethinking Housing and Growth Policies

New efforts are underway in Florida to evaluate existing land-development laws and move aggressively toward reducing regulatory impediments to low-cost housing. With leadership from the Governor and a legislative proclamation that by the year 2010 the State will ensure that decent and affordable housing is available to all residents, policies are being reconsidered and initiatives to affect local change have begun.

Florida's legislation in the 1970s and 1980s established an integrated comprehensive planning system that begins with a State plan, with which all other plans must be consistent. Local governments are required to develop comprehensive plans that reflect 26 State goals, including housing. Local plans must assess housing needs and ways to address housing deficits—including "eliminating unnecessary regulatory practices which add to the cost of housing"—and adopt land-use regulations to implement their plans.

The Department of Community Affairs (DCA) is charged with reviewing the 460 local comprehensive plans for consistency with the State plan and may withhold highway and other funding for noncompliance. Although DCA has rejected some plans, most commonly for inadequate housing elements, no funds have actually been withheld. Among the reasons are lack of clear guidelines and staff to monitor plan implementation. Another consideration is Florida's so-called "concurrency requirement," instituted in 1985. This provision mandates that infrastructure be in place before, or be built at the same time as, a new development—a problematic standard in times of limited public funds.

Higher Priority for Barrier Removal

In 1991, in response to mounting evidence of a housing affordability crisis, newly elected Governor Lawton Chiles appointed the Ad Hoc Work Group on Affordable Housing to come up with an action plan for a statewide public-private housing partnership. Chaired by the secretary of DCA, the committee brought together a wide spectrum of groups with housing interests, including State and local government officials, for-profit and nonprofit housing developers, advocacy groups, financial institutions, social service providers, and private corporations.

The group's recommendations, made in a final report in autumn of 1991, will have far-reaching programmatic implications as Florida's land-planning system matures. The recommendations were used to guide the development of the State's first Comprehensive Housing Affordability Strategy, which articulates the State's intention to "establish affordable housing as an equal priority issue . . . address, where needed, any adverse impact of growth management on affordable housing and, where possible and appropriate, remove regulatory barriers to affordable housing."

Among the work group's proposals were to strengthen links between housing and the State's growth-management laws, and to link regulatory reform to the receipt of housing funds. These recommendations became part of landmark legislation that was signed into law in July 1992. The centerpiece for this law is a dedicated funding source for State and local housing programs in the form of a documentary stamp tax. The legislation also created the State Housing Initiatives Partnership (SHIP) program, through which local governments will receive part of the funds collected by the documentary stamp tax. SHIP eligibility is tied to minimum delivery criteria for local housing programs and requires local governments to examine their permitting processes and land-development regulations. It also requires adopting a local housing incentives plan that contains specific steps to reduce regulatory barriers, including a mandatory provision for expedited review of affordable housing projects.

Meanwhile, DCA is focusing on changing attitudes. It has produced a documentary videotape for local decisionmakers to illustrate how affordable housing can blend into existing neighborhoods and benefit a wide range of residents. DCA has also conducted a statewide survey of local planning staffs and elected officials on regulatory barriers. The survey results are being used to formulate implementation approaches in DCA's strategic plan to educate citizens and officials on the NIMBY syndrome.

For More Information

Department of Community Affairs
State of Florida
2740 Centerview Drive
Tallahassee, FL 32399
(904) 488–7956

Hawaii: Expediting Affordable Housing Development

Hawaii has been aggressive and experimental in recent efforts to increase housing production. The results have begun to appear in the form of thousands of new affordable units.

The State's actions came in response to a severe shortage of housing for low- and moderate-income families, estimated at 20,200 units in 1987 and projected to be 64,000 by the year 2000. Among other factors, the lengthy development permitting processes contributed to the shortfall. In the mid-1980s, a homebuilder might wait as long as 7 years after acquiring land to accomplish the necessary community-input procedures and State and county review and approval.

In 1987, Governor John Waihee and the State legislature embarked on a major initiative to address the housing crisis. One of the first steps was creation of the Housing Finance and Development Corporation (HFDC), with the mission "to serve as a catalyst in the provision of housing opportunities in a balanced environment to meet the housing needs of Hawaii's residents." Governed by a nine-member board, this "superagency" can operate as a master developer, building housing on its own; enter into joint ventures or turnkey projects with for-profit firms and nonprofit organizations; and give other developers the right to build on HFDC-owned property.

New Powers, New Plans

HFDC takes advantage of a variety of tools to construct housing or facilitate development, including a streamlined review period of 45 days for State land-use district boundary amendment proceedings, and an exemption from the State's 4-percent general excise tax for qualified affordable developments. Until April 20, 1993, HFDC has been granted even greater flexibility through Act 15, legislation enacted in 1988.

Act 15 gives HFDC the authority to establish development codes and standards for affordable housing and to expedite such projects without the "tail-end veto power" of county councils. In effect, an HFDC-certified development is deemed to be in compliance with or exempt from county general plans, growth plans, and zoning laws. A county council has 30 days to review and approve preliminary plans and specifications, and subdivision and other construction documents. HFDC can override disapproval or conditions placed on approval. This has reduced to an average of 8 months the time required for State and county approval.

At the heart of HFDC's housing production efforts is its 15-year development plan, involving 3 large (4,000 to 5,000 units) master-planned communities that will integrate housing for families of different incomes, along with support facilities and amenities ranging from daycare centers to golf courses. The plan relies on public-private partnerships: the State acquires and rezones tracts of agricultural or conservation land; makes major off site improvements; provides financing for housing and infrastructure construction; and then encourages private developers to design, construct, market, and sell both affordable and market-rate homes. Since HFDC ensures that zoning issues will not delay development and carries the land and off-site improvement costs, the homebuilder's risk is substantially reduced.

Developers have responded. According to HFDC, production has increased from a first-year total of 10 projects and 363 units in 1987 to 2,677 units under construction, 950 units completed, and an additional 40 developments in the planning stage in 1991. Officials estimate that by the end of 1992, 60 developments will be on line, with more than 2,8[illegible]0 units completed or being built.

Hawaii's most recent legislative initiative to enlist private developers as partners was enacted in April 1992. The measure streamlines the approval process for all residential development by limiting the time for review and approval by State and local agencies: 6 months for State review, 12 months for county review of zoning matters, and 6 months for the issuance of county construction permits.

For More Information

Housing Finance and Development Corporation
State of Hawaii
500 Ala Moana Boulevard
Honolulu, HI 96813
(808) 587–0600

Interstate Compact: In Support of Modular Housing

The Industrialized Buildings Commission is the Nation's newest interstate compact, formed to develop and implement a State-based regulatory system for industrialized residential and commercial buildings.

More than 120 interstate compacts exist today, each involving from 3 to 50 States in matters that range from water rights to the transfer of prisoners. The mission of this newest compact is "to support and enhance productivity, innovation, affordability, and international competitiveness in the American construction industry through nationwide uniformity on codes, rules, regulations, and procedures and elimination of duplication in reviews, inspections, and fees, while assuring quality, durability, and safety in the built environment."

The commission expects to reduce regulatory costs to consumers, States, and industry by streamlining conflicting and overlapping standards and procedures that govern the design and construction of industrialized structures. Housing in this category includes modular, panelized, precut, prefabricated, shell, and log homes. These structures are distinct from other types of manufactured housing in that they do not have a chassis or wheels attached; instead, panelized units are transported by flatbed truck to their sites, where they are placed on permanent foundations.

The Need to Coordinate Regulations

Because zoning ordinances generally regard industrialized homes as equivalent to "stick-built" houses, these units and their foundations must comply with State and local building codes. These requirements can present difficulties for manufacturers whose markets cross State boundaries. For example, a single type of modular home shipped to eight States would undergo eight different approval procedures—even if the States' standards were identical. In addition, local inspectors sometimes require that a portion of an industrialized unit be dismantled for inspection, and they can insist on onsite alterations. Manufacturers must also deal with various transportation regulations on the shipping of industrialized structures.

Over the past 3 decades, 36 States have created statewide regulatory systems, and 12 have signed reciprocal agreements to accept each other's standards for industrialized buildings. While these efforts have brought about some streamlining, the lack of uniformity in administrative procedures and requirements among the States still imposes costly, duplicative burdens.

The effort to establish a coordinating compact to address the problem was led by the National Conference of States on Building Codes and Standards (NCSBCS), which in 1990 completed a draft Interstate Compact on Industrialized/Modular Buildings. Three States—Minnesota, Rhode Island, and New Jersey—became the initial signatories to the compact, which was officially activated in January 1992.

Members of the commission will include a representative from each participating State, plus individuals representing manufacturers of industrialized buildings, consumers of such structures, and two observers from the Federal Government. Model standards and procedures are being developed by an 11-member consensus-based committee of State officials, manufacturers, private third-party inspection agencies, and consumers. Each State will be responsible for overseeing the design and construction of industrialized structures that are built and will be used in the State or will be shipped to other compact-member States.

It has been estimated that nationwide interstate reciprocity on code approval and transportation regulations could reduce the cost of industrialized housing by 10 to 15 percent. The new compact is already moving toward that possibility, with its membership expected to grow rapidly. As of late summer, another five States were conducting active discussions on joining the commission, and many more have indicated their interest.

For More Information

Industrialized Buildings Commission
NCSBCS
505 Huntmar Park Drive
Herndon, VA 22070
(703) 481–2022

New Jersey: New Avenues of Regulatory Reform

Based on a successful statewide preemptive building code law, New Jersey's Department of Community Affairs (DCA) has proposed two new regulatory reform measures to reduce delay and uncertainty in housing development. One proposal would establish statewide standards for subdivision site improvements; the other would consolidate State, regional, and county permitting requirements.

New Jersey's first major initiative to address its cumbersome and complex development system was the Uniform Construction Code Act, which gave the DCA commissioner complete authority to adopt requirements and clarify the roles of all levels and agencies of government involved in building regulations. As a result, since 1977, New Jersey has operated under a single construction code, composed of national model codes adopted by reference. Any statutes that conflicted with the nonamendable State code were automatically repealed.

The legislation established "one-stop service" at the local level. Only a single construction permit issued by a local official is required. No separate plumbing, electrical, health, fire, or other "subcode" clearances are required. Application for construction permits must be acted upon within 20 working days, and each request for a required inspection must be honored within 72 hours.

DCA is the only State agency with any authority over construction standards and is ultimately accountable for every structure built in the State. DCA has the power to take over inspection and permitting for any building. Thus, when a controversial housing proposal was opposed by town officials, DCA put an end to delay by issuing the construction permit.

The one-permit system has been credited with eliminating fragmentation, duplication, and inefficiency. The legislation's emphasis on coordination and clarity of standards has helped foster working partnerships among all levels of government and between the public and private sectors.

Proposed New Regulatory Reform

Following the lead of the Uniform Construction Code, DCA has proposed the Uniform Site Improvement Standards Act to address the multiplicity of requirements now existing for residential developments. The measure would create an advisory board to develop a uniform set of statewide technical site-improvement standards applying to streets, sidewalks, off-street parking, utilities, water supply, sanitary sewers, and storm water management.

These necessary and workable standards would be written in performance terms. For example, the width of a street would be a function of the amount of traffic it would bear, and the thickness of the street's pavement would be a function of the soil conditions below. Within 180 days of their adoption, the State standards would supersede existing municipal site-improvement requirements.

DCA is also working on consolidating and simplifying all State, regional, and county development approval requirements. Under the "permit reform" concept, development applications would undergo a single review against a statewide set of standards by a competent office or agency. That single review would be, insofar as possible, carried out at the municipal level.

A State board would be created to evaluate all existing and proposed nonmunicipal development regulations to ensure they are clear and understandable, consistent with and not duplicative of other regulations, set forth in performance terms and using national standards whenever possible, and in the public interest. Regulations that met the criteria would be incorporated into an integrated, complete set of State requirements. Those that did not would be returned to the promulgating agencies for revision.

DCA intends the two proposed initiatives to create timely, predictable standards and procedures that will result in a more efficient and effective system of development regulation and the removal of unnecessary barriers to building affordable housing.

For More Information

Department of Community Affairs
State of New Jersey
101 South Broad Street
Trenton, NJ 08625
(609) 292–7899

New Hampshire: The Chester Decision

A New Hampshire Supreme Court ruling has opened new possibilities for curtailing the powers of localities to zone against affordable housing. In the summer of 1991, the court delivered a milestone decision in the case of *Britton* v. *Town of Chester*. By unanimous vote, the justices ruled that the town had violated the general welfare provisions of the State enabling law that gives localities the authority to zone, and had practiced "blatantly exclusionary" land-use policies.

At issue was the zoning ordinance of Chester, located 13 miles from Manchester, which is one of the State's fastest growing urban areas. With a population of about 2,300 and 900 housing units, Chester had no public sewer or water system—and a history of restrictive zoning. Multifamily developments were prohibited until 1986, then allowed only on tracts of 20 acres or larger (estimated to compose less than 2 percent of the town's total land). Single-family homes could be built only on lots of at least 2 acres; the minimum lot size for duplexes was 3 acres.

A builder and [illegible] low- and moderate-income plaintiffs, who were born and raised in Chester, contended that State law required towns to provide reasonable opportunity for the construction of affordable housing, and that Chester's regulations constrained the rights of families with limited financial means to find suitable homes. The court agreed, ruling that the town had exceeded its zoning authority and had created an impediment to providing housing that reflected the region's needs.

The Verdict and Its Implications

Citing other landmark zoning decisions, such as New Jersey's Mount Laurel cases (see page 23), the judges found that a community must consider its entire region in formulating zoning policies, because localities are "subdivisions of the State" and "not separate isolated enclaves . . . they do not exist solely to serve their own residents . . ."

The court required Chester to rewrite its zoning ordinance to include a provision for multifamily housing and to permit one of the plaintiffs to build, giving the developer, not the town, control over the location and size of the unit, as long as it complied with health and safety regulations. The court stopped short, however, of mandating that all towns bear a fair share of regional housing needs; nor did it deal with Chester's zoning code in its entirety.

The case is widely viewed as having national implications for several reasons. First, the wording of the decision suggests that a locality is obliged to consider the needs of the broader community in establishing its zoning laws. Second, unlike the Mount Laurel verdicts, which are based on the State constitution, the Chester ruling involves enabling legislation that is the basis for local zoning in New Hampshire and most other States. Finally, the impact could be far reaching because the type of exclusionary zoning exhibited by Chester is common, particularly in suburbs of high-growth areas.

Meanwhile, extensive local regulatory reform in New Hampshire may be several years away. Zoning revisions tend to require legal assistance, as well as considerable effort by citizen planners. In most communities, amendments will require approval by voters at the annual town meeting, a spring event, so the impact of the supreme court's decision is not expected to be felt until mid-1993.

For More Information

Law Library
State of New Hampshire
Noble Drive
Concord, NH 03301
(603) 271–3777

New York: Making Regulations Make Sense

"Building in New York requires the persistence of Sisyphus, the patience of Job, and the strength of Zeus. The development process is contentious, occasionally combative, and usually unpredictable. It takes a toll on all those involved in it, including regulators, affected neighborhoods or communities, as well as builders."

So begins a publication that represents an important move toward remedying the reality that New York's land-use and development regulations are among the most complicated in the Nation. The manual resulted from 1987 State legislation authorizing creation of a model land-development guide. The measure provided for preparing a compendium of the legal and administrative requirements of the development approval process, both State and local, and for assessing the impact of those regulations on the "quality, efficiency, and consistency of land-use decisionmaking." A second task was to develop a set of recommendations to improve the regulatory structure.

The Division of Housing and Community Renewal (DHCR) selected the New York City Housing Partnership, a private nonprofit organization, to direct the project. Since 1982, the Housing Partnership has served not only as an intermediary coalescing financial, citizen, and housing interests, but as an actual producer of affordable housing. Having created and rehabilitated some 7,000 units in New York City's exceedingly difficult regulatory environment, the organization is intimately aware of how conflicting, excessive regulations can increase development costs.

With an advisory committee representing diverse statewide interests, the Housing Partnership embarked on an 18-month process that involved consultation with hundreds of experts and observers. They explored objectives and procedures involving a full range of development issues, including zoning, wetland protection, environmental review, historic preservation, and subdivision requirements.

Roadmap and Recommendations

The result is *A Resource Guide to the Land Use Review and Development Approval Process in New York*. This 600-page publication marks the first "roadmap" to New York's development requirements, from the State through the village level. Intended for use by all players on the front line of land-use decisionmaking—developers, planners, lenders, and members of local, regional, and State boards—the manual details the legal underpinnings and current procedures for dozens of actions, from zoning variances to floodplain review.

The guide features 13 case studies of actual projects that underscore the complexity of existing rules and the confusion, jurisdictional conflicts, and added expense that can ensue. Also offered is a summary of regulations in other States, and information on training programs, publications, and relevant organizations and agencies. Copies of the publication were printed and distributed throughout the State in 1992.

In addition to producing the guide, the Housing Partnership and advisory committee spent considerable effort on reaching consensus on recommendations, the second component of the DHCR contract. They ultimately developed a series of proposals to reduce costs, complexity, and unpredictability. Covering eight major areas of reform, these recommendations emphasize well-planned development, removing barriers to affordable housing, and integrating planning and environmental review. A second group of recommendations—not endorsed but determined to be worth further consideration—is also included in the advisory committee's final report, issued in the summer of 1992.

The recommendations, like the guide, are built on the premise that a more sensible, coherent regulatory system of land development is both necessary and possible. Because the solutions were drawn up through an intensely participatory, high-profile process—and have been agreed to by prominent leaders—the problem of unwieldy, excessive requirements has received broader public attention and, participants hope, is one step closer to meaningful reform.

For More Information

Division of Housing and Community Renewal
State of New York
38–40 State Street
Albany, NY 12207
(518) 486–3370

Rhode Island: Legislation for Affordable Housing

Rhode Island is taking steps to combat the NIMBY attitude that has taken the form of restrictive zoning regulations in many communities.

These local laws are viewed as an outgrowth of circumstances in the 1980s that drastically altered Rhode Island's housing market. Home prices soared with new demand from people working in nearby Massachusetts, where housing costs are considerably higher, and from purchasers of vacation homes along the oceanside. Mounting concern over protecting environmentally sensitive areas further limited the availability of buildable land. Market pressures prompted concern by residents over preserving property values and their way of life—and a proliferation of ordinances for large-lot zoning, impact and processing fees, lengthy permitting procedures, and other measures to thwart development of affordable housing.

In part to counter these local actions, Rhode Island enacted legislation in 1988 requiring cities and towns to adopt State-approved comprehensive plans. The plans must include a housing element that inventories and analyzes the existing stock of affordable housing, identifies the housing needs of the current population, and establishes goals and policies to implement a projected 5-year affordable housing program. All [illegible]ities are required to bring their zoning ordinances [illegible] conformity with their comprehensive plans by [illegible] 1993.

[illegible] Force to Planning Objectives

In 1991, Rhode Island adopted measures to place new emphasis on the local obligation to plan for affordable housing. The State amended its Zoning Enabling Act to encourage new options, including cluster development and incentive zoning, and to mandate "efficient review of development proposals." More significantly, the legislature enacted the Low- and Moderate-Income Housing Act.

Patterned on the Massachusetts Anti-Snob Zoning Law (see page 15), the act allows a public agency, nonprofit organization, or limited-equity housing cooperative proposing to build State- or federally subsidized low- or moderate-income housing to submit a single application for local zoning review. (Other private developers may use the same process for rental housing that will remain affordable for at least 30 years.) The zoning board, required to act within 40 days of a public hearing, may deny the request only if a proposal is inconsistent with the locality's needs or its comprehensive plan; if at least 10 percent of the community's housing is in subsidized units; or if environmental, health, and safety concerns have not been adequately addressed.

In the Rhode Island model, if a qualified application is denied or granted with conditions that make the project infeasible, appeal is made through the Rhode Island Housing and Mortgage Finance Corporation to the State Housing Appeals Board created by the act. Chaired by a district court judge, the board's nine members represent specific constituencies, including housing advocates and developers, local zoning and planning boards, city and town councils, and State planning and housing agencies.

The State appellate board may override the local decision or modify or remove conditions placed on the proposed development. Subsequent appeal by either side may be made directly to the State supreme court.

A working committee of State and local representatives developed the board's procedural regulations, which will be used to decide at least two appeals brought by developers in 1992. Although cases may occur infrequently at first, due to a development slowdown, State officials are optimistic that the law will accelerate and simplify the local approval process, saving developers delay and unwarranted denials. Together with State comprehensive planning requirements, the Low- and Moderate-Income Housing Act can serve as a mechanism to ensure that Rhode Island towns and cities share more equally the burden of providing affordable housing.

For More Information

Rhode Island Housing and Mortgage
Finance Corporation
60 Eddy Street
Providence, RI 02903
(401) 751–5566

Virginia: Uniform Statewide Building Code

For more than two decades, the Commonwealth of Virginia has been a leader in the establishment and enforcement of building code regulations. Although most States have mandatory codes—some of which include enforcement measures—Virginia is considered to have the most experienced State building-regulation staff in the Nation.

Virginia's code program did not occur as a result of one State law; it evolved and gained strength over the years, with two regulatory measures providing the greatest impetus toward an effective statewide program. In 1973, Virginia enacted the Uniform Statewide Building Code (USBC) for standard construction, maintenance, and fire-safety regulations and procedures. Sixteen years later, the State founded the Nation's first school for building officials.

Today, all 170 of the State's building departments enforce the construction code, which provides criteria for design elements such as energy and water conservation; retrofit requirements; production of manufactured homes; and new construction requirements, including conformity with national electrical, gas, plumbing, and mechanical standards. Primarily aimed at consumer protection, many of the requirements directly affect housing affordability.

Before standards were established, lack of enforcement caused homeowners in some areas to be shortchanged by faulty workmanship and materials. By contrast, other jurisdictions adopted restrictive standards or imposed local fees. Either situation meant additional costs. With statewide standards in place, the potential for unnecessary housing expense is less likely. The code also ensures fairer building practices by eliminating local and regional regulatory discrepancies, and it reduces costs attributed to local self-interests.

The current system has improved the pre-1973 situation, when building codes were observed in only 93 out of 399 jurisdictions, and 306 localities had no building codes. Where regulations did exist, 3 separate codes prevailed, with 41 jurisdictions using the Southern Standard Building Code; 25, the Building Officials' and Code Administrators' Code (BOCA); and 27, the National Building Code. Furthermore, local governments could impose additional requirements or restrictions as they wished.

Establishing and Supporting Statewide Standards

In 1968, the General Assembly's Virginia Housing Study Commission recommended a single statewide building code. Four years later, USBC, based on the BOCA standards, supplanted all other State, county, and municipal building codes.

The initial code addressed building construction only. However, maintenance amendments have since been added, and in 1987 the Statewide Fire Prevention Code (SFPC) was passed. The SFPC is optional, and localities that choose not to enforce it are under the authority of the State Fire Marshal. The successful adoption of uniform, statewide code regulations led to the consolidation of several State agencies into the Department of Housing and Community Development (HCD). This agency administers all code-related matters through its Division of Building Regulation.

Since 1973, technical assistance, training, and education have been an important component of the statewide system. The 1989 General Assembly established the Virginia Building Code Academy to provide training at no cost for building officials and inspectors. The mission of the Virginia Building Code Academy is to enhance the professionalism of code enforcement officials throughout the Commonwealth. Operated by HCD, the academy is funded through a 1-percent levy on all building permits issued under the Virginia USBC. Programs are offered in building technology, legal issues, and administration and management.

Virginia's statewide emphasis on building code regulation, supportive training, and professionalism has contributed substantially to housing affordability, safety, and durability. With a strong and effective code program in place, the State continues to move forward in its efforts to provide decent housing for its citizens.

For More Information

Department of Housing and Community Development
Commonwealth of Virginia
205 North Fourth Street
Richmond, VA 23219
(804) 786–4857

Washington: Promoting Barrier Removal

Washington State has been active in reducing regulatory barriers since the early 1980s, when several of its communities became host sites for demonstration projects under the U.S. Department of Housing and Urban Devlopment's Joint Venture for Affordable Housing program. In 1984, the State produced a handbook of techniques for localities to use in evaluating their land-use systems. The handbook, *Affordable Housing: Local Government Regulatory and Administrative Techniques*, features developments and policy changes that were actually undertaken by local jurisdictions. Several counties and cities have adopted improvements to their planning and regulatory practices based on the guide.

More recently, the Department of Community Development (DCD) has contracted with the University of Washington to conduct three research projects. One, "Design for Density," is intended to encourage development of housing at higher densities through innovative design techniques in dwellings and project site plans; a second will identify regulations that drive up construction costs, particularly in new subdivisions, and will recommend alternative policies and laws; and the third will focus on building code impediments to affordable housing, identifying potential cost savings in codes and permit processing.

Targeted for completion in 1992, these studies further reflect continuing awareness that housing affordability can be affected by flexible and responsive design alternatives, construction techniques, and zoning and permitting practices. State officials hope that in addition to offering guidance for local innovations, the studies will help DCD devise ways to influence barrier removal.

Planning for Affordable Housing Development

Major growth-management legislation adopted in 1990 and 1991 also is helping to focus attention on affordable housing and regulatory reform. Similar to Oregon's model (see page 27), the legislation establishes a framework for locally made land-use planning decisions related to growth. Cities and counties in rapid growth areas are required to develop comprehensive plans; for other jurisdictions, this planning is optional. In addition to the 16 counties and their cities mandated to plan under the Growth Management Act, another 10 counties have elected to join the process, bringing the total to 26 counties and 186 cities.

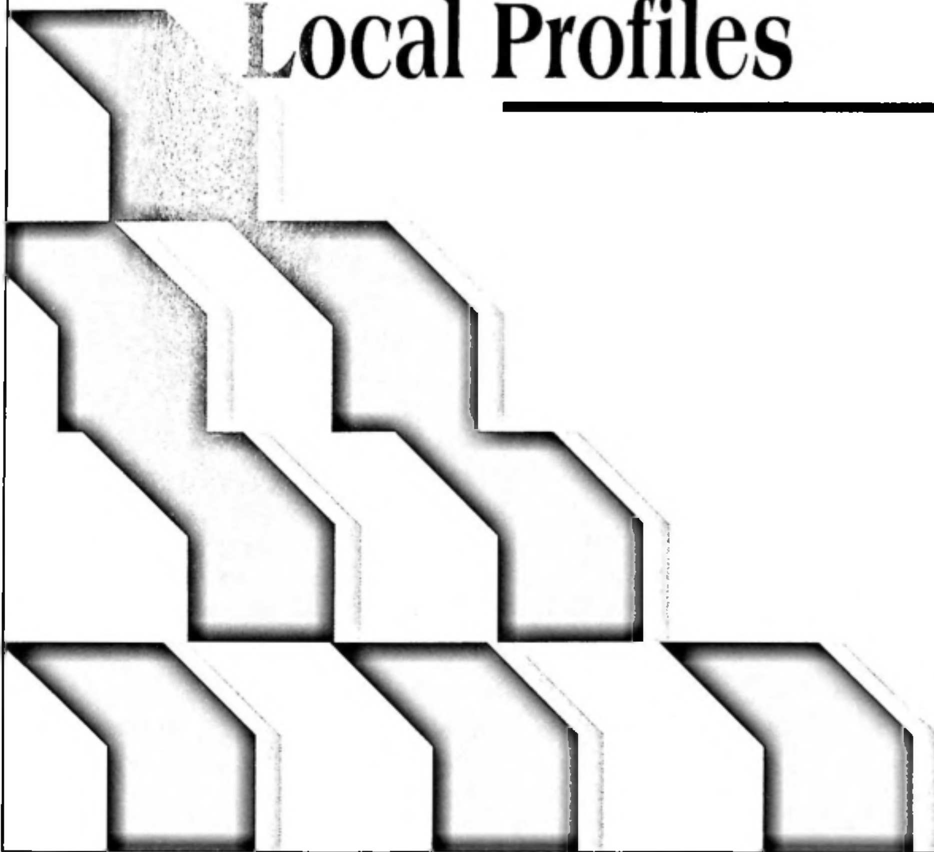
To be consistent with the 13 planning goals of the Growth Management Act, local comprehensive plans must accommodate various housing types and densities and provide sufficient land to meet projected needs. Zoning and development ordinances must reflect the plans. In Washington, countywide planning policy statements will form a framework and ensure consistency in land-use regulations among towns and among the county and local jurisdictions. The county statements will help preclude local decisionmaking that disregards the needs of wider regions and thus shifts elsewhere the burden for providing affordable housing.

Although still in its infancy, Washington's approach is helping communities to be specific in how they propose to meet their housing needs and coordinate development. The goal of this process is to make decisions upfront about land use and development, at the comprehensive planning level. Early results are promising: dialog has begun on objectives, needs and regulatory contradictions, and local land-use and housing policies are evolving in a forthright manner.

For More Information

Department of Community Development
State of Washington
906 Columbia Street SW.
P.O. Box 48300
Olympia, WA 98504
(206) 753–2222

Local Profiles



BABYLON, NEW YORK

Increasing Resources With Two-Family Conversions

In 1979, the town of Babylon passed an ordinance allowing homeowners to apply for special permits on a temporary basis to add second units to single-family houses. As a result, more than 3,000 homes now include this affordable alternative. These apartments not only supplement the town's limited housing supply, but also provide an important source of rental income for homeowners.

The Long Island town of Babylon, about an hour's train ride from New York City, includes Lindenhurst, Amityville, and a number of other predominantly residential communities in New York's Suffolk County. Most of the population of 202,889, live in single-family homes selling in the $160,000 to $180,000 range.

Late in the 1970s, it became clear that Babylon's housing supply was finite. With no vacant land on which to build new units, the town recognized several problems. First, an exodus of young adults from the community was in large part due to the lack of affordable housing for those who no longer wished to nor were able to reside with their parents. Second, rising property taxes and maintenance costs were making it too expensive for homeowners—particularly the elderly —to remain in their homes.

Third, illegal conversions from single-family houses to two-family homes were significantly increasing and threatened the safety and physical appearance of the existing housing and surrounding neighborhoods. The town board estimated that in 1979 between 10 and 20 percent of single-family homes had illegal apartments.

Babylon officials seized upon this third problem and made it part of the solution by adopting a law that allowed for the modification of single-family homes to include second units. As a result the town has nearly doubled the estimated 1,770 illegal units in 1979 to 3,085 legal, decent, affordable apartments today.

Solutions Found in Two-Family Dwellings

Effective on January 1, 1980, Babylon's Special Permit Law for Temporary Two-Family Dwellings amended the existing zoning code by establishing requirements and a procedure for converting single-family homes to two-family dwellings.

The ordinance created a Two-Family Review Board to review and approve all applications for the conversions. The seven-member board has authority to issue permits for temporary secondary or accessory apartments, with several important restrictions. The special permits are not transferable and are valid for only 2 years. At the end of the first renewal, which is a 2-year period, the homeowner must renew the application. Upon renewal, the permit runs for 3 years. Before reissuing the permit, the board may evaluate conditions at the location and require improvements or change the criteria for reissuance.

Another important restriction is that the primary unit must be owner occupied. This requirement stemmed from an observation made by the town's building department at the time the law was passed. Although only about 10 percent of Babylon's two-family units were owned by absentee landlords, a disproportionate number of all complaints about such housing received by the department—approximately half—concerned properties of absentee owners.

In addition to considerations such as the safety and welfare of the community, the conservation of property values, and the character and appearance of the neighborhood, the review board weighs the effect of potential increases in vehicular traffic and parking requirements. Probable changes in population density and proximity to churches, schools, recreational facilities, or other areas of public assembly are also considered in the decisionmaking process.

Requirements and the Response

Specific modifications to accommodate a temporary two-family unit include the following requirements:

- The secondary unit must comply with all applicable requirements for two-family dwellings according to the New York State Building Code and the laws and housing regulations of the State and the town of Babylon.
- Each unit must have a minimum of 500 square feet of habitable space, and all rooms must have at least 80 square feet of habitable space.
- The rental unit may not have more than two bedrooms.
- Each dwelling unit must have two onsite parking spaces (four spaces per two-family home), and the spaces must be paved with asphalt, concrete, or similar materials. (The original law required only one parking space per unit, but this requirement later proved to be insufficient.)
- To preserve the single-family nature of the neighborhood and the appearance of the dwelling, the house may have only a single front entrance.
- In accordance with a 1982 amendment to the original law, a dwelling must be at least 7 years old before a special permit for a two-family unit can be issued.
- Additional requirements include stipulations for fire retardant building materials, electric smoke detectors outside master bedrooms, a minimum ceiling height (7 feet, 6 inches), and handrails for all stairways.

Application procedures are typical for this type of exemption from land-use ordinances, with a public hearing and posting of the subject property required. In 1982, the town board removed the posting requirement for renewal applications for temporary two-family dwelling permits.

To apply for a permit, a property owner submits floor plans, a property survey, a full disclosure affidavit, documentation to show that abutters have been informed, a copy of the current tax bill, a building permit application, and a posting affidavit (except for renewal applications). The applicant must also file a Declaration of Covenants with the county clerk's office. The covenant stipulates, among other things, that the conversion permit will terminate upon the death of the permitholder or his or her survivor, with the transfer of title to the property from the permitholder, or when the permitholder no longer occupies the premises as a principal residence.

The application fee is set at $150 (or $100 for citizens 65 years or older). The fee remains the same for the first 2-year renewal period and the subsequent 3-year renewal period. Special permit or renewal applications are rarely denied. The few rejections were attributable to permit or code violations, such as excessive units in the house or other serious infringements. (Permits in violation are revoked within 90 days.)

As a result of the ordinance, most of Babylon's pre-existing secondary units have now been legalized. The planning and development office estimates that the majority of the more recently converted single-family homes are owned by elderly residents and rented to their own children or other young people.

Thus, the law is helping to address all of the issues that brought it into existence—adding to the affordable housing supply, supplementing the incomes of older citizens, and giving the town greater control over housing conditions in the process. Babylon's housing stock is still a finite resource, but it is being used to maximum advantage through the easing of conversion restrictions.

For More Information

Liaison to the Affordable Housing Unit
Town of Babylon
200 East Sunrise Highway
Lindenhurst, NY 11757
(516) 957–7468

BENTONVILLE, ARKANSAS

New Zoning, New Attitudes

Challenged by a commuter workforce seeking affordable housing within the city limits, Bentonville's public- and private-sector leaders united to improve local housing opportunities. One of the successful strategies was zero-lot-line zoning, which increased residential building permits 62 percent in one quarter alone. A major benefit of reform efforts was the community's changed perception that affordable housing could be a neighborhood asset rather than a blight.

In the late 1980s, Bentonville faced both good and bad news. The good news: economic development was on the rise, including a sizable home-office expansion of Wal-Mart, the national discount-store chain founded by Sam Walton. The bad news: Bentonville had almost no housing available for potential workers entering the community, not to mention current residents wishing to buy their first homes.

City and local chamber of commerce officials provided the initial leadership for solving Bentonville's housing problems. One of the first approaches was to pass a zero-lot-line (ZLL) zoning ordinance. Through reduced land and development costs under this concept, builders were given incentives to construct affordable, nonsubsidized housing while maintaining strict design and quality standards. During the first quarter of 1992, 53 residential building permits were issued—an increase of 62 percent from the first quarter of 1991—totaling 68 new units at an average price of $33,335 for a single-family detached home. Almost all were built under the ZLL provisions.

For Bentonville, affordable housing initiatives were not a one-time thing, and regulatory changes such as the ZLL ordinance have fostered a new cooperative spirit. Instead of casting builders, developers, architects, and engineers in the role of mere profit-seekers, public officials and business leaders are working with them directly, even appearing at permit hearings to express support for new housing developments. Mortgage banking, real estate, and homebuilding organizations have applauded the city's followthrough efforts, such as the establishment of a nonprofit public-private housing partnership for continued emphasis and action on affordable housing.

The 1980s: Population and Jobs Grew, Housing Did Not

While much of the United States suffered through the 1980s recession, northwestern Arkansas became known as a "pocket of economic vitality." Benton County experienced the largest migration into the State, and the city of Bentonville expanded almost 29 percent from 8,756 people in 1980 to 11,257 in 1990. The city boasted 26 thriving manufacturing concerns, and the largest area business, Wal-Mart, had more than 6,500 workers on site.

With new jobs increasing, the city knew its most immediate challenge was to develop sufficient housing to meet the growing demand. Two issues propelled housing to the top of the community's priority list—substandard housing stock and a workforce drawn mainly from neighboring communities.

The former concern centered primarily on the older, dilapidated housing randomly located on Bentonville's three main streets. This housing stock, primarily rental property for transient people, was an eyesore and an embarrassment to a city that took pride in its quality of life. The simple solution would have been to demolish the old structures; but with few decent, low-cost homes available, where else would disadvantaged residents find shelter?

On the commuting issue, a study of 418 employees showed that between 53 and 65 percent of the people who worked in Bentonville drove to their jobs from nearby towns. The majority of commuters said they would prefer to live closer to work—in Bentonville—if they could find affordable housing there.

These factors spurred the Bentonville/Bella Vista Chamber of Commerce to establish the Housing Development Committee in 1988 to analyze the housing situation and recommend possible solutions. The committee's August 1989 report indicated that 30 percent of Bentonville's residents did not qualify financially to purchase a home and might need some kind of rental subsidy. An additional 30 percent could afford homes priced between $30,000 and $50,000—if such homes were available.

During 1988, projections called for the construction of 31 new homes in the $30,000 to $50,000 price range; however, only 10 were actually built. Forecasts estimated a need for a 4 percent annual increase in the housing supply between 1988 and 1992, 30 percent of which should be priced under $50,000. Unfortunately, several high-cost factors inhibited affordable development: Bentonville had only three lots priced under $7,000 (lot cost generally averages about 20 percent of the total housing cost); homeowners were expected to pay for installation of electrical power service and transformers; and financing alternatives were scarce for both subdivision developers and first-time homebuyers.

New Zoning Ordinance as Catalyst for Housing Production

The chamber study produced eight major recommendations, including a land-use plan, utilities master plan, funding of future utility expansion, subdivision zoning, utility services and extension policies, revision of city development plan review process, residential financing, and production of low-rent housing. The proposal that created an immediate boon to low-cost housing development was the new ZLL provision contained in the subdivision zoning recommendation.

Some members of the Bentonville planning commission and city council expressed reservations about the quality and design implications of zero-lot-line zoning. Would it have a negative impact, resulting in less-than-attractive homes and unstable neighborhoods? The officials cleared up many misconceptions after visiting Blueberry Acres, a ZLL subdivision in nearby Springdale. Blueberry Acres is a pleasant community with well-designed homes and proud residents, including people of all ages and vocations (such as a policeman, a doctor, a certified public accountant, and several retired professionals), many of whom expressed in writing their satisfaction as homeowners.

Springdale's initiative had followed examples from other Arkansas cities, including West Memphis, Marion, Decatur, Clarksville, and Searcy. In addition, the State's municipal league, composed of mayors

from across the State, had a housing advisory committee that shared ideas and activities. Knowledge gained through other cities' experiences encouraged Bentonville leaders to move forward with their affordable housing efforts.

The ZLL district enabled Bentonville developers to increase density to a maximum of 16 houses per acre, compared to the conventional 4 units, thereby reducing the average lot cost by 50 to 75 percent. Houses could be built against a property line on one side of a lot, leaving a larger yard on the other side.

Both single-family detached housing and duplexes were permissible under the ZLL provisions. The minimum parcel of land was 1 acre, with a minimum lot size of 4,500 square feet for a single-family home and 6,000 square feet for duplexes. The "footprint" of the house itself could not exceed 60 percent of the total lot size.

While requiring the same basic design criteria as is required under standard zoning provisions, Bentonville's ZLL regulations allowed street, sidewalk, and off-street parking modifications. Streets could be narrowed to a minimum of 24 feet, as long as they remained public and were built to city standards. Sidewalks had to be installed along public streets. Also, each housing unit was required to have a minimum of three concrete off-street parking spaces measuring 9 by 18 feet. These amenities ensured the livability of the new neighborhoods, while still keeping construction costs low.

City Turns Talk Into Action

The effectiveness of Bentonville's zero-lot-line option was first tested in the Brook Hollow subdivision. The project involved 38 new houses priced from $37,900 to $49,900, an amount affordable without subsidy to families or individuals within the low-income household limit of $23,300 annually for a family of four. The Brook Hollow homes were built on lots averaging 7,000 square feet, compared with the 10,000 square-foot standard. A typical home had 1,000 square feet and was larger than existing homes that cost about the same. The new housing, completed in the spring of 1992, was built in an average of 45 days per unit and was sold as quickly as it could be constructed. Not only did the development provide needed homeownership opportunities, but its appearance and marketability helped change the local public image of affordable housing.

Since completion of Brook Hollow, the developer has applied for and received a permit to build 80 more dwellings under the ZLL provisions. These homes will be larger than those in Brook Hollow, but still affordable to much of the target market at a sales price of $50,000 to $60,000.

Community support continues to rally behind affordable housing. The institution of zero-lot-line zoning was closely followed by the creation of the nonprofit Bentonville Community Development Corporation, an umbrella organization for all low-income housing activities and a clearinghouse for Federal, State, local, and private-sector housing financing, including low-income housing tax credit investments.

Bentonville's willingness to use regulatory reform as a tool for community improvement has not only broken up its housing logjam but also has stimulated commercial and retail growth. The city is building on its short-term achievements to create long-term solutions that contribute to a progressive and healthy economic climate.

For More Information

Chamber of Commerce
412 South Main Street
Bentonville, AR 72712
(501) 273-2841

Using the Zero-Lot-Line Concept

In 1981, Dade County officials enacted a zoning ordinance to encourage the use of zero-lot-line siting to develop modest single-family homes at higher density on smaller lots. Drawing on the law's reduced requirements for setbacks, lot size, and building coverage, developers have lowered selling prices from $7,000 to $15,000 per unit and have constructed more than 15,000 affordable single-family homes.

Zero-lot-line (ZLL) siting can dramatically reduce housing costs by efficiently using small parcels of land. The technique allows homes to be placed on side lot lines—or sometimes on rear or front lines—rather than at traditional setback distances of 5, 10, 20, or more feet from property boundaries.

Often described as "a detached version of a duplex home," ZLL can be envisioned as moving one of the duplex units away from the common wall to the other side of the lot. Instead of the customary two side yards per house, each unit has a single side yard of twice the size. Typically, that area becomes part of the residence's living space, emphasized by a terrace or patio. Thus the ZLL technique retains the higher density of duplex development—but with freestanding single-family houses.

Nowhere has the concept stirred the imagination more than in Dade County. In 1981, the county enacted what is believed to be the first ordinance in the Nation to specifically address the requirements of ZLL development, rather than incorporating the concept into other ordinances such as planned unit development (PUD) provisions. Resulting in scores of residential developments and thousands of new homes, the model has proved that substantial savings can be realized from ZLL siting, that there is a ready market for such dwellings, and that ZLL housing can be both livable and affordable when creatively and carefully designed.

The Need and the New Law

For Dade County, the ZLL idea was appealing because it offered a way to respond to the problem of high land prices and the growing demand, by existing residents as well as incoming retirees, for modestly priced and sized single-family homes. County officials were aware that many relatively small tracts of land, 5 to 40 acres, could be developed and made

more marketable if zoning requirements for freestanding homes were relaxed.

Officials experimented with the zero-lot-line approach in a PUD that eventually required more than 1,000 exemptions and variances. This experience, and the prospect of similar requests by numerous other developers, led to considering a more flexible approach. The planning staff reviewed ZLL provisions and other techniques used elsewhere for small-lot development, enlisting the participation of local developers, architects, landscape architects, and attorneys. Together they crafted the ordinance that became law in 1981.

The 10-page statute set forth three purposes: more efficient land use than in typical single-family developments, "making available needed housing at a more affordable cost"; integration in the design of indoor and outdoor areas, "resulting in more pleasant and livable facilities"; and encouraging outdoor space to be "grouped and utilized to its maximum benefit."

The ordinance permitted zero-lot-line siting for single-family homes in six residential zoning districts. A property owner could establish a ZLL community by obtaining approval from the planning, building, and zoning departments, with no public hearing required unless variances were sought. The law also allowed ZLL development in the RU–1 zone—which had more restrictive zoning than the other districts, with lots ordinarily required to measure at least 75 by 100 feet—upon approval after a public hearing.

Developers could build at considerably higher density through the ZLL provisions. Lots could be as small as 3,000 square feet, provided they averaged 4,000 square feet (4,500 square feet in the RU–1 district). Maximum building coverage was increased to 50 percent, versus 35 percent in a standard RU–1 development. In addition to permitting one side wall of a house to abut a lot line, the setback for front lines was lowered from 25 to 5 feet, and rear setback requirements were eliminated. Minimum street frontage was left unspecified, to be determined on a project-by-project basis by the developer and planning staff.

The flexible new options were accompanied by a set of building and site-design standards to help safeguard the quality of ZLL projects. For example, walls abutting the lot line could not contain doorways or air conditioners, and integration of interior and outdoor space was fostered by a formula for a certain amount of the house to include "penetrable openings," such as a sliding glass door to a patio area. There had to be at least three trees on each house lot, plus a street tree every 40 lineal feet of street frontage.

The ordinance required ZLL projects to undergo extensive site plan review to ensure they met these and other requirements. (Builders can request, and have received, variances from the ordinance's provisions.) Developers must present graphic renderings and quantitative data to planning department staff and at a public hearing, if one is required.

In 1987, use of the zero-lot-line concept was expanded by creating a separate district, RU–1Z, as an option in the RU–1 zone. Detached single-family units in a ZLL layout may be built as a matter of right in accordance with the ground rules set by the 1981 ordinance, provided the total number of units does not exceed the number permitted in the county's Comprehensive Development Master Plan.

A Look at the Results

In its first year, the ZLL ordinance generated 35 applications, most of which were approved. While the pace of development subsided in subsequent years, the option continued to be the most viable type of single-family development in Dade County, accounting for more than 15,000 homes built between 1981 and 1986.

According to the Builders Association of South Florida, zero-lot-line provisions result in average cost savings of $7,000 to $15,000 per unit in Dade County. A developer who built a 198-unit ZLL project has estimated that constructing single-family homes to conventional specifications would have increased the sales price of an average unit by $25,000; another cites selling homes in his 64-unit development for about $11,000 less because of the eased requirements.

Many developments combine ZLL and conventionally sited homes, which serve as a buffer between the small-lot housing and adjacent residential areas. For

reasons of salability, most developers have opted to build above the ZLL standards, with considerably larger lots, front yards, and road frontage.

The county's ZLL ordinance has drawn much praise over the years, serving as a model for other communities in Florida and elsewhere. At the same time, it has prompted the usual NIMBY tensions regarding potential negative impact on nearby property values. Other detractors claim that cost savings accrue more to developers than to homebuyers, and concerns have surfaced over the livability of ZLL developments.

In 1987, the planning department studied the results of the ordinance. Acknowledging that an impressive number of less costly homes had been built, the planners concluded that some ZLL developments turned out much better than others. In less well-designed projects, cost-cutting measures sometimes compromised privacy, community esthetics, and open space considerations and led to serious parking problems.

In sum, an ordinance that sets minimum standards cannot fully control the end product. In the hands of experienced, thoughtful developers using creative design, the ZLL technique results in attractive, functional, affordable communities. The same flexibility (combined with variances sometimes granted from ZLL design requirements) can lead to poor choices and outcomes that fall short of the law's expectations.

The overall response, however, to the zero-lot-line option in Dade County is decidedly positive. Developers continue to find it a welcome technique, buoyed by demand from the homebuying public for smaller, more affordable housing. Planners and other officials continue to view ZLL as a major asset and tool in implementing the county's Comprehensive Development Master Plan because of the flexibility and alternative housing possibilities the approach offers.

For More Information

Planning Department
Metropolitan Dade County
111 NW. First Street
Miami, FL 33128
(305) 375–2810

DALY CITY, CALIFORNIA

Second Unit Ordinance

Daly City's Second Unit Ordinance has helped create a new source of affordable housing by permitting the legalization and development of accessory apartments "by right." Since passage of the law in 1983, more than 400 legal, affordable units have been added to the city's housing supply, providing viable options for renters of modest financial means and a source of additional income to homeowners.

Many California localities have passed flexible accessory apartment provisions since 1982, when the State legislated the Mello Bill requiring all jurisdictions to develop ordinances so that separate, secondary units may be developed in existing single-family homes. Daly City, a community of 95,000 residents just south of San Francisco, stands out as the most successful in implementing a program to encourage these conversions.

Daly City created its ordinance for accessory apartments primarily as an initiative to provide safe, decent, affordable housing, especially for low- and moderate-income residents. The planning department worked with building inspectors and the city council to develop a law specific to the community's needs. The statute they devised had three main purposes: (1) to create a review and approval process for evaluating requests to add accessory apartments to existing single-family homes; (2) to recognize the excessive number of existing illegal second units, estimated in the thousands, and ensure that these units either would be brought up to standard and legalized, or eliminated; and (3) to discourage future construction of illegal units by instituting rigorous policy for review of building-permit plans.

In passing the Second Unit Ordinance in June 1983, the city council set a cap of 250 units to be legalized within a 60-day time period. After 2 months, there were only 16 applicants, so the council eliminated the timeframe but kept the 250-unit ceiling. Another limitation imposed by the law was a density of 16 dwelling units per acre, allowing approximately 2 to 3 secondary units per block. This was to ensure even distribution of accessory apartments throughout the city.

Creating a Second Unit

To develop a second unit or to legalize an existing unit in Daly City, a homeowner must obtain a Certificate of Registration application from the city. This takes less than half an hour to complete and requires minimal information. The homeowner fills out a one-page form; pays a $25 fee; provides a copy of the property deed, floor plans, and plot plans for both the primary unit and secondary unit; and notes all parking spaces.

For both new and existing accessory apartments, the ordinance sets a limit of one secondary unit per parcel and requires one of the two units to be owner-occupied. New units must have two parking spaces, which may be uncovered and tandem, while existing units follow preexisting parking requirements. In addition, the housing must meet all health and safety standards according to housing codes.

After obtaining appropriate permits, the applicant makes any required improvements to the residence. The city planner then conducts a final inspection. If approved, the homeowner must file the Certificate of Registration with the county recorder's office to officially legalize the unit. If denied, the applicant may appeal the decision to the city council.

Soon after the ordinance passed, Daly City initiated a marketing effort to promote accessory apartments. Elected officials and representatives of the planning department notified the press; spoke on radio talk shows; printed and distributed fliers explaining the law's provisions; gave presentations to real estate groups, neighborhood associations, and community leaders; and included announcements of the new law in municipal water bills. These public relations activities encouraged residents to seek further information about developing secondary units.

Benefits of the Ordinance

Since 1983 an average of 57 Daly City homeowners per year have applied and received approval for these conversions. As of early 1992, 231 new secondary units have been created, and 178 previously illegal apartments have been brought up to code standards.

These second units provide beneficial options for both homeowners and renters in Daly City, as shown in the following examples:

- Senior citizens or unemployed homeowners, with little or no income, can continue to reside in their homes as a result of income from an accessory unit.
- Parents who have recently become single can legally rent out part of their home and maintain their family lifestyle.
- For families whose grown children cannot yet afford to rent at market rate or buy a home, secondary units provide a practical solution, enabling both parents and young adults to live independently at an affordable cost.
- An individual who requires constant care can live in either the secondary quarters adjacent to family in the main unit, or in the main dwelling with a health-care provider living in the apartment.

The ordinance also offers advantages to others in the community. For instance, because of the income generated by the apartments, real estate agents can recommend Daly City homes with accessory units as an option to prospective homebuyers who might otherwise not qualify for mortgages. Construction trades benefit as well, due to the labor involved in creating or upgrading the units.

Overall, the concept has received few complaints—virtually none from the neighborhoods and only some from tenants regarding their landlords. The most frequent grievance comes from homeowners with second units who do not wish to live on the premises, since the ordinance prohibits both units from being rented.

Assessing the Success

Several factors have contributed to the success of Daly City's program. First of all, the requirements and procedures for developing an accessory apartment (or legalizing an existing unit) are simple. Unlike many other California communities, Daly City qualifies a second unit on a lot as small as 2,500 square feet and permits tandem parking. The process does

not require a lengthy public hearing, but allows second units by right when certain criteria are met.

Second, the nature of existing housing is conducive to conversion. Much of Daly City's stock is row housing with average lots of 3,000 square feet, often including additional footage behind the garage. Ample space exists for separate living quarters and additional parking, as mandated by the ordinance.

Third, installation costs for an accessory apartment are kept relatively low. In Daly City, special assessment fees and additional utility hookup fees do not apply to second units. City permit fees are minimal.

The Second Unit Ordinance is successful for all of these reasons. It provides a straightforward means—appropriate to local needs and resources—to address the high cost of housing and residents' affordability concerns. By honoring the development and legalization of secondary units as a right, Daly City is helping to create and improve a viable, livable, affordable residential option.

For More Information

Department of Community Development
Planning Division
City of Daly City
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The Premier Model of Flexible Zoning

Residents of this agricultural and university community did not want to stifle growth, but they did want to retain the qualities that made their city both attractive and affordable. To that end, Fort Collins city planners devised the unique Land Development Guidance System, which allows both the city and developers more latitude in responding to housing needs.

The city of Fort Collins has in place a sophisticated set of criteria for permitting residential, commercial, and industrial developments. It is premised on the importance and success of planning ahead for growth. Entitled the Land Development Guidance System (LDGS), the model represents a major departure from the traditional approach to land development and zoning. It presumes that any land use can be made compatible with existing uses through creative, carefully negotiated, upfront site and project design.

The hallmark of LDGS is flexibility. This comes about by determining that certain requirements and restrictions can be less controlling if other standards are exceeded. For example, if employees can walk to work, fewer parking spaces will be required.

In operation for more than a decade, the Fort Collins concept is a testament to the possibility of a community being able to both direct and encourage growth. It has helped keep the area's housing affordable, its esthetic standards high, and its economy healthy.

Meeting the Challenge of Growth

Beginning with its founding in 1864, Fort Collins became best known as the home of Colorado Agricultural and Mechanical College. The town was a trade center for the surrounding livestock and farming industries, and the population was relatively stable.

However, since 1950—about the time the college changed its name to Colorado State University and broadened its curriculum—the community has experienced phenomenal growth. Small high-tech firms choose to locate in the area because of its physical attractiveness and congeniality and its well-regarded educational institution. Today, Fort Collins' population is near 100,000, and the university's enrollment has more than tripled in the past 30 years.

As early as 1967, the city adopted a planned unit development (PUD) ordinance that sought to maintain the community's qualities. But when a citizens' initiative to limit growth was proposed to voters in 1979, it was defeated by a margin of two-to-one. Clearly, the residents wanted to take advantage of impending economic opportunities.

Immediately after the vote, Fort Collins city planners set out to establish a comprehensive strategy that would encourage developers—residential, business, and industrial—to conform to the town's long-range goals, while simultaneously easing restrictive zoning. Two years were devoted to structuring the system and accumulating input from an outside consultant, the city's planning staff, developers, attorneys, and affordable-housing advocates. The process also involved the minority of residents who were strongly in favor of limited growth and strict environmental controls.

After numerous reviews and revisions, a consensus was reached, and the new set of ordinances was put before the city council for enactment. LDGS was adopted, becoming an award-winning model that has received attention throughout the country.

How the System Works

In essence, LDGS is a performance-based system that eliminates rigid requirements associated with conventional zoning. It permits considerable flexibility and innovative approaches to the type of development that can take place on a specific site. The system allows the marketplace to propose land uses, while regulating external features to avoid impingement on the surrounding area and the existing site characteristics. Thus, a light manufacturing plant can be located in a residential area, provided it has attractive architecture and landscaping, and traffic circulation systems are well designed.

Each new development proposal is evaluated on the basis of its own merits and impacts. LDGS covers five broad planning principles:

- Control fringe growth.
- Encourage concentrated land-use and infill development.
- Encourage mixed-use development.
- Encourage higher densities.
- Encourage alternate means of transportation (mass transit, bicycle, and pedestrian routes).

LDGS divides all land uses into nine categories, with different basic criteria governing each proposed use. Some criteria are absolutes that a development must satisfy before approval can be granted. These standards deal with neighborhood compatibility, environmental standards, natural resource protection, engineering requirements, and site design. Other criteria, such as specific use, energy conservation, and historic preservation, are variable. Nevertheless, each development must achieve a minimum percentage of the variable criteria before approval will be granted.

The guidance system analyzes the proposed density through 10 dominant criteria, with the primary focus on location. The higher the number of points scored, using a base of 100 points, the higher the awarded density. Most importantly, points are earned for low- and moderate-income housing, along with a provision in the project for active open space. The LDGS also grants density bonuses to projects that create public amenities beyond those normally required, for features such as parkland dedication and contributions to transit or other neighborhood facilities.

A PUD is normally processed in three stages: conceptual (or master) plan, preliminary plan, and final plan. The master plan generally defines the development's parameters and is first reviewed for its conformity with the city's comprehensive plan. The preliminary plan specifies the land uses and layout of buildings and landscaping, and is the basis for the project's success or failure when the appropriate LDGS criteria are applied. It is at this stage that PUD points are given and tallied. All the fixed criteria must be met, and a developer can win approval if the PUD satisfies 65 percent of the variable criteria. The final plan is the detailed engineering document from which building permits and other approvals are issued.

One Result: More Affordable Housing

LDGS is especially effective in fostering affordable housing in Fort Collins because of its influence on new PUDs in the fast-growing city. For example, one site was originally approved, prior to the guidance system, for 102 single-family detached homes on 43 acres. After negotiating with the city and applying LDGS criteria, the project's density was more than doubled to 235 units and included prefabricated houses that ranged from 960 to 1,680 square feet.

In another instance, a proposal under the conventional PUD requirements allowed a maximum density of 12 units per acre. Under LDGS, the developer agreed to include 12 units for low-income families and 3 designed for handicapped individuals. The builder was awarded bonus points sufficient to receive approval for a density of more than 30 units per acre.

In addition to facilitating affordable housing in large PUDs, LDGS is credited with promoting infill development at higher density. This is a major priority in Fort Collins, not only to meet housing needs, but to help to concentrate development and dissuade urban sprawl.

Acceptance of LDGS by both residents and developers can best be illustrated statistically: since its inception, less than 2 percent of the zoning board's decisions have been appealed to the city council. Additionally, submittal-to-approval time for developers has been reduced from months to weeks.

The achievement of LDGS to foster affordable housing is well documented. The success can be attributed to cooperation among the city government, professional planners, developers, and residents, and their willingness to be flexible in responding to the needs and potentials of a growing community. Fort Collins has demonstrated the merits of its model—simply put, it *works*.

For More Information

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GLOUCESTER, MASSACHUSETTS

From Single- to Two-Family Homes by Right

To address the shortage of affordable housing, especially for residents in low-wage and seasonal occupations, Gloucester began a program in 1988 to encourage the conversion of single-family homes to two-family dwellings. Based upon the positive results of that program, these conversions are now permitted by right in all but one of the city's residential districts.

The affordable housing problems of a small township that serves as a bedroom community to a major high-cost city are, at best, difficult. If that same town's primary economic base is a 4-month tourist season, the problems become formidable. These two elements are only part of the difficulty faced by Gloucester, Massachusetts.

For the past 8 years, Gloucester has been under court order to provide city sewering for all new and existing homes. This court mandate came about because too many houses, built as summer residences with acceptable septic systems, were converted to year-round homes. Eventually, the large number of expanded-use dwellings polluted the surrounding lands in what was already a high-density area.

Sewer main extensions are the responsibility of the town, and the individual property owners must bear the cost of hooking into the sewer system, ranging from $3,000 to $8,000. This financial burden to both the town and developers has discouraged any type of residential construction. Thus, if there is a demand for affordable housing in Gloucester—and there is—the supply of such housing has to come from existing dwellings. The most expedient route to affordable housing is conversion of single-family homes to multifamily units.

Acknowledging the Need and Potential Resources

Gloucester, population 28,000, is the picture-perfect New England fishing village. Its historic, narrow, winding streets and classic multistoried homes make it a mecca for tourists visiting Cape Ann. Indeed, in recent years, tourism has begun to challenge fishing as the city's number one industry. These two industries continue to be dominated by seasonal employment patterns, and many of the jobs in Gloucester are at the low end of the wage scale.

The housing difficulties of these employees were exacerbated in the 1970s by an influx of affluent newcomers who worked in Boston, less than an hour's drive away. Residential construction of high-priced homes and condominiums in Gloucester boomed for a decade. Rentals that had previously been available to the town's workforce were occupied by commuters.

During this period, Gloucester's special permit process for converting single-family dwellings to multifamily was entangled with restrictions and requirements for numerous board approvals. These safeguards had been put in place as the price of residential property kept climbing, because some residents feared conversions would devalue their neighborhood. As a result, one word to a politically connected friend was all that was necessary to discourage petitioners.

Still, town officials and concerned citizens recognized that something had to be done to supplement the existing housing stock with affordable options. The first step in changing the environment for creating secondary or accessory apartments would be to convince homeowners that requirements for a special permit to add to or convert part of their homes were reasonable and protective of the owners' interests. Thus, it was apparent that the town's regulatory boards and approving departments needed to demystify the process.

Officials also knew that if enough conversions took place under the special permit system without public protest, then the city council could declare such conversions a matter of right in certain residential districts.

A Program to Gain Community Acceptance

To accomplish the first step—demystifying the special permit process—a social service organization in Gloucester applied for and was awarded a $27,000 State grant to encourage individual homeowners to investigate the feasibility of conversion. The program was dubbed Add-A-Home.

The director of Add-A-Home discovered that special permit procedures and restrictions were not documented. Similarly, he found that town officials were also concerned about the lack of guidelines for the permit process. So, under the joint sponsorship of the mayor-elect and the service organization, the appropriate individuals met to agree upon procedures, allay jurisdictional fears, and put in writing the steps and requirements for creating a secondary unit.

The initial meeting was followed by an advertised public meeting for interested homeowners. More than 60 people attended and heard presentations from the Add-A-Home director and the town building inspector, who outlined the steps necessary to receive a special permit. They also heard from a consulting architect, who discussed the feasibility of various unit designs and how to estimate construction costs.

A representative from a local bank notified the audience that his institution was offering loans up to $15,000 over a 10-year payback period at a half-a-percent discount from the bank's standard rates. In addition, the group was told that a portion of the Add-A-Home grant was set aside to reimburse the homeowners for the cost of the application and permits up to $500. Because of this joint town- and private-business support, the participants were asked to offer their apartments at or below fair market value.

Forty-three homeowners from that meeting signed applications. Some applicants had to withdraw for financial reasons or because the conversion would not be in compliance with the zoning bylaws or building code requirements. Nevertheless, within a year, more than 25 new apartments were in the process of being constructed, and no formal objections from neighbors had been lodged with the city council. To the surprise of town officials, who had expected elderly owners of big, older houses to perform the conversions, there was no pattern to the size of the homes converted or the circumstances of the residents.

Eliminating the Restrictions

As a result of this positive response, the stage was set for the city council to take the next step—eliminating the need for a special permit and allowing conversions of single-family homes to two-family dwellings as a matter of right.

In August 1991, the city council proposed that the town planning director and the building inspector prepare an amendment to the zoning ordinance permitting such conversions, along with allowing construction by right of new two-family homes. The result was an amendment that permitted accessory apartments as a right in all but the town's most exclusive residential district and its business and industrial zones. The code revision eased the dimensional and setback requirements that had previously necessitated a zoning variance, placing restrictions only if the conversion made a nonconforming use more nonconforming.

After review of the proposal, the planning board endorsed the merit of the amendment, but stated their concern that it was too open-ended, and that certain standards should be established relative to the individual structures to be converted (such as age and condition and size of the building). Despite the lack of wholehearted endorsement by the planning board, the city council unanimously passed the amendment to the zoning code, provided all dimensional and parking requirements were met.

In the time since the adoption of the by-right ordinance in late 1991, an average of four to five homeowners per month have started conversions. The economic downturn that has prevailed throughout New England for the past few years has lessened the incentive in Gloucester for homeowners to make the necessary investment. These same economic conditions have also made existing units available at reduced rents. But the permission by right for conversions is in place for the future. The town officials have responded to the need with the resources available to them, and more people of modest economic means are ensured that they can remain Gloucester residents.

For More Information

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LOUISVILLE, KENTUCKY

User-Friendly, One-Stop Permitting

The city of Louisville's emphasis on teamwork—such as consolidation of all local permitting, inspection, licensing, and code enforcement functions, and creation of the Red Tape Reduction Office—has significantly streamlined the development process. Developers of affordable housing and other projects now experience less paperwork, fewer delays, and virtually no regulatory confusion.

Success in creating new affordable housing—especially in older urban communities—often requires many players, and thus demands teamwork. Under Mayor Jerry Abramson, the city of Louisville has emphasized coordination of the development process to help facilitate proposed projects.

As part of the teamwork approach, all city inspection, permitting, licensing, and code enforcement departments have been successfully merged into one city agency, the Department of Inspections, Permits and Licenses. The department's developer-friendly approach has helped advance various projects, and affordable housing builders in particular have benefited from the teamwork that extends to virtually all local, county, and regional agencies and commissions involved in development.

Red Tape Reduction and Citywide Coordination

After his election in 1986, Mayor Abramson took recommendations from a committee of private individuals who had assessed all facets of the local government with an eye to revitalizing older sections of the city and stimulating economic growth. One key recommendation was to improve Louisville's development and permitting process.

As in many other municipalities, Louisville developers faced a bureaucratic maze of regulatory departments literally spread across the city. Acting as separate entities, the building inspections department, department of public works, fire prevention office, and other permitting authorities lacked a coordinated system of policies. Developers traveled from one agency to the next, sometimes even back and forth, coordinating building requirements.

With the creation of Louisville's Department of Inspections, Permits and Licenses, developers of most projects need to visit only one office to obtain the necessary approvals. The department's extensive staff of highly trained and specialized personnel consist of five building inspectors, five construction review officers, four electrical inspectors, four HVAC inspectors, four plumbing inspectors, three elevator inspectors, two officers who concentrate on wrecking inspection, a director, an assistant director, a chief code enforcement officer, and administrative support staff.

Within the Department of Inspections, the city's Red Tape Reduction Office was established as a customer service entity. The office publishes *Removing the Red Tape From Your Project: A Louisville Development Handbook*, a looseleaf binder that is given to any company or individual interested in developing a project in the city. The handbook explains and illustrates in chart form how to obtain all required construction permits and reviews, as well as how each project type fits into the process. Updated annually, the book also lists permit fees.

In addition to combining city agencies and providing information to prospective developers, the department serves as a link to other public agencies involved in the development process. The department works closely with the Louisville Planning Commission, Jefferson County, the Metropolitan Sewer District, and other relevant boards and staffs. For example, the city's engineer, who can authorize most developments' connection to the sewer service, serves as liaison with the Metropolitan Sewer District for projects that require a new sewer connection or extension of service. Department staff also provide technical assistance to developers who require conditional-use permits or zoning variances.

Saving Time and Eliminating Confusion

Relatively simple projects—such as construction or rehabilitation of single-family houses or small multifamily developments on properly zoned parcels—usually complete Louisville's permitting process in a single day. Department staff encourage developers of larger projects or those that require replatting or zoning changes to request a preapplication conference to help speed approval.

Representatives from all permitting agencies attend preapplication conferences to explain their procedures and standards to the project architect, developer, and subcontractors before development plans are completed. The conference, arranged by the Department of Inspections, often includes staff from outside agencies such as the city's Department of Housing and Urban Development, Planning Commission, Waterfront Development Commission, or Metropolitan Sewer District. Consequently, before the permitting process has even begun, developers learn where each project might hit snags, officials become familiar with the proposed development, and guidance is provided on problems unique to the project.

All developers building in Louisville benefit from such conferences and the city's overall team approach to development. As one local residential developer of 18 years put it, "Builders run on short fuses and schedules." They appreciate the city's user-friendly approach, which makes the permitting process quick and easy.

Affordable housing developers are further aided by the city's Department of Housing and Urban Development staff, who promote the teamwork concept to its fullest. For example, the 34-unit Cloisters project that opened in December 1990 was a joint undertaking by a local developer, First National Bank, the Kentucky Housing Corporation, and the Louisville Department of Housing and Urban Development. Housing units in the Cloisters, a former convent with historical landmark status, are rented to low-income single-parent families. Careful coordination with the city's Landmark Commission during project development qualified the Cloisters for historic tax credits.

Such complex housing projects require deliberate, intense collaboration by many public and private entities. The city of Louisville's teamwork attitude gets the job done.

For More Information

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ORLANDO/ORANGE COUNTY, FLORIDA

Initiatives for Affordability

Thanks to recent actions by both the city and county, the outlook for affordable housing in Orlando and Orange County is improving. Orlando has adopted policies and laws to lower housing development costs, and the county's Affordable Housing Task Force has set in motion several barrier-removal initiatives. A new joint committee representing city and county interests is formulating further solutions to area housing needs.

The shortage of affordable housing in the city of Orlando and surrounding Orange County has prompted practical actions by officials, planners, and developers. Both city and county governments are helping builders reduce costs—such as easing lot-size, infrastructure, permitting, and impact fee requirements. In addition, their joint efforts complement each other and the goal of increasing affordable housing opportunities.

The initiatives follow two decades of change that was extraordinary, even for fast-growing Florida. When a 1968 agreement with the State allowed Walt Disney Company to create virtually its own city, once-pastoral citrus groves quickly gave way to mile after mile of amusements, hotels, restaurants, and shopping centers, as well as the enormous Disney World itself.

As a consequence, the area's population and economic base have expanded dramatically. However, most new employment is in the low-wage service sector, and workers often find housing beyond their reach. Moreover, independent of the tourism boom, the region has seen an influx of lower income population groups.

City Action: Zoning Flexibility and Experimentation

To help address its need, the city of Orlando has adopted highly flexible housing development policies. The Land Development Code, dating back to the 1920s, was completely overhauled in 1985, then further fine-tuned in 1991. Together with an array of incentives and assistance programs, these changes offer important new affordable possibilities.

Among the code's many flexible features are its standards for average-lot development "intended to promote innovative residential layout, encourage

diversity of housing at a variety of costs, and allow more efficient use of land as compared with the typical single-family development, thereby making available needed housing at a more affordable cost." Nowhere in Orlando is a housing lot required to be more than 10,000 square feet, and this minimum may be achieved by average-lot development.

Cost-saving design alternatives, such as zero-lot-line and cluster development, are allowed by right throughout the city. In new affordable housing developments, the parking, drainage, sidewalk, and street requirements may be reduced. Density bonuses are available in 11 zoning districts, and mixed-use corridors have been established along major mass transit lines for intensive development, with the possibility of substantial density increases.

Infill housing and mixed-use development are encouraged by liberal regulations. Accessory apartments are permitted or conditional in all but one residential zone. Manufactured housing enjoys the same permitting requirements as site-built single-family or multifamily housing. Mobile homes are allowed by right in several zoning districts.

Because of the options actually permitted by the Land Development Code, public hearings on housing matters have become a rarity. The city's philosophy is that if a housing alternative is not singled out as beyond the ordinary, it is less likely to be derailed. Orlando officials, in essence, have addressed potential NIMBY issues upfront in their planning and policy decisions, removing affordable alternatives from the arena of potential controversy, opposition, and politics.

Orlando has also adopted new procedures to streamline review of subdivision plans. Preliminary site plan approval by the Technical Review Committee is no longer required, and a short-form platting process has reduced review time to about 60 days. In addition, the city has established a priority system for constructing sewer and water lines to service low-income and affordable housing developments to meet the State's concurrency requirement (see page 35). Orlando appropriated $500,000 in 1992 to pay any and all city impact fees—transportation, sewer, and water—for affordable developments.

A prominent example of the city's willingness to help reduce housing costs is a demonstration project known as the Villages of Timberleaf. In 1988, Orlando entered into an agreement with a developer to establish a design review committee composed of four city employees and five private-sector representatives to serve as Timberleaf's exclusive decisionmaking body. In exchange for this arrangement—which has resulted in concessions negotiated for design, processing, ownership options, and financing—the developer agreed to limit profits so that all savings go toward lowering sales prices. Partially completed and occupied, Timberleaf is expected to provide about 1,800 affordable homes on 188 acres, built at 10 to 20 percent less than conventional housing.

The County's Role in Affordable Housing

The region's housing affordability problems extend beyond the city of Orlando—67 square miles, population 128,000—to Orange County, an area of 910 square miles and more than 677,000 people. In April 1988, the Orange County Affordable Housing Task Force formed to explore a broad-based approach to lowering the cost of residential development. Established by the Board of County Commissioners (BCC), the task force was charged with evaluating the needs, potential solutions, and long-term implications of housing issues facing central Florida.

The group included representatives from the real estate and homebuilding industries, financial institutions, nonprofit organizations, social service agencies, and government. Agreeing on the goal of creating a comprehensive package of systemic remedies to the area's housing affordability problems, they formed five subcommittees, including one on regulatory reform.

Presented in a September 1989 report, the task force's far-reaching recommendations proposed numerous changes in development regulations and procedures, as well as creation of a housing trust fund, a lending consortium, and a nonprofit building corporation. As of 1992, most of these recommendations have been implemented.

One key recommendation of the task force established a set of Affordable Housing Threshold Criteria used in identifying and certifying development proposals. Such projects are eligible for variances from the Planning and Zoning Commission, and approval of their rezoning applications and development plans receives accelerated review and processing.

Other recommendations involved various changes to county ordinances and building specifications, including easing construction standards for drains and sewer lines, eliminating the requirement for onsite tree surveys, and reducing sidewalk requirements in affordable projects. These were incorporated in the county's revised zoning code, adopted in December 1991. The following spring, BCC enacted an ordinance to reduce impact fees to 75 percent for certified affordable housing developments.

The task force's work had an important byproduct—public education. By putting the affordability problem in the spotlight, the group created new interest and helped diminish NIMBY attitudes. Affordable housing is less likely to be viewed as "someone else's problem," according to county staff.

Heightened public concern has been accompanied by more cooperation and coordination by city and county governments, which, as one Orlando official noted, "are actively working to learn from each other's experiments and ideas." This collaborative attitude recently took a new form, with guidance from The Enterprise Foundation, a national low-income housing and community development assistance organization, in establishing the Housing Action Committee (HAC). Cochaired by the city's planning director and the director of the county's Community Services Division, HAC is bringing together public- and private-sector interests to analyze five areas, one of which is regulatory incentives. Meeting since November 1991, HAC will formulate specific policy, legislative, and project proposals to increase affordable housing production. These proposals will be considered and then voted on by BCC and the Orlando City Council.

The new committee's work will augment other recent efforts to make homebuilding less costly. According to officials, there is already a 30-year supply of land where infrastructure will be provided for development. Along with the changes in regulations and procedures and an assortment of financial programs and partnership initiatives, there is new opportunity in the 1990s for developers and lenders. The nature, pace, and impact of the response remains to be seen.

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PHOENIX, ARIZONA

Subdivision Development Options

Phoenix's rapid population growth and shrinking affordable housing supply led to adoption of flexible new subdivision laws in 1981. Together with an overhaul of city development approval requirements, the revised regulations have encouraged builders to undertake creative design, construction, and site-planning innovations that have provided savings of 15 to 22 percent to homebuyers and have enabled Phoenix to make major strides in meeting its affordable housing needs.

A community's need for affordable housing does not in itself automatically offer sufficient motivation to private-sector developers to build such housing. Unless local regulations allow variable plans, designs, and construction methods, developers may find it difficult to build quality housing, sell it at a reasonable price to first-time homebuyers, and make a decent profit.

The city of Phoenix understands this concept well and has created an exemplary development climate characterized by planned growth, high-quality projects, and public- and private-sector cooperation. A major success factor has been the revision of local development regulations, necessitated largely by Phoenix's rapid growth in the 1970s.

These local reforms have enabled sizable cost savings in administrative and permit processing, construction, and land development—up to $1.3 million ($8,039 per unit) in 1 development of 255 single-family units. The revised regulations have cut out literally months of needless processing delays, thereby eliminating substantial interest costs and other fees. In the end, everybody wins. Developers can produce housing in a flexible, supportive regulatory environment; homebuyers with modest incomes can find reasonably priced housing; and the city can offer an adequate and attractive supply of affordable housing.

Phoenix city officials have estimated that streamlining regulations and procedures reduced the total approval process time by approximately 50 percent and helped developers decrease costs by 15 to 22 percent. Within several months of the passage of the regulations, the 4 new subdivision options allowed 3 local builders to begin construction of 600 new housing units priced from $26,000 to $34,000, all of which were rapidly purchased. In 1982, the number of new residential permits grew to 22,479, totaling approximately $1.5 billion in construction.

"Builder-Friendly" Residential Revisions

Between 1970 and 1980, Phoenix's population expanded 35.8 percent to approximately 800,000 people (1.2 million in the greater metropolitan area), making it the ninth largest city in the United States. As the number of residents increased, there was a simultaneous decrease in the affordable housing supply—the average household income was around $21,500, but the average cost of a home was $85,300.

In a major land-use study—the Phoenix Concept Plan 2000—local planners recommended as a development standard "urban villages," each of which would include a mix of housing types, employment opportunities, shopping facilities, educational institutions, and recreational choices. To encourage private-sector production of affordable housing in livable neighborhoods, Phoenix's city council scaled down the number of residential districts from 27 to 10. It then significantly redefined development regulations, establishing the 1981 Residential Revisions to permit four subdivision options for each district—traditional, zero-lot-line, average lot size, and planned residential development.

The 1981 Residential Revisions encouraged builders to employ creative, cost-saving methods of design, construction, and site planning. The new regulations eased former rezoning requirements while preserving compatibility with contiguous neighborhoods. They also permitted a variety of housing choices and mixes, including rental units, condominiums, attached townhouses, and detached single-family homes. City officials sanctioned greater density to facilitate smaller, lower-cost units and less maintenance than in conventional housing. Revised regulations also rewarded builders with density bonuses for providing open spaces, extra landscaping, recreational facilities, and other amenities.

These subdivision options alone would probably not have been as effective if the city had not aggressively instituted administrative cost- and time-saving initiatives. Four of the most significant changes were:

- One-stop approval of major development projects that reduced preconstruction review time by 50 percent.
- Single-construction permitting that abolished the former four-permit system and eliminated paperwork by 50 percent.
- Cutback from four residential inspectors to one per housing unit for plumbing, structural, mechanical, and electrical systems, thereby decreasing city inspection costs by $750,000 per year.
- Local revisions to the Uniform Building Code that emphasized issues of health and safety rather than appearance.

Cimarron—Test Case for Development Innovations

The 1982 Cimarron Affordable Housing Development Project was undertaken by a local builder with 35 years' experience, as a collaborative effort of the Phoenix Concept Plan 2000 and the U.S. Department of Housing and Urban Development's (HUD's) Joint Venture for Affordable Housing demonstration program. Although Cimarron was the first project to test the effectiveness of local regulatory changes, the concessions made for this project became standard procedures for subsequent housing development efforts throughout Phoenix.

The planned residential development (PRD) option, which proved to be among the most popular of the 1981 Residential Revisions' four alternatives, allowed the builder to commingle townhouses and single-family detached housing without a minimum lot-size requirement. The builder constructed 255 2- and 3-bedroom homes on 38 acres, 6 miles southeast of downtown Phoenix, leaving more than 18 percent of the land as open space. The 107 townhouses (770 to 912 square feet) sold for $45,000 to $50,300, and 148 single-family detached units (948 to 1163 square feet) were priced at $59,000 to $63,000, all well below the average local sales price of $85,300. These homes were designed for first-time homebuyers who had been priced out of the housing market—primarily single and married 25- to 35-year-old professionals with annual household incomes above $20,000.

The city made numerous administrative concessions that both hastened the project and saved considerable loan interest expense. In the areas of construction and land development, the city agreed to 28 of 37 features

suggested by the builder, none of which added project expense, used untried methods or materials, or detracted from considerations of attractiveness, quality, or safety.

One of the most cost-effective compromises was exempting the builder from a 3-percent off site performance bond, with the stipulation that all public improvements would be complete by final inspection clearance. Phoenix also instituted a speedy local permit review process. Meanwhile, HUD designated Phoenix a Local Acceptable Community and accepted the city's Federal Housing Administration subdivision approval review, resulting in a 90-percent time savings over HUD's standard review process. These arrangements saved the developer at least 6 months and $560,500 in interest and other fees.

Construction savings of $552,105 were realized, in part, by designing homes to fit standard material dimensions, which substantially reduced waste and scrap materials. Other modifications included applying hardboard siding directly to framing and reducing setback distances so that less driveway pavement was needed.

A savings of more than $247,442 was realized through novel site-development techniques. Cimarron's overall housing density was 71 percent greater than in standard subdivisions, because the PRD option permitted a mixture of house types with no minimum lot size. Site cost-saving techniques included the use of less expensive grading, gutter, and curb installations; downsizing of water mains; narrower residential access streets and rights of way; sidewalks on only one side of the street; increased fire hydrant and water valve spacing; and use of new pipe materials and techniques.

Overall the developer was able to enhance Cimarron's affordability by $1,360,047 or $8,039 per unit. The combination of attractive design, reasonable pricing, and high housing demand resulted in the sale of 101 (40 percent) Cimarron homes within the first 10 days of the January 16, 1983, "Grand Opening." Cimarron proved to be a highly productive venture, clearly illustrating the merits of Phoenix's flexible development regulations.

Benefits of Phoenix's Regulatory Reforms

As a successful test case, Cimarron set the pace for continued regulatory reforms in Phoenix. Creating flexible zoning options and easing local building restrictions had a positive effect on the community, not only in increased affordable housing opportunities, but in a heightened spirit of teamwork between city officials and developers.

With rising competition from the neighboring cities of Scottsdale, Tempe, and Mesa, Phoenix has not rested on its earlier accomplishments. Mayor Paul Johnson insists that the city keep its regulatory process "lean and mean" to meet changing building needs, reduce processing time, and minimize development costs. A 1987 reorganization led to the establishment of the Development Services Department, the focal point for homebuilders and city officials to work together. The manager of this department is accountable for all local regulatory activity, including project monitoring and oversight of regulations to assure that no unnecessary duplication exists. The city is proud that, while ordinances allow a maximum 21-day turnaround time for preliminary site plan approval of a major new development project, its decisionmaking process now averages 14 days.

City officials believe that other factors have contributed to Phoenix's ability to meet its affordable housing needs. These include the slowdown in population growth and housing demand during the 1980s, as well as some migration of low-income families to smaller towns on the city's west side, where housing is less costly. Phoenix nevertheless remains alert for new opportunities; in January 1992, the mayor ordered a review of all development regulations to determine if additional reforms could improve the city's development climate even further.

For More Information

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PORTLAND, OREGON, METROPOLITAN AREA

Metropolitan Housing Rule

The Portland area's unique Metropolitan Housing Rule has stimulated affordable-housing-friendly land-use and zoning requirements in more than two dozen jurisdictions surrounding the city of Portland. The rule's density and mix standards, which encourage multifamily housing, have reduced exclusionary zoning and mitigated the effects of rising housing costs.

In the past decade, the Portland area has become renowned for its livability and has recently been mentioned on *USA Today*'s "best places to be in the '90s" list, *Fortune*'s "top 10 business cities" list, and *Newsweek*'s "hot cities" list. The region's population of nearly 1.2 million is expected to increase 35 percent during the next 20 years. While Portland has prospered, housing costs, relative to per capita income, have remained well below those of many comparable U.S. cities. Recent studies conclude that this is due to, at least in part, the Metropolitan Housing Rule.

Enacted in 1981, the Metropolitan Housing Rule measures the Portland area's compliance with Goal 10 of the Oregon Statewide Planning Program (see page 27). The rule has kept housing costs down by requiring the area's 27 jurisdictions to increase the amount of land available for multifamily housing and by requiring 22 of the jurisdictions to decrease lot-size requirements. Towns and counties are thus mandated to plan and allocate growth areas for meeting their fair share of the region's affordable housing needs.

Because additional statewide planning requirements, local land-use and zoning decisions, and market-demand factors help determine density mixes and housing prices, credit for a given number of affordable homes cannot be attributed solely to the Metropolitan Housing Rule. Portland area officials agree, however, that the rule has been effective in decreasing lot-size requirements, increasing land zoned for multifamily development, and keeping housing costs down.

Indeed, since adoption of the rule, the volume of higher density housing development in the Portland area has increased dramatically. By 1989, the density of new development was 13 to 32 percent greater than at pre-housing-rule levels, and the majority of new units were multifamily housing. In many jurisdictions, more multifamily and attached single-family units were developed within several years following imple-

mentation of the rule than had been projected in their 20-year plans. One community, for example, had planned for only 371 additional multifamily dwellings in its comprehensive plan adopted in 1978. Between 1985 and 1989, having revised its plan and zoning to meet the Metropolitan Housing Rule requirements, the jurisdiction witnessed development of 2,981 multifamily units.

A State Administrative Rule Unique to Portland

Since 1974, the housing goal, or Goal 10, of the Statewide Planning Program has required Oregon localities to plan and provide for the housing needs of people at all income levels. The need for such planning has been especially critical in the fast-growth Portland area, which contains approximately 43 percent of the State's population.

As part of the planning process, each community establishes an Urban Growth Boundary (UGB) that encompasses land adequate to meet future development needs, including housing. Oregon's legislature determined that the Portland metropolitan area's 24 cities and 3 counties should establish a *regional* UGB and cooperative plan for meeting urbanization and housing goals.

The Portland Metropolitan Service District, a regional unit of government, determined the UGB in concert with the area's city and county governments. The Metropolitan Housing Rule, administered by the Oregon Department of Land Conservation and Development (DLCD), helps each community within the UGB meet its fair share of the region's affordable housing needs.

While the Metro Service District coordinates planning, the area's individual local governments must develop their own comprehensive plans and implement zoning and policy measures that comply with the Metropolitan Housing Rule. Consistent with the monitoring of all statewide planning goals, the Land Conservation Development Commission must approve these local plans and codes. Consequently, the rule's density and mix targets are evaluated for compliance based on 20-year planning periods.

The rule establishes three classifications of jurisdictions within the Portland area UGB: (1) small cities on the urban fringe with limited growth potential, such as Cornelius, Durham, Fairview, Happy Valley, and Sherwood; (2) medium-size, central jurisdictions, including Clackamas and Washington counties and the cities of Forest Grove, Gladstone, Milwaukee, Oregon City, Troutdale, Tualatin, West Linn, and Wilsonville; and (3) large, urbanized jurisdictions encompassing or near major employment centers, including Multnomah County and the cities of Portland, Gresham, Beaverton, Hillsboro, Lake Oswego, and Tigard.

The five relatively small cities in the first category are required to allocate an average overall housing density of six or more units per net buildable acre. The jurisdictions in the second group must set an average overall residential density of eight or more units per net buildable acre. For the third category of larger, more urbanized jurisdictions, the requirement is 10 or more units.

All three of these categories of jurisdictions must also designate sufficient buildable land to meet population forecast, and plan for at least 50 percent of new residential units to be attached single-family homes or multifamily housing. (The small, developed cities of Rivergrove, Maywood Park, Johnson City, King City, and Wood Village are excepted from the rule's housing density and mix standards.) The rule also specifies that "local approval standards, special conditions, and procedures regulating the development of needed housing must be clear and objective, and must not have the effect, either of themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

Compliance and Effect: Affordable Housing Opportunities

A 1990 study conducted jointly by the Home Builders Association of Metropolitan Portland and 1000 Friends of Oregon, a nonprofit public service organization concerned with protecting Oregon's quality of life, compared actual residential development patterns with planned patterns and evaluated regional housing affordability. Housing development during

the 5-year study period (1985–1989) exceeded 20-year density and mix targets. However, the study also noted that single-family subdivisions were built at only 66 percent of allowable density capacity.

A 1991 DLCD growth-management case study of four UGBs suggests that the Metropolitan Housing Rule has contributed to increased density development and housing affordability. Residential development densities within the Portland UGB were substantially higher and closer to maximum densities than those developed in the other Oregon UGBs, which are not subject to the same housing rule. Multifamily units in the Portland area represented 54 percent of residential development in contrast with 15, 21, and 38 percent in the other UGBs studied.

DLCD officials have experienced no substantial compliance problems with the rule and note that compliance provides only increased *opportunity* for affordable housing. Developers are not required to build to maximum density allowances. Additionally, State officials point out, higher densities do not always result in more affordable housing. A substantial amount of Portland's recent multifamily development has been luxury housing. Consequently, DLCD is considering tying maximum lot sizes to the rule to increase its effectiveness.

Notwithstanding its limitations, the Metropolitan Housing Rule is an effective tool for increasing housing affordability. As a result of this unique policy, more low- and moderate-income households can share in the Portland area's renowned livability.

For More Information

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SAN DIEGO, CALIFORNIA

The SRO Supply Strategy

Responding to a critical need for affordable housing in San Diego, a local task force recommended changes in building and other codes to make rehabilitating and developing single-room-occupancy (SRO) dwellings more feasible. Flexible new regulations have encouraged private developers to increase the city's SRO stock by more than 2,100 affordable, livable, nonsubsidized units since 1986.

Only in recent decades have Americans recognized the value of SROs—single-room-occupancy dwellings—as a means to address the housing problems of our low-income population. Rather than attempting to retain this source of affordable housing by imposing demolition and conversion restrictions, the city of San Diego chose instead to help the private sector increase the supply of SROs.

Developers, architects, building inspectors, fire department officials, lenders, providers of homeless services, and zoning officials formed a joint task force in 1986 to determine whether regulatory codes were posing unnecessary impediments to creating SROs. Based on the task force findings and recommendations, the city embraced more than 25 ways to expedite SRO development. Among the changes were alterations to construction requirements—primarily code-equivalency alternatives—and incentives to make private development of new SROs economically feasible.

The more flexible requirements and the small allowable room sizes create the potential for higher densities. As a result, developers have been able to build units for as little as $20,000, adding hundreds of "no-frills" affordable rentals to San Diego's housing stock.

A New Look at the SRO Resource

While downtown development in San Diego gathered momentum in the 1970s and 1980s, there was a sharp decline in available SROs due to demolition and market conversion. In addition, no new SROs had been built since 1930 because of tighter building standards—rendering impossible the construction of what was formerly viewed as economical, safe housing. And yet, for the homeless, and the working poor in particular, SROs can provide low-cost, permanent, private rental housing.

In an attempt to stem the loss of these affordable units, San Diego officials began to consider preservation policies. The city council adopted a 1-year moratorium on SRO demolitions and conversions in December 1985. Critics of the law perceived it as tantamount to confiscation of property rights and argued that an inflexible, strict preservation ordinance was not the answer to halting the decline of available SRO units.

In the spring of 1986, a private developer determined that it was economically feasible to build SROs that would serve the same function as those the city sought to preserve. This proposition deflected the focus of the issue—from preservation to generating an adequate, viable supply of SRO units.

Based on the developer's hypothesis, city officials appointed an SRO Task Force to examine how this housing option could best address the growing need in downtown and other areas of the city. The task force—a coalition of private professionals in the building, design, and financial fields and officials from all relevant regulatory departments and agencies—studied the applicable codes and found numerous ways to induce new construction by modifying zoning requirements and building standards without endangering public safety.

The task force proposed a three-pronged approach to using SROs to address the affordable housing crisis: preserving existing units, rehabilitating dilapidated ones, and constructing new SROs. This strategy involved considerable complexity. State legislation had to be enacted to authorize the creation of a new type of housing unit; lending institutions had to learn how to appraise new SROs for market value; and new and innovative regulatory changes and code-equivalency standards had to be negotiated and established.

Supply Strategy

In July 1987, the city adopted a supply strategy, replacing the earlier preservation approach. The new ordinance set a minimum threshold of approximately 3,000 SRO units serving individuals qualifying as very low income; if the total fell below this number, an immediate ban would be instituted on demolitions and conversions. Thus SRO owners could demolish or convert their properties—provided the city's new program to facilitate SRO development and rehabilitation proved effective.

With encouragement from the SRO Task Force, the city embraced more than two dozen ways to both expedite the construction of new SROs and ensure the safety of existing buildings. Some of the modifications took the following forms:

- SROs, made possible by the enactment of State legislation, were designated as a permitted use in commercially zoned districts, resulting in expanded locational flexibility. In addition, SROs were designated as a hotel use instead of a residential one, thus substantially reducing development costs.
- The State law was amended to relax certain fire codes. In addition, to decrease costs, the fire department took on the responsibility of reviewing plans on a case-by-case basis to identify reasonable equivalents to existing requirements.
- A variance procedure was formalized for reducing offstreet parking requirements in commercial zones. The specific parking requirements are worked out on a case-by-case basis, taking into account the location of the project in relation to transit, services within walking distance, and the proposed rent structure of the development.
- SROs were granted an exemption from, or a rebate of, the city's Transient Occupancy Tax.

While most of the modifications brought about by San Diego's program are aimed at encouraging and facilitating new SRO construction, other provisions ensure that indiscriminate demolition of SROs does not occur. The building inspection department can issue permits for demolition or conversion only if an owner executes an agreement to provide replacement units on a one-for-one-basis within the next 3 years in the community plan area or in another approved alternate location, and also pay specified relocation benefits to displaced tenants. These units must be maintained as low-income housing for at least 10 years.

Achievements and Future Outlook

The first SRO development constructed under the new ordinance was the 207-unit Baltic Inn in 1987, built with the help of gap financing by the San Diego Housing Commission. Encouraged by the project's success, the Baltic owners promptly commenced another 221-room SRO. Within 18 months of adoption of the ordinance, four new SRO hotels were occupied or under construction. Primarily small, densely developed structures, they were imaginatively designed with light courts and naturally ventilated corridors and rooms.

In all, more than two dozen SRO hotels have been built or renovated since 1987. Among the 2,100 units in these buildings are 496 highly affordable rooms, renting at $197 to $300 per month. The vacancy level remains low.

Regulatory flexibility was key to making these projects feasible and successful. The most significant savings came from permitting the unit size to be 220 square feet, rather than the minimum of 550 square feet before the code was amended, reducing development costs to approximately $20,000 to $25,000 per unit.

The city has expanded the SRO concept and developed the "living unit," which San Diego officials believe will become the low-cost housing of choice in the future. The living unit, with minimum dimensions of 150 square feet, would house up to two persons. Two living-unit projects have been completed, adding approximately 400 affordable housing units to the city's supply.

The lesson and legacy of San Diego's SRO program is that low-cost, livable housing can be built by the private sector without the aid of government subsidies. It took only a practical, concerted reconsideration of regulations to enlarge the possibilities for developers, and it took only one new SRO project for builders and the financial community to realize that this type of development could be a moneymaker. Most of the projects were built by for-profit developers using conventional financing, and one local bank has loaned more than $20 million for constructing new SROs.

The SRO initiative now extends well beyond San Diego, having been replicated in varying degrees in places as close as San Jose and Berkeley in California and as distant as Atlanta, Georgia, and the State of Hawaii. Diverse localities are discovering that SROs make sense—both economically and as a solution to the low-income urban housing needs.

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SAN PABLO, CALIFORNIA

Manufactured Housing in Older Neighborhoods

San Pablo turned to the option of manufactured homes to replace uninhabitable housing and to provide homeownership opportunities for low- and moderate-income residents. With State and Federal guidelines ensuring quality construction, the city modified its fee requirements and streamlined permit procedures, making it feasible for a private developer to create new affordable housing units in a short period of time and setting the stage for future development.

The city of San Pablo has succeeded in using factory-produced housing as a cost-effective solution for "infill" dwellings—new homes constructed on vacant lots in older neighborhoods. Relying on existing high construction standards and strict inspection procedures, the city eased its requirements for permits, impact fees, and building codes to create a favorable local climate for manufactured housing.

In addition to ordinance revisions, the city went a step further by eliminating administrative hurdles for developing the housing. The result was a quicker permit process through an "over-the-counter" approval system that saved at least 2 months' time on building permits and reduced construction financing expenses.

San Pablo's Argument for Manufactured Housing

Manufactured housing—produced in a factory rather than built on a site—has been widely used in the United States because it usually offers less costly construction and faster installation than conventional units. The manufactured housing option also cuts down on vandalism losses because units can be secured at the assembly site—a particularly beneficial feature in crime-prone inner-city neighborhoods.

Some communities may be reluctant to encourage such housing, which includes manufactured homes that are single-section or multisection buildings

and are transported to the site and installed. But high-caliber, well-designed products are now being created, and Federal requirements mandate their quality. San Pablo has demonstrated that such housing is an acceptable and economically viable alternative to the higher cost of conventional dwellings.

San Pablo is a small city of 21,700 located 14 miles from San Francisco. Over the years, San Pablo has changed from an industrial-based center to a bedroom community. Now it is improving its transportation system with new freeway construction and is beginning to attract light industry. In 1989, the average annual per-capita income was $35,000. Housing was about equally divided between owner-occupied and rental property.

By the mid-1980s, San Pablo's large stock of 1940s housing, hastily constructed for use by shipbuilding workers during World War II without benefit of building codes, had begun to deteriorate as the city's manufacturing base declined. Dilapidated beyond repair, these substandard units became health and safety hazards as well as a blighting influence. Meanwhile, with the price of California housing continuing to soar, the city found itself facing a serious shortage of affordable housing in general and homeownership opportunities for its low- and moderate-income citizens in particular.

Support at All Government Levels

Manufactured housing has to meet high standards mandated at the Federal level. The U.S. Department of Housing and Urban Development's (HUD's) National Manufactured Home Construction and Safety Standards require an approved quality-control program; inspections of both construction and materials; and installation of all major systems, including heating, cooling, plumbing, and electrical. In California, the homes must also comply with State building codes, which are based on the National Conference of States on Building Codes and Standards. Manufactured houses undergo rigid independent inspection at the factory to ensure that the units meet both HUD and State standards.

California set the legal context for San Pablo's use of manufactured housing. With the passage of several important laws, in 1980, the State ruled that such homes must be built on standard foundation systems if lots are zoned for conventional single-family homes. The law's intent was to subject manufactured housing to the same regulations applied to conventional housing. In the past, manufactured housing applications were reviewed on a house-by-house basis and were often required to obtain conditional-use permits and zoning exemptions. Nearby property owners were notified and public hearings were held, which added considerable time and expense to the development process.

California law prohibits cities from discriminating against manufactured housing; but, even with the 1980 legislation, some cities still refused to treat this type of housing with parity. A new law was enacted in 1988 that allowed a manufactured home to be placed on *any* lot zoned for conventional single-family housing. Use permits for both types of housing are the same. California law also now requires cities to identify adequate sites and appropriate zoning and development standards to actually encourage the use of manufactured housing.

Responding to the State legislation and the city's housing and revitalization needs, San Pablo eased its restrictions to benefit manufactured housing in two ways. First, when used as infill housing, manufactured homes received a waiver or credit of customary city fees for permits, utility hookup, and development impact by classifying the units as *replacement housing*, not new construction. The city also instituted a Residential Health and Safety Program, which allowed the city to gain court approval to demolish dangerous residential structures that could then quickly be replaced with manufactured housing. Unfortunately this law was rescinded in a budget-cutting move in 1990.

A Simple Process for Manufactured Homes

The incentive of a waiver or credit for the local fees proved sufficient to attract an experienced private developer with an excellent local reputation to the task of installing manufactured housing on an infill basis. In 1987, city-owned lots were sold to the developer who, in turn, made any necessary site improvements, including demolition. The net cost saving was an average of $3,200 per home in the late 1980s and would be more than $5,700 per unit today, as illustrated below:

	1989	1992
Utility hookups	$3,900	$6,350
School fees	2,400	2,900
Building permit	400	1,000
Total fees waived	$6,700	$10,250
Less cost of demolition of old house onsite	$3,500	$4,500
Minimum savings	$3,200	$5,750

San Pablo officials worked with the builder to create a new, accelerated approval process. The developer established a design concept, guidelines, and a standard foundation system, which the city adopted as minimum standards for infill housing. Because manufactured housing already must meet Federal and State quality standards, the city only has to inspect the foundations and the finished unit—a much faster proposition than periodic inspections throughout the construction process. With local standards in place, the developer could take the blueprints to the building permit office and get the staff to approve the plans over-the-counter. The result was that permits were issued up to 2 months quicker than the conventional process allowed.

The accelerated processing helped encourage local lenders to provide construction financing. The assurance of quality housing with fast installation meant that the units could be built in less time and with more certainty than conventional housing. This facilitated frequent financing turnover and often meant higher earnings for the lender.

San Pablo's manufactured housing has included both single-family and duplex homes that could be installed in 6 to 8 weeks. The houses were delivered to the sites in two sections and placed on concrete perimeter foundations, which are set back 20 feet from the street on lots approximately 40 by 112 feet. The houses included a garage, utility hookups, and masonry for sidewalks and a driveway. The savings on the sales prices are estimated to average one-fourth of the cost of comparable conventional units. The initial home cost $82,500 in 1989 and increased in value to as much as $145,000 by 1990.

More than 75 manufactured infill housing units have now been constructed in San Pablo. All have been purchased by low- and moderate-income homebuyers. The developer credits much of the venture's success to the support of the city and neighborhood groups. The San Pablo housing model is not only working for its own residents, but has spread to several neighboring communities where more affordable housing is being constructed. The city and developer are confident the concept will be replicated beyond California, since recent inquiries and observers have come from as far away as Chicago and Atlanta.

For More Information

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VICTORVILLE, CALIFORNIA

Simplifying the Permit Process

A positive, proactive attitude about affordable housing on the part of city officials has led to flexible regulations and procedures for housing development in Victorville. A streamlined permit application and approval process, coupled with land costs that are less than those in surrounding areas, has provided the community with new housing that is within the reach of low- and moderate-income homebuyers.

Less expensive land. Leaner profit margins. Tougher bargaining with subcontractors. Flexible local regulations. According to one developer, these are the major elements that make new homes affordable. These criteria sum up what is happening in Victorville, California, and why this same developer sold 55 houses in 3 hours for prices ranging from $80,000 to $105,000—and why the entire project was sold out within 1 week, months before the final homes were built.

Flexible city codes, paired with timely development approvals and low permit fees, help explain why, despite a difficult economic climate, Victorville has become a haven for low- and moderate-income homeowners. New houses are 25- to 50-percent less expensive than in other communities in Southern California. Ninety-eight percent of all homes built in the past few years in Victorville have sold for under $100,000, and most of these were in the $70,000 to $80,000 range.

Victorville lies on the edge of the Mojave Desert, which allows for perimeter expansion with relatively low land costs. At the same time, the city is accessible (45 minutes by car) to major employment centers such as San Bernardino and the Ontario International Airport. Residents even commute to jobs in Los Angeles, just over an hour's drive away, which gives credibility to the contention that first-time buyers are willing to trade off a longer commute for homeownership.

Since 1968, Victorville has had a master plan to ensure that its population, geographic, and economic growth would be compatible with the city's natural resources, while still pursuing residents' desire to become the hub city in the area known as the Greater Victor Valley region. Until the 1980s, the city's growth had remained rather contained and steady. However, when housing prices in Southern California began to force low- and middle-income families out of the homebuying market, the focus turned to Victorville.

To meet the demand for housing, the city annexed 5.6 square miles in 1992, adding 2,500 residents and bringing the total population to just over 50,000. Consequently, undeveloped land is available for housing in an already desirable community for single-earner families, blue-collar workers, and civil servants. And, as part of the master plan, city officials have tailored zoning ordinances to accommodate the variety of housing available to residents of all income levels, including such cost-reduction alternatives as single-room occupancy and cluster housing development.

The Permit Process

Obtaining a building permit—whether for a single home or a subdivision—is generally a linear process. Each jurisdictional board (such as environmental or planning) in turn reviews and approves or rejects a proposal. Because each review committee must hold a public hearing, obtaining a final permit can take months under the best of circumstances. And delays in approval from a long permitting process add to the cost of a project and thus to the sales price of individual homes.

To mitigate this problem, city officials made a concerted effort to reduce bureaucracy. They reviewed the minimum statutory requirements for approvals and then instituted a system whereby most of the investigations and approvals could be handled simultaneously. Likewise, by placing permit-granting authority with a single commission, city officials can expediently grant Victorville developers construction go-aheads in fewer than 30 days. This process formerly took 90 to 120 days.

Enacted by the city in 1989, the revised procedures encourage developers to acquire important information (maps, regulations, restrictions, and Federal and State approvals, if required) prior to submitting their plans. Permit applications are submitted to the city planning director before coming before the planning commission. If other city boards or agencies are required to be part of the hearing process, they can sit in with the planning commission.

The comprehensive development plan submitted by the developer must address all factors that affect the well-being of the community and the environment, including housing, traffic circulation, solid waste management, water, and air quality. In addition, development in Victorville must face specific considerations that concern preservation of desert plant life (the Joshua tree), endangered species (the desert turtle and Mojave ground squirrel), and seismic-related hazards (proximity to active faults).

If the planning director determines that all development and government considerations have been satisfied, the director gives notice of a hearing by the planning commission to be held no earlier than 10 days from the date the notice is advertised. Surrounding property owners are notified by mail. At the hearing, the planning commission has authority to approve or deny the permit. If the project is denied, the applicant has 15 days to appeal to the city council for another hearing. The city council can sustain, modify, or overrule the action of the planning commission.

Appeals to the Victorville City Council are rare. Developers agree that the single board is flexible in dealing with restrictions and standards, and that the planning commission works to adjust requirements to fit the circumstances.

Other Incentives for Affordable Housing

When a developer submits a housing plan to the planning director, the density can range from a single home per acre to 6.5 residences per acre. The differential involves a system of density bonuses provided by city ordinance and can take the form of the higher density or "other incentives of equivalent financial value, such as reduced requirements for sidewalks or roadway widths in subdivisions."

As part of the city's system to ease the hearing and approval process, applications for density bonuses may be submitted with specific housing plans. If bonuses are awarded, the developer enters into a

contractual agreement with the city. The agreement becomes part of the recorded deed, obligating an owner or successor to keep the property affordable.

In addition to simplified procedures and density bonuses, development impact fees (such as for sewer and water hookup) have been held down in comparison with other California communities. Filing fees are also moderate, ranging from a few hundred dollars for a home occupancy permit to $1,125 for special plans involving 40 acres or more.

Victorville's proactive and positive stance on facilitating low-cost housing production is counteracting national and regional trends. According to 1991 Census Bureau figures, homeownership by persons under age 25 has dropped from 21 percent in 1980 to 15 percent; for those between ages 25 and 30, ownership fell from 43 percent to 34 percent. By attracting developers to construct low-priced single-family houses, Victorville is attracting young people who had given up hope of homeownership. Thus, despite the worst homebuilder recession in years—and one of the most problematic housing affordability and land-development climates in the Nation—the city has delivered workable opportunities for both prospective builders and aspiring homebuyers.

For More Information

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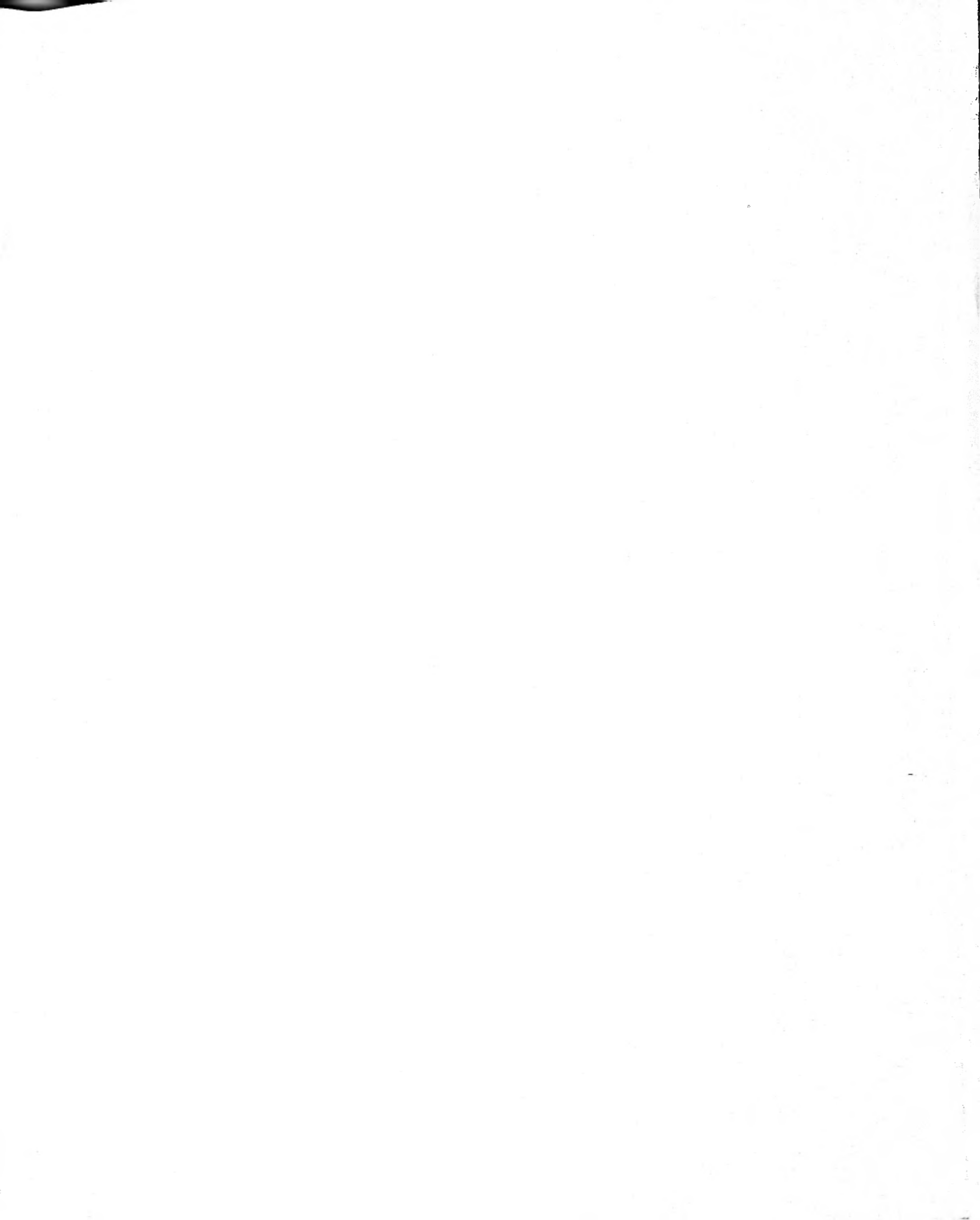

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