

# PUTTING THE PIECES TOGETHER

## State Actions to Encourage Smart Growth Practices in California

*A Report from the ULI  
California Smart Growth  
Initiative's Statewide  
Coordinating Committee*



THE JAMES IRVINE FOUNDATION

**ULI**Foundation



**Urban Land  
Institute**

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ULI sponsors education programs and forums to encourage an open, international exchange of ideas and sharing of experiences; initiates research that anticipates emerging land use trends and issues and proposes creative solutions based on that research; provides advisory services; and publishes a wide variety of materials to disseminate information on land use and development. Established in 1936, the Institute today has more than 17,000 members and associates from some 60 countries representing the entire spectrum of the land use and development disciplines.

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# FOREWORD

A growing consensus exists among leaders in California—from the business, environmental, academic, government, social equity, labor, and other arenas—that new development patterns are needed in order to accommodate projected growth while preserving people’s quality of life. Development must be encouraged to locate in existing urbanized areas. New development in nonurbanized areas must be more compact, of a mixed-use character, and served by public transit. Jobs and housing must move closer together. Open space and important natural features and environmental systems must be preserved. And in order to begin to deal with regional issues and solve regional problems—such as traffic, environmental quality, and the economy—planning and infrastructure investments must be coordinated across jurisdictional boundaries.

Many barriers stand in the way of achieving these objectives. There are fiscal disincentives to interjurisdictional coordination. No state framework is in place to facilitate smart growth planning and development. Growth-induced problems are being compounded by insufficient funding for transportation and other infrastructure. And various regulatory obstacles and liability issues discourage smart development practices. We believe, however, that it is possible to remove many of these barriers by taking a comprehensive approach, crafting intelligent incentives and reforms, and providing bold and decisive leadership at the state level.

The ULI California Smart Growth Initiative is an attempt by a broad cross section of leaders in the state to seriously address California’s growth challenges and find real, pragmatic, and effective solutions.

We feel that the work of the Statewide Coordinating Committee and ULI district councils in California under the auspices of the ULI California Smart Growth Initiative will make a positive contribution to the quality of life of future generations of Californians.

**Fritz Grupe**  
*Cochair*  
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September 2002

# THE ULI CALIFORNIA SMART GROWTH INITIATIVE



**T**he ULI California Smart Growth Initiative seeks to address growth challenges in California by examining growth and development trends, identifying barriers to smart growth, and making recommendations for specific local, regional, and state actions that can advance a collaborative smart growth agenda. The project was launched in September 2000 and is coordinated by ULI in collaboration with its five California district councils.

The project's goals include the following:

- ◆ Encourage collaboration at the local, regional, and state levels among key stakeholders in the smart growth dialogue.
- ◆ Foster the active participation of the private development community in local, regional, and statewide efforts to implement smart growth and sustainable development.
- ◆ Organize forums involving a diversity of community leaders who could be expected to take the lead in developing and implementing local and regional smart growth strategies.

To accommodate a projected population of 57 million by 2040—a 70 percent increase—California needs to concentrate development more.



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- ♦ Inform decision makers about the impediments and barriers to making smart growth work at the local, regional, and state levels; and suggest to them solutions.

The ULI California Smart Growth Initiative has been guided by a Statewide Coordinating Committee consisting of more than 30 respected leaders from the business, development, environmental, social justice, civic, and state and local government arenas committed to advancing a coordinated smart growth agenda. (See following list of committee members.) The diverse makeup of the committee—with each member holding a strong interest in seeing certain aspects of a comprehensive approach advanced—resulted in recommendations that recognize the needs of diverse interests throughout the state.

The committee met formally in six full-day sessions between March 2001 and June 2002 to identify key growth challenges facing the state, identify major barriers to smart growth policies and projects, and recommend a set of possible state actions to promote smart growth practices (as detailed in this report).

The ULI California Smart Growth Initiative has sponsored smart growth work groups at the regional level, organized by ULI district councils in San Francisco, San Diego, Orange County, and Los Angeles. These sessions have brought together leaders from the business and development communities; environmental, civic, and social justice communities; and the public sector—leaders who are dedicated to advancing smart growth action plans within their regions.

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# GROWTH CHALLENGES IN CALIFORNIA

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California is projected to add 6 million new residents by 2010, 12 million by 2020, and 24 million by 2040. And the state's urbanized areas are expanding outward rapidly. Distances between jobs and housing are lengthening, meaning that Californians spend more time driving and more money on transportation; housing production is trailing the demand for present and future housing; local infrastructure is under increasing strain; and the state's natural resources are being threatened.

To accommodate projected population growth without putting severe strain on the state's resources and deteriorating the quality of life of its residents, California needs to concentrate development more. However, the state is moving in the opposite direction. Its most rapid growth (measured by the rate of population growth) is occurring in largely suburban counties characterized by low-density development—such as Merced, Fresno, Sacramento, San Bernardino, and Riverside.

## TRENDS

California's basic growth and development trends are as follows:

- ◆ Population is steadily increasing. The majority of this growth stems not from in-migration but from natural increases.
- ◆ Urban areas are expanding rapidly. They are spilling over into undeveloped areas.
- ◆ New development is primarily at low densities and largely automobile-dependent.
- ◆ Employment locations are becoming increasingly decentralized and separated from residential areas.

## PROBLEMS

These trends pose a number of potential problems for the state's residents, economy, and environment, including the following:

- ◆ severe housing shortages;
- ◆ housing markets that are unaffordable to more than two-thirds of the state's residents;
- ◆ a projected 100 percent increase in vehicle-miles traveled and a 200 percent increase in traffic congestion over the next 20 years;

- ◆ growing concentrations of poverty in urban areas and wealth in suburban areas, caused in part by the lengthening distances between affordable housing and jobs;
- ◆ the loss (or fragmentation) of thousands of acres of farmland annually to residential and commercial development (note: the Central Valley alone is projected to lose 1 million farm acres by 2040);
- ◆ a loss of open space;
- ◆ deteriorated air and water quality from pollution exacerbated by sprawl; and
- ◆ declining economic competitiveness attributable to high levels of traffic congestion, expensive housing, and other quality-of-life issues.

Traffic (vehicle-miles traveled) in the state is projected to double and congestion to grow even more over the next 20 years.



COURTESY OF THE LOCAL GOVERNMENT COMMISSION

## BARRIERS TO SMART GROWTH

Smart growth offers a way out of the growth dilemma for California; it is a strategy that would enable the state to develop in ways that are more equitable, efficient, and economically sound. However, numerous structural, political, and fiscal barriers impede the spread of smart growth practices. Key among these barriers are the following:

**Fiscal zoning.** California's local government finance system encourages localities to seek land uses and development projects that will pay (or generate) more taxes than they will require in government services. Under this system, which has come to be known as "fiscal zoning," sales tax-generating commercial uses consistently win out over housing, resulting in a serious imbalance between commercial and residential development.

**Neighborhood opposition to new development.** Nearby residents and businesses frequently pressure local officials to modify or deny proposed developments out of concern about density, traffic, loss of open space, or design incompatibility. The benefits of well-designed developments in

terms of community livability and economic viability and the preservation of open space are not widely known or understood.

**Fragmented decision making.** On the local level, piecemeal localized planning decisions, the lack of a comprehensive planning framework, and the failure to take regional impacts into account make for bad overall growth policy. At the state level, many agencies affect patterns of development and community livability, but there are few or no requirements that these agencies coordinate their plans.

**Insufficient funding for infrastructure.** Many local governments will face significant infrastructure deficits in the coming decades. Insufficient funding makes it difficult for communities to upgrade infrastructure to support infill development and thus can discourage infill activity in developed urban areas.

**Limited funding for planning.** Planning for smart growth and livability is not included in the planning budgets of many localities with budgetary challenges. The state generally does not provide funding to localities for this activity.

**CEQA redundancies.** The California Environmental Quality Act (CEQA) requires localities to evaluate the potential impacts of proposed plans and projects. The evaluation and approval processes that have evolved to carry out this task contain multiple redundancies that create uncertainty, delays, and additional costs in the development process.

**Brownfield development issues.** The uncertainty and delays that often complicate the development of brownfield sites discourage developers, lenders, and insurers from investing in these sites. Multiple federal, state, and local regulations under the authority of separate agencies constitute a major obstacle, as does the threat of liability in perpetuity for developers of brownfield sites for any environmental hazards arising from the site, regardless of the cause of the hazard.

**Construction-defect litigation.** The proliferation of construction-defect lawsuits brought against builders and developers by homeowner associations has become a serious disincentive to the development of compact, attached housing. This litigation—coupled with a lack of clear standards for the repair and remediation of defects—has driven insurance carriers out of the market, made it prohibitively expensive for builders to obtain construction-defect insurance, and limited the production of townhouses and condominiums, which have been one of the most viable housing options for first-time homebuyers in California.

# EIGHT PRINCIPLES OF SMART GROWTH

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**S**mart growth is about ensuring that growth is accommodated in ways that are economically sound, environmentally responsible, and supportive of community livability. It is about growth that enhances quality of life. Smart growth seeks to remedy many of the problems associated with unsmart growth—increasing traffic congestion, lack of affordable housing, jobs/housing imbalance (lack of housing where jobs are located and lack of jobs where housing is located), loss of farmland, and loss of open space and natural resources.

The following eight principles of smart growth should serve as a framework for smart growth at the state, regional, and local levels. They act as the foundation for the committee's recommendations for state initiatives to promote smart growth.

**1. Preserve and enhance California's quality of life.** Accommodate growth in ways that use the state's natural and financial resources efficiently, enhance its economic competitiveness, and provide local governments more certain and adequate funding.

**2. Create viable and livable communities.** Ensure that existing communities remain or become vital and healthy places that provide opportunities for all residents to live, work, recreate, obtain a good education, and raise a family.

**3. Invest in transportation linked to efficient land uses.** Strengthen the links between transportation funding decisions and smart growth practices. Support smart growth practices with efficient transportation planning and investment strategies.

**4. Enhance housing opportunities.** Support policies to increase the supply and affordability of housing to meet the needs of California families.

**5. Preserve open space, natural resources, and the environment.** As much as possible, locate new development in or adjacent to existing communities, so as to protect air and water quality, conserve wildlife habitat and natural land features and systems, and provide green space for recreation and other amenities.

**6. Preserve farmland.** To the extent possible, avoid the conversion of California's prime agricultural land to other uses.



Smart growth is about ensuring that growth is economically sound, environmentally responsible, and supportive of community livability.

**7. Address growth issues regionally.** Foster collaboration among state, regional, and local governments to solve problems that are regional—and not local—in nature.

**8. Seek solutions at the grass roots.** Educate and engage the community because grass-roots, community-centered processes and procedures are essential elements of smart growth.

# THE STATEWIDE COORDINATING COMMITTEE'S RECOMMENDATIONS



**D**rafting a comprehensive, workable smart growth agenda for California is a challenging task. The state's size and regional diversity, entrenched political interests, rapid population growth, and complex and poorly coordinated statutory framework all work against any one-size-fits-all solution. But this task is necessary as well. Smart growth needs programs at the state level that can effectively address growth and development challenges while respecting the diversity and autonomy of California localities.

Smart growth promotes the growth of livable communities that provide opportunities for all residents to live, work, recreate, obtain a good education, and raise a family.



While changes at the local and regional levels need to occur too, the Statewide Coordinating Committee focused its attention on what can be done at the state level. Its recommendations result from careful deliberations. Among the criteria that the committee aimed at in drafting its state-level recommendations are the following:



- ◆ The smart growth initiatives should be compelling as well as politically and economically viable.
- ◆ The recommendations should address problems that are not already being successfully addressed.
- ◆ The actions recommended should be meaningful in terms of the impact they would have if implemented.
- ◆ The set of recommended programs should address the needs of a broad cross section of stakeholders and be able to mobilize their interest.

The recommendations made, it should be noted, are not antigrowth. Growth is inevitable, and the aim of these recommendations is to assure that growth is beneficial rather than harmful to California residents, communities, and the economy. Nor do the recommendations remove necessary safeguards against growth for communities, residents, and the environment. But they do seek to avoid many unintended negative consequences of such safeguards. Finally, these recommendations will not burden developers and businesses with unnecessary restrictions. On the contrary, they will provide more certainty in the development process and a context of equitable, healthy growth that will help the state retain competitive advantages and benefit its economy.

Each of the committee's recommendations addresses a different aspect of the growth and development challenges California faces, but each also addresses multiple needs. Together they form a comprehensive package that could be effective in securing a more sustainable future for California. The committee's recommendations are listed in the box below and described in detail in the following two sections of this report.

## Recommended State Actions for Smart Growth

The Statewide Coordinating Committee of the ULI California Smart Growth Initiative recommends that state leaders consider implementing the following incentives and regulatory reforms to advance smart growth in California.

### Economic Incentives

- ◆ Create a program—the Community Dividend Program—to encourage and reward communities for integrating smart growth practices into the planning and development processes.
- ◆ Program transportation funds to promote smart growth.
- ◆ Authorize tax-increment financing for transit-oriented development.
- ◆ Provide fiscal incentives for housing.

### Regulatory Reforms

- ◆ Revise regulations governing environmental review and local planning to encourage smart growth.
- ◆ Take steps to limit the impact of construction-defect litigation on the production of attached housing.
- ◆ Emphasize community building in school construction and remodeling programs.
- ◆ Eliminate barriers to the development of brownfields.

# ECONOMIC INCENTIVE RECOMMENDATIONS



**T**he committee recommends that state leaders consider implementing the following economic incentives, detailed below, to advance smart growth in California:

- ◆ Community dividend program.
- ◆ Smart growth transportation funds.
- ◆ Tax-increment financing for transit-oriented development.
- ◆ Fiscal incentives for housing.

## CREATE A COMMUNITY DIVIDEND PROGRAM

The proposed Community Dividend Program encourages and rewards local governments with a voluntary financial incentive—a dividend—for integrating smart growth practices into their planning and development processes. The program has two parts: 1) grants and forgivable loans for planning activities that help encourage smart growth, and 2) the awarding of priority status for future infrastructure funds to localities that meet defined smart growth criteria.

The Uptown District near downtown San Diego offers a mix of retail and recreational amenities reminiscent of a small town.



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The program's goals include improved growth patterns throughout the state, the provision of needed planning funds to localities, the more efficient use of state infrastructure funds, the provision of infrastructure that supports smart growth projects, and support for localities that accommodate a share of the growth that is projected to occur in the state and growing regions.

### **PLANNING LOANS AND GRANTS**

The state's provision of grants and forgivable loans for up-front land use planning and California Environmental Quality Act (CEQA) documentation can encourage cities and counties to voluntarily seek to advance smart growth objectives. Planning assistance would be offered to communities for the development of integrated planning strategies incorporating smart growth objectives—for example, a diversity of housing choices, an expansion of travel-mode choices, infill development, downtown revitalization, transit-oriented development, a mix of land uses, open-space preservation, the protection of natural resources, and certainty in the development review process. Specific criteria for providing Community Dividend Program planning assistance will need to be developed.

### **PRIORITY INFRASTRUCTURE FUNDING**

The state's provision of priority infrastructure funding for cities and counties that voluntarily implement smart growth strategies would encourage localities to practice smart growth. The Community Dividend Program would involve the redesign of the state's allocation systems for funding transportation and other infrastructure, economic development, open space acquisition (including recreational land), and the preservation of agricultural land and environmentally important land. Specific criteria for providing Community Dividend Program planning assistance will need to be developed (see feature box on page 14 for some suggested criteria.)

### **IMPLEMENTATION**

In order to establish an effective Community Dividend Program, state administrative and legislative leaders need to take the following actions:

- ◆ Establish a pool of funds to support the planning assistance aspect of the program.
- ◆ Direct that the policies of all state agencies involved in funding infrastructure—including agencies that fund transportation improvements, sewer and water facilities, open-space acquisition and natural resource preservation, and economic development—incorporate criteria to support the priority infrastructure funding aspect of the program.
- ◆ Link new funding initiatives for public facilities, including bond acts, to the objectives of this program.

The planning and infrastructure funds made available under this program could be particularly valuable in encouraging the integrated planning that the Statewide Coordinating Committee calls for in its recommendation concerning the reform of environmental review and planning law regulations (see page 18).

## Illustrative Criteria for Smart Growth Dividends

Any city or county opting to participate in the planning assistance or the priority infrastructure funding portion of the Community Dividend Program must support specific smart growth practices and policies. Actual program eligibility criteria and the process for determining eligibility for priority funding should be established through a collaborative effort involving state and local government officials.

Illustrative local actions that would be taken in order to receive incentive funding under the Community Dividend Program are suggested here for consideration by advocates or legislators who are interested in seeing this recommendation implemented. The program's action criteria should be refined and prioritized as the program is developed.

### Support for the Development of The Kinds of Housing Needed in The Community

In support of the satisfaction of diverse housing demand, the locality:

- ♦ is planning to meet or exceed its share of projected regional housing needs;
- ♦ encourages higher-density development in areas close to transit, employment centers, and community facilities through location-specific density bonuses (in addition to the state-mandated bonuses) or similar mechanisms;



The 14-acre Uptown District has been redeveloped with an average housing density of 43 units per acre.

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- ♦ gives priority to projects that include affordable or mixed-income housing; or
- ♦ does not require conditional use permits for proposed infill housing projects that meet zoning requirements.
- ♦ pedestrians and encourage walking, especially in residential and mixed-use areas; or
- ♦ relaxes level-of-service standards for streets in walkable neighborhoods with access to transit, and in neighborhoods targeted for infill development or redevelopment.

### The Promotion of Travel Choices

In support of the expansion of travel-mode choices, the locality:

- ♦ establishes residential densities within walking distance of bus stations that are supportive of local-bus service;
- ♦ adopts street design standards—such as continuous sidewalks, on-street parking, crosswalks, traffic calming, and landscaping—that give priority to

### The Promotion of Infill Development

In support of infill development, the locality:

- ♦ inventories its vacant and underused urban land and prepares specific reuse strategies for various properties, which can include surplus or aban-

## PROGRAM TRANSPORTATION FUNDS TO PROMOTE SMART GROWTH

Metropolitan planning organizations and state transportation agencies generally program a significant amount of state and federal transportation funds each year. The California Department of Transportation (Caltrans) has recently directed some of its resources to local smart growth planning activities. It should carry that initiative further.

Caltrans can contribute to smart growth by undertaking the following actions:

- ♦ Create a pool of funds to be made available to localities on a competitive basis for community planning and capital improvements that 1) promote mixed-use development near existing or future rail stations, 2) concentrate growth along bus corridors, and 3) improve the regional jobs/housing balance.

done institutional facilities as well as underperforming or abandoned commercial and industrial sites;

- ◆ determines priority areas for infill growth and initiates funding to upgrade infrastructure—water and sewer systems, lighting, and transit, for example—in priority infill areas;
- ◆ allows development rights purchased from landowners in urban fringe areas that are targeted for open-space preservation to be used in infill locations to develop at greater than zoned densities (up to a locally prescribed maximum density);
- ◆ collaborates with agencies affected by infill development or redevelopment, including transportation agencies, school districts, and various other service providers; or
- ◆ streamlines the permit process for the reuse of underused land.

### **The Encouragement of Activity in Downtown and around Transit Facilities**

In support of increased activity in downtown and around transit stations, the locality:

- ◆ establishes minimum density requirements for new residential and commercial development within walking distance (one-quarter mile) of commuter-rail stations or bus-transit hubs;
- ◆ permits a mix of uses and the highest appropriate intensity of residential

and commercial use in downtown and transit-station areas; or

- ◆ adopts development regulations and establishes funding programs that encourage the location of community-serving facilities—such as child-care centers, libraries and other civic buildings, social services centers, seniors housing, and medical facilities—in downtown and transit-accessible areas.

### **The Encouragement of Mixed Uses**

In support of a mix of uses within communities, the locality:

- ◆ plans for a complementary mix of land uses, but not necessarily on every site;
- ◆ permits residential uses in all zones (except industrial zones), convenience retail uses within employment areas, and neighborhood-serving commercial uses in residential zones;
- ◆ relaxes parking requirements or encourages shared parking for residential development above or adjacent to office and retail uses; or
- ◆ programs school sites as centers of community activity, with a particular focus on the joint use of facilities.

### **The Preservation of Open Space And Natural Resources**

In support of the preservation of open space and the protection of natural resources, the locality:

- ◆ identifies agricultural land and natural features—wetlands, wildlife habitat, waterways, and so forth—that should be protected, and encourages the protection of identified land and features;
- ◆ provides parks and open space in built-up and revitalizing communities;
- ◆ identifies priority sites for future parks, and develops a financial strategy for acquiring and maintaining these areas;
- ◆ establishes policies promoting the clustering of development on less sensitive land and the avoidance of development on more sensitive land; or
- ◆ provides dedicated funding for open-space acquisition and agricultural land preservation.

### **The Provision of Certainty in the Development Review Process**

In support of providing more certainty in the development review process, the locality:

- ◆ provides a limited, more streamlined environmental review process for development projects that conform to the mitigation measures established in thorough front-end environmental assessments and clearances; or
- ◆ establishes standards that assure that multifamily or mixed-use development located near transit will not be constrained by parking requirements.

- ◆ Provide financial and technical support to two recently established state programs administered by the Department of Housing and Community Development, the Inter-Regional Partnership Grants for Jobs-Housing Balance, and the Jobs-Housing Balance Incentive Grants.
- ◆ Integrate smart growth funding strategies into the allocation of federal and state funds for transportation planning and capital facilities throughout California.
- ◆ Encourage regional organizations that allocate state transportation dollars to include smart growth considerations in their funding criteria.

Ideally, Caltrans could use criteria similar to those suggested for smart growth dividends (see box above) to prioritize its planning and capital facilities funding. It would be desirable to reprogram certain Surface Transportation Improvement Program (STIP) funds to emphasize smart growth plans and projects, but Caltrans would have to take care to not violate existing funding commitments.

A market-driven development strategy in Brea (30 miles east of downtown Los Angeles) has encouraged pedestrian and bicycle travel and retail/residential mixed-use projects in this city of 35,500 people.



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## **AUTHORIZE TAX-INCREMENT FINANCING FOR TRANSIT-ORIENTED DEVELOPMENT**

Under California redevelopment law, local redevelopment agencies are authorized to use tax-increment financing (TIF) together with land assembly powers to achieve redevelopment objectives in areas determined to be blighted. The state should authorize localities to use TIF powers also in nonblighted areas near rail facilities and along major bus corridors to achieve transit-oriented development (TOD) objectives.

The result of successful TOD can be vibrant, mixed-use communities and pedestrian-friendly town centers with improved access to public spaces and mass transit; enhanced property values; and the prevention of blight in at-risk areas.

California should enact legislation allowing localities to use TIF around major bus stops or rail-transit stations that conform to specified criteria. TIF would be available for use within one-quarter mile of stops or stations. The criteria for use of this tool would include minimum peak period ridership on the transit route, as well as assurances that:

- ◆ the area is predominantly urban;
- ◆ critical county and other services dependent on property tax growth are protected;
- ◆ the hoped-for development would not reasonably be expected to occur through private enterprise or government action, or both, without tax-increment financing assistance;
- ◆ density standards within TIF areas are sufficiently high, parking requirements are sufficiently reduced, and a mix of housing types is permitted;
- ◆ a variety of nonresidential land uses, including transit-oriented retail and commercial development and civic uses such as daycare and libraries, are allowed within the TIF area; and
- ◆ sufficient affordable housing is included.

## PROVIDE FISCAL INCENTIVES FOR HOUSING

The reliance of local governments in California on sales taxes encourages them to approve proposed commercial development and discourages them from approving (or promoting) sufficient residential development. This incentive structure needs changing.

Fiscal incentives for local government approval of proposed affordable housing and other housing projects conforming to smart growth practices are needed. Even though the state currently faces fiscal limitations, incentives that would stimulate the production of needed housing warrant careful consideration, because such housing would provide significant long-term benefits to the state's economy. Certain incentives could be used in connection with a regional tax-sharing strategy. The state should consider the adoption of three (not mutually exclusive) possible fiscal incentive strategies:

- ◆ Dedicate a portion of the growth in locally generated property or sales taxes to encourage the production of housing as well as transit-oriented development and to provide parks, open space, and other infrastructure.
- ◆ Dedicate a portion of the property tax increment from specific smart growth projects or types of projects to support local housing and other community needs. For example, set aside a portion of the property tax growth from transit-oriented developments for use by local governments in promoting housing and providing needed infrastructure in the tax-increment district or nearby areas.
- ◆ Permit city/county voluntary agreements to provide for an exchange of a portion of the city's sales tax revenue for a portion of the county's property tax. The city would collect a larger share (and the county a smaller share) of property taxes on new housing development levied in the city and the county would levy a portion of the sales tax in the city. In the first year, the transaction would be revenue neutral. Over time, however, the city's revenue base would come to depend more on taxes on residential properties. Thus, this tax-exchange program would reduce the city's motivation to approve an overabundance of commercial development and incentivize the production of housing. The optimum location for tax-exchange programs would be counties in which most urbanization is taking place within city boundaries and the counties are not seeking urban development in unincorporated areas.

**Doe Mill's 160 single-family and multi-family homes on a 20-acre site in Chico are being developed at approximately twice the density of new housing in other parts of the community. The project has received strong support from neighbors.**



COURTESY OF HERITAGE PARTNERS

# REGULATORY REFORM RECOMMENDATIONS

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**T**he committee recommends that state leaders consider implementing the following regulatory reforms, detailed below, to advance smart growth in California:

- ♦ Revise environmental and planning regulations.
- ♦ Address construction-defect litigation.
- ♦ Emphasize community building in school construction.
- ♦ Eliminate barriers to brownfield development.

## **REVISE REGULATIONS GOVERNING ENVIRONMENTAL REVIEW AND LOCAL PLANNING**

*Note: In the course of discussing regulatory reform related to the California Environmental Quality Act (CEQA) and the role of such reform in effective land use planning—a complicated and controversial issue that leaders in the state are seeking to address—the Statewide Coordinating Committee made progress in formulating certain approaches. However, not all committee members agree with all of the conclusions and recommendations provided here on this issue. They are provided to stimulate further discussion. The committee recognizes that a much more broadly based dialogue will be necessary to develop final legislative proposals on the issue of CEQA reform.*

Two state laws guide development and conservation activities in California: the general plan law and the California Environmental Quality Act (CEQA). These laws are not strongly coordinated, nor are they effective in promoting smart growth. The state should seek to revise these two regulatory programs to achieve three objectives: 1) improve the coordination between local land use planning and environmental regulations, 2) improve the ability of local governments to preserve important wildlife habitats and other natural features, and 3) reduce barriers to smart growth erected by these laws.

General plan law requires localities to adopt long-range plans, goals, objectives, and policies that address development and conservation issues, but fails to require them to specify the means for achieving the goals and objectives or for implementing the policies. Also, general plan law neither requires nor encourages localities to enact or pursue strategies consistent with smart growth.

CEQA requires localities to evaluate the potential environmental effects of proposed plans and projects. Projects pass through multiple—and fre-



quently duplicative—stages of review that unnecessarily lengthen and complicate the approval process. Furthermore, CEQA is often administered by local agencies in a way that lowers planned densities and pushes development out to undeveloped areas.

Ideally, CEQA and the general plan law should be integrated planning tools that work together to protect environmental resources and open space and promote smart development. In reality, the laws are implemented in ways that impede smart growth. These two regulatory programs should be revised to focus on the accomplishment of three important smart growth goals: 1) infill development, 2) the management of urban development in undeveloped and developing areas, and 3) improved opportunities for the kinds of residential development needed by California residents.

- ◆ For infill development proposals, institute a planning process that provides for expedited environmental review under CEQA and greater certainty in the approval process for qualifying projects.
- ◆ For development in unincorporated areas and expanding incorporated areas, institute a smart growth planning process that protects open space, identifies areas for future development, and encourages balanced, mixed-use developments.
- ◆ For enhancing opportunities for the kinds of residential development needed by Californians, encourage local governments to prepare infill plans or inventories as part of the state's Housing Element law.



Developed on the site of a former regional shopping center in the heart of downtown Pasadena, Paseo Colorado is a mixed-use urban village with more than 500,000 square feet of retail development and 387 apartment homes.

COURTESY OF POST PROPERTIES

To encourage these actions, the state should offer financial incentives and support for planning and infrastructure like that described for the Community Dividend Program, and it should provide CEQA relief as well.

## FOR INFILL DEVELOPMENT

While CEQA offers important environmental safeguards, it also can inhibit infill development. The state should streamline environmental review for urban infill projects in order to promote infill development in urbanized areas (and thereby better protect the environment).

The first step in a streamlined review would be for a lead agency to prepare an infill-focused environmental impact report (EIR) for any qualified project that will need an EIR. (Projects that do not receive a negative environmental declaration or are not otherwise exempt from CEQA need EIRs.) To qualify for an infill-focused EIR, projects should meet specified criteria to ensure that they are consistent with smart growth objectives (see feature box below for some illustrative criteria).

The infill-focused EIR would address environmental standards up-front in the planning process and would certify that the project meets smart growth criteria. Thus, project alternatives, growth-inducing effects, and cumulative effects would not have to be addressed.

The infill-focused EIR would need to address the following issues: parking, traffic, community design, and open space. It could provide clear standards and mitigation measures for these project elements.

The infill-focused EIR would be circulated for comments for a period of not more than 30 days, and be subject to limited judicial review (expedited review and a limited standard of judicial review including judicial deference to the lead agency's decision) and a 30-day statute of limitations for challenges.

## FOR THE MANAGEMENT OF URBAN DEVELOPMENT IN UNDEVELOPED AND DEVELOPING AREAS

The state should seek to strike a balance between environmental conservation and protection on the one hand and development in designated smart growth areas on the other by encouraging more comprehensive

### Illustrative Criteria for Infill-Focused EIRs

To qualify for streamlined environmental review, proposed infill developments would have to meet specified criteria to assure that they are consistent with smart growth objectives. The following criteria are illustrative of what the state could use to determine the eligibility of a project.

- ◆ The project is located within an urbanized area—either within city limits or within designated smart growth boundaries in an unincorporated area—and is substantially surrounded by existing urban uses.
- ◆ The project is consistent with the local general plan, and the EIR for the applicable general plan was certified within ten years of the date of the project application.
- ◆ The project is consistent with the applicable zoning ordinance, and with any applicable specific plan, local coastal program regulations, and other applicable regulations.
- ◆ The project can be adequately served by utilities.
- ◆ The project site has no value as habitat for endangered, rare, or threatened species.
- ◆ The project site poses no significant health hazards to future occupants.
- ◆ The project is within a specified distance of a public transportation node or system.
- ◆ The project will improve the regional jobs/housing balance.
- ◆ The project's density is at least 20 dwelling units per acre or is equivalent to at least 150 percent of the surrounding density, whichever is feasible.
- ◆ The project incorporates adopted local or regional mitigation requirements—such as traffic or transit fees, water quality measures, and open-space fees.
- ◆ The locality has a certified housing element and residential uses were considered.

approaches to planning on the part of cities and counties, which would support smart growth practices by providing greater certainty in the development process. Initial implementation of a comprehensive planning initiative could occur on a voluntary or pilot basis. The initiative could involve—singly or in combination—1) new county/city planning efforts and 2) extension of the LAFCO (Local Agency Formation Commission) process to address proposed expansions of urban development and the establishment of new communities.

**County/City Comprehensive Planning.** Interested cities and counties could draft 20-year comprehensive plans that would provide all stakeholders in the development process with more reliable information on regulatory and investment trends. Counties should undertake such planning efforts in close collaboration with affected cities and property owners.

Such plans would designate areas in which growth will be fostered by public policies and public investment and areas in which the conservation of appropriate open space, critical habitat, and prime agricultural lands will be fostered by public policies and investment. Alternatively, they would designate certain areas in which growth can occur and certain other areas that will not be urbanized.

Such plans and their supporting EIRs should be reviewed and revised on a periodic basis—every five or ten years—to account for revised growth projections and changing conditions.

Planners would use state and regional population and employment forecasts to determine the amount of growth that should be planned for, while also taking into account how much of the forecasted growth can be practically and feasibly accommodated through infill development in urbanized areas based on best practices, maximum feasibility, and other factors (including how much infill development actually occurs in the planning area in an average year).

Localities participating in long-term comprehensive planning would designate smart growth areas in which development must meet defined criteria (for example, be of a minimum density, feature pedestrian-oriented design, contribute to the regional jobs/housing balance, provide transit accessibility, provide parks and open space, and respond to certain mitigation requirements). In determining the location of smart growth areas, planners should give consideration to the presence of prime agricultural land or critical habitat and ascertain whether candidate areas are part of a conservation plan approved by the state.

Long-range plans must be in full compliance with CEQA under current rules. (That is, they must receive EIR certification.) Once a plan's EIR is certified, no CEQA litigation would be permitted for conforming development proposed within designated smart growth areas. This CEQA incentive will provide greater certainty in the development process and encourage private investment and development in fully planned smart growth areas.

**Extension of LAFCO Process.** Managing urban development in rural and newly urbanizing areas could be accomplished also through extension of the Local Agency Formation Commission (LAFCO) process. Smart growth

Located 30 miles north of downtown Los Angeles in the Santa Clarita Valley, Valencia Town Center contains a wide mix of uses, including office, hotel, residential, retail, and entertainment. For the occupants of the development's 560 apartments and of another 5,000 attached and detached residences nearby, the town center's many destinations are easily accessible by walking or bicycling.



COURTESY OF NEWHALL LAND

criteria—"factors of consideration" in LAFCO's terminology—could be developed and followed for all annexations. Furthermore, the LAFCO review process could be applied to proposed major expansions of urban development and the proposed establishment of new communities in unincorporated areas. Factors of consideration could include smart growth standards and a determination—based on an infill-site inventory or infill development plan (see next section)—that the supply of feasible infill sites is inadequate to meet projected growth demands.

### FOR HOUSING PRODUCTION

Local governments should be encouraged to take an inventory of infill sites or prepare an infill plan as part of the state Housing Element law. And a CEQA exemption should be granted to qualifying infill projects in cities and counties with an adopted infill plan that was developed in full compliance with CEQA.

A qualifying infill plan should cover the following bases:

- ◆ identify housing production goals for infill development;
- ◆ identify all potential infill sites (including vacant and underused property, reusable buildings, and brownfield parcels);

The city of Sacramento's Redevelopment Agency provided a \$1.2 million loan to the developer of Metro Square to build 45 single-family homes on a 2.2-acre infill site in the Midtown neighborhood, which reduced project costs and kept sale prices at an affordable level.



COURTESY OF THE LOCAL GOVERNMENT COMMISSION

- ♦ suggest how barriers to infill development can be removed;
- ♦ provide incentives for infill development;
- ♦ specify minimum requirements for infill projects;
- ♦ report annually on the amount of infill development occurring;
- ♦ adjust annually the forecast for infill development; and
- ♦ establish strategies by which the locality can achieve its fair share of housing needed in the region.

## **TAKE STEPS TO LIMIT THE IMPACT OF CONSTRUCTION-DEFECT LITIGATION ON THE PRODUCTION OF ATTACHED HOUSING**

The production of attached housing—condominiums and townhouses—is the most economical means of providing more homeownership opportunities for California residents and particularly for first-time homebuyers. But the production of attached housing in the state has fallen dramatically in recent years, from 19,000 units in 1994 to 6,000 units in 2001.

The risk of construction-defect litigation is a major factor in this production drop-off. The high probability of being sued for construction defects has made it difficult for builders to obtain construction-defect insurance, which is available only at extraordinary prices. Most insurers and builders have been driven out of the attached-housing market. Many design professionals as well design only a limited number of attached houses if any, due to the risk of construction-defect litigation.

Regulatory reform that encourages the construction of higher-density, attached, for sale housing is needed to achieve the objectives of smart growth in any meaningful way. In the absence of appropriate reforms, the homeownership rate in California will likely remain the second lowest in the nation.

Redress should be available to homeowners when builder negligence causes construction defects that could result in physical injury or property damage. However, the nature of construction defects varies widely and the law provides no guidance for distinguishing minor cosmetic or aesthetic defects from defects that threaten physical harm or major property damage. Furthermore, under the current system builders have no opportunity to remedy defects prior to litigation, and homeowners receive little assistance in evaluating the source and significance of defects and obtaining remedy short of a costly and lengthy legal process.

The state should devise a strategy for resolving construction-defect disputes that both protects the rights of homeowners and encourages builders to produce well-designed, high-quality attached housing. Establishment of some of the following remedies and conditions could be included in this strategy:

- ♦ the right of the builder to inspect and repair defects prior to the filing of litigation;

The Crossings, an 18-acre pedestrian-friendly neighborhood in Mountain View (30 miles south of San Francisco), was developed on the site of a failed auto-oriented shopping center. It incorporates retail uses and a mix of housing—townhouses, apartments, and single-family houses—including 15 percent affordable units.



- ◆ a contract between the builder and the original homebuyer (and any subsequent homebuyers) providing full coverage of the cost to repair construction defects;
- ◆ a fair and rapid out-of-court dispute resolution system to resolve disagreements and provide for repairs deemed legitimate;
- ◆ independent third-party inspection and certification of construction-defect repairs;
- ◆ maintenance standards for homeowner associations (to reduce the incidence of building problems resulting from improper maintenance or neglect);
- ◆ construction-defect definitions and standards developed specifically for affordable attached housing;
- ◆ limits on other tort remedies (punitive damages) in defect litigation, except in the most egregious cases;
- ◆ insurance products that protect all design professionals and contractors associated with the project;
- ◆ a state insurance pool covering construction-defect risks; and
- ◆ the encouragement of higher standards of homebuilding.

The state legislature, the governor, and the attorney general should consider establishment of a commission or task force to bring together builders, insurers, trial attorneys, public officials, and other interested parties for the purpose of finding ways of making construction-defect litigation less of an impediment to the production of attached housing.

## **EMPHASIZE COMMUNITY BUILDING IN SCHOOL CONSTRUCTION AND REMODELING**

School infrastructure needs statewide are estimated to require \$40 billion of spending. The state is now spending significant amounts of school-bond funds for modernizing and building schools, and the state legislature is considering a new \$25 billion bond program for K–12 schools.

School construction projects offer smart growth opportunities. Land use efficiency can be increased by programming multiple uses—museums, libraries and other community facilities, parks—for school properties. School facilities can serve as community anchors by providing a variety of uses and functions extending beyond the hours they are typically used for educational purposes. School construction in developed urban areas provides redevelopment opportunities and expanded educational and recreational opportunities.

However, most school construction and modernization projects tend to be planned without community collaboration and without consideration of joint-use opportunities. Also, current state rules favor large schools on large sites, which often makes it difficult for urban school districts to build new schools and diminishes opportunities for community building by isolating schools from neighborhoods, necessitating more auto usage, and increasing commute times for teachers and students. Furthermore, local school districts tend to view joint use as an unwanted complication to the already challenging process of designing, funding, and constructing schools. In planning school projects, local school districts are not incentivized to consider community policies and goals and other community-planning factors.

The state should work to assure that funds associated with state school bonds are awarded in ways that encourage sound community planning,



School construction projects provide opportunities for neighborhood revitalization and for the inclusion of community-based educational and recreational facilities.

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the joint use of school facilities, and better and more efficient land use. School facilities should serve a variety of community needs; and schools should act in partnership with a wide array of public, civic, and private organizations to accommodate community needs. Joint use is a key to making K–12 schools the centers of their neighborhoods. Joint-use development accommodating direct access to community uses—like libraries, gymnasiums, auditoriums, health clinics, athletic fields, and performing arts space—requires smarter designs for new and renovated schools.

To emphasize community building in school construction projects, the state should 1) rank funding applications based on smart growth criteria, 2) reduce barriers to smarter school design, and 3) directly fund the implementation of model projects.

Using the State Infrastructure Bank scoring process as a model, the board that allocates state K–12 school funds should rank applications for school construction funds on a scale that gives a majority of points to such smart growth factors as the following:

- ♦ The project provides for the joint use of school facilities with nonprofit or public agencies.
- ♦ The design and location minimize automobile trips and commute times for students, teachers, and parents.
- ♦ The site is of the minimum size needed for meeting student space needs. (The Department of Education currently accepts a number of strategies for minimizing site sizes, including multistory schools, the joint use of facilities, the use of off-site facilities, structured parking, rooftop play areas, and shared fitness and athletic facilities.)
- ♦ The project involves the redevelopment of underused urban land or the adaptive use of obsolete buildings.
- ♦ The project protects agricultural land and open space.

The state should reform its funding procedures, revise its school construction standards, and otherwise work to remove barriers to the joint use of K–12 facilities and to the design and programming of neighborhood-serving schools. For example, the state should revise the minimum acreage requirements for school sites and the building and construction code requirements for school renovations.

Finally, the state should set aside a small portion of its school-bond funding to plan and implement joint-use projects and model school design and construction projects that are based on smart growth principles of community planning.

## **ELIMINATE BARRIERS TO THE DEVELOPMENT OF BROWNFIELDS**

Abandoned, idled, underused, and often contaminated industrial and commercial sites in urban, suburban, and rural areas offer significant opportunities to accommodate housing and jobs. In urbanized areas, the development of brownfields can strengthen the tax base. Development





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EmeryStation Plaza, a mixed-use development adjacent to the Emeryville Amtrak Station in the San Francisco Bay area, includes a multi-modal transit center, offices, retail uses, and housing.

on California brownfields is presently discouraged for a variety of reasons, including the state's uniquely complicated regulatory structure.

Multiple federal, state, and local agencies exercise overlapping jurisdiction over brownfield cleanup and development in California. The applicable procedural and legal requirements of the different oversight agencies exhibit substantial differences. The state Department of Toxic Substances operates a program modeled on the federal Superfund program that is targeted to assure cleanup of the most complicated and controversial properties. The regional water quality control boards have established somewhat more flexible procedures for brownfield cleanup. The brownfield oversight requirements of local agencies—including health departments, fire departments, and redevelopment agencies—are varied and broad, contained sometimes in relatively informal memorandums of understanding and sometimes in detailed ordinances.

Each involved public agency establishes its own cleanup standards. Depending on the standards that apply, cleanup schedules and costs can vary dramatically. The maze of laws and requirements that apply to most brownfield projects can be daunting; and compliance with these laws and requirements still does not relieve the developer—and in some cases the local agency—from significant long-term liability. Moving through the cleanup process and gaining the required approvals is time-consuming. Often, developers must hire specialists simply to understand what is required.

To promote the cleanup and reuse of brownfields, the state should establish a multifaceted and coordinated program that provides clear and definitive guidance on brownfields development. It would probably be advisable to consolidate brownfields oversight under one roof by naming a single lead brownfields agency or coordinating agency. At a minimum, the state should provide an official guide to California's brownfields regulatory maze.

Also, state legislation should be aligned with the federal Brownfields Revitalization and Environmental Restoration Act (2002) to eliminate conflicting or redundant regulations and clarify liabilities and requirements for the development of brownfields.



# NEXT STEPS

**T**he ULI California Smart Growth Initiative's Statewide Coordinating Committee's recommendations aim to identify priority areas where state actions, including incentive programs and regulatory reforms, could significantly contribute to smart growth. There is a growing consensus in California about the need for smart growth, and this bandwagon offers an opportunity to effect real change, to make key changes in longstanding growth patterns—and thus address the problems associated with those growth patterns.

The implementation of these smart growth recommendations will help to make California a place where—20 to 40 years in the future:

- ♦ activity-filled cities thrive;
- ♦ there is a workable balance of compact, efficient, transit-served communities and low-density, suburban developments;
- ♦ housing at all prices is in healthy supply;
- ♦ jobs, housing, and other uses are located near one another—and long commutes are less necessary;
- ♦ green space is preserved and farmland protected; and
- ♦ underused urban land continues to be recycled for viable commercial and residential development.

The smart growth movement in California opens up opportunities to make key changes in longstanding growth patterns.



GARY BINGER

Implementing the state initiatives for smart growth recommended in this report will not be easy. Their success depends on the support of multiple stakeholders, policy makers, and committed leaders throughout the state. But the results will be well worth the effort. The kinds of incentives and regulations proposed here, if intelligently designed to promote smart growth, promise a satisfying quality of life and healthy economy for the next generation of Californians.



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